

From: [Himebaugh, Glenn E](#)
To: [Garcia, Alexandria E](#); [Hall, Elizabeth L](#)
Subject: Fw: [EXTERNAL] Haskell Indian Nations University XC Student-Athletes Rights
Date: Tuesday, June 14, 2022 9:43:04 AM
Attachments: [Jun 13, Doc 1 1.jpg](#)
[Jun 13, Doc 1 2.jpg](#)
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[Jun 13, Doc 1 4.jpg](#)
[Jun 13, Doc 1 5.jpg](#)
[Jun 13, Doc 1 6.jpg](#)
[Jun 13, Doc 1 7.jpg](#)
[Jun 13, Doc 1 8.jpg](#)
[image001.png](#)
[Outlook-yebkgm5y.png](#)

Glenn E. Himebaugh

Manager, Employee & Labor Relations, Albuquerque

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BIE survey - [BIE HR Customer Satisfaction Survey](#)

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From: Shamblin, Jackie R <Jackie.Shamblin@bie.edu>
Sent: Tuesday, June 14, 2022 8:08 AM
To: Tuchawena, Bennett R <Bennett.Tuchawena@bie.edu>; Himebaugh, Glenn E <Glenn.Himebaugh@bie.edu>
Cc: Benavides, Jacqueline <Jacque.Benavides@BIE.EDU>
Subject: FW: [EXTERNAL] Haskell Indian Nations University XC Student-Athletes Rights

See below.....

Jackie R. Shamblin

Human Resources Officer
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Website: www.bie.edu



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From: [REDACTED]
Sent: Monday, June 13, 2022 10:47 PM
To: Shamblin, Jackie R <Jackie.Shamblin@bie.edu>
Subject: [EXTERNAL] Haskell Indian Nations University XC Student-Athletes Rights

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opening attachments, or responding.

Human Resources Director Jackie Shamblin,

Our cross country team at Haskell Indian Nations University has been meeting weekly over the last 6 months to pursue our next path forward to resolve numerous violations, and abuses by a select group of Haskell Administrators who have done so for years. These problems and abusers should have no place at Haskell.

Our former athletic director, Gary Tanner, advised us to follow the BIE's chain of command with our reports as we have extensively detailed. We have nearly exhausted the chains in command and we will look towards obtaining representation.

We called, met in-person, and made multiple/serious reports to Haskell's Human Resources administrator, (b) (6), since September of 2021.

No Responses Given

We made reports to our former athletic director up to 12/31/2021, (b) (6). (b) (6) said he was unable to do anything as he was unwillingly removed by the Vice President Tonia Salvini from having a say.

Following the discussions with (b) (6), we reached out and expressed our serious grievances and reports to last Intern Haskell President Tamarah Pfeiffer. We tried to set up appointments at her office, sent 3 direct emails with our team letter attached, and we mailed our team letter.

No Responses Given

Additionally, we expressed our substantial grievances with the next chain in command, and we sent a copy of this mailed letter and 2 additional emails with the team letter attached to the BIE Director Tony Dearman.

No Responses Given

In continuing our reports and grievances we followed the next chain in command with mailing our team letter and sending 2 emails with our team letter attached to the Assistant Secretary, Bryan Newland.

No Responses Given

Our grievances and our reports to Human Resources, the Athletic Director, Haskell

President, BIE Director, Bryan Newland, as well as, other issues needing to be addressed

-

1.) Forcing students, student-athletes, administrators, and even people that did not work at, nor were enrolled at Haskell to sign or demand they follow contracts they created. These included the no-contact agreement, and the non-disclosure agreement put into place by HR (b) (6), VP Tonia Salvini. (b) (6), and (b) (6) enforced these contracts with aggressive intimidation in-person, cited repercussions if we did not follow them, and detailed multiple times we will be removed from Haskell if we did not follow them.

As time went on these regulations began to get even more absurd. Haskell's Vice President Tonia Salvini and Athletic Director (b) (6) openly told numerous cross country recruits and their families they are legally mandated to follow the 'non-contact agreement' and 'non-disclosure agreement,' as they were also limited on what they could say, do, and who they could come into contact with.

2.) Bullying by Haskell administrators and a select group of their student-athletes - We experienced it and have seen it.

3.) Harassment by Haskell administrators and a select group of their student-athletes - We experienced it and have seen it.

4.) Witnessing the theft of thousands of dollars of federal property at Haskell stolen by (b) (6) and (b) (6) - We seen it, 7 other Haskell administrators confirmed they have seen it. At least 2 administrators reported it this past school year. We watched multiple times (b) (6) and (b) (6) load up her (b) (6) truck with thousands of dollars of federal property, athletic gear, and drive off-campus mid-work day to never return that day, nor return the gear. It is known by a majority of Haskell's campus that (b) (6) and (b) (6) have been giving thousands of dollars of federal property and athletic gear to their family and friends outside of Haskell over multiple decades. As Mr. Tanner and another Haskell coach stated:

"Conducting a simple internal investigation would solve these issues immediately."

5.) Illegally breaching our coaches' contract - Former AD, (b) (6), cited this happened and it was illegal through systematic harassment and fabrication of false allegations that still have zero merit 7-8 months later

6.) Giving 2 Haskell administrators a head athletics coaching position, one for track and another for cross country, with zero experience - These administrators did not compete or apply for this contract - 3 Upper Administrators at Haskell, including our last AD, (b) (6) cited this a major contract violation and is a real problem for (b) (6)

to do so.

7.) On 1/1/2022 we hired a new athletic director, (b) (6). This is a violation with multiple regulations as (b) (6) is supervising (b) (6) who was the head track coach.

Another Haskell administrator provided our team with the cited regulation:

<https://bja.ojp.gov/program/project-safe-neighborhoods-psn/summary-standards-conduct-and-conflict-interest-rules>

Inconsistently we were told (b) (6), who was hired as the Sports Information Administrator was the new Haskell head track coach last March, but as of 2 weeks ago when our athletics website was updated, it states (b) (6) is the head Haskell track coach.

Al went to all track meets that occurred in March, April, and May. Al was also at track practices, and was the only 'track' coach that brought a Haskell student-athlete to compete at Outdoor Track Nationals last month in Alabama. (b) (6), and (b) (6) did not go to Track Nationals, only (b) (6) did.

(b) (6) addressed this as a direct violation to the BIE Director Tony Dearman with an email on 3/2/2022. This email is attached and was published in a recent Lawrence Times Article made available to the public.

Nothing was done in response.

8.) Mandatory meetings that stated our entire team needed to be present. These meetings were created by (b) (6), and (b) (6). At the first meeting lasting over 2 hours entailed (b) (6) and (b) (6) becoming aggressive stating we were committing multiple violations for erroneous reasons, we had to remain silent, and if we did not heed to every demand, and the contracts, we would be reprimanded.

Within these meetings (b) (6) and (b) (6) included 2 of their students who they previously used to recruit other Haskell students to join their coalition and sent them to students' dorms and apartments un-announced at late hours.

-EVERY REPORT MADE AND MENTIONED WENT UNANSWERED-

_Attached is the letter we mailed and emailed 3 times to the Former Haskell Intern President Tamarah Pfeiffer.

_The BIE Director Tony Dearman was supplied with the same letter as Ms. Pfeiffer.

_Attached is the letter we mailed and emailed to the Assistant Secretary Bryan Newland.

_Attached is a link on our story we shared with Lawrence Journal with being silenced, and our rights being stricken.

_Attached is an email from Haskell's previous Athletic Director, (b) (6), to BIE Director Tony Dearman stating there is "intimidation" and "bullying" going on with our coach at Haskell.

_Attached is one message of many for who has seen (b) (6) and (b) (6) commit theft of federal property.

_Attached is screen shots of (b) (6), (b) (6), and (b) (6)) all coaching the same team in last years.

Objectives:

-We don't want special treatment, we want the SAME equal opportunity for ALL Haskell administrators and ALL student-athletes.

-ALL Haskell administrators and ALL students to follow Haskell's procedures, rules, and regulations in place.

-Our coach Clay Mayes to have his contract unpaused and reinstated immediately. Our coach and our team have been subject to multiple cases of ongoing harassment, bullying to comply, intimidation, and perpetually facing false allegations.

-Internal investigation on-campus and have administrators that have a conflict of interest with family and friends they work with to work from home during this time.

-There needs to be a heavy review and an internal investigation for the wrong doings of mentioned administrators. For there to be administrator interviews, reviews of all documents, reviews of past employment applications, and reports.

A recent example for why Haskell needs to conduct a review for past positions:

It has been openly discussed on-campus that (b) (6) (HR at the time) threw out multiple athletic director applications for the recent Haskell Athletic Director position.

Some of us also talked to by former Athletic Directors who applied and by multiple Haskell employees. These people all detailed that (b) (6) was throwing out their applications for illegitimate reasons in order to manipulate giving the position to Judith Gipp. Other Haskell administrators also validated this.

-Another internal review needs to be conducted on the BIE's Human Resources Administrator in Albuquerque, New Mexico, (b) (6).

In the past anytime a Haskell administrator has been able to report (b) (6), or her close friends at Haskell, Tonia Salvini, (b) (6), and (b) (6) to (b) (6), he has consistently hidden the reports or disregarded them all together. Multiple Haskell employees can provide their testimonies that their reports were expunged from any consideration.

In exhausting all our options we recently contacted Lawrence Journal and our cross country team did an interview with one of their journalist.

Our story can be found here: <https://www2.ljworld.com/news/general-news/2022/jun/10/haskell-athletes-were-made-to-sign-no-contact-agreements-stemming-from-investigation-of-former-coach-they-say-administrators-intimidated-them/>

If you need any of other emails, reports, or documents do let us know and we will send them to you promptly.

We just want to focus on being a student and an athlete first and foremost. Please step in prevent these abuses from continuing to allow us to have the same opportunity and rights as other students and student-athletes. Whole heartedly we want to represent our community and Haskell on the highest platforms made available.

Tomorrow at 10:00 a.m. we are meeting a lot of Haskell Alumni at the McDonald's closest to Haskell in seeking resolve with these issues. If you live close to Lawrence, you are more than welcome to visit with us, too.

Our team is also happy to meet in whatever form that is most suiting for you whether that's by call, zoom, etc.

With Due Respect,

-The Haskell Cross Country Team

clay mayes Inbox



(b) (6)

Mar 2



to Tony.Dearman@BIE.EDU, me ▾

Mr. Dearman,

My name is (b) (6) and (b) (6) (b) (6) from that Athletic Department. I am sending you this email to ask that you take a personal interest in the situation that is happening in the Athletic Department concerning the Cross Country Program. I believe that there is intimidation and bullying at least going on toward Coach Clay Mayes. He has now had his contract put on hold and is not getting paid for "not being able to do his job", but look at his recruiting and program building that he has been doing.

I also believe that there is a conflict of interest with the acting Athletic Director and Clay Mayes the Cross Country Coach who replaced her brother this year, which is not Coach Mayes's fault. I think some nepotism also may exist with the Athletic Director supervising her brother, the present Head Track Coach and past Cross Country Coach. (The Athletic Director supervises all coaches to some point)

Cross Country is one of the more visible Athletic Programs in Indian Country across the nation and could be a very good program if it had support and positive effort toward it and it's coach. I am not the only one who feels this way and we all want to support the Cross Country Program.

Clay Mayes deserves to be supported and backed by the University and Athletic Department, but it seems to all of us that know and understand Haskell Athletics that he has not been given a chance to thrive. He has been trying to battle barriers and limitations put in front of him since he got to Haskell.

Please do not take my word on this but contact him and visit with him on this. I believe that he is being railroaded out by several other people also that are in the click at Haskell against him.

Please contact me if you need anything else on this situation.

Hello Assistant Secretary Mr. Bryan Newland,

Our team is in desperate hopes to find resolve and we are seeking for Haskell to do the logical and right thing. We do not feel that Haskell's administration is addressing the needs of Haskell's student-athletes, future student-athletes, and for the general well-being of all involved. If continue to hear no responses, we are looking to raise these concerns with multiple respectable news outlets.

We put together a team letter that is attached below and we mailed this letter to the previous Haskell president, Tamarah Pfeiffer and to BIE's Director, Tony Dearman, months ago. We also sent multiple emails to both individuals to follow-up and we received no responses of any kind. We feel disheartened and betrayed from the lack of leadership, toxic bullying nature, and nepotism involved with ongoing issues that have been outright neglected.

We have been consistently reporting ongoing issues with multiple athletic Haskell administrators, (b) (6) (b) (6) and (b) (6) who have systematically created complaints, allegations, used intimidation, bullied, and created problems for other Haskell staff members and coaches by manipulating their students to falsify complaints. Our voices are not being heard, our well-being ignored, and our fears pushed aside. We do not feel comfortable with (b) (6) and (b) (6) being involved in the Cross Country and Track program as we have yet to see any semblance of accountability for their actions.

Haskell's (b) (6) got involved and emailed Tony Dearman in March. According to (b) (6) he did not receive any responses in regards to his urgent email (b) (6) (b) (6) email is provided in the link below.

Ultimately, no wrong doing was found with Coach Clay Mayes from last Fall, but not long after, (b) (6) (b) (6) who was the administrator who created complaints, was named as Haskell's head track coach earlier in March. (b) (6) has never coached nor has any track experience of any kind. Following (b) (6) promotion as a head coach, another predictable false allegation came out to remove our coach, Clay Mayes. Haskell has yet to allow any due process nor allowed our coach or even one of the

student-athletes on our team to respond to ongoing harassment and intimidation created from (b) (6)

(b) (6) and (b) (6) We have also made reports to Haskell's Vice President, Tonia Salvini, and she routinely stated, "I'll look into it."

Once our coach was removed (b) (6) contacted all of us to meet in the classrooms of the athletic complex for mandatory 2 hour meetings for 3 days in a row. Judith would persistently state she was going to report us if we talked to anyone about the issues or if we voiced concerns (b) (6) reiterated this applied to talking to Clay, or if we were to talk to our parents about Clay. (b) (6) stated she would report us and threatened us with legal repercussions from the federal government. At one point, Judith pushed for us to transfer since we're "unhappy." We never stated or expressed this sentiment, mostly because we do not trust (b) (6) or (b) (6) as they lack professional boundaries as coaches and administrators and repetitively bully others to acquire what they want.

As (b) (6) stated, Haskell allowing the sister of a current coach to be the athletic director violates BIE's regulations on conflicts of interest with (b) (6) (b) (6) is the sister of (b) (6) who was replaced by our coach as Haskell's new cross country coach. (b) (6) still coaches track, goes to practices, and goes to meets.

We want to allow our team and our program to be built. All of us come from out of state and we are committed to Haskell because we knew the supportive team culture that Coach Clay would develop. This email comes from 17 student-athletes and we can all meet by zoom or any other preferred format that is most convenient for you.

Here is an article about current problems. We recently reached out to Haskell's Indian Leader to start the process to get our story out there. There have been multiple Haskell administrators who have been involved with helping us and doing the right thing

<https://lawrencekstimes.com/2022/05/13/mayes-haskell/>

Our coach started Last July of 2021 and was immediately attacked weeks after his start date. All of his grievances and reports of harassment and hostility were ignored by every level of Haskell's

administration. How Haskell's leadership has allowed this to continue is beyond us. We have been encouraged by a lot of the mentors within Haskell's community such as (b) (6)

(b) (6)

and most recently some of us were able to visit with Haskell's new Interim President Julia Goodfox. All members mentioned above have openly agreed with us about ongoing problems and have encouraged us to continue using our voice to dismantle ongoing issues and to continue trying to build our program rightfully.

Please help us resolve these issues and allow our program to be built and to grow

-Haskell Cross Country Team

To Haskell's Office of the President,

Towards the end of last summer Haskell Indian Nations University hired Clay Mayes as our new cross country coach. A new era was underway, and many of us, like other student-athletes across the country saw a new opportunity.

The recruitment process was limited with a late start, but we will continue building the program with new incoming student-athletes brought in by Coach Clay. Almost all of the incoming student-athletes for the cross country and track program for Fall of 2021 and Spring of 2022 were brought to Haskell by Coach Clay.

Since last Fall we have been told by multiple Haskell administrators there was an investigation launched due to reports from a subset of returning runners discussing there was hostility at practices. During the entire time Clay has coached us at Haskell we have all whole-heartedly agreed there was no wrong doing of any kind. These sentiments are shared by almost all current and returning runners, minus a few that are under the direction of (b) (6) and (b) (6)

We have always maintained a comfortable environment that was welcoming and one could continue developing as a student-athlete. For the runners who previously ran for Coach Clay at Bacone College or University of Antelope Valley, and now, Haskell we would not have followed Coach Clay to Haskell if we felt unsafe or uncomfortable at any point.

One possible difference with the former Haskell program and the current Haskell program is having necessary standards and criteria to meet with being on our team. Every student-athlete was to attend practices consistently, follow our team's honor code, team rules, and to communicate effectively when it was necessary.

We have high expectations for 2022's Cross Country Season, as Coach Clay has already made multiple recruiting trips to the homes' and schools' of the best Native American-based runners in the country. When given the opportunity to allow Coach Clay to bring in his first year's recruits, Haskell will begin to field a group of student-athletes that are athletically, academically, and culturally successful at a national level.

Haskell is and will continue to be an outlet where one can obtain a college education, and continue to use the sport as a platform to empower the Native Community.

We are looking forward to discussing this further and to rightfully allow our Coach to continue building the program. Haskell is an university where we should always be supporting and welcoming everyone who shares a vested interest in building our community.

Sincerely,

-Haskell Cross Country and Track Student-Athletes



OCT 05, 11:49 AM

Don't know if you ever knew or been to Jim Thorpe Gym but the (b) (6) over the years have used funds to buy gear/shoes/t-shirts and give aways for non Haskell students and XC students as well. Looks like they are loading it all into (b) (6) truck right now



attending and participating in powwows, running, photography, and being with his family and grandchildren.



(b) (6)

**ASSISTANT COACH
16th Season**



(b) (6)

**VOLUNTEER
4th Season**

COACHING STAFF



(b) (6)

HSES Instructor/Coach
16th season



(b) (6)

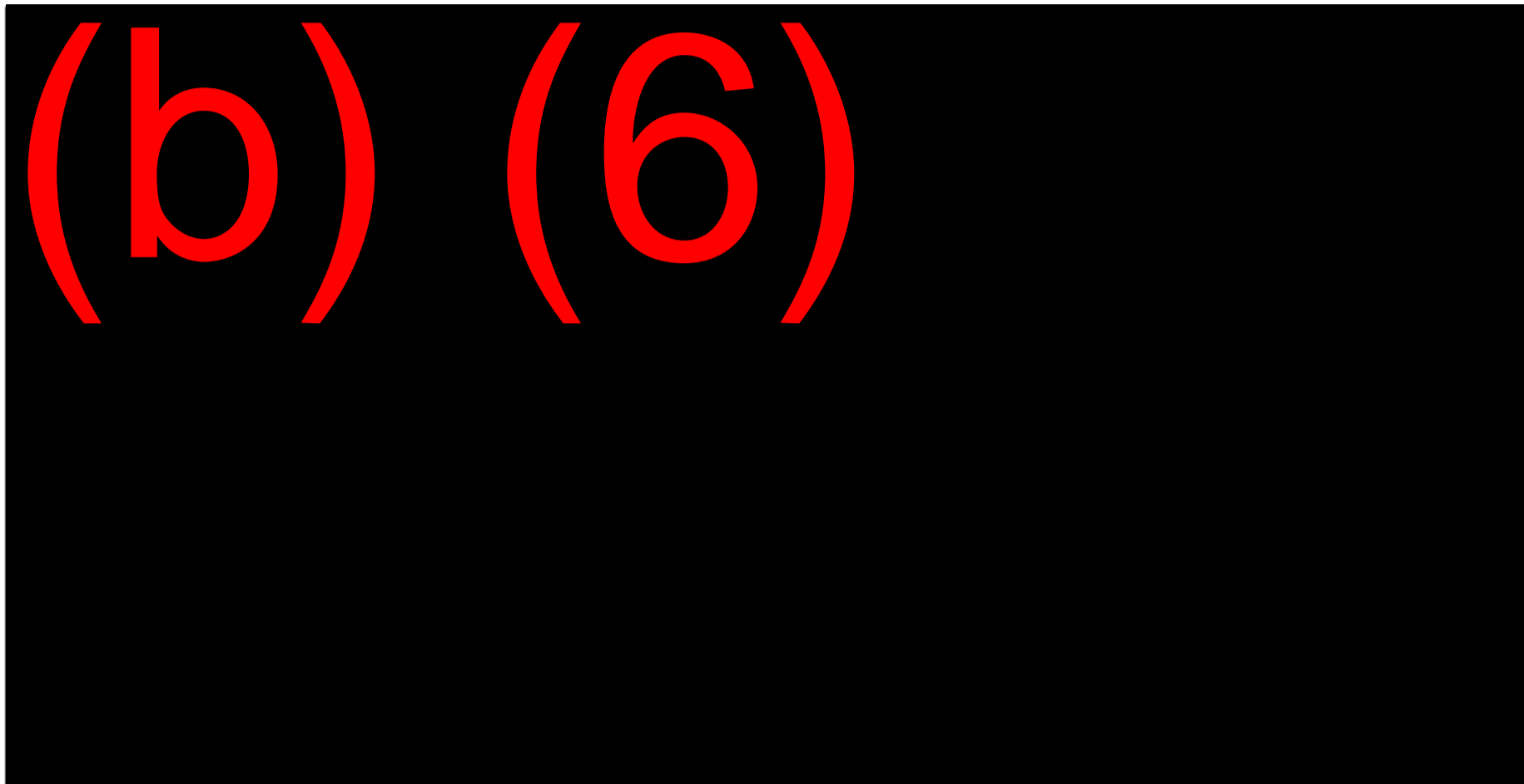
Assistant Coach
16th season



(b) (6)



The list of student-athletes below are aware of this exact letter and helped write this letter of support.
ANY of the students-athletes below can meet and validate their sentiments.



The only people that did not sign our letter of support are the student-athletes that previously or currently compete under (b) (6) and (b) (6). They were the sublet group that issued the allegations. Recently, (b) (6) was named the Haskell head track coach by (b) (6).



(b) (6) (Haskell) >

give them the officer's number

Haskell has a issue with handling harassment, assault, and rape cases. Talking to other victims we all realized the school doesn't hold them accountable. One victim has to stay in the same dorm building her incident happened and the perpetrator is allowed to stay for summer school in the same building. A girl raped 3 people and wasn't kicked off campus or out of the dorms for that but instead for getting too drunk. My rapist would be allowed to attend school and move in the dorms/ participate fully as a student and they would make time slots of when both of us could go to certain areas on campus. That would be punishing the victim who wants to do good and allow bad people to continue to go here

(b) (6)
(b) (5)

Today 10:58 AM

The police are making a report of the allegations, anyone who wants to add to the investigation I'm supposed to give them the officer's number

Haskell has a issue with handling harassment, assault, and rape cases. Talking to other victims we all realized the school doesn't hold them accountable. One victim has to stay in the same dorm building her incident happened and the perpetrator is allowed to stay for summer school in the same building. A girl raped 3 people and wasn't kicked off campus or out of the dorms for that but instead for getting too drunk. My rapist would be allowed to attend school and move in the dorms/ participate fully as a student and they would make time slots of when both of us could go to certain areas on





(b) (6)



OCT 05, 11:49 AM

Don't know if you ever knew or been to Jim Thorpe Gym but the (b) (6) over the years have used funds to buy gear/shoes/t-shirts and give aways for non Haskell students and XC students as well. Looks like they are loading it all into



(b) (6)

truck right now



Peeps have the right to due process...grievance process. More for student Athletes than a contract. So setting up policy to silent that right maybe illegal



The Group of Haskell Family Members and Friends Working Together Haskell-

(b) (6)

(b) (6) Previously Human Resources

(b) (6)

(b) (6)

Tonia Slavini-Vice President

(b) (6)



SKILCRAFT



1. (b) (6)

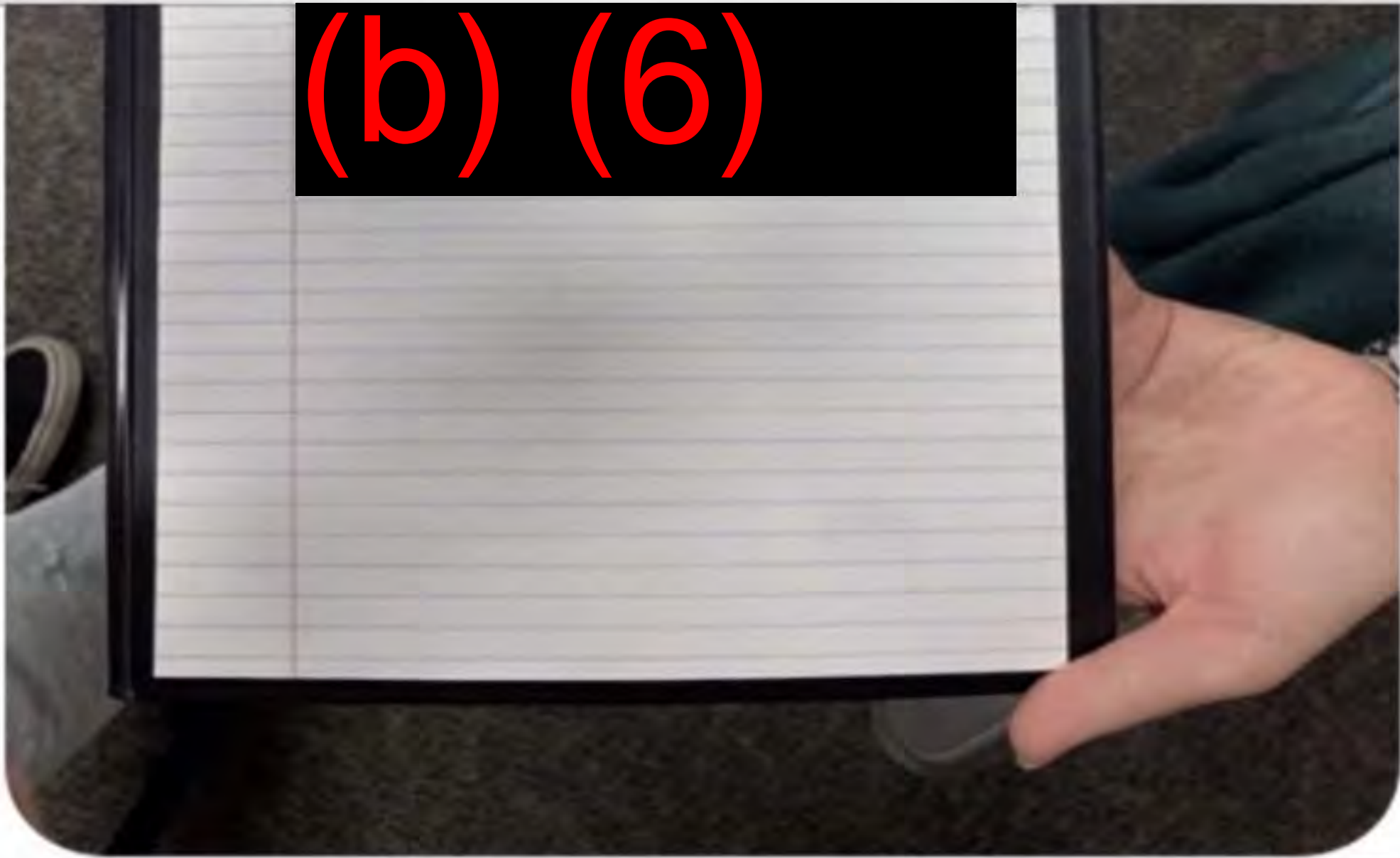
2.

3. (b) (6)

4.

5.

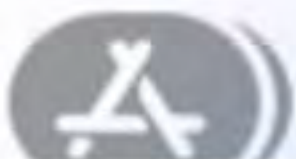
(b) (6)



These were sent to me by someone close to the team. They want to remain anonymous until they want to.

These were notes taken by (b) (6) from various members of the team. (b) (6) and someone else I think.

(b) (6) talked to (b) (6) (b) (6) stated that "they are going to get you out".




SEP 29, 6:50 PM

Clay

There's been some complaints about the runners here, various races, or about my end.

If you all get individual questions from others, about races, or thoughts, just note for that person they should be talking to is our AD, by his email or by his phone.

No one here did anything wrong. We keep getting the same admin reporting anything and everything said under the sun (we are at 17). Either twisting things or taking them out of context. Just be smart with everything, and just point them in the AD's direction.

Some people  be sly about this. Just be careful and if you



(b) (6)

(b) (6)

Active 3h ago



with everything, and just point them in the AD's direction. Some people will be sly about this, just be careful and if you sense anything is up, just point them to our AD. If it's serious enough, or small enough, he handles those rules and regulations.

Again, most of these issues is coming from one admin. The same admin had another admin get questions and information.

If I ever do anything wrong, also report it to the AD. Go to the man in charge. Going through admin slows the process and pulls others down.

SEP 29, 7:16 PM

Dakota



One can check with me too if

(b) (6)

(b) (6)

From: (b) (6)
To: [Epaloose-Pinto, Cassie](#); [Paisano, Erland S](#); [Francisco, Marlana J](#)
Subject: FW: AIB Haskell
Date: Friday, January 6, 2023 1:20:47 PM
Attachments: [image001.png](#)

From: Shamblin, Jackie R <Jackie.Shamblin@bie.edu>
Sent: Friday, January 6, 2023 1:08 PM
To: (b) (6)
Subject: AIB Haskell

For the record, I was tasked with putting an AIB together to conduct an investigation at Haskell due to staff and student complaints to the Secretary and Assistant Secretary's office. I assigned (b) (6) to lead the AIB.

Jackie R. Shamblin

Human Resources Officer
1011 Indian School Road NW Suite 150
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UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Indian Education
1011 Indian School Rd. NW, Suite 150
Albuquerque, NM 87104

IN REPLY REFER TO:

IN REPLY REFER TO:
(505) 563-5300
(505) 563-5306 (fax)

MEMORANDUM

Date: July 11, 2022

From: Jackie Shamblin **JACKIE SHAMBLIN**
Bureau of Indian Education (BIE)
Human Resources Officer

Digitally signed by
JACKIE SHAMBLIN
Date: 2022.07.11
10:42:07 -06'00'

To:

(b) (6)

Thru: Tony Dearman, BIE Director

Subject: Authorization to Conduct an Administrative Investigation at Haskell Indian Nations University

You are hereby appointed to an Administrative Investigation Board (AIB). (b) (6) shall serve as the (b) (6). The investigation shall look into the facts (b) (6) ances regarding allegations from (b) (6) (b) (6) (b) (6) and an anonymous letter from Haskell Cross Country and Track Athletes, pertaining to:

- Nepotism
- Favoritism
- Rape/Assault

Workplace Harassment/Intimidation/Bullying and Sexual harassment (Students and staff)

Fraud, Waste and Abuse

Drinking on Campus

The incidents were allegedly reported to have occurred during the period of October 5, 2021 through March 28, 2022.

This memorandum authorizes you to inquire into all aspects of these matters; to require employees to cooperate with you; to require all employees having any knowledge of the complaints to furnish testimony under oath or affirmation without a pledge of confidentiality; to obtain voluntary sworn testimony from other individuals; to administer oaths and affirmations; and to gather other evidence that you determine is necessary and relevant. These authorities are delegated for the purposes and duration of this investigation only. Your investigation shall be conducted and reported in accordance with Department of Interior's Administrative Investigation Manual.

Preparations for the investigation should begin immediately. You shall submit your completed report and investigation file to me within 45 days of this memorandum date, unless an extension is requested and subsequently granted. Your report shall specifically include findings of fact, an analysis, and conclusions.

- A. (b) (6)
(b) (6)
Haskell Indian Nations University
Lawrence, Kansas Interview Date: July 11, 2022
- B. (b) (6)
(b) (6)
Haskell Indian Nations University
Lawrence, Kansas Interview Date: August 15, 2022
- C. (b) (6)
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Haskell Indian Nations University
Lawrence, Kansas Interview Date: July 12, 2022
- D. (b) (6)
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Haskell Indian Nations University
Lawrence, Kansas Interview Date: July 14, 2022
- E. (b) (6)
(b) (6)
Haskell Indian Nations University
Lawrence, Kansas Interview Date: July 13, 2022
- F. Clay Mayes
Head Cross Country Coach (Contractor)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas Interview Date: July 13, 2022
- G. (b) (6)
(b) (6)
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas Interview Date: July 12, 2022
- H. (b) (6)
(b) (6)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas Interview Date: July 12, 2022
- I. (b) (6)
(b) (6)
U.S. Department of Interior
Bureau of Indian Education Interview Date: August 10, 2022

Haskell Indian Nations University
Lawrence, Kansas

J. (b) (6) Interview Date: July 12, 2022
(b) (6) July 15, 2022
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

K. (b) (6) Interview Date: July 15, 2022
(b) (6)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

L. (b) (6) Interview Date: July 14, 2022
(b) (6)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

M. (b) (6) Interview Date: July 14, 2022
(b) (6)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

N. (b) (6) Interview Date: July 29, 2022
(b) (6)
(b) (6)
(b) (6)
(b) (6)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

O. (b) (6) Interview Date: July 15, 2022
(b) (6)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

P. (b) (6) Interview Date: July 28, 2022
(b) (6)

U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

Q.

(b) (6)
(b) (6)

Interview Date: August 18, 2022

U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

R.

(b) (6)
(b) (6)
(b) (6)
(b) (6)

Interview Date: August 19, 2022

U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

S.

(b) (6)
(b) (6)

Interview Date: August 12, 2022

U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

T.

(b) (6)
(b) (6)

Interview Date: August 12, 2022

U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

U.

(b) (6)
(b) (6)

Interview Date: July 20, 2022

U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

V.

(b) (6)
(b) (6)

Interview Date: July 19, 2022

U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

- W. Tamarah Pfeiffer
Former Acting President
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas
Interview Date: August 17, 2022
- X. Tonia Salvini
Vice-President for University Services (Current)
Support Service Manager (Standard Form 50)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas
Interview Date: August 1, 2022
- Y. (b) (6)
(b) (6)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas
Interview Date: August 19, 2022
- Z. (b) (6)
(b) (6)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas
Interview Date: July 14, 2022
- AA. (b) (6)
(b) (6)
Haskell Indian Nations University
Lawrence, Kansas
Interview Date: August 10, 2022
- BB. (b) (6)
(b) (6)
Haskell Indian Nations University
Lawrence, Kansas
Interview Date: August 10, 2022
- CC. (b) (6)
(b) (6)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas
Interview Date: September 27, 2022
- DD. (b) (6)
(b) (6)
U.S. Department of Interior
Interview Date: July 13, 2022

Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

DECLARATIONS - BIE Federal Employees/Contract Employees:

- EE. (b) (6) Interview Date: July 27, 2022
(b) (6)
U.S. Department of Interior
Bureau of Indian Education
- FF. (b) (6) Interview Date: August 1, 2022
(b) (6)
U.S. Department of Interior
Bureau of Indian Education
- GG. (b) (6) Interview Date: August 1, 2022
(b) (6)
U.S. Department of Interior
Bureau of Indian Education
- HH. (b) (6) Interview Date: September 27, 2022
(b) (6)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas
- FF. (b) (6) Interview Date: July 27, 2022
(b) (6)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

(b) (6)

did not return signed declarations.

HASKELL INDIAN NATIONS UNIVERSITY

STUDENT CODE OF CONDUCT



Effective Date: August 10, 2015
Last Revised Date: May 20, 2021



Haskell Indian Nations University

COVERSHEET

Re: **STUDENT CODE OF CONDUCT**

Signatures of parties involved confirm information has been shared, vetted, and discussed and agreed upon, effective date signed.

DocuSigned by:

Rebecca Villalobos

Student Senate

5/20/2021 | 10:55 AM PDT

Date

DocuSigned by:

Judith Gipp

Faculty Senate

5/20/2021 | 1:00 PM PDT

Date

DocuSigned by:

Tonia Salvini

VP Univ Services

5/20/2021 | 1:32 PM PDT

Date

PRESIDENT APPROVAL

DocuSigned by:

Dr. Tamarah Pfeiffer

University President

5/20/2021 | 1:35 PM PDT

Date

Haskell Indian Nations University
Student Handbook
Code of Student Conduct

“When you know who you are; when your mission is clear and you burn with the inner fire of unbreakable will; no cold can touch your heart; no deluge can dampen your purpose. You know that you are alive.”

-Chief Seattle, Duwamish (1780-1866)

On the cover: Photo Courtesy of Office of Haskell President

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Statements of Accreditation, Mission, and Vision



National Accreditation

Haskell Indian Nations University is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools to award associate and baccalaureate degrees



Professional Accreditation

The Haskell Indian Nation University, School of Education is accredited by National Council for Accreditation of Teacher Education (NCATE).



Haskell Indian Nations University Mission Statement

The mission of Haskell Indian Nations University is to build the leadership capacity of our students by serving as the leading institution of academic excellence, cultural and intellectual prominence, and holistic education that addresses the needs of Indigenous communities.

Haskell Indian Nations University Vision Statement

Haskell is a unique and diverse intertribal university committed to the advancement of sovereignty, self-determination, and the inherent rights of tribes.

I. Introduction

A. Preamble

The mission of Haskell Indian Nations University is to build the leadership capacity of our students by serving as the leading institution of academic excellence, cultural and intellectual prominence and holistic education; in order to address the needs of Indigenous communities.

Haskell has established a Code of Student Conduct in order to promote healthy decision-making and to protect the rights of all students. Each student is responsible for contributing to the values of Haskell through support and adherence to the Code of Student Conduct. By forming this Code of Student Conduct, Haskell affirms students' rights to freedom, due process and impartiality in decision-making. Haskell also prides itself on the focus of learning for students as they relate to self, friends, family, tribe, country, and world.

Sanctions are meant to help students reflect on their actions and learn to make better choices in the future to ensure they retain the opportunity to reach their academic potential. Students will be treated with fairness and respect throughout the processes of Student Conduct. The Code of Student Conduct helps students understand the conduct expectations of the university and the consequences of your decision-making as a role in student learning. We hope you will think about your choices and decisions and the impact they can have on your leadership potential and ability to complete your degree at Haskell before you engage in actions that violate our standards of conduct.

In October 2014, Haskell adopted new Institutional Values, commonly referred to in the document as "CIRCLE" values, which are aspirational and reflect Haskell's ideals for the conduct of Haskell students, staff, faculty, administrators, and the Board of Regents.

Communication

To successfully convey ideas, opinion, information, results, images and creative expression using multiple strategies for diverse groups and stakeholder.

Integrity

To conduct ourselves in ways that honor the sacrifices of our tribes on which treaty and trust responsibilities are based; and to carry out our responsibilities as students, staff, faculty, administrators, and regents by engaging in action based on the highest standard of conduct.

Respect

To honor and promote the diversity of beliefs, rights, responsibilities, cultures, accomplishments of self and others, including our non-human relations.

Collaboration

The willingness and ability to work successfully with others to accomplish the goals of the university and to meet the needs of our students, the tribes we represent and serve as well as our mission.

Leadership

The willingness to acquire the knowledge and skills required to advocate for, and to advance the sovereignty and self-determination of tribes, Haskell and the students.

Excellence

To strive toward the strongest level of accomplishment in our respective roles on behalf of Haskell, as students, staff, faculty, administration, and the Board of Regents.

B. Vision Statement

Haskell is a unique and diverse intertribal university committed to the advancement of sovereignty, self-determination, and the inherent rights of tribes.

C. Authority

The President of Haskell Indian Nations University has delegated the responsibility and authority for resolving all issues of student conduct with the Student Conduct Administrator. It will be presumed that Haskell employees will act in good faith when performing their duties and shall use a reasonable person standard to make discretionary decisions.

The Student Conduct Administrator shall determine the composition of Student Conduct Committees and Alternative Dispute Resolution Boards.

The Student Conduct Administrator shall develop internal policies and procedural rules for the Student Conduct Process and for Student Appeals Committees that are consistent with the provisions of the Code of Student Conduct.

Decisions made by a Student Appeals Committee, Alternative Dispute Resolution Board or the Student Conduct Administrator shall be final pending appeal, if any.

D. Jurisdiction

You are responsible for your conduct from the time of application to Haskell for admission through the actual awarding of a degree. You are accountable for conduct that occurs before classes begin, after classes end, on or off campus, during the academic year or during periods between semesters of actual enrollment. You are responsible for your

conduct throughout your education at Haskell, even if your conduct is not discovered until after a degree is awarded or you have left the university.

While representing the university in off-campus events, you are held accountable for actions that may violate the Code of Conduct. The Code of Student Conduct shall apply to your conduct even if you withdraw from school while a disciplinary matter is pending.

The Student Conduct Administrator shall decide whether the Code of Student Conduct shall be applied to conduct occurring off campus.

Anyone can file a written report against a student for violation of the Code of Student Conduct. The report shall be submitted to the Office of Student Conduct within five (5) business days from the date the situation occurred. The 5 business days rule does not apply to any complaints alleging sexual misconduct. To learn more about processing sexual misconduct complaints and procedures, please go to page 45.

E. Violation of Law and University Discipline

You can be sanctioned for violation of the Code of Student Conduct, even if you receive a sanction for a violation of local, state or federal law arising from the same situation. Your Student Conduct Process can happen before, during, or after the on or off campus legal matter. The sanctions you receive in the legal matter **will not** determine the sanctions given by the Office of Student Conduct or the Student Conduct Committee.

In order to be clear, if you get in trouble on or **off campus** and it is determined that you have violated the Code of Student Conduct, the outcome of the legal matter will have no effect on the Student Conduct process. You can be found not guilty in criminal court and still be found responsible for violation of the Code of Student Conduct.

F. Student Rights

Part 42 of Title 25 of the Code of Federal Regulations applies to Haskell, which is funded by the Bureau of Indian Education.

Haskell recognizes that students have:

1. The right to understand the grading process at Haskell.
2. The right to an education that may take into consideration Native American or Alaska Native values and that incorporates applicable Federal and Tribal constitutional and statutory protections for individuals.
3. The right to be free from unreasonable search and seizure of their persons or property, to a reasonable degree of privacy, and to a safe and secure environment.
4. The right to make decisions for themselves where appropriate.
5. The right to freedom of religion and culture.
6. The right to freedom of speech and expression, subject to the Free Expression Statement in Section I.
7. The right to freedom of the press, except where material in student publications is libelous, slanderous, or obscene.

8. The right to peaceably assemble and to petition for the redress of grievances.
9. The right to freedom from harassment or discrimination based on sex, race, color, national origin, religion, ancestry, sexual orientation, disability, or, as specified by law, age, veteran status, marital or parental status, or degree of Indian blood.
10. The right to due process. Every student, student organization, and campus organization is entitled to due process and appeal in every instance of disciplinary action for alleged violation of Haskell expectations. Please see Code of Conduct section on page 24. A student or organization may waive the right to a hearing and use the alternative dispute resolution system or may choose to admit responsibility for misconduct and accept disciplinary sanctions from Haskell.
11. The right to reschedule examinations and tests, other than final examinations, which occur on mandated religious holidays or during traditional cultural ceremonies, provided that the students notify their instructors at the beginning of the semester.
12. The right to have respect for his/her property.
13. The right to have student representation in the decision-making and policy forming groups.
14. The right to be notified of proposed changes to student responsibility and academic policies.

The following rights are retained by students who live in the residential halls:

1. The right to read, study, and relax in one's room free from undue interference; unreasonable noise and other distractions that may inhibit the exercise of this right.
2. The right to sleep without undue disturbance from guests of roommate(s) and/or other residents.
3. The right to expect that a roommate will respect others' personal belongings.
4. The right to a clean living environment.
5. The right to host guests with the expectation that guests are to respect the rights of the host's roommate(s) and other hall residents.

G. Student Responsibilities

Students shall have these responsibilities so as not to infringe upon the rights of others in the Haskell community. Students assume an obligation to obey all rules and regulations made by properly constituted authorities to preserve all property provided for their education and to discharge their duties as students with diligence, fidelity and honor.

1. Obtain an Education. Students shall regard the opportunity of obtaining an education as a duty to the community. Students have the responsibility to attend all their classes regularly.
2. Conform to Haskell rules. Students shall obey recognized rules and procedures developed by the school community, order and use of school property.
3. Exercise self-control. Students shall refrain from inflicting bodily harm on other students or other persons and respect the privacy of property and mail.
4. Understand the grievance process. Students shall inform themselves of the proper methods and channels for complaints and make use of them.
5. Disclose any information regarding convictions of felonies. Failure to disclose will result in immediate dismissal and loss of enrollment status.

6. Obtain and regularly check campus mailbox and e-mail. This pertains to students living on-campus and off-campus. This is the primary way that Haskell corresponds with the student body.
7. Respect the rights of others and behave in accordance with expectations regulating student conduct and guidelines established by this Code of Student Conduct.
8. Make decisions that do not infringe upon the rights of others.
9. Express opinions and ideas in a respectful manner that does not slander, hurt or harm others.
10. Respect the beliefs of others.
11. Arrange a time and place for peaceable assembly that does not interfere with Haskell's normal operations.
12. Recognize Haskell's authority to check student rooms for safety and health reasons.
13. Respect the freedom of expression exercised by others.
14. Maintain updated contact information at Haskell consistent with the application for admission in compliance with the Family Educational Rights and Privacy Act (FERPA).

RESPONSIBILITIES CONCERNING CAMPUS E-MAIL

1. Haskell e-mail is a U.S. Government resource and, as such, all rules and regulations pertaining to use/misuse of Federal resources shall apply.
2. Passwords are confidential and shall not be shared with any other individual.
3. Haskell students shall not use the e-mail system for chain letters, junk mail, or any use of distribution lists such as campus-wide emails sent to the Haskell community.
4. Haskell students shall not transmit through the e-mail system any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature.
5. Haskell students shall not use the e-mail system for any illegal or commercial purposes, this includes compliance with Haskell's copyright policy.
6. Haskell students shall provide true and accurate information on the e-mail application form.
7. Failure to abide by the above terms will result in revocation of Haskell's e-mail privileges for the remainder of the semester in which the violation occurs.

H. Classroom Expression

Discussion and expression of all views relevant to the subject matter are permitted in the classroom, subject to the Free Expression Statement in Section I. The responsibility of the instructor is to maintain order.

- a. Students are responsible for learning the content of any course for which they are enrolled.
- b. Requirements of participation in classroom discussion and submission of written exercises are consistent with this section.

Students are encouraged to conduct themselves with communication, respect, cooperation, leadership and excellence. Disruptive behavior which unreasonably interferes with the rights of other students, or substantially disrupts the learning environment, may result in sanctions and will be enforced through the Office of Vice President of Academics. Please refer to the Haskell Catalog for more information.

I. Free Expression Statement

Haskell is committed to protecting the right to freely communicate ideas and fully supports the freedom of all members of the Haskell community to engage in robust, uninhibited discussion and deliberation on any and all topics. However, freedom of expression at Haskell is not without limits. Haskell reserves the right to reasonably restrict student speech and conduct in accordance with longstanding Supreme Court precedent concerning on-campus speech, incitement, defamation, threats and harassment, and any other applicable subject area. Haskell will strive to implement any of these restrictions in a manner consistent with Haskell's foundational commitment to a free and open discussion of ideas.

J. Student and Campus Organizations

Organizations may be established for any legal purpose, including, but not limited to, religious, political, educational, economic, social, or recreational purposes.

- a.** Affiliation or disaffiliation with an extramural organization shall not disqualify the Haskell-based branch or chapter from registering as a student or campus organization.
- b.** Members in all Haskell-related organizations shall follow the guidelines established by the Constitution of the Student Senate. The right of organizations to establish standards for membership is acknowledged, provided that all students are afforded equal opportunity to meet those standards. Nothing in this section shall be interpreted as imposing a requirement that would violate the principle of selection on the basis of individual merit.
- c.** A student may not be denied the rights of access to and participation in any Haskell-sponsored or Haskell-approved activity because of race, religion, sex, color, disability, national origin, ancestry, sexual orientation, political affiliation, marital or parental status, and to the extent specified by law, age or veteran status.

In order for an organization to apply for student activity funds, the organization shall register annually as an organization with the Student Senate and file a list of officers and plan of operation indicating that the organization shall abide by the rules and regulations of the Constitution of the Student Senate.

The Student Senate delegates to each organization, residential hall, fraternity, sorority or living group responsibility for establishing rules concerning social conduct. Such rules shall be consistent with this Code of Student Conduct, rules of the Board of Regents, and local, state and federal law.

Residential rules of social conduct shall not be adopted that conflict with the Student Housing contract entered into as a condition of residency in facilities operated by the Department of Student Housing.

An organization or living group may discipline any member for violation of rules of social conduct, provided that any disciplinary action taken shall not affect a member's rights and privileges as a Haskell student.

Haskell facilities shall be available to registered student and campus organizations for regular business meetings, social functions, recreational activities, and for programs open to the public. Reasonable conditions, as outlined in Haskell space utilization process, may be imposed to regulate the timeliness of requests, to determine the appropriateness of the space assigned, time of use, and to insure proper maintenance of the facilities.

Haskell facilities may be made available to individuals or groups composed of members of the Haskell community, even though not formally registered. Preference may be given to programs designed for audiences consisting primarily of members of the Haskell community. The Space Utilization form can be attained at the Vice-President for University Services Office in Pushmataha Hall.

An organization alleged to have violated provisions of this code is entitled to alternative dispute resolution (ADR), restorative justice conference or a hearing in accordance with procedures established by the Office of Student Conduct. For more information about alternative dispute resolutions, please go to page 25.

K. Publications

A student, group, or organization may hand out written material on campus without prior approval.

The student press shall be free of censorship. Its editors, managers, and contributors shall be protected from arbitrary sanctions because of what is written. Similar freedom shall be assured for the oral statement of views on all Haskell-controlled radio or television stations. Slanderous speech or libelous writing is not protected. Slander is spoken words that are meant to defame another person or institution and that are untrue or unverified.

Libel is a written, printed, or pictorial statement that defames one's character or reputation or exposes one to public ridicule.

L. Freedom of Protest

Students have the right of orderly and peaceful protest within the Haskell community. Haskell retains the right to assure the safety of individuals, the protection of property, and the continuity of the educational process including the maintenance of entrance to and from all Haskell buildings and offices, conduct of regular class meetings and other Haskell functions.

Orderly picketing and other forms of peaceful protest are protected activities on Haskell premises in the absence of interference with free passage through areas where members of the Haskell community have a right to be or the orderly conduct of Haskell business.

Peaceful picketing and other orderly demonstrations are permitted in public areas of Haskell buildings, including corridors, outside the auditorium and other places set aside for public meetings.

Any student or group of students has the right to protest against the appearance on campus of any organization provided that the protest does not interfere with any other student's opportunity to communicate with the organization.

M. Student FERPA Rights

Haskell, in compliance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, ensures that students have the following rights relative to their education records.

1. The right to inspect and review their education records within a reasonable period of time, and in no case longer than 45 days after a request has been made. If any material or document in the education record of a student includes information on more than one student, each student shall have the right to inspect and review only such part of such material or document as relates to that student or to be informed of the specific information contained in such part of such material or document. Copies are not to be distributed to students at any time.
2. The right to request the amendment of their education records and to have the records amended within a reasonable period of time to ensure that the records are not inaccurate, misleading, or otherwise in violation of privacy or other rights.
3. The right to confidentiality of personally identifiable information contained in their education records, except (a) to the extent that FERPA authorizes disclosure without consent; or (b) the information is disclosed to Haskell staff pursuant to Haskell policy; or (c) the information is disclosed to other persons, as provided by law, to comply with a judicial subpoena or a requirement of law or government regulation or to appropriate persons in a health or safety emergency.
4. The right to have personally identifiable information withheld from Haskell directories, if the student informs Haskell within two weeks of public notice of the categories of information that will be included in the directories.
5. The right to file a complaint with the US Department of Education concerning alleged failures by Haskell to comply with the requirements of FERPA. For more information regarding the process for filing a complaint, you can find it on Haskell's website in the Office of Admissions.
6. Except to the extent allowed by law or when acting on behalf of Haskell, those parties to whom personally identifiable information is given are not permitted to disclose that information to others without the written consent of the student. A release of information form can be found on Haskell's website with the Office of the Registrar.
7. Haskell must maintain a record of each disclosure of personally identifiable information about the student.
8. Excluded from the category of education records, and to which the law does not guarantee the right of student access, are records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to persons other than those providing treatment, except that such records may be personally reviewed

by a physician or other appropriate professional of the student's choice and with the student's written consent.

Any requests to view or obtain records should be made to the Office of the Registrar. For more information about students under the age of 21 in violation of the Substance Abuse Policy, please see page 37.

N. Campus Safety and Security Survey

Haskell Indian Nations University is required to comply with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (The Clery Act) as amended in 1998, which requires all post-secondary institutions to publish and distribute certain information regarding campus crimes, including reports of campus sexual assault, sexual assault policies and security programming to all current students, employees and to any applicant who so requests. A copy of the annual report can be requested at the Office of Institutional Effectiveness or it can be found on our website at www.haskell.edu under Consumer Disclosure.

In compliance with the Jeanne Clery Act, Haskell has the Daily Crime Logs that are maintained in the Office of Institutional Effectiveness. Please refer to the Haskell website at the Office of Institutional Effectiveness for more information.

II. Code of Student Conduct

Haskell Student Code of Conduct and definitions:

1-A. Being under the influence of Alcohol

Reasonable grounds for a person to be considered under the influence of alcohol: odor of alcohol, slurred speech, bloodshot eyes, watery eyes, staggering, incoherence, inability to stay focused on conversation and maintains concentration due to consumption of alcohol. When a person exhibits 2 or more of the above-mentioned descriptions or their Blood Alcohol Content (BAC) is greater than 0.01%, a person may reasonably be considered to be under the influence of alcohol and in violation of this Article.

1-B. Possessing Alcohol and/or Alcohol Containers

Possession is when alcohol and/or alcohol containers such as cans, bottles, flasks, etc. are present, or in one's possession, whether full, empty, or partially filled. If these items are found on a student's person while anywhere on campus, in their dorm room, vehicle, or sites off campus as designated by the Haskell Administration, the student is in violation of this Article. All students who are in the immediate vicinity will be issued violation notices.

All alcohol and containers are subject to confiscation and will not be returned.

1-C. Transporting and trafficking Alcohol

To manufacture, supply, transport, or sell alcohol on campus as evidence by the alcohol itself, ingredients, packaging and distribution material, statements and/or witnessed by those items or transport alcoholic beverages onto campus. This also includes violation of laws or ordinances prohibiting the manufacture, sale, transporting, furnishing, maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor person; using a vehicle for illegal transportation of liquor; and all attempts to commit any of the aforementioned. All items associated with alcohol are subject to confiscation and will not be returned.

2-A. Being Under the Influence of Drugs or Inhalants

Reasonable grounds for a person to be considered under the influence of drugs or inhalants: odor of marijuana, slurred speech, bloodshot eyes, watery eyes, staggering, incoherence, inability to stay focused on conversation and maintain concentration due to use of drugs. When a person exhibits 2 or more of the above-mentioned descriptions, he/she may reasonably be considered to be in violation of this Article.

2-B. Possession of Drugs and/or Paraphernalia

Possession is having illegal drug(s) and/or prescription medication without a valid prescription, from a doctor or pharmacist, or drug paraphernalia or inhalants are present, or in one's possession. If these items are found on a student's person while anywhere on campus, dorm room, vehicle, or areas off campus as determined by the Haskell Administration and if in the vicinity where these items are present, the student is in violation of this Article. All who are in the immediate vicinity will be issued violation notices. All drugs, suspected drugs, and drug paraphernalia may be turned over to law enforcement agencies. Students in possession of drugs, suspected drugs, and/or drug paraphernalia, may be temporarily detained by Haskell Staff, pending an immediate criminal investigation by appropriate law enforcement agencies.

2-C. Transporting and/or Trafficking of Drugs or Inhalants

To manufacture, supply, transport, or sell illegal drugs, prescription medication or inhalants on the Haskell campus, or to bring on to campus, as evidence by the drug(s)

and/or inhalant(s) itself, ingredients, packaging and/or distribution paraphernalia, statements and/or witnessed by those items or action. This also includes violation of laws or ordinances prohibiting the manufacture, sale, transporting, maintaining places to manufacture drugs; furnishing drugs or inhalants to a minor person; using a vehicle for illegal transportation of drugs; and all attempts to commit any of the aforementioned. Any drug packaging and/or distribution paraphernalia may be turned over to law enforcement agencies. Haskell Staff may temporarily detain students that are found in possession of drug packaging and/or distribution paraphernalia, pending an immediate criminal investigation.

2-D. Contributing to the delinquency of a Minor

Encouraging, abetting, permitting or assisting a person under the age of 21 to violate any of these articles or to otherwise commit any delinquent act. Persons over the age of 21 who allow such acts performed in their presence without objections are in violation of this article.

3-A. Violation of Haskell policy, federal, state or local laws.

Any assisting, violating or having knowledge of a violation of Haskell policy, federal, state and local laws and not reporting it is prohibited at Haskell.

3-B. Violating any part of the Code of Student Conduct while on Haskell Probation.

4. Violence

Having knowledge of or facilitating violence without reporting the incident.

4-A. Intimidation or Threat

Any willful conduct, which creates a fear of bodily harm, or is verbally abusive, including gesturing, name-calling, threatening, by word or action of a perceived threat to inflict bodily harm.

4-B. Simple Assault

Assaults and attempted assaults where no weapon is used and which do not result in serious or aggravated injury to the victim.

4-C. Aggravated Assault

An unlawful attack by one person, upon another, that inflicts severe or aggravated bodily injury. This type of assault may be accompanied by the use of a weapon or by means likely to produce death or great bodily harm.

4-D. Negligent Manslaughter

The killing of another person through gross negligence.

4-E. Murder/ Non-Negligent Manslaughter

The willful (non-negligent) killing of one human being by another.

4-F. Self-Destructive Behavior

Inflicting harm on one's self by cuts, burns, or other harmful acts. These include ingesting harmful substances to cause self-injury. This includes statements of suicide, as evidenced by statements and/or witnessed by an individual. A student refusing medical attention could jeopardize his/her residence privileges due to the safety of himself/herself and others involved.

5-A. Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim.

5-B. Dating violence means violence committed by a person who is or has been in a romantic or intimate relationship with the affected party.

6-A. Bringing a Weapon on Campus

All weapons are prohibited on the Haskell campus. Weapons are defined as any item whose primary use is to cause death or injury. Any use of, or having in one's possession or concealing, an instrument or substance, which by nature or use is an offensive or a combative object, even if otherwise legal, is prohibited. All weapons are subject to confiscation and will not be returned.

6-B. Illegal Weapons Violation

The violation of city, county, state, or federal laws or ordinances dealing with weapon offenses, regulatory in nature, such as: manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; furnishing deadly weapons to minors; and all attempts to commit any of the aforementioned.

7. Haskell Property

Attempting to damage or actually damaging property belonging to Haskell. Willfully marring, destroying, injuring or disturbing any real or personal property of Haskell. This includes moving any property belonging to Haskell or others without permission.

7-A. Robbery

The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the affected person in fear.

7-B. Burglary

The unlawful entry of a structure, or room to commit a felony or a theft. Attempted forcible entry is included.

7-C. Larceny/ Theft

The unlawful taking, carrying, leading or riding away of property, from the possession of another. It includes crimes such as shoplifting, pocket picking, purse snatching, thefts from motor vehicles, thefts of motor vehicle parts and accessories, bicycle thefts, etc., in which no use of force, violence or fraud occurs.

7-D. Motor Vehicle Theft

The theft or attempted theft of a motor vehicle. A motor vehicle is self-propelled and runs on surface streets and roads. Construction equipment and farming equipment are excluded.

7-E. Fraud

Fraud consists of the intentional misappropriation or taking of anything of value, which belongs to another, by means of fraudulent conduct, practices or representations.

7-F. Embezzlement

Embezzlement consists of the embezzling or converting to his own use of anything of value, with which he has been entrusted, with fraudulent intent to deprive the owner thereof.

7-G. Vandalism

Any willful act that defaces, breaks, disables, or destroys any property not belonging to that person.

7-H. Unauthorized Possession of School Property

Students are not to be in possession of keys to any room or campus office, except for their assigned room in the residence lodge or mailbox key. Other prohibited items include cafeteria utensils, maintenance tools, equipment or other Haskell property.

8-A. Harassment

Harassment is prohibited at Haskell Indian Nations University. Harassment is defined as systematic and/or continued unwanted actions directed towards an individual or group of students by another student. Harassment may include, but is not limited to threats, demands, intimidation, coercion, suppression, and cruelty. Haskell Indian Nations University values the individual's right to live, work, and study without fear of intimidation, coercion, or exploitation regardless of race, gender, national origin, tribal affiliation, religion, disability, or sexual orientation. Indicators of harassment include but are not limited to:

- Any action or communication that would cause a reasonable person to fear for his/her safety.
- Any action or communication that causes any reasonable person harm or distress.
- Any repeated attempt to make contact with anyone over his or her objections.
- Intentionally, maliciously, and repeatedly following another person on campus.
- Haskell Indian Nations University prohibits bullying. Bullying behavior is any pattern of gestures or written, electronic or verbal communications, or any physical act or any threatening communication that:
 1. Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or
 2. Creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities or benefits.
- Cyber bullying, defined as sending threatening or aggressive texts, e-mails, or phone messages, posting insulting rumors, information, or pictures on a blog or social networking site, or using someone else's username to spread rumors or post insulting comments or pictures.

9. Sexual Harassment

Sexual harassment can consist of the actions just described, but also creates an environment that is intolerable and incompatible with the mission and goals of the university; sexual harassment is a form of discrimination and is illegal. Any unwelcomed sexual advances, requests for sexual favors, sexually motivated physical conduct, or gender-based verbal or physical threats that are explicit or implicit terms or conditions of employment (hire/fire, benefits) and/or substantially or unreasonably interferes with, limits or deprives an individual's ability to participate in or benefit from the university's educational program and/or activities creates a hostile environment and is prohibited at Haskell.

10. Stalking

To intentionally, maliciously, repeatedly follow or harass another person in person, by correspondence, or by electronic means.

11. Lewd, Indecent, or Inappropriate Public Behavior

Acts, words, or gestures which cause anger, shock, embarrassment or humiliation,

including electronic communication is prohibited. Included is the excessive public display of affection.

12. Sexual Assault/Misconduct

Sexual assault can be any form of forced sexual contact. Force can be physical or emotional (threat, intimidation, pressure, coercion). Rape is a type of sexual assault usually involving sexual intercourse which is initiated by one or more persons against another person without that person's consent.

12-A. Forcible Rape

The carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

12-B. Forcible Sodomy

Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly against the person's will where the affected person is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

12-C. Sexual Assault with an Object

The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the affected person is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

12-D. Forcible Fondling

The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the affected person is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity.

13. Non-Forcible Sexual Misconduct

Unlawful, non-forcible sexual intercourse including Incest (non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law) and Statutory Rape (non-forcible sexual intercourse with a person who is under the statutory age of consent.)

13-A. Incest

Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

13-B. Statutory Rape

Non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in Kansas is 16 years of age.

14. Fire Safety

14-A. Arson

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling, building, motor vehicle, personal property of another, etc.

14-B. Activating and/or Tampering with a Safety Device

Any willful attempt to block, hinder, or disable or activate a safety device, or use without just cause, such as fire alarms, smoke detectors, fire extinguisher, fire escape route, or any other safety device. Objects are not to be placed with-in 24-inches (2-feet) of a fire suppression device.

14-C. Burning of Material, Use of Tobacco, and Fireworks

Burning of any material in the residence lodge is strictly prohibited as it may endanger the health and the safety of occupants.

Burning of material means either open flame or smoldering material such as candles, medicinal plants and herbs, cigarettes or pipes containing tobacco or illegal substances, except when authorized by the Director of Housing, or designee, under Haskell's Smudging policy. Please see the Residential Housing Student Handbook for more information. Smoking of tobacco products on campus is allowed only outside of each building, except within 25-feet of entrances and ventilation air intake systems.

Fireworks, of any type, are prohibited from use and/or storage on Haskell campus at all times.

14-D. Opening Exit Doors

Opening an exit door to admit persons or keeping an exit door propped open for any reason, other than emergency, will be in violation of this policy.

At no time will any type of furniture or other item be placed within 24-inches (2-feet) of an automatic sprinkler head used for fire suppression. Students may be held financially liable for any damage caused by the movement of furniture or other object, with or without prior authorization.

15. Hazing

Hazing constitutes doing, requiring or encouraging any act, whether or not the act is voluntarily agreed upon, in conjunction with initiation or continued membership or participation in any group, that causes or creates a substantial risk of causing mental or physical harm or humiliation. Such acts may include, but are not limited to, use of alcohol, creation of excessive fatigue, and paddling, punching or kicking in any form.

16. Residential Hall Policies

This is not an all-inclusive list. Please refer to the Residential Housing Student Handbook for more detailed information.

16-A. Unauthorized Visitation

Bringing or allowing into the residence lodge unauthorized person in a restricted areas of the residential hall, such as a member of the opposite sex in the living areas of the hall or allowing visitors to remain in the unauthorized areas past visiting hours.

16-B. In the Private Living Area of the Opposite Sex

Being anywhere in the private living areas of the opposite sex. This includes dorm rooms, showers, restrooms, windows, and dorm wing hallways.

16-C. Failure to Maintain a Clean Room or Failure to Clean Assigned Area

Students residing in the Haskell residential halls that fail to maintain a neat and clean room and/or are assigned to clean an area and fail to do so, or properly complete the assignment, will be in violation of this policy. Repeated violations will result in suspension of housing privileges.

16-D. Gambling

All gambling is prohibited on Haskell campus.

16-E. Littering

Leaving trash or litter on campus except in appropriate receptacles. Residents who place their room trash in hall waste receptacles instead of the dumpster are in violation of this article.

16-F. Excessive Noise

Quiet hours are observed starting 10:00 p.m. to 8:00 a.m. All those making loud, excessive, obnoxious, repeated, or unnecessary noise, which interferes with the rights of those who want to sleep, study, or relax, even if outside the posted quiet hours are considered in violation of this article.

16-G. Failure to Identify and/or Give False Identity

At all times Haskell students are required to visibly display their Haskell Student Identification cards while on the Haskell Campus. Students are required to show identification upon demand, or when entering/exiting the campus.

Failure to visibly display their Haskell Student Identification Card; being in possession of another person's Haskell student Identification Card; allowing someone else to use your Haskell Student Identification Card and refusing to provide your name or providing a false name, are all violations of this policy. Persons refusing or unable to provide suitable identification may be detained by Haskell employees until their identification can be satisfactorily verified by law enforcement authorities.

17. Trespassing

Entering on or loitering in unauthorized areas on campus is a violation of this policy. Students that have been suspended from the residential halls are not allowed in either residential areas including balconies, patios, windows, exit doors, and all other areas immediately adjacent to the dorm. Students that have been expelled from Haskell are in violation of a current Emergency Suspension (any levels), Notice to Vacate, or are on the ineligible for housing master list.

18. Cooperation with Haskell Employees

Any attempt to misdirect, delay, misinform, hinder, or obstruct in any way Haskell staff in the performance of their duties will be in violation of this article.

19. Cooperation with Haskell Students

Any attempt to misdirect, delay, misinform, hinder, or obstruct in any way Haskell students in the right to gaining an education will be in violation of this article.

20. Harboring

Harboring a person, such as a student who has been suspended from the dormitories or former student expelled from Haskell, or other person who has been evicted/ banned for disciplinary reasons from the campus.

21. Misuse of Technology

- a. Violation of Haskell policy on proper use of E-mail or Internet while on the Haskell server.
- b. Downloading or transferring of illegal downloaded media files, including illegal downloading of music and movies.

III. Student Conduct Process

A. Due Process

Every Haskell student has the following rights to due process in a formal disciplinary proceeding pursuant to 25 C.F.R. 42.8:

1. **Notice.** Written notice of charges within a reasonable time before a hearing. Notice of charges shall include reference to the regulations allegedly violated, the facts alleged to constitute the violation, and notice of access to all statements related to the charge and to those parts of the student's school record which will be considered in rendering a disciplinary decision.
2. **Hearing.** A fair and impartial hearing. In an emergency situation that seriously and immediately endangers the health and safety of the student or others, a Haskell official may temporarily suspend a student, but shall immediately report in writing the facts (not conclusions) giving rise to the emergency. The official shall afford the student a hearing which fully comports with due process as soon as practicable thereafter. Please see Student Conduct Office regarding 25 CFR 42.7 mandate.
3. **Representation.** The right to have an Advocate at the hearing. An attorney will be allowed to present the student's case, but only at the student's expense.
4. **Confrontation.** The right to confront and examine all witnesses and to produce and have produced witnesses on the student's behalf and to confront and examine all witnesses.
5. **Records.** The right to the minutes and record of all disciplinary proceedings (including appeal hearings) and to written findings of fact and conclusions in all cases. All Information will follow Family Educational Rights and Privacy Act (FERPA) guidelines.
6. **Appeal.** The right to an administrative review and appeal.
7. **Non self-incrimination.** The student shall not be compelled to testify against himself/herself.
8. **Expunged.** The right to have the allegations of misconduct and information pertaining thereto expunged from the student's school record in the event the student is found not guilty of the charges.

B. Advocates

1. Students who wish to have an "Advocate" must submit a "Release of Information" form to the Office of Student Conduct to allow the Advocate to have access to records and documentation associated with the case.
2. A Haskell employee must have permission from his or her immediate supervisor to act as an Advocate. The Student Conduct Administrator will investigate potential "conflicts of interest" before a hearing.
3. A Haskell student must be in good academic and social standing to be and Advocate. A student Advocate must notify the Office of Student Conduct and withdraw from being an Advocate if he/she is no longer in good academic and/or social standing OR if he/she has pending a disciplinary matter.
4. The Advocate is responsible for scheduling his/her own investigative interviews.
5. The student is responsible for providing the Advocate with all information that pertains to his/her case.

6. The Presiding Officer will state on the record at each hearing that the student is represented by an Advocate and that a signed release form, allowing the Advocate access to records and documentation associated with the student's case, is in the student's case file.

C. Alternative Dispute Resolution

Haskell may address a student violation using an Alternative Dispute Resolution (ADR) process or the Adjudication process.

- (1) When appropriate, Haskell will first attempt to use the ADR process.
- (2) When the ADR process does not resolve matters or cannot be used, Haskell must address the alleged violation through the Adjudication process.

ADR process may:

- (1) Include peer adjudication, mediation, and conciliation; and
- (2) Involve appropriate customs and practices of the Indian Tribes or Alaska Native Villages to the extent that these practices are readily identifiable.

D. Restorative Justice

Haskell may offer another alternative to addressing a student violation using the Restorative Justice model. This model focuses on understanding and repairing the harms created by inappropriate conduct. The Student Rights Specialist and the Dean of Students can determine if the Restorative Justice model will work in situations, and will be dealt with on a case by case basis.

Haskell may address an alleged violation through the ADR process or Restorative Justice Process unless one of the following conditions apply:

- the act requires immediate removal or emergency suspension.
- **OR**
- all parties do not agree to using an ADR process.

E. Adjudication Process

1. An Incident Report shall be filed with the Student Conduct Administrator within five (5) business days of the incident.
2. The Student Conduct Administrator shall send a letter to the accused student through campus mail informing the student of the appointment date and time to meet with the Student Conduct Administrator or assigned housing staff. Minor violations are handled by the Housing staff. Major violations are handled by the Student Conduct Administrator with the exception of Fire Safety violations. Fire Safety violations are handled by the Safety Officer.

3. At this meeting, the decision maker shall determine whether the student has committed a violation and shall impose sanctions based on preponderance of the the evidence. If the student is found not responsible, then no sanctions will be given.
4. Alternative Dispute Resolution (ADR) may be used when the accused student and the decision maker agree to it. Situations may arise where the alternative dispute resolution process would resolve a problem in an informal manner.

F. Appeal Process

1. A student may appeal based on the following:
 - a) Deprivation of Due Process.
 - b) Inadequate evidence to justify decision.
 - c) Sanction not in keeping with the gravity of the violation.
2. The student shall submit a written request for appeal that lays out the reason for appeal. The written request shall be submitted to the Student Conduct Office, Pushmataha Hall, no later than 12:00pm noon five (5) business days after the Student Conduct Administrator's decision.
3. The student shall have the opportunity for an appeals hearing before a Student Appellate Board. The Student Appellate Board is made up of at least three to five Haskell employees and/or students, selected by the Student Conduct Administrator. The student shall be notified through campus mail of the time and date of the hearing.
4. The student is allowed a 15-minute waiting time from the time that the hearing is to begin. Failure to report to the hearing before the waiting time ends will result in the Student Conduct Committee making a determination from the material before it.
5. At the hearing, the student may present a case, including witnesses and documents, and may ask questions of the accuser.
6. The Student Conduct Committee may interview the accuser, the accused student, and the witnesses.
7. The Office of Student Conduct shall record all hearings. Minutes of the hearing shall be available upon written request to the accused student. Students and witnesses are not allowed to record hearings.
8. Students are allowed to have an Attorney at Law present as an advocate at their appeal but at their own expense.
9. Parents have no standing in the appeal process.
10. After the Student Conduct Committee has deliberated in private, only the accused student and the student's authorized Advocate will be called before the Student Conduct Committee to be informed of the decision, a final decision will be made at this hearing.
11. The Student Conduct Committee has the authority to retract or alter any sanctions that were applied by the Student Conduct Administrator, the Housing Staff, an Alternative Dispute Resolution Board or a Restorative Justice Conference.
12. The decision of the Student Conduct Committee is final and there are no additional appeal rights to pursue.

G. Appeal Process following Expulsion

Given the serious nature of expulsions, Haskell has established specific procedures for the appeal of an expulsion.

1. If a student appeals an expulsion, the appeal will be referred to a Student Appellate Board. The student has five (5) business days from receiving notice of expulsion to file an appeal with the Student Conduct Administrator. The Student Conduct Administrator is responsible for convening the Student Conduct Committee and shall preside as the chair during the review hearing.
2. The Student Conduct Administrator shall schedule a review hearing after receiving an appeal and the student will be notified through campus mail. Such notice shall contain:
 - a. A specific statement of the violation(s) for which the student is being expelled.
 - b. A statement of the time, date, and location of the Student Conduct Committee hearing to review the expulsion.
 - c. A statement specifying the student's right to have an Advocate (or student paid attorney) to assist him/her. A "Release of Information" form must be completed by the Advocate and filed by the student or the Advocate.
 - d. A statement advising that the student may voluntarily waive the right to be present at the review hearing. Such statement shall advise that the student may not be forced to sign such waiver. Failure to report to a Student Conduct Committee review hearing shall constitute a waiver.
3. The Student Conduct Committee shall have access to all materials used at the hearing that resulted in an expulsion order, including audiotapes of the proceeding. Additional material(s) provided by the student shall be allowed.
4. The Student Conduct Committee shall issue a decision. The Student Conduct Committee may uphold the expulsion; reverse the expulsion and order other appropriate sanctions; or, on a finding of serious procedural error below, reverse the expulsion and remand the case to the Student Conduct Administrator for further proceedings.
5. The Student Conduct Administrator shall notify the student in writing of the Student Conduct Committee's decision.
6. The Student Conduct Committee's decision is a final decision.
7. Students expelled from Haskell forfeit their right to attend Haskell. They may not return to Haskell and are not permitted to be on campus grounds or in buildings without permission from Haskell's President.

H. Personal Safety during the Student Conduct Process (Affected Person's Rights)(25 C.F.R. 42.9)

In formal disciplinary proceedings, each school must consider affected person's rights when appropriate.

- (a) The affected person's rights may include a right to:
- (1) Participate in disciplinary proceedings either in writing or in person;
 - (2) Provide a statement concerning the impact of the incident on the affected person;
- and
- (3) Have the outcome explained to the affected person and to his or her parents or guardian by a school official, consistent with confidentiality.

(b) For the purposes of this part, the affected person is the actual affected person, not his or her parents or guardians.

The decision maker may accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the Complainant, Respondent, and/or other witness during the hearing by providing separate facilities, by using a visual screen, and/or by permitting participation by telephone, closed circuit television, video conferencing, videotape, audio tape, written statement, or other means, where and as determined in the sole judgment of the Director of the Office of Student Conduct. Students should contact the Title IX Coordinator Tonia Salvini at Pushmataha Hall for a listing of affected person's rights.

I. Major/Minor Violations

Major Violations - Major violations will be adjudicated by the Student Conduct Administrator.

- Substance Abuse pg. 17
- Weapons pg. 18
- Haskell Property pg. 18
- Haskell Policy, State, and Local Laws pg. 17
- Intimidation pg. 17
- Violence pg. 17
- Harassment pg. 19-20
- Sexual Misconduct pg. 19
- Fire Safety pg. 20
- Haskell Property pg. 18
- Cooperation with Haskell employee pg. 21
- Cooperation with Students pg. 22

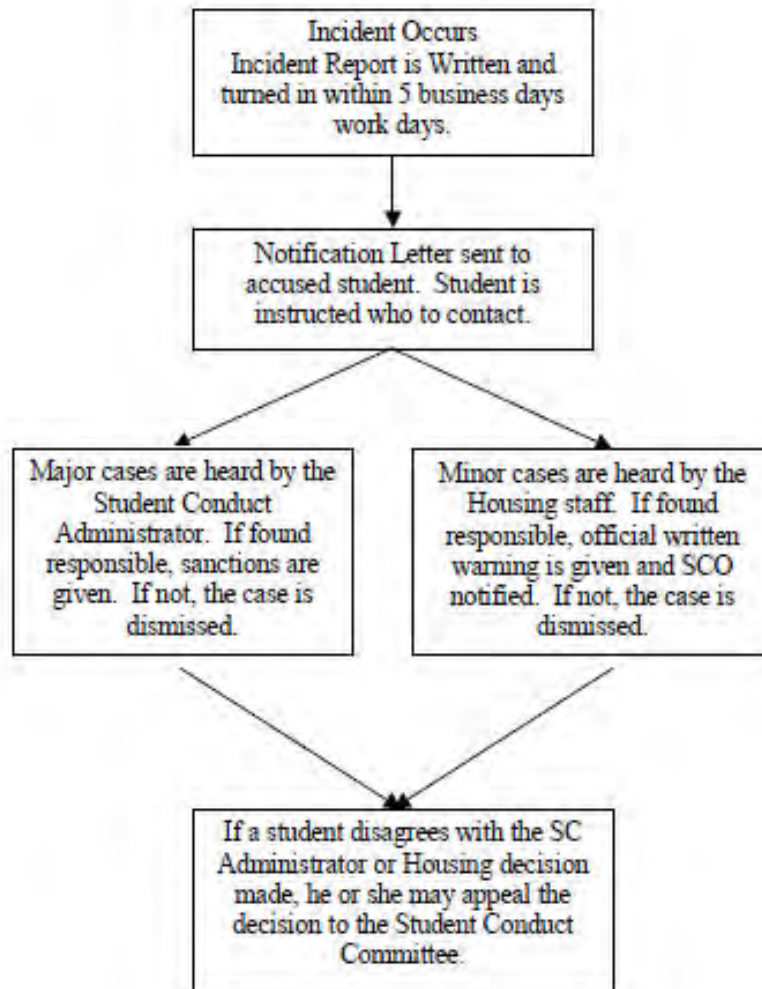
Minor Violations - Minor violations will be documented by the Housing staff.

- Residential Halls Violations (visitation and room checks) pg. 19-20

STUDENT NOTIFICATION PROCEDURE (Minor Violations): The following procedure will apply to students who are found in violation of the visitation and room check procedure.

- First offense- written Student Notification warning is presented to the student. A copy is forwarded on to the College Resident Assistant Supervisor.
- Second offense- \$25.00 fine and 10 hours community service (In order for a violation to be considered at 2nd offense, the staff must include a copy of the first offense notification along with the incident report)
- Third offense- eviction

Haskell University Conduct Flow Chart



J. Sanctions

A decision maker has discretion to impose disciplinary, educational and/or restorative sanctions for a violation.

Disciplinary Sanctions

1. Warning and Probation- A notice in writing to the student that the student is found to have violated specific Haskell regulations and that more severe disciplinary sanctions may be imposed if the student is found to violate Haskell regulations during the designated probationary period.
2. Notice to Vacate: A Notice to vacate means that a student must vacate their residential hall. Typically a Notice to Vacate (NTV) is in place for one year of the issuance.
3. Loss of Privileges- Denial of specified privileges for a designated period of time.
4. Loss of Good Social Standing- Loss of Good Social Standing bars the student from being an officer in a student organization or representing Haskell. It is regained once other sanctions are completed.
5. Fines- Previously established and published fines may be imposed.
6. Residential Hall Removal- This may be either temporary or permanent. Temporary removal is separation of the student from the residential halls for a definite period of time, after which the student is eligible to return. Conditions for return must be specified under a temporary removal. Permanent removal is a permanent separation of the student from the residential halls with no eligibility for return. Conditions for return will not be specified under a permanent removal since the student is ineligible to return.
7. University Removal- This may be either temporary or permanent. Temporary University Removal is separation of the student from Haskell for a definite period of time, after which the student is eligible to return. Conditions for return must be specified under a temporary removal. Permanent removal is a permanent separation of the student from Haskell with no eligibility for return. Conditions for return will not be specified under a permanent removal since the student is ineligible to return. A student that has been removed will automatically receive a notice of trespassing if the student is found to enter or loiter on Haskell premises without prior authorization from Haskell's President.
8. Revocation of Admission and/or Degree- Admission to or a degree awarded from Haskell may be revoked for fraud, misrepresentation, or violation of Haskell standards for obtaining the degree or for other specified violations committed by a student before graduation. Revocation of admission and/or degree may be coupled with temporary or permanent University banishment.
9. Withholding Degree- The University may withhold awarding a degree otherwise earned until the completion of the process set forth in this Code of Student Conduct, including the completion of all sanctions imposed.
10. Loss of Organizational Recognition: Student organizations that violate the Code of Student Conduct may lose their status as a student organization.

11. “No Contact Order” - A “no contact order” may be imposed to prohibit a student from being in contact with another student or Haskell employee. This includes personal, electronic, postal, or any other types of contact. The no-contact order may be temporary or permanent.
12. Guest Restriction: A student may be restricted from hosting guests in the residential halls if the student violates the guest policy. The guest restriction may be temporary or permanent.

Educational Sanctions

1. Reflection Essay: A reflection essay may be assigned to help a student reflect on what choices he or she has made to get into a situation, what he or she could do instead to avoid situations like this in the future, and what he or she learned in this situation. The essay cannot serve to blame others for the actions of the student. Length will be assigned by the Student Conduct Administrator or Housing staff.
2. Policy Review: A policy review may be assigned in order to help students understand the motivation behind the Code of Student Conduct. In this essay, the student must reflect on why the policies he or she violated exist in Code of Student Conduct and what would happen if the policy did not exist. The review cannot be used to argue against the Code of Student Conduct. It is meant to challenge the student to think from many perspectives. Length will be assigned by the Student Conduct Administrator or Housing staff.
3. General Essay: A General Essay may be assigned about any topic the Student Conduct Administrator deems appropriate for the violation. Length will be assigned by the Student Conduct Administrator or Housing staff.
4. Interview: An interview with a relevant campus resource may be assigned to help the student learn from this situation and relevant campus resources. The length and number of questions will be assigned by the Student Conduct Administrator or Housing staff.
5. Flyer: An 8.5”x11” flyer about the violations committed may be assigned in order to help the student better explain a policy and to educate the Haskell or residential hall community about the violation.

Restorative Sanctions

1. Letter of Apology: A letter of apology will be assigned as a sanction when the student showed disrespect to other members of the Haskell community. The letter must be sincere and will be reviewed by the Student Conduct Administrator before it is delivered.
2. Community Connection Activities: Community Connection hours will be assigned to help the student to repair harm done through his or her actions, but more importantly will help the student find better connections to help the student be successful at Haskell. The Student Conduct Administrator will assign the specific location where hours are to be completed and specify a date by which the community connection hours must be completed.
3. Recommended Counseling: Counseling will be recommended in writing to students for assistance in resolving any potential mental or emotional issues. The recommendation will be maintained in the student’s file.

4. Haskell Chemical Abuse Prevention Program (HCAPP): HCAPP or another licensed and/or certified Alcohol Assessment program will be required of students for severe alcohol violations. This program assists students in understanding if they have problems with alcohol.
5. Conference: A conference between the person harmed and the person who violated the Code of Student Conduct will be assigned in cases where the person harmed agrees to have a conference with the student who violated the code. The main objective of a conference is to have the student who violated the code understand how his or her choices have affected others.
6. Restitution- Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.
7. Haskell Mental Health Assessment (HMHA) - HMCA or another licensed and/or certified mental health assessment program will be required of students for severe incidents involving violence and other threatening behavior. This program assists students in understanding if they have problems with anger management, and/or patterns of behaviors associated with violence.

K. Emergency Suspension

Any action to separate a student from the campus before a hearing is known as emergency suspension. An emergency suspension can only come from the Student Conduct Administrator. The forms for the Emergency suspension can be found on the website under the Student Conduct Office. There are three levels of Emergency Suspension. Please refer to page 94 for more information.

The emergency suspension may be imposed only: a) to ensure the safety and wellbeing of members of the Haskell community; b) to ensure the student's own physical or emotional safety and wellbeing; or c) if the student poses an ongoing threat of serious disruption of, or interference with, Haskell's normal operations.

During the emergency suspension, a student shall be denied access to the residential halls and/or to the campus (including classes), food service, community activities and all other Haskell activities or privileges for which the student might otherwise be eligible, as the Student Conduct Administrator determines to be appropriate.

L. Trespassing Procedures

A temporary, interim, or permanent "University Banishment" order will include a "no trespassing notice." The notice shall state that (a) the student will be charged with trespassing if he or she is found to enter or loiter on Haskell premises without prior authorization from Haskell's President and (b) Haskell will notify local, state or federal law enforcement units to enforce the law if the student violates a "no trespassing notice." The "no trespassing notice" will expire when the "University Banishment" order is lifted, expired or dismissed.

Similarly, a temporary, interim, or permanent "Residential Hall Banishment" order will include a "no trespassing notice." The notice shall state that (a) the student will be charged with trespassing if he or she is found to enter or loiter on the residential hall

premises without prior authorization from Haskell's President and (b) Haskell will notify local, state or federal law enforcement units to enforce the law if the student violates a "no trespassing notice." The "no trespassing notice" will expire when the "Residential Hall Banishment" order is lifted, expired, or dismissed.

M. Diversion

The Office of Student Conduct for Haskell Indian Nations University has established the following guidelines for the Diversion Application process. This program is a service that is available only once during a student's enrollment at Haskell, and is designed to be a learning experience for students to help them be successful in their educational endeavor.

Diversion is a privilege and not a right. No presumption in favor of diversion exists in any case, and the burden of proof rests with the student to establish that a diversion agreement will best serve the student, the interests of the university, public safety and the rights of the victim(s).

In determining whether to grant a diversion, the Student Services Department will consider whether the student demonstrates a genuine sense of remorse and is prepared to acknowledge the offense(s) charged and accountability for consequences for his/her actions. Other factors to consider are the nature of the offense and the circumstances surrounding it, the probability that the student will cooperate and benefit from the program, the impact of diversion of the student on the university, the recommendations of the involved parties and that of the victim(s), the amount of restitution/damages which is owed, and any mitigating and aggravating circumstances surrounding the incident/offense.

It is not required that the student have a representative for the purpose of the diversion. However, each student has the right to secure counsel and have him/her represent them through the application process. If the student chooses to hire an attorney or seek legal advice, those costs are assessed to the student.

Eligibility

The Office of Student Conduct will consider a number of factors in determining whether or not diversion is appropriate, which shall include but not be limited to the following:

1. Prior offense(s) and nature of incident.
2. Academic standing.
3. Recommendations or letters of support.
4. Letter of intent by student.
5. Completed application and all materials related to application received in timely manner.

It is presumed by these guidelines that a diversion is **NOT appropriate** in the circumstances that follow:

1. If the student has been found in violation of a substance abuse offense within the last five years.
2. If the incident involved violence and/or weapons that resulted in arrest.

3. If the student was placed on emergency suspension as a result of the incident.
4. If the student received any prior diversions or has pending incident reports not including matters covered by this application.
5. If the student has been suspended from residential housing within the last five years.
6. If the student had an incident report processed through Office of Student Conduct.

Procedures

The student must attend all conferences set by the Office of Student Rights in regards to the application process. During the initial conference regarding the incident report a determination will be made as to the disposition of the incident. If the student meets the eligibility criteria an application may be obtained and the diversion process initiated. The student will be need to complete the diversion application within 5 working days of formal adjudication, all necessary documents and materials must be submitted with the application. Partial applications will not be accepted.

Assessments

- If the incident involves alcohol or drugs, the student may need to obtain an alcohol or drug evaluation from the Haskell Health Center prior to a final decision.
- If the incident involves violence, the student may be required to obtain an anger management assessment which may be done through the Haskell Health Center.

Notification of the application's approval or denial will be issued to the student during a conference to be set by the Student Services Department. In the event the application is denied, due process will continue for the offense.

Requirements

Once the student has been notified of the approval of the application, an appointment will be set for the student to review the requirements and conditions of the diversion.

- If an assessment was required, the recommendations of the assessment must be completed fully by the student as prescribed.
- Monitoring of academic progress by student and Office of Student Rights, or designee.
- Establish individualized plan for monitoring.
- Failure to adhere to conditions and requirements, or a second report involving substance abuse or similar offense will end diversion and loss of residential housing will be immediate with no appeal process.
- Failure to comply or any requests for extensions will result in the doubling of the fines and community service hours.

Diversion provides an opportunity for students to maintain Good Social Standing and remain eligible for housing. Students may participate in a drug or alcohol treatment program while fulfilling the sanctions for violating the Substance Abuse Policy. For more information please turn to page 37.

NOTE: If a student is in an Honor Residential Hall and violates the Substance Abuse Policy and/or Violence Policy, he/she will have to vacate immediately and move to a regular residential hall. The Haskell Chemical Abuse Prevention Program (HCAPP) and/or Haskell Mental Assessment (HMHA) may be utilized. Students can choose to use other certified and/or licensed diversion programs at their own expense. Failure to complete a diversion program will result in an immediate “Notice to Vacate” a residential hall and the student will no longer be considered in Good Social Standing. All sanctions must be completed before the student is considered to be in Good Social Standing once again.

Student will need to apply for a diversion, and have that request granted in order to secure it as an option. The Student Conduct Administrator will review all diversion applications and make a determination to approve, or deny. Failure to complete application process, or having the diversion application denied can result in eviction from housing, a notice-to-vacate being issued, or other consequence deemed appropriate.

Application includes:
Completed Diversion Application
Personal Statement
Letter of Support from Instructor

A diversion application needs to be filed within 5 working days of formal adjudication.

IV. Substance Abuse

A. Standards of Conduct

Haskell's substance abuse policy prohibits the possession, use, or transporting/trafficking of alcohol, illegal drugs, non-prescribed prescription drugs, and other mind-altering substances by students. Haskell does not accept abuse of alcohol or drugs by students and behaviors that occur as a result of such abuse. The most serious consequences of this behavior are the loss of housing and suspension or expulsion from the University.

Haskell seeks to enrich the lives of students by employing programs and services to assist them, referring them to counseling, and having staff conferences with them. See the Counseling Center for information about campus programs to prevent the possession, use or distribution of alcohol and drugs.

Haskell will contact the parents/guardians of students under the age of 21 in regards to violation of the "Substance Abuse Policy."

B. Medical Release for Substance Abuse

Abuse of alcohol and/or drugs is a serious threat to the wellbeing of students and the Haskell community. Accordingly, students who abuse alcohol or drugs to the extent that they become incapacitated and/or require monitoring shall be referred to the Counseling Center. The Counseling Center shall determine if students should be medically released from Haskell. Any student who is medically released must provide proof of treatment at a certified or licensed treatment facility and a written recommendation for return to Haskell from a licensed mental health professional before readmission to Haskell. In some cases, violations of the code of conduct for medical reasons could be removed from the record.

C. Sanctions for Violation of the Substance Abuse Policy

1. First Violation:

- Student can participate in a Diversion Program in order to maintain housing. The Diversion Program includes a fine, community service hours and/or an alcohol assessment program.
- A student who does not participate in a Diversion Program will receive a "Notice to Vacate", or "Eviction" resulting in immediate loss of housing for one year from the date of issuance.
- Any time a student is found in violation of the Substance Abuse Policy, he/she will lose their housing privilege. However, a student may appeal the loss of housing on their first violation only. The student shall remain in housing pending the outcome of the appeal. Should the student lose the appeal, the previous "Notice to Vacate" will go into effect immediately.

2. Second Violation: This sanction is mandatory; however a student may appeal to the appellate board for review. The Student will receive an order that includes the items below:

Notice to Vacate, resulting in immediate loss of housing for one year from the date of issuance, also includes:

- Loss of the privilege of visiting in the residential halls.
- Loss of the privilege of being on campus after regular business hours, unless student is attending a class.
- Loss of the privilege to participate in any extracurricular activities, including athletic teams, intramural sports, etc. and loss of the use of Haskell facilities (i.e., Tecumseh Gym, Coffin Sports Complex, and Stidham Union). Student shall inform the Office of Student Conduct when the student has a class or class assignment or project in any of these facilities.
- Loss of privilege to Curtis Hall.
- Loss of Good Social Standing.
- Requirement to complete an Alcohol Assessment and Treatment Plan.
- **Double** the fine and community service hours from the diversion program.

3. Third Violation:

- Referral to Student Appellate Board with a recommendation of mandatory suspension for two academic years with a double fine and community service hours from the previous violation.
- Completion of an alcohol/drug treatment program or other appropriate treatment program before readmission to Haskell, or depending on the severity, expulsion from Haskell.

D. Medical Amnesty

The Medical Amnesty Program (MAP) represents the Haskell's commitment to increasing the likelihood that community members will call for medical assistance when faced with an alcohol or drug-related emergency. Every student, as a part of the Haskell community, has a responsibility for caring for self and others. In alcohol or drug related incidents, the primary concern of the University is the well-being, health, and safety of students.

Haskell has an obligation to make mandatory administrative referrals of students for incidents related to alcohol and other drug-related emergencies. The potential for student conduct action by the University against the student in need of medical attention and/or the student reporting the incident may act as a barrier to students getting the immediate medical attention they need. In order to alleviate the behavioral consequences associated with these alcohol and other drug-related emergencies, and increase the likelihood that students will get the medical attention they need, Haskell has developed a Medical Amnesty Program. This policy applies to all students who call on behalf of themselves or another student in need of immediate medical assistance including being transported by EMS.

In order to receive Medical Amnesty, students must use the policy proactively. This means that students must take the initiative to get assistance and that asking for medical amnesty after being confronted for possible alcohol or drug policy violations will not result in application of MAP.

If a student calls on behalf of another student, he or she is **REQUIRED** to remain with the student experiencing the medical emergency until medical personnel arrive.

Medical amnesty applies only to possession or consumption of alcohol and drugs. In addition, the policy does not prevent action by police or other law enforcement personnel.

Frequently Asked Questions about the Medical Amnesty Program

Why do we have a Medical Amnesty Program?

At Haskell, the health and safety of every student is of primary importance and all students are strongly encouraged to be empowered bystanders who respond in a potentially dangerous situation without fear of reprisal from Haskell. Haskell supports students who act responsibly by reaching out for assistance in the case of a medical emergency, as well as supports the student who is helped. A student or student organization seeking medical treatment for him/herself, or for any other student who is in immediate medical need, or any student who is the recipient of this emergency medical help, will not be subject to disciplinary sanctions related to the violation of using or possessing alcohol or other drugs, as defined in the Substance Abuse Policy. This rule applies to emergencies both on and off campus.

A student is eligible to use the Medical Amnesty Program on more than one occasion and students are always strongly encouraged to report a medical emergency. The positive impact of reporting a medical emergency will always hold the highest priority when determining the appropriate response for Haskell policy violations. In a situation where there are repeated violations, Haskell reserves the right to take disciplinary action on a case by case basis.

Because parents are vital partners in the educational process and because the student can be best supported from home, Haskell typically contacts parents of students under 21 years of age in instances where there is evidence of risk to health, welfare or safety. In addition, the University reserves the right to record names of those students involved to enable the University to follow up with the students as deemed necessary to ensure a student's well-being.

A student who receives medical assistance for alcohol use under the Medical Amnesty Program will be referred by the Student Conduct Office or their representative to a mandatory intervention program, such as the Red Road Program at the University Counseling Center. Additionally, a student who qualifies for the Medical Amnesty Program by calling for medical assistance for another student may be referred to this program at the discretion of the Student Conduct Office.

Frequently Asked Questions

Q. What if I am underage and drunk when I call for help for a friend?

A. In this situation, emergency personnel might want to ask you a few questions about how much the sick person had to drink or if they mixed the alcohol with any other drugs, for example. This information will be critical to helping your friend. In such a case, Haskell will not refer you or the person you called for an alcohol violation.

Q. Will my name be recorded if I call for help for my friend?

A. In most situations, if you are level-headed enough to call for help and you are not showing signs of alcohol or other drug overdose, emergency personnel will thank you for your assistance and simply help your friend.

Q. How will anyone know I was the one who called for help?

A. In most cases, a professional staff members from Residential Halls will know that you called for help. If they do not know, you can simply inform them of your role in helping your friend or yourself.

Q. Does the Medical Amnesty Program apply if I call for help for myself?

A. Yes

Q. Does Haskell contact my parents if I am transported to the hospital?

A. Haskell does not automatically contact your parents when you are transported to the hospital. However, your parents would eventually be notified by mail if you are under 21 and had a hospital transport for alcohol or drug use.

Q. What happens if I am transported to the hospital for the second time – does the Medical Amnesty Program apply?

A. While the main concern is the health and safety of every student, a pattern of behavior for hospital transports will require a staff member to review the situation and follow up using professional judgment for each individual situation.

Q. What should I do if a friend is showing signs of alcohol poisoning or overdose?

A. Remember to **Check**, **Call** and **Care**. Alcohol overdose can be scary, but getting help is not.

CHECK: Watch out for your friends throughout the night. Encourage healthy choices. If someone you know has consumed too much alcohol, check for signs of overdose.

CALL: If you discover any one of the above problems, call for medical help immediately. Call 911. The above indicators of alcohol overdose are very serious and time is of the essence. If you are unsure and are on campus, call Haskell Security at 785-760-6192.

CARE: Continually talk to the person and monitor their skin color, temperature and breathing. Turn and keep the person on his/her left side as this will help to keep the person from choking should they vomit. Wait with your friend until help arrives; never leave a sick friend alone.

V. Campus Violence Policy

A. Purpose of the Policy

Haskell Indian Nations University and its respective entities are committed to maintaining a safe working and learning environment for all members of the Haskell community. In this regard, HINU will take reasonable action to provide an environment free from violence, threats of violence, harassment, intimidation, and other disruptive behavior.

B. Policy Statement

HINU will not tolerate violence, threats, harassment, intimidation and other disruptive behavior on its campus or in its programs, whether by students, faculty, staff or visitors. Such behavior may include oral or written statements, gestures, or expressions that communicate a direct or indirect threat of physical harm or intimidation. Individuals who commit such acts may be subject to sanctions including, but not limited to, removal from the premises; exclusion from the premises; criminal prosecution; corrective and/or disciplinary action; and suspension or expulsion.

Haskell seeks to enrich the lives of students by employing programs and services to assist them, referring them to counseling, and having staff conferences with them. See the Counseling Center for information about campus programs of harassment and violence.

C. Sanctions for Violation of the Violence Policy (That does NOT involve an arrest or emergency medical personnel)

1. First Violation:

- Student will have an opportunity to participate in a Level I Violence Diversion Program in order to maintain housing.
- A student who does not participate in a Level I Violence Diversion Program will receive a “Notice to Vacate”, or “Eviction” resulting in immediate loss of housing for one year from the date of issuance.
- Any time a student is found in violation of the Violence Policy, he/she will lose their housing privilege. However, a student may appeal the loss of housing. The student shall remain in housing pending the outcome of the appeal. Should the student lose the appeal, the previous “Notice to Vacate” will go into effect immediately.

2. Second Violation: This sanction is mandatory; however a student may appeal to the appellate board for review. The Student will receive an order that includes the items below:

Notice to Vacate, resulting in immediate loss of housing for one year from the date of issuance, also includes:

- Loss of the privilege of visiting in the residential halls.
- Loss of the privilege of being on campus after regular business hours, unless student is attending a class.

- Loss of the privilege to participate in any extracurricular activities, including athletic teams, intramural sports, etc. and loss of the use of Haskell facilities (i.e., Tecumseh Gym, Coffin Sports Complex, and Stidham Union). Student shall inform the Office of Student Conduct when the student has a class or class assignment or project in any of these facilities.
- Loss of use of Curtis Hall.
- Loss of Good Social Standing.
- Requirement to complete a Mental Health Assessment and Treatment Plan.
- Fine
- Community Service Hours

3. Third Violation:

- Referral to Student Appellate Board with a recommendation of mandatory suspension for one academic year.
- Completion of an anger management treatment program or other appropriate treatment program before readmission to Haskell, or depending on the severity, expulsion from Haskell.

VI. Campus Sexual Assault and Sexual Harassment and Title IX

Jurisdiction

Haskell shall adjudicate cases involving alleged violators who are students or Haskell employees. There is no “statute of limitation” for violation of the sexual misconduct policy. This is in recognition of the severe psychological harm that sexual misconduct can have and to empower those against whom sexual misconduct is perpetrated to report when they have been harmed.

Campus Sexual Assault

The following actions are violations of the sexual assault/harassment policy of Haskell.

1. Non-Consensual Sexual Touching
2. Non-Consensual Sexual Intercourse
3. Non-Consensual Sexual Contact (sexual contact without effective consent).
4. Sexual Exploitation.
5. Any attempt or aiding in attempt of any of the actions listed in this policy.

Definitions

1. Intercourse: includes vaginal or anal penetration by penis, object, tongue, or finger; or contact between genitals and mouth).
2. Sexual Touching: any *intentional* contact with breasts, buttocks, groin, genitals, mouth, or other bodily orifice of another, or touching another with any of these body parts, or making another touch you or himself or herself with or on any of these body parts.
3. Consent: is informed agreement to do the same things, at the same time, in the same way, with each other, is freely given without coercion, uses mutually understood words or actions. One cannot engage in sexual intercourse or sexual touching, without violating the sexual misconduct policy, if one knows the other cannot give consent.
4. Sexual Misconduct includes non-consensual sexual contact, non-consensual sexual intercourse, sexual exploitation, and sexual harassment.
5. Non-Consensual Sexual Intercourse is any sexual intercourse (vaginal, anal, or oral), however slight, between persons of whatever sex, without consent.
6. Non-Consensual Sexual Contact is any sexual touching, however slight, between persons of whatever sex, without consent.
7. Sexual Exploitation includes prostitution, posting images on social media without consent, video taping without consent, peeping tommery, intentional transmission of any sexually transmitted diseases, and inducing incapacitation for the purpose of having sex with a person.
8. Initiator: The person, of whatever sex, who initiates any sexual touching, contact, or intercourse.

9. Respondent: The person, of whatever sex, who must consent before any sexual touching, contact, or intercourse may occur.

What does consent mean?

1. In the absence of mutually understood actions or words, it is the responsibility of the initiator of any sexual contact to ensure consent is given by another person.
2. Consent to one form of sexual activity does NOT imply consent to other types of sexual activity.
3. Past consent to sexual activity does NOT imply consent to future sexual activity.
4. Consent must be given at each stage of sexual contact.
5. Consent given under the threat of physical force, any form of coercion, or intimidation is not effective consent.
6. Consent cannot be given by minors (persons under age 18), mentally disabled persons, or physically incapacitated persons.

How do I know if someone cannot give consent?

Is the other person:

1. Unconscious?
2. Under the legal age of consent?

In these two cases, the other person cannot give consent.

Do you perceive in the other person:

1. Slurred speech
2. Bloodshot eyes
3. Smell of alcohol on breath
4. Inability to stand up straight
5. Vomiting
6. Outrageous or unusual behavior

Or, is the other person:

7. Physically impaired?
8. Physically incapacitated?
9. Mentally disabled?

This is not a comprehensive list. None of these characteristics necessarily means that the person cannot give consent. However, it is the responsibility of the initiator of sexual contact to ensure that the respondent can consent and that he or she gives consent.

Sexual misconduct does NOT necessarily have to be intentional. If the initiator does not ensure consent, the initiator can be found in violation of the sexual misconduct policy.

In other words, **it is always the responsibility of the initiator of sexual contact to ensure that consent can be and is given.** It does not matter if the initiator is incapacitated or not; it is always the responsibility of the initiator to get consent from the partner.

Other Important Information to Consider

1. Any person is not required to resist sexual advances. Silence is NEVER implied consent.
2. Silence, previous sexual relationship, current relationship, style of dress, or money spent on the respondent does not imply consent to any sexual activity.
3. Intentional or unintentional use of alcohol or drugs does not imply consent on the part of the respondent.
4. Consent may be revoked at any time by any party involved.
5. Consent has an expiration date. Consent only lasts for a reasonable amount of time. Reasonable amount is defined by circumstances. If a person consents to sexual activity, but no sexual activity occurs, the initiator should reconfirm consent before again initiating sexual activity.

Possible Sanctions for Sexual Assault

1. Any student found responsible for violating the Sexual Exploitation, the Non-Consensual Sexual Contact or the Non-Consensual Sexual Touching policy will face sanctions ranging from warning and probation to expulsion, depending on the severity of the incident and previous conduct records.
2. Any student found responsible for violating the Non-Consensual Sexual Intercourse policy will face sanctions ranging from suspension to expulsion, depending on the severity of the incident and previous conduct records. The recommended sanction will normally be expulsion.

Definition of Sexual Harassment

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when either:

(1) submission is either explicitly or implicitly a condition affecting academic or employment decisions; (2) the behavior is sufficiently severe or pervasive as to create an intimidating, hostile or repugnant environment; or (3) the behavior persists despite objection by the person to whom the conduct is directed. The University considers such behavior, whether physical or verbal, to be a breach of its standards of conduct and will seek to prevent such incidents and take corrective action when sexual harassment occurs.

Types of Sexual Harassment

Generally speaking, there are two types of sexual harassment, "*quid pro quo*" and *hostile environment*.

Quid pro quo (meaning "this for that") sexual harassment occurs when it is stated or implied that an academic or employment decision about a student or employee depends upon whether the student or employee submits to conduct of a sexual nature. *Quid pro quo* sexual harassment also occurs when it is stated or implied that an individual must submit to conduct of a sexual nature in order to participate in a University program or

activity. So, for example, if an employee is made to believe that a promotion is likely if the employee goes on a date with the employee's supervisor, the employee is possibly being subjected to "quid pro quo" sexual harassment.

Hostile environment sexual harassment occurs when unwelcome conduct of a sexual nature creates an intimidating, threatening or abusive working or learning environment or is so severe, persistent or pervasive that it affects a person's ability to participate in or benefit from a University program or activity. While a person engaging in harassing behavior most often has some form of power or authority over the person being harassed, that is not always the case. The harasser can be a peer of the person being harassed. Sometimes the harasser is harassing a person who has power over them. For example, a supervisee can sexually harass a supervisor or a student can sexually harass a faculty member.

Examples of Sexual Harassment

The following descriptions, while not all-inclusive, will help you understand the types of behavior that are considered "conduct of a sexual nature" and that, if unwelcome, may constitute sexual harassment:

Unwanted sexual statements: Sexual or "dirty" jokes, comments on physical attributes, spreading rumors about or rating others as to sexual activity or performance, talking about one's sexual activity in front of others and displaying or distributing sexually explicit drawings, pictures and/or written material. Unwanted sexual statements can be made in person, in writing, electronically (email, instant messaging, blogs, web pages, etc.) and otherwise.

Unwanted personal attention: Letters, telephone calls, visits, pressure for sexual favors, pressure for unnecessary personal interaction and pressure for dates where a sexual/romantic intent appears evident but remains unwanted.

Unwanted physical or sexual advances: Touching, hugging, kissing, fondling, touching oneself sexually for others to view, sexual assault, intercourse or other sexual activity.

Possible Sanctions for Sexual Harassment

1. Any student found responsible for violating the Sexual Harassment policy will face sanctions ranging from warning and probation to expulsion, depending on the severity of the incident and previous conduct records.

TITLE IX REQUIREMENTS: NON-DISCRIMINATION AND ANTI-HARASSMENT POLICY

A. Title IX Statement

It is the policy of the College to comply with Title IX of the Education Amendments of 1972 through E.O. 13160, which prohibit discrimination

based on sex (which includes sexual harassment and sexual violence) in Haskell's educational programs and activities. Title IX and its implementing regulations also prohibit retaliation for asserting claims of sex discrimination. Haskell has designated the following Title IX Coordinator for the entire university system to coordinate its compliance with Title IX and to receive inquiries regarding Title IX.

Interim Title IX Coordinator
155 Indian Avenue
Lawrence, KS 66046
(785)749-8457

Students who wish to report sex discrimination or sexual harassment should file a complaint with the Title IX Coordinator Tonia Salvini at 785-749-8457.

B. Policy Statement

Haskell Indian Nations University is committed to providing a learning, working, and living environment that promotes personal integrity, civility, and mutual respect in an environment free of discrimination on the basis of sex. Haskell considers sex discrimination in all its forms to be a serious offense. Sex discrimination constitutes a violation of this policy, is unacceptable, and will not be tolerated. Sexual harassment (as defined below), whether verbal/sexual, physical/rape unwanted touching, or visual, is inconsistent with the expectations of Haskell and may constitute a form of sex discrimination prohibited by this policy. Sexual harassment also includes sexual violence/assault (as defined below). Examples of specific conduct that constitutes sexual harassment and sexual violence/assault are set forth below.

C. Content of the Complaint

So that the Haskell has sufficient information to investigate a complaint, the complaint should include: (1) the date(s) and time(s) of the alleged conduct; (2) the names of all person(s) involved in the alleged conduct, including possible witnesses; (3) all details outlining what happened; and (4) contact information for the complainant so that the Haskell may follow up appropriately.

A complainant will be given a copy of the document titled "Explanation of Rights and Options After Filing a Complaint Under the Title IX: Non-Discrimination and Anti-Harassment Policy."

Conduct that Constitutes a Crime

Any person who wishes to make a complaint of sex discrimination or sexual harassment that also constitutes a crime—including sexual violence/assault, domestic violence, dating violence, or stalking—is encouraged to make a complaint to local law enforcement. If requested, Haskell will assist the complainant in notifying the appropriate law enforcement authorities. A victim may decline to notify such authorities.

Special Guidance Concerning Complaints of Sexual Violence/Assault, Domestic Violence, Dating Violence, and Stalking

If you are the victim of sexual violence/assault, domestic violence, dating violence, or stalking, do not blame yourself. These crimes are never the victim's fault. Haskell recommends that you immediately go to the emergency room of a local hospital and contact local law enforcement, in addition to making a prompt complaint under this policy.

A victim may decline to notify such authorities. A victim is NOT required to report to law enforcement as a prerequisite for filing a Title IX complaint through Haskell. The Title IX complaint can proceed regardless of whether there is any simultaneous law enforcement reporting.

If you are the victim of sexual violence/assault, domestic violence, or dating violence, do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. Victims of sexual violence/assault, domestic violence, or dating violence should not bathe, urinate, douche, brush teeth, or drink liquids until after they are examined and, if necessary, a rape examination is completed. Clothes should not be changed. When necessary, seek immediate medical attention at an area hospital and take a full change of clothing, including shoes, for use after a medical examination.

It is also important to take steps to preserve evidence in cases of stalking, to the extent such evidence exists. In cases of stalking, evidence is more likely to be in the form of letters, emails, text messages, etc. rather than evidence of physical contact and violence.

Once a complaint of sexual violence/assault, domestic violence, dating violence, or stalking is made, the complainant has several options such as, but not limited to:

- contacting parents or a relative
- seeking legal advice
- seeking personal counseling (always recommended)
- pursuing legal action against the perpetrator
- pursuing disciplinary action
- requesting that no further action be taken

1. Protecting the Complainant

Pending final outcome of an investigation, Haskell will take steps to protect the complainant from any further harassment or retaliation regardless of whether the victim chooses to report the crime to campus police or local law enforcement. Steps may

include assisting and allowing the complainant to change his or her academic, transportation, work, or living situation if options to do so are reasonably available.

If a complainant has obtained a temporary restraining order or other no contact order against the alleged perpetrator from a criminal, civil, or tribal court, the complainant should provide such information to the Title IX Coordinator or appropriate deputy Title IX Coordinator for their campus. Haskell will take all reasonable and legal action to implement the order.

2. Timing

Haskell encourages persons to make complaints of sex discrimination and sexual harassment as soon as possible because late reporting may limit Haskell's ability to investigate and respond to the conduct complained of.

3. Investigation and Confidentiality

All complaints of sex discrimination and sexual harassment will be promptly and thoroughly investigated in accordance with the Title IX Procedure. The interim Title IX Coordinator will investigate and any recommendations for adjudication will be referred to the Title IX Team. For more information regarding the Title IX process, please see page 54.

Haskell will make reasonable and appropriate efforts to preserve an individual's privacy and protect the confidentiality of information when investigating and resolving a complaint. However, because of laws relating to reporting and other state and federal laws, Haskell cannot guarantee confidentiality to those who make complaints.

In the event a complainant requests confidentiality or asks that a complaint not be investigated, Haskell will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name not be disclosed to the alleged perpetrator, Haskell's ability to respond may be limited. Haskell reserves the right to initiate an investigation despite a complainant's request for confidentiality in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the Haskell community.

4. Resolution

If a complaint of sex discrimination or sexual harassment is found to be substantiated, Haskell will take appropriate corrective action. Students, faculty, and staff found to be in violation of this policy will be subject to discipline up to and including termination, expulsion, or other appropriate institutional sanctions; affiliates and program participants may be removed from the university programs and/or prevented from returning to campus. Remedial steps may also include counseling for the complainant, academic, transportation, work, or living accommodations for the complainant, separation of the parties, and training for the respondent and other persons.

5. Bad Faith Complaints

While Haskell encourages all good faith complaints of sex discrimination and sexual harassment, Haskell has the responsibility to balance the rights of all parties.

Therefore, if the investigation at Haskell reveals that a complaint was knowingly false, the complaint will be dismissed and the person who filed the knowingly false complaint may be subject to discipline.

D. Retaliation

It is a violation of this policy to retaliate against any person for making a good faith complaint of sex discrimination or sexual harassment and/or cooperating in the investigation of (including testifying as a witness to) such complaint.

E. Vendors, Contractors, and Third Parties

This policy applies to the conduct of vendors, contractors, and third parties. If a member of the Haskell community believes that he or she has been subjected to sex discrimination or sexual harassment by a vendor, contractor, or third party, the person should make a complaint in the manner set forth in the above procedure. Haskell will respond to the complaint as appropriate, given the nature of its relationship to the vendor, contractor, or third party.

F. Academic Freedom

While Haskell is committed to the principles of free inquiry and free expression, sex discrimination and sexual harassment are neither legally protected expression nor the proper exercise of academic freedom.

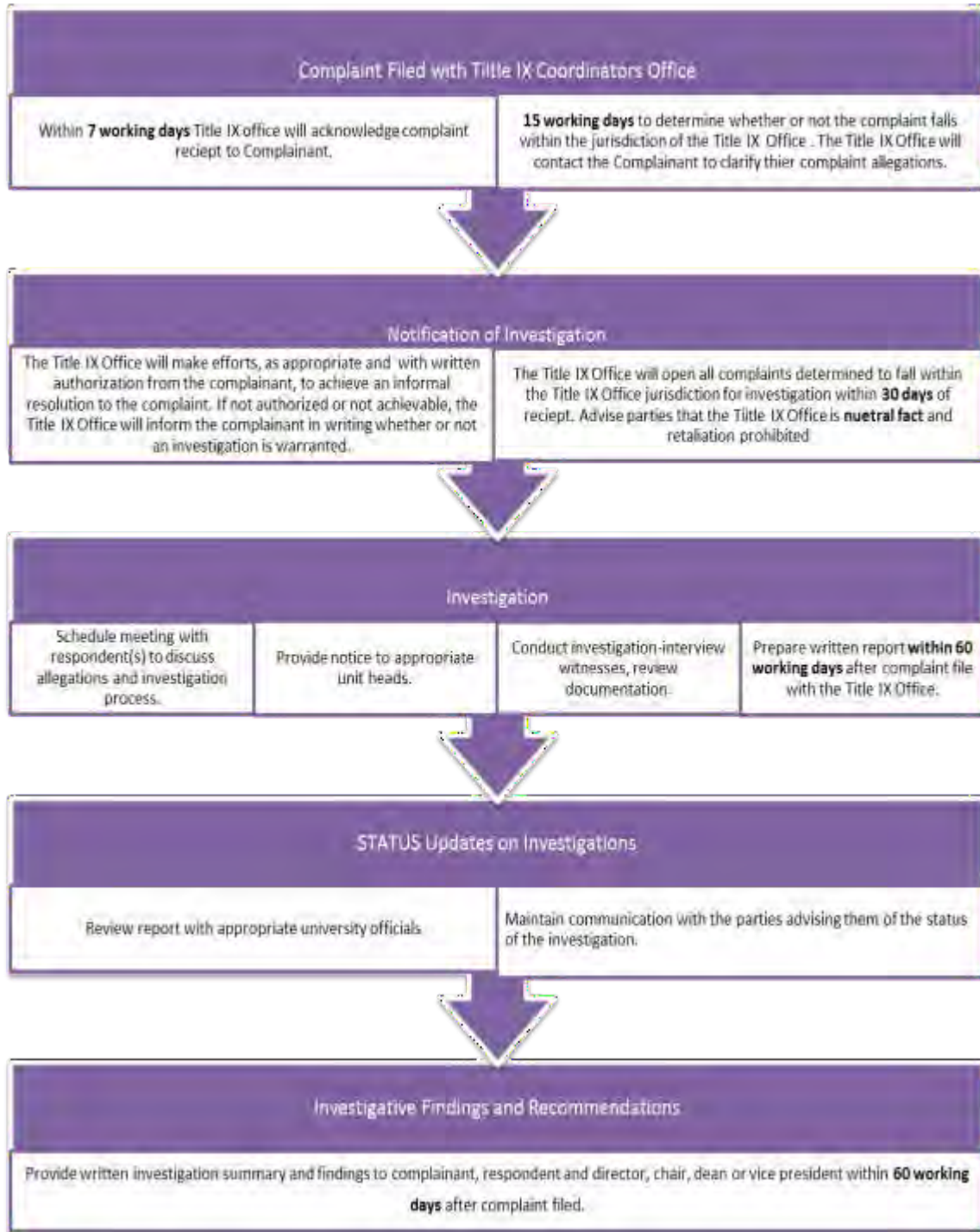
G. Education

Because Haskell recognizes that the prevention of sex discrimination, sexual harassment, sexual violence/assault, domestic violence, dating violence, and stalking is important, it offers educational programming to a variety of groups such as: campus personnel; incoming students and new employees participating in orientation; and members of student organizations. Among other elements, such training will cover relevant definitions, procedures, and sanctions; will provide safe and positive options for bystander intervention and will provide risk reduction information, including recognizing warning signs of abusive behavior and how to avoid potential attacks. To learn more about education resources, please contact the Title IX Coordinator. All forms can be found at the end of this book in the “Forms” Section.

HASKELL INDIAN NATIONS UNIVERSITY

Title IX Coordinator's Office

COMPLAINT PROCEDURE



VII. Fire Safety

A. MAJOR VIOLATIONS

1. Fire Protection Equipment – Fire extinguisher’s, pull stations, smoke detectors, automatic sprinkler systems, and fire alarms are located throughout the campus for the protection of human life and property. To use this equipment for non-emergency purposes is prohibited. Immediate action will be taken against anyone who falsely, whether intentionally or negligently, activates or tampers with fire safety equipment, exit signs, horns, strobes, notification devices, and fire exit doors. Tampering means to intentionally disable, alter, or change the fire alarm system, fire protective device, the station or signal box. Fire doors and any door with a closing mechanism must not be propped open or disabled. In addition, initiating, causing or contributing to a false report, warning or threat of fire, explosion, or other emergency is grounds for disciplinary action.

Typical Sanctions: Emergency suspension, \$100 fine plus all costs associated with the repair or replacement of misused or damaged equipment, cleaning of the facility, possible eviction from University housing and/or possible criminal charges.

2. Fire Hazards – All campus facilities, including student rooms and balconies, are smoke-free. Smoking of tobacco products is permitted only in designated outdoor smoking areas (50 feet from buildings). Cigarette butts and ashes shall be considered *prima facie* evidence of smoking. Open and smoldering flames, including lit candles, incense, plants/herbs, pipes, grills, e-cigarettes and hookahs are prohibited in all campus facilities, including student rooms and balconies. A student must receive prior approval from the Director of Housing to burn material for religious purposes. No heat-producing appliances will be permitted in student rooms, unless authorized by the Haskell Safety Office. This includes hot plates, coffee pots, popcorn poppers, electric skillet, heaters, air fresheners (“Sensies”), etc. Any items confiscated WILL NOT be returned. **BLOW TORCHES (regardless of size) is STRICTLY prohibited. Any violation will result in Emergency Suspension Level 2 minimum with a minimum fine of \$100.**

Typical Sanction: \$50 fine.

3. Endangerment (Emergency Evacuation) – When a fire alarm is sounded, residents must assume that there is a fire in the building and are expected to evacuate the building. Residents may return to the building only when instructed to do so by Residential hall staff or Haskell Security/Safety personnel. Endangerment includes failure to follow these procedures for fire safety, as well as failure to take cover during severe weather upon notification by Residential Hall staff, Haskell officials, tornado siren, or television/radio severe weather instructions.

Typical Sanction: \$50 fine.

4. Fires (Intentional – Arson) – Any willful or malicious burning or attempt to burn any building or government property on or around campus, any motor vehicle, and/or personal property of another is subject to expulsion from Haskell, as well as criminal charges.

Typical Sanction: Expulsion from Haskell as well as criminal charges.

5. **Fires (Unintentional)** – All other fires will be handled on a case-by-case basis, based on fire department reports. If it is determined that the fire was the result of violations listed above, sanctions will be at minimum: emergency suspension, \$50 fine plus all costs associated with the repair or replacement of the damaged area, cleaning of the facility and other damaged property, possible eviction from Haskell housing, and possible criminal charges.

Typical Sanctions: Emergency suspension, \$50 fine plus all costs associated with the repair and replacement of the damaged area and property, and cleaning of the facilities. Possible eviction from Haskell housing and possible criminal charges may apply.

VIII. Residential Life Policies

A. Authority to Enter Rooms

Residential hall staff or other non-law enforcement employees may enter rooms for several reasons as described below. **As a courtesy**, these officials will knock and will identify themselves and verbally request entry before entering the room. **Not hearing a knock or verbal request to enter is not a viable defense in disciplinary proceedings.**

1. For reasonable suspicion that a violation of the Code of Student Conduct or local, state, or federal law has occurred in the room or that evidence of the violation is in the room (see details below).
2. For emergencies such as fire drills.
3. For pre-announced health and safety checks.
4. For maintenance requested by the student or pre-announced requests by staff for maintenance work.
5. To conduct room inspections every two weeks.
6. To accompany a police officer who has a search or arrest warrant.
7. To ensure the safety of the student or others, if there is no response to the staff's knock or verbal request to enter.

B. Search and Seizure in Student Rooms

General Procedures: These procedures apply when Residential Hall staff and other Haskell officials enter a room because of an emergency, or for a room check (every two weeks), or to determine the location of a repair job.

1. Residential Hall staff and other Haskell officials shall use prudent judgment to determine if Security should be present.
2. Illegal items in "plain view" shall be seized.
3. Violations of the Code of Student Conduct that are in "plain view" shall be written into an incident report.
4. Care shall be taken to ensure that the student's room is left in the same shape as it was found.

Procedures Related to Search Based on Reasonable suspicion of Violation of the Code of Student Conduct: Residential Hall staff and other Haskell officials have authority to search a room when there is **reasonable suspicion that** a violation of the Code of Student Conduct has occurred and there is reasonable suspicion that evidence of the violation will be found in the room. Reasonable suspicion: A school official must have specific and articulable facts or inference, obtained from either personal observation or a reliable informant, that leads him/her to conclude – based on his/her experience the totality of the circumstances – that the search will lead to a discover of a violation of the Student Code of Conduct.

1. Residential Hall staff and other Haskell officials shall use prudent judgment to determine if non-law enforcement staff should be present. Upon entering, if occupants are present, the occupants must be informed of the intent to search the room.
2. The article/item must be defined before a search begins. (i.e. alcohol, drugs, weapons, etc.)

3. After beginning the search, an illegal item in “plain view,” even if unrelated to the purpose of the search, shall be seized and included in the incident report.
4. The area to be searched is the area where the article could be found. For example: if the article was a jacket, only those spaces of the student’s room where a jacket could be found can be searched; e.g., closet, under the bed, suitcases; however, the search cannot extend to a small purse or makeup cases.
5. Care shall be exercised to leave the room in the same shape as it was found.

Procedures Related to reasonable suspicion Search for Lost or Stolen

Property:

If there is reasonable suspicion to believe that a room contains lost or stolen student or Haskell property, the following procedure is to be followed to locate the property and to return it to its owner.

1. The Vice President of University Services may authorize Haskell officials with Reasonable suspicion to search the room after a reasonable attempt is made to inform the student whose room is being searched and to have the student present for the search.
2. Residential Hall staff and other Haskell officials shall use prudent judgment to determine if non-law enforcement should be present. Upon entering, if occupants are present, the occupants must be informed of the intent to search the room.
3. The complaining party must clearly identify the property before the search begins.
4. The complaining party must request the particular room(s) to be searched or name(s) of residents whose rooms are to be searched. **A BLANKET SEARCH OF A RESIDENTIAL HALL OR WING IS NOT ALLOWED.**
5. The area searched is the area where the article likely could be found. If the article was a jacket, only those spaces of the student’s room where a jacket could be found can be searched; e.g., closet, under the bed, suitcases; however, the search cannot extend to a small purse or makeup cases.
6. After beginning the search, illegal items in “plain view,” even if unrelated to the purpose of the search, shall be seized and included in the incident report.
7. Care shall be taken to ensure the student’s room is left in the same shape as it was found.
8. Violations of the Code of Student Conduct that are in “plain view” shall be written into an incident report.
9. In the event the searched-for contraband is found, it will be held in the Security Office until the matter is disposed of.

C. Search of Belongings

Scope of Policy

This policy concerns search of a student’s belongings by Haskell officials in the residential hall or anywhere on campus grounds. **This policy does not cover room searches or searches of vehicles.**

Procedure

1. No Haskell employee shall search a student's personal belongings unless there is reasonable suspicion based on the five senses to believe that a student has items subject to confiscation in a closed container, belongings, etc.
2. Examples of where there is **not** reasonable suspicion:
 - a. Sound of cans, bottles, visual shape of cans, bottles in back pack, purse, bag, etc.
 - b. Prior substance abuse write-ups
 - c. Walking to or from a known drinking area with a bag, backpack or purse
 - d. Walking across campus late at night with a bag, backpack, etc.
3. Examples of reasonable suspicion:
 - a. Odor of alcohol clearly emanating from the bag, purse, backpack
 - b. Clear view of beer can or other alcohol container through clear or slightly opaque bags evidenced by a name brand, labels and/or color of can or bottles clearly identified to be that of a known brand
 - c. Open container of liquid smelling of alcohol
 - d. Combinations of the above
4. The Student Conduct Administrator will dismiss incident reports where there are violations of a student's right of privacy.
5. A request to search an item (back pack, purse, bag, luggage) may be done with phrases, "May I have your consent to search (item such as backpack, purse, etc.)?" If a student refuses and there is not reasonable suspicion, a search cannot be conducted.

D. Visitation and Guests

Hosts and visitors who violate the Residential Halls visitation policy and other visitation conditions will be subject to Haskell disciplinary process. Non-student visitors may be subject to formal charges under local, state, or federal law.

Visitation Hours will be:

Sunday through Thursday 12 p.m. – 12 a.m.

Friday and Saturday 12 p.m. – 2 a.m.

Holidays 12 p.m. – 2 a.m.

Spring Break 12 p.m. – 2 a.m.

E. Frequently Asked Questions about Visitation

1. Who is a Visitor?

A visitor is any individual who is not a resident of the residential hall visited or occupant of the room visited.

2. What if I live in a Co-ed hall?

Residents of co-ed residential halls also have to abide by "inter-visitation" rules.

3. What is "inter-visitation" and are there specific rules?

This term is used to describe visitation between/among residents of that specific co-ed hall. Co-ed hall residents must not only adhere to the rules of visitation but also follow “inter-visitation” regulations. Students residing in co-ed housing may visit in their residential hall without signing the visitation logbook during the designated time for visitation. Residents in co-ed halls are not allowed to be on wings/floors/rooms or study areas before and/or after visitation hours or in areas delegated to members of the opposite sex.

4. What do I need to do to sign in the visitor?

Present your Haskell Student Identification card to staff. Staff will secure and return it after **you** have signed out your visitor.

5. Where can I take my visitors once they are signed in?

Visitors may visit in the floor lounges and, with the consent of roommate(s), in the private room of a student.

6. Are minors allowed to visit?

Under state law, minor children are those under the age of eighteen (18). Minor children are not permitted in residential halls without the supervision of parents, legal guardians or other appropriate adult supervision.

F. Visitation Shall Be Governed by the Following Stipulations:

1. Student Services will poll students and determine those who prefer visitation and those who do not. From this data residential halls and residential hall wings will be identified for visitation or not. Student Services will assign students based upon their preference to the maximum extent practical.
2. All student-hosts and visitors shall be required to abide by the Code of Student Conduct and residential rules related to hours of visitation, areas in which visitation is allowed and procedures for visitation.
3. The student-host shall be responsible for his/her visitor’s behavior. **The student-host must escort their visitors at all times.**
4. **Every visitor** must be **checked/signed in** at the residential hall’s office before visitation and **checked/signed out** when leaving. Students currently enrolled at Haskell will leave their Haskell identification card when checking in to visit and may retrieve their Haskell identification card upon leaving. Non-student visitors will be required to be signed in by student-host. **Student-hosts** are responsible for checking/signing in visitor(s).
5. All visitors are required to enter through the main (front) entrance of the residential hall.
6. Residential hall staff have the authority to make reasonable decisions on who should/should not be in the residential hall subject to due process for currently enrolled students.
7. For purposes of this section, sleeping areas are defined as individual rooms and corridors/hallways adjacent to individual rooms. Common areas are defined as TV rooms and lounges.
8. Failure to adhere to or abide by this or other Residential Housing policies for visitation will result in disciplinary action, which could include an official warning and/or incident report.
9. Non-Students who continually violate residential rules and/or campus rules

may be subject to criminal trespassing charges and/or banishment from the campus. (Also see Residential Housing Policies and Procedures Handbook).

G. Prohibited Items in the Residential Halls

Due to fire hazard, safety, and energy use, the following items are prohibited while in the residential halls.

- More than one refrigerator per room.
- Any appliance with an open heating coil.
- Broiler ovens, toasters/toaster ovens
- Alcohol
- Candles, incense, candle warmers
- Air fresheners (“Sensies”)
- Four-way or cheater plugs
- Any type of extension cord without breaker
- Sun or heat lamps
- Any appliance not clearly marked as U/L approved
- Tacks or nails in walls or ceilings
- Electronic items that cause electrical outages
- Contact paper on walls/furniture
- Any type of grill
- Electric blankets
- Electric sauce pans
- Laser pointers
- Halogen lamps
- Hot plates
- Space heaters
- Paint ball, BB-guns, or other weapons
- Oil popcorn poppers
- Flammable liquids and chemicals
- Cut Christmas trees or boughs
- Extension cords
- Firearms and fireworks
- Hookahs
- Blow torches (IMMEDIATE removal from Housing)

H. Other Policies

The following are general regulations common to all of the residential halls.

Students violating these regulations are subject to the disciplinary process.

- 1. Authority of Staff to Enter Rooms** – See Authority to Enter Rooms (Section II Authority to Enter Rooms p. 13).
- 2. Baby-Sitting:** Baby-sitting is not allowed in the residential hall.
- 3. Checkout Items:** Student identification cards shall be left with

residential hall staff to ensure the return of items checked out from the office.

- 4. Door Opening Charge:** All requests to open doors will be \$3.00. Student doors will be opened two (2) times before they are required to buy another key.
- 5. House Meetings:** Attendance at the initial house meeting each semester is mandatory. Failure to obtain attendance by 75% of residents will result in no visitation privileges for all residents until after the first successful meeting is held. In addition, the Residential Housing Supervisors will host House Meetings to provide information related to changes in policy or other areas of concern for students and staff.
- 6. Laundry:** Clothes may not be left unattended while doing laundry. The University is not responsible for lost or stolen articles. Doing laundry of non-residents is prohibited. Any student unauthorized to use the laundry facilities will be automatically charged for the residential hall fee.
- 7. Leave:** Residents shall sign out when leaving for holiday and/or long weekends or any extended leave of absences.
- 8. Paging and Intercom:** Paging in the residential halls will be allowed only during the hours of: Monday through Friday- 8 a.m. to 10 p.m., Saturday & Sunday – 10 a.m. to 10 p.m.
- 9. Pets:** No pets are permitted in the residential halls including, but not limited to, fish, reptiles, birds, gerbils, spiders, and insects. Students will be responsible for removal of pets from the residential hall and for any damages caused by pets. Every individual with a disability has the right to be accompanied by a guide dog, signal dog, or service dog, trained and certified for the purpose. However, the individual shall be liable for any damage done to the premises or facilities by his/her dog. Guide Dog means any guide dog or Seeing Eye Dog that was trained and certified by a licensed person. Signal Dog means any dog trained or certified to alert a deaf person, or a person whose hearing is impaired, to intruders or sounds. Service Dog means any dog trained and certified to do work or perform tasks for the benefit of an individual with a disability, including but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items. **NOTE:** Emotional Support Animals (ESA) MUST BE PRE-APPROVED with documentation from the ADA Coordinator. Any violation of the Emotional Support Animal (ESA) policy will result in immediate loss of housing.

- 10. Proper Use Of Entrances:** The back and side entrance(s) will be locked at 10:00 P.M. The front entrance will be used to enter and exit the building after these hours. The front entrance will be locked on Monday-Friday at midnight and Saturday and Sunday at 2:00 A.M. Staff is available to open the front entrance after closing hours. The use of other entrances after those times is a code violation. Windows are not to be used to get in or out of a building except for life- threatening situations. Use of windows for entrance or exit in other situations is a code violation. Identification may be requested by staff to assure residency within the hall.
- 11. Public Displays:** Public displays of behavior such as fondling, passionate kissing and exposure are potentially embarrassing to other students. Visitors may lose visiting privileges if they do not properly respond to official warnings received.
- 12. Quiet Hours:** The observance of quiet hours in all residential halls will begin at 11:00 P.M. and end at 11:00 A.M. Each residential hall will decide quiet hours during holidays and spring break sessions.
- 13. Residential Room Keys:** Each student will be assigned a key to his/her residential hall room. If this key is lost or stolen, residents are responsible for reporting the loss immediately to the Residential Hall staff. Replacement keys will cost \$25.00. Entry/room doors should be locked at all times to secure valuables and enhance individual safety. The University is not responsible for lost or stolen articles. Student must present a receipt from the Business Office to the Residential Hallstaff before a key is given to the student. If a key is not available from the locksmith, the student will not be charged until the key is received. All funds collected will be transferred to the House Council account of each respective hall.
- 14. Room Clearance:** Students are expected to check out of residential halls and follow procedures that include, but are not limited to, clean room/bathroom, return of key and payment for damages and repairs to room. Failure to do so may result in an assessment of charges to cover such costs.
- 15. Study Room:** The study room is available 24 hours a day and is to be utilized for STUDYING ONLY (See inter-visitation in Code Violation). Eating or smoking is not allowed nor are radios or stereos permitted, unless using earphones and audio material is related to study material. Non-residents may study with a resident within the designated visitation hours and must sign in.

- 16. Telephone Use:** The office phone is for official use only. Only emergency calls and official calls will be allowed from the office phone. No collect calls shall be accepted from any University telephone. All travel arrangements will be made on the public telephone.
- 17. Tobacco (Any products):** Use of smokeless tobacco, snuff, and Cigarettes (including e-cigarettes and other vapor products) are prohibited in residential hall. Use of these product(s) is a Code violation (See Fire Hazard Code in Code Violation Section).
- 18. Room Inspections:** Housing reserves the right to conduct room inspections every two weeks to ensure a level of cleanliness, order, and safety are maintained.
- 19. Harboring:** Harboring a person, such as a current student or a student who has been suspended from the dormitories or even a former student expelled from Haskell, or other person who has been evicted/barred for disciplinary reasons is prohibited.

I. Haskell Not Responsible for Student Property

Haskell will not be responsible for any damaged, lost, or stolen property. All personal property must be removed from the residential hall on the last day of the student's occupancy. Personal property remaining in residential halls, after the student is no longer residing there, may be discarded. It is recommended that all personal property be appropriately labeled to prevent loss or theft. It is also recommended that all students obtain renter's insurance for their personal property or be insured through their parent's homeowner's insurance.

IX. Parking and Traffic Program Policies and Procedures

GENERAL REGULATIONS

Haskell is authorized to establish campus parking and traffic regulations and to provide parking fines and penalties for infractions of these regulations. Any motorized vehicle, including motorcycles, operated on Haskell property is subject to all campus parking and traffic regulations.

These regulations have been promulgated for the safety, welfare, and health of students, employees, and visitors and to govern traffic on campus. The operation and/or parking of any vehicle on Haskell property is a privilege, not a right.

Vehicle Registration:

All privately owned motorized vehicles operated by Haskell students and employees on Haskell property must be registered at the time of enrollment, employment and/or acquisition. The following information is required to register a motorized vehicle: Name, address, vehicle year, vehicle make, vehicle color, license tag number, and state in which vehicle is registered.

A registration decal will be issued which must be affixed to the inside lower driver side windshield. There is no cost for the initial decal; however, **replacement decals are \$20.00** payable at the University Business Office.

Any students or employee's motorized vehicle not registered with the University Parking and Traffic Office will be subject to ticketing and towing.

Responsibility for Vehicles

Any person operating or parking a vehicle on campus shall be fully responsible for that vehicle and its contents. An individual shall be held responsible for violations by a vehicle registered to him/her either through Haskell registration or tracing through the state Motor Vehicle Department, regardless of the operator at the time of the violation. There will be a \$20 fee if a trace through the Motor Vehicle Department is necessary.

Notify Parking and Traffic if a registered vehicle is sold. If the vehicle remains on campus, any fines or fees incurred will be charged to the person on record and registered with Parking and Traffic.

Regulations – Hours in Effect

Regulations are in effect 24 hours a day and 365 days a year. All parking spaces are available for "open" parking between 5:00pm and 7:00am, except parking for the physically impaired, fire lanes, and where otherwise posted.

PARKING

Subject to modification, the parking permit classifications and parking privileges are shown below. **All zones have color coded signs.**

GOLD/YELLOW Student Parking Permit is valid in all **Green** areas, except for spaces designated for the physically impaired, visitors parking, loading zones, fire lanes, roadways, and other marked and designated “no parking” zones.

PURPLE Employees Parking Permit. Valid in all **Blue** and **Green** areas except for spaces designated for the physically impaired, visitors parking, loading zones, fire lanes, roadways, and other marked and designated “no parking” zones.

Open Parking Lots

There are two large open parking lots on campus. The lots are located at Coffin Complex and the Cultural Center.

Visitor Lot

The visitor lot is located in the center of campus, between Tecumseh Hall and Hiawatha Hall. Visitors may also park in any open parking lot. A sign indicating either “visitors only” or “visiting staff” is not considered open parking.

Parking for the Physically Impaired

Certain parking spaces have been designated for the physically impaired. Parking in those spaces is reserved for individuals whose vehicle displays either:

- A. A specially issued license plate displaying the international symbol of access to the physically impaired.
- B. A specially issued state identification card with the international symbol of access to the physically impaired clearly displayed in the vehicle.

The permit is only valid for the individual to whom the tag is issued and that individual must be an occupant of the vehicle.

Persons desiring special parking consideration because of permanent disability are advised to obtain a Parking Permit for the Physically Impaired by making application at the State of Kansas, Department of Motor Vehicles.

Prohibited Parking

Parking violation notices may be issued to all vehicles, including GSA, and vehicles may be immobilized and/or removed from campus for:

- A. Double parking or in streets or roads
- B. Parking on sidewalks or grass
- C. Parking in service roads or restricted areas
- D. Parking across drive entrances or sidewalk crossings
- E. Parking outside of marked parking spaces and/or taking up two spaces
- F. Parking in fire lane/fire hydrant zones
- G. Parking over length/oversize vehicle without permit
- H. Parking in an area designated by signs and/or curb markings as a “no parking” zone
- I. Parking in a lot or space for which vehicle is not permitted

- J. Unauthorized parking in physically impaired parking zone
- K. Blocking vehicles, roadway, or trash containers
- L. Parking in an area designated by signs as “visitors only” or “visiting staff only”

Parking of Large Vehicles

Over-length or oversized vehicles, such as buses, trucks, and campers cannot be parked in regular parking spaces. Visiting groups and charter buses may arrange for a special parking assignment and permit with the Parking and Traffic Office.

Overnight Camping or Sleeping

Parking for camping or overnight sleeping in vehicles is prohibited. Designated personnel conduct periodic patrols of the campus in an effort to safeguard all vehicles from vandalism and to protect the health and welfare of any vehicle occupants. The personnel conducting the security patrols are authorized to remove any student, staff or faculty found loitering or sleeping in the parking areas.

Vehicle Storage

All student motorized vehicles on Haskell property must be removed from the campus 72 hours after the closure of residential halls at semester’s end. Any individual violating these policy guidelines will have his/her vehicle removed from the campus by commercial vendor at the student’s expense.

Permission for vehicle storage over the Christmas Holiday period must be obtained from the Parking and Traffic Office. All vehicles stored on campus must be parked in the Blalock Hall parking lot(s) during this period.

Employees’ motorized vehicles may not be stored on campus with the exception of those employees on official travel, business, or by permission from the Parking and Traffic Office. Any individual violating these policy guidelines will have his/her vehicle removed from the campus by commercial vendor at the owner’s expense.

Abandoned Vehicles

A vehicle will be considered abandoned if it appears to be un-drivable (i.e. flat tires, broken windows, damaged, etc.) and has not been moved for five or more days. Vehicle owners will be notified by mail stating the date the vehicle must be moved. If the vehicle is not moved or proven to be drivable, the vehicle will be removed from the campus by commercial vendor.

FINES

Payment of fines for Parking Violations

A fine of **\$50.00** shall be charged for parking without authorization in parking areas for the physically impaired, parking on the patio of the Coffin Sports Complex, and parking in fire lanes/fire hydrant zones. The traffic circles located at Roe Cloud, Osceola/Keokuk, and Winona-Pocahontas Hall are designated as fire lanes, as well as the area north of Coffin Complex. A fine of **\$25.00** shall be charged for all other prohibited parking or for operation of a motor vehicle contrary to the provisions of these regulations.

In the event that there is more than one violation on a parking violation notice, the secondary fine(s) will be **\$10.00** each. Such fines are due and payable at the University Business Office within ten (10) school days following the date the citation is issued.

Late Payment of Parking Violation Fines

If the parking violation fine is not paid within ten (10) school days following the date the violation is issued, a late payment fee of \$10.00 for a physically impaired parking zone violation and \$5.00 for all other prohibited parking or traffic violations shall be assessed on the eleventh school day and thereafter.

Student Parking Violation Fines – Failure to Pay

Students with unpaid parking violation fines at the end of any fall, spring, or summer semester shall not be permitted to re-enroll, graduate, or transfer, and a “hold” shall be placed on the student’s transcript or transfer records until such fees are paid in full.

Employee Parking Violation Fines – Failure to Pay

Employees with unpaid parking violation fines shall be subject to administrative review. If, after administrative review, fines remain unpaid, the vehicle will either be immobilized or removed from the campus by a commercial vendor. An immobilized vehicle may be recovered by obtaining a release from the University Business Office, which will be issued only upon payment of a \$25.00 fee for the removal of the wheel lock and payment of all outstanding fines.

Excessive Unpaid Parking Violations

Excessive unpaid parking violations exist whenever three or more parking violation notices have been posted to the record of the vehicle’s registered driver. Vehicles will be subject to immobilization or removal from campus.

Towing and Impoundment of Vehicles

Vehicles may be towed from the campus or immobilized by a wheel lock at any time if they interfere with the efficient operation of the traffic and parking on the Haskell campus or if they are parked in an area not specifically designated for or designed as a parking area. All charges for commercial towing and/or storage are the responsibility of the registered owner. An immobilized vehicle may be recovered by obtaining from the University Business Office a release which will be issued only upon payment of a \$25.00 fee for the removal of the wheel lock and all unpaid fines levied for parking violations posted to the registered owner.

VEHICLE OPERATION

The provisions of the state highway traffic code, Chapter 8 of the Kansas Statutes Annotated (K.S.A. 8-2001) and the Standard Traffic Ordinance for Kansas Cities are applicable to the operation and condition of motor vehicles operated on the University campus except as may be otherwise provided for in these regulations.

Haskell is within the city limits of the City of Lawrence. The Lawrence Police Department and Douglas County Sheriff's Office have the authority to enforce all traffic laws of the State of Kansas and any general ordinances of the City of Lawrence on the University campus.

Vehicles, Pedestrians and Bicyclists

Vehicles shall stop and/or yield to all pedestrians and bicyclists on all campus roadways and crosswalks.

Vehicle Speed Limits

All vehicles shall be driven prudently and not in excess of **20 MPH** on the streets and roads on the University campus. Except as may be otherwise posted, speed limits for vehicles operated in the University parking lots shall not exceed **10 MPH**.

Vehicle Operation – Prohibited Acts

The following is prohibited and may be subject to ticketing:

- A. Driving over the curbs or sidewalk
- B. Driving on grass or seeded areas
- C. Driving in excess of the speed limits
- D. Reckless Driving or speeding
- E. Failing to yield to a pedestrian in a crosswalk or at an intersection
- F. Failure to stop at a posted stop sign
- G. Driving in violation of the provisions of Chapter 8 of the Kansas Statutes Annotated

Note: Delivery and/or service vehicles must notify the Parking and Traffic office before driving or parking in non-designated parking areas for loading or unloading purposes.

Reporting of Accidents

Any accident involving a motor vehicle on the Haskell campus should be reported to the Lawrence Police Department which has jurisdiction over all accidents occurring within the City of Lawrence. A report of an accident should also be made to the Parking and Traffic Office.

Appeals

A parking citation may be appealed in writing within 10 calendar days of receipt of the ticket. Forms may be obtained in the Parking and Traffic Office or in the Outlook Public Folders under "Safety Information."

IDENTIFICATION CARDS (ID'S)

All students and employees are required to obtain an official Haskell Identification Card (ID) at the time of enrollment or employment. IDs are required to be readily available upon request from any university official.

Obtaining an ID

ID photos are taken in the Parking and Traffic Services office located in Winnemucca during posted hours. Proper identification/credentials are needed to obtain a photo ID:

- A.** Employees: Verification from supervisor or Human Resources of your appointment.
- B.** Students: Current registration, class schedule, or paid receipt.

IDs are valid for:

- A.** Employees: Duration of employment.
- B.** Students: A period of four years. For example: Fall 2015 IDs will be valid from Fall 2015-Spring 2019.

Initial IDs are free of charge. There is a **\$20** charge for replacement IDs. Payment for a replacement ID is to be made at the Haskell Business Office.

- A.** Replacement charges are waived when the information on the ID is incorrect or has been changed (documentation needed) or ID is broken or magnetic strip is damaged due to normal usage and wear and tear (must bring broken ID).
- B.** Replacement charges will not be waived for lost or stolen IDs or if the ID is broken because of a hole punch. It is recommended that holes not be punched into IDs.

DEFINITIONS

Employees - individuals who are currently employed at Haskell. When an employee resigns or has been relieved of his/her position, without another assignment, his/her parking permit and ID become invalid.

Parking and Traffic Office is under the direction of the Facilities Management Department. The office is located in Winnemucca, Building #118. All questions or concerns and/or appeals should be directed to this office.

Parking Space - a space where an automobile or motorized vehicle can be parked and so indicated by two parallel white stripes on the ground. Refer to the campus map.

Students - individuals who are currently enrolled at Haskell. For Parking and Traffic purposes, one can not be a student and employee at the same time.

University Business Office is located in Navarre Hall, Building #121. All fine payments must be paid at this office.

Visitors - individuals who are not students or employees of Haskell. Visitor parking passes may be obtained from the Parking and Traffic Office and the President's Office located in Navarre Hall, Building #121.

X. Student Grievance Process:

In the interest of better serving students, Haskell has established and published a Student Grievance Process whereby students can be assured a prompt, impartial and fair hearing of their complaints. More specifically, a complaint is a written concern or formal charge of dissatisfaction with a person, service, or process that requires clarification, investigation, and resolution. If a student has attempted to work out an issue or problem by first discussing it with those most involved [individual(s) and/or office(s)] in a calm and honest way, but continues to feel that the issue or problem continues to exist, then the student may submit a written complaint to the supervisor of the various departments where the issue or concern took place.

The grievance can be submitted during normal operation hours (7:45am- 4:30pm M-F) within five (5) business days from the date of the occurrence or matter. The complaint shall be routed to the appropriate official for review and response within five (5) business days in receipt of the complaint. The official-within the department- to whom the complaint was forwarded to review and address, will submit a response to the person who wrote the complaint within five (5) business days in receipt of the complaint. A student may pick up a copy of the Student Complaint Policy and Procedures and a copy of the Student Complaint form on the Haskell website under University Services or in the Office of Student Rights.

For questions or additional information contact the Student Conduct office at (785)749-8415. Haskell will not allow any form of retaliation against individuals who file a complaint to Haskell management, or who cooperate in the investigation of such reports. To the extent possible, the confidentiality of the reports will be maintained.

SPECIAL NOTE: Conversely, sometimes Haskell students find they are particularly pleased with how something has been handled for them, how they were assisted by a particular staff member, the positive experience they had in a specific class, or some other outstanding thing that happened to them at Haskell. As a student you should know that you are also encouraged to submit a written compliment or note of appreciation through the Vice President of University Services.

Contact Persons and Areas of Concern

Instructors

The instructors are located at:

College of Arts & Sciences- Sequoyah Hall
School of Business Blue- Eagle Hall School
of Education- Parker Hall

They receive concerns about classroom activity, for example: invasion of privacy, grades, not grading papers, excessive canceling of classes, and proselytizing (imposing one's religious belief).

Academic Deans

The Academic Deans are located at:

College of Arts & Sciences- Sequoyah Hall
School of Business Blue- Eagle Hall School
of Education- Parker Hall

They receive less severe concerns that are not initially resolved by Instructors.

Vice President, Academic Affairs

This office is located at Navarre Hall. This office receives concerns not resolved by the Academic Deans.

Director of Athletics

This office is located at Coffin Sports Complex. The Director of Athletics receives concerns about the athletic program.

Office of the Chief Information Officer (OCIO)

This office is located at Pontiac Hall. The Chief Information Officer receives concerns about Computer Services.

Admissions

This office is located at Navarre Hall. The Director of Admissions receives concerns about enrollment policies and discrimination in Admissions.

Counseling Center

This office is located at Stidham Union. The Director of the Counseling Center receives concerns about the counseling programs, services or staff.

Financial Aid Office

This office is located at Navarre Hall. The Director of the Financial Aid Office receives concerns about financial aid appeals and concerns about office staff.

Food Service Department:

This office is located at Curtis Hall. The Director of the Food Service Department receives concerns about food service, kitchen employees, and student helpers.

Residential Hall Program:

This office is located at Osceola-Keokuk Hall. The Director of Housing receives concerns not resolved by the residential hall supervisors and security personnel concerns.

Residential Hall Supervisor

The residential hall supervisor receives concerns about pest control, Residential Aides, supplies, and physical operation of residential halls.

Office of Student Conduct

The Office of Student Conduct is located at Minoka Hall. The Student Conduct Administrator receives concerns about the Student Conduct process in disciplinary matters; violation of the right of privacy; and the behavior of students, such as theft, sexual harassment, and substance abuse.

Student Recruitment/Placement

The Career Planning/Placement & Recruitment Office is located at Navarre Hall. The Office supervisors receive concerns about college work study.

Finance Office

The Finance Office is located in Navarre Hall. The main number is 749-8451. The Finance Office receives concerns involving the following services: Business Office, Student Bank, Post Office, and Property & Supply.

Director, Academic Support Center

This office is located at Tommaney Hall. The Director of the Academic Support Center receives concerns about library policies or hours, library staff, unpaid book fines, book orders, tutors, the Learning Center, peer tutors.

Vice President of University Services

The Office of the Vice President of University Services is located in Pushmataha Hall. The telephone number is 830-2753. This office receives concerns not resolved by: Admissions Office, Counseling Center, Financial Aid Office, Food Services, Registrar, Residential Housing Program, and the Office of Student Conduct.

Office of the President

This office is located in Navarre Hall-North. Office hours are Monday-Friday, 8 a.m. to 5 p.m. The telephone number is 749-8497. The President's Office receives concerns not resolved by the University Services, Division of Academic Affairs, Director of Athletics, Administrative Services, or Facilities Management.

Title IX Office (Sexual Harassment and Sexual Violence)

Interim Title IX Coordinator Ms. Tonia Salvini is located in Pushmataha hall, 785-749-8457. Students can file a complaint and talk with the Title IX Coordinator about concerns involving sexual harassment, sexual assault, and domestic violence.

Office of Civil Right, Public Civil Rights, Washington, DC

No individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a federally conducted education or training program or activity. (Executive Order 13160)

If a student believes he or she has been discriminated against because of a violation of Executive Order 13160, he or she may, personally or through a representative, file a written complaint with the Public Civil Rights Office, U.S. Department of the Interior, 1849 C. Street, NW Washington, DC 20240. All written complaints must cite EO 13160, include the complainant's name, address, and phone number, and must describe the alleged discriminatory conduct in sufficient detail to inform the Civil Rights Office as to the nature and approximate date of the alleged violation.

Department of Interior, 1849 C. Street, NW Washington, DC, 20240 (Sloan Farrell, Director, Public Civil Rights 202-208-3455)

XI. Definitions and Appendices

A. Definitions

1. The term “**University**” means Haskell Indian Nations University
2. The term “**student**” means any person taking courses at Haskell either full-time or part-time, pursuing undergraduate, or professional studies. Persons who withdraw after allegedly violating the Code of Student Conduct, who are not officially enrolled for a particular term but who have a continuing relationship with Haskell or who have been notified of their acceptance for admission are considered “students.” The term “student” includes any person with respect to whom Haskell maintains education records or personally identifiable information, but does not include a person who has not been in attendance at Haskell for the purpose of academic study.
3. The term “**faculty member**” means any person hired by Haskell to conduct classroom or teaching activities or who is otherwise considered by Haskell to be a member of its faculty.
4. The term “**Haskell official**” means any person employed by Haskell.
5. The term “**member of the Haskell community**” means any person who is a student, faculty member, or Haskell official, as well as any person employed by Haskell or any person living in Haskell residential halls, although not enrolled at Haskell. A person's status in a particular situation shall be determined by the Director of the Office of Student Conduct.
6. The term “**Haskell premises**” means all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by Haskell (including adjacent streets and sidewalks).
7. The term “**organization**” means a group of persons that has been registered and approved by Haskell and that is either:
 - a. A registered student organization, which is defined as a group of individuals of which at least 75% of the members are currently enrolled students. The officers of a student organization must be currently enrolled students; or
 - b. A registered campus organization, which is defined as a group of individuals of which at least 75% of the members are from the Haskell community, including currently enrolled students, employees, or spouses of these persons. The officers of a campus organization must be members of the Haskell community as defined in this paragraph.
8. The term “**Student Appeals Committee for Hearings**” means a group of persons authorized by the Student Conduct Administrator to determine appeals after initial adjudication. The Student Appeals Committee can determine whether a student has violated the Code of Student Conduct and to recommend sanctions that may be imposed when a violation has been committed in situations where the Student Conduct Administrator is unable to do so. The Student Appeals Committee for Hearings is comprised of a cross-section of employees and students from the Haskell community.
9. The term “**Student Conduct Administrator**” means the Haskell official designated by the Haskell President to be responsible for the initial adjudication of violations of the Code of Student Conduct. The Student Conduct Administrator is authorized to resolve all issues of student conduct and to impose or monitor sanctions upon any student(s) found to have violated the Code of Student Conduct.
11. The term “**shall**” is used in the imperative sense.

12. The term “**may**” is used in the permissive sense.
14. The term “**policy**” means written Haskell regulations as found in, but not limited to, the Code of Student Conduct, Residential Life Handbook, the Haskell web page and computer use policy, and Graduate/Undergraduate Catalogs.
15. The term “**Affected Person or Parties**” or “**Complainant**” means any person who submits a charge alleging that a student violated this Code of Student Conduct. When a student believes that s/he has been an affected person of another student's misconduct, the student who believes s/he has been an affected person will have the same rights under this Code of Student Conduct as are provided to the Complainant, even if another member of the Haskell community submitted the charge itself
16. The term “**Respondent**” means any student accused of violating this Code of Student Conduct.
17. The term “**Student Conduct Process**” means the procedures for conducting investigations, hearings, and appeals related to alleged violations of the Code of Student Conduct.
18. The term “**Alternative Dispute Resolution**” means a method to resolve disputes outside of the normal SC process. Involves the use of neutral third parties to increase the effectiveness of settlement discussions.
19. The term “**Student Appeals Committee**” means any person or persons authorized to impose or monitor sanctions on any student(s) found to have violated the Code of Student Conduct.
21. The term “**education records**” means records, files, documents, and other materials that contain information directly related to a student and that are maintained by Haskell. The term does not include: (i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute; (ii) records maintained by a law enforcement unit of Haskell that were created by that law enforcement unit for the purpose of law enforcement; (iii) in the case of persons who are employed by Haskell but who are not in attendance at Haskell, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or (iv) records on a student that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.
22. The term “**directory information**” relating to a student includes the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational institution attended by the student.
23. The term “**disorderly conduct**” means petty offense chiefly against public order and decency that falls short of an indictable misdemeanor

- 24. ADJUDICATION** – The action of hearing and deciding a complaint of a violation of the Code of Student Conduct based on information in an incident report, evidence and /or testimony.
- 25. ADVOCATE** – One who pleads for someone’s cause, or in support of something.
See Student Advocate Policy.
- 26. APPEAL** – A request by a party to a disciplinary matter to have another designated Haskell official or officials review a disciplinary decision.
- 27. BUSINESS DAYS** –Days that Haskell is in full operation. Excludes weekends and holidays.
- 28. CALENDAR DAYS** – All days of the week are considered calendar days including weekends and holidays.
- 29. CODE VIOLATIONS** –Violations of the rules of the Code of Student Conduct, which subjects students to the Student Conduct Process and which may result in sanctions; see Sanctions on pg. 28-30.
- 30. CRIMINAL TRESPASS NOTIFICATION** – A form issued by Haskell staff to an Individual(s) who trespasses on Haskell property or who has been issued a Notice to Vacate or Emergency Suspension. Once a Criminal Trespass Notification is in place, the person who violates the notice may be referred to local authorities and may incur arrest and charges for Criminal Trespass.
- 31. DISPOSITION** – A written decision following adjudication.
- 32. DISCIPLINARY (Social) PROBATION** –One or more of the following sanctions:
 - A.** Restriction, for the duration of probation, from holding any student offices and from representing Haskell in any manner.
 - B.** Monitoring of student’s behavior, with a requirement that the student report to a counselor as directed. Any violations while a student is on social probation could result in a Notice to Vacate, removal from campus and Emergency Suspension or expulsion.
- 33. DIVERSION PROGRAM** –An alcohol and/or drug program or campus violence program that allows a student to maintain “Good Social Standing,” and/or maintain housing eligibility. Usually applied as a sanction.
- 34. EVICTION** – A sanction whereby the student is ineligible for housing for a specified period of time.
- 35. EXPULSION** – A sanction that prevents a student from attending Haskell or being on its grounds or in its buildings without permission from the Haskell President. Violators may be referred to local authorities and may incur arrest and charges for Criminal Trespass.
- 36. GOOD SOCIAL STANDING** – All students at Haskell have good social standing upon admission. Good social standing can be lost by a violation of the Code of Student Conduct that results in removal, suspension or expulsion from Haskell; not to be confused with good academic standing. The student is restricted, for duration of loss of good social standing, from holding any student offices and from representing Haskell in any manner. Representation of Haskell includes all athletic programs and intramural activities. Good social standing can be regained by completing the sanctions, fulfilling conditions of probation or by re-admission after suspension.

37. OFFICIAL WARNING – A written warning on a disposition form notifying the student that he/she has not maintained acceptable standards of conduct by not complying with sanctions given. Failure to comply will result in immediate “Notice to Vacate” from housing.

38. PREPONDERANCE OF INFORMATION – Evidence which is of greater weight or more convincing or more believable than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

39. REASONABLE SUSPICION - : A school official must have specific and articulable facts or inference, obtained from either personal observation or a reliable informant, that leads him/her to conclude – based on his/her experience the totality of the circumstances – that the search will lead to a discover of a violation of the Student Code of Conduct.

40. SOCIAL PROBATION- A period of time when a student may be faced with more severe disciplinary sanctions if the student is found to violate the Haskell regulations while in the designated probationary period.

41. SUSPENSION – A sanction that prevents the student from attending Haskell for a specified time frame. For substance abuse, if the student is found to have committed the violation, the suspension is for a minimum of one (1) full year but not more than two (2) full years.

42. NOTICE TO VACATE (NTV) - An immediate loss of housing for one year from the date of issuance and:

- Loss of the privilege of visiting in the residential halls.
- Loss of the privilege of being on campus after regular business hours, unless student is attending a class.
- Loss of the privilege to participate in any extracurricular activities, including athletic teams, intramural sports, etc. and loss of the use of Haskell facilities (i.e., Tecumseh Gym, Coffin Sports Complex, and Stidham Union). Student shall inform the Office of Student Conduct when the student has a class or class assignment or project in any of these facilities.
- Loss of use of Curtis Hall. Charges for the food service program will not be refunded.
- Loss of Good Social Standing.
- Requirement to complete an Alcohol Assessment and Treatment Plan if NTV was issued for a Substance Abuse Violation.

B. Interpretation and Revision

Any question of interpretation or application of the Code of Student Conduct shall be referred to the Student Conduct Administrator or his or her designee for final determination.

The Code of Student Conduct shall be reviewed every 3 years under the direction of the Student Conduct Administrator.

C. Sources

These sources may be found in the Student Service Policy and Procedures Manual at the Office of the Vice President of University Services. A brief description of each source is provided.

1. Drug Free School and Communities Acts Amendments of 1980 – P.L. 101-226

A federal law that requires Haskell to notify students and employees about campus programs that prevent the unlawful possession, use, or distribution of illicit drugs and alcohol and the standard of conduct.

2. E-Mail Regulations

The Haskell Information Technology Department governs the use of e-mail for Haskell students. All U.S. government rules and regulations pertaining to use/misuse of Federal resources apply.

3. Family Educational Rights and Privacy (FERPA)

A federal law that protects the privacy of student education records.

4. Health Insurance Portability and Accountability Act (HIPPA)

A federal law that requires physicians to ensure they are protecting the privacy and security of patients' medical information and using a standard format when submitting electronic transactions, such as submitting claims to payers.

5. Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act

A federal law that requires all universities to report statistics on murder, sex offenses, robbery, aggravated assault, burglary, and motor vehicle theft, along with statistics on arrests for drug and alcohol violations and weapons violations.

6. Violence Against Women Act

A federal law that requires all universities to report statistics on any crimes committed concerning violence against women. Although this mandate does state women, the jurisdiction covers any victims of violence.

D. Acknowledgements

This Code of Student Conduct is based on the work done by Edward Stoner and John Lowery and their work, "A Twenty-First Century Model Student Conduct Code with a Model Hearing Script." The Code of Student Conduct section was based on the code at the University of Denver, Haskell's core values, and the August 2007 Haskell Indian Nations University Code of Student Conduct. The sexual misconduct policy was based on Brett Sokolow's work, "Creating a Proactive Campus Sexual Misconduct Policy." The "Classroom Expression," "Campus Expression," "Publications," "Freedom of Protest," and "Student and Campus Organizations" sections are based on Dr. Venida Chenault's document, "Haskell Indian Nations University Development of Comprehensive Code of Student Conduct." All other sections are based on the 2008/2009 Haskell Indian Nations University Student Code of Conduct and the August 2007 Haskell Indian Nations University Code of Student Conduct.

Revised 2-14-2015.

XII. Forms

Haskell Indian Nations University
INCIDENT REPORT

STUDENT INFORMATION

Student Full Name (LAST, First Middle Initial) _____

A00000

Complete Haskell ID Number _____

Residential Hall or Local Address _____

Date of incident _____

OFFENSE INFORMATION – Check the appropriate boxes for the offense and then give a brief description of the account answering who, what when, where, how and why. **Attach narrative to this form.**

Violations	
<input type="checkbox"/>	1. Alcohol Misuse
<input type="checkbox"/>	2. Drug Misuse
<input type="checkbox"/>	3. Haskell Policies and Fed., State, and Local Laws
<input type="checkbox"/>	4. Violence
<input type="checkbox"/>	5. Domestic/Dating Violence
<input type="checkbox"/>	6. Weapons
<input type="checkbox"/>	7. Haskell Property
<input type="checkbox"/>	8. Harassment
<input type="checkbox"/>	9. Sexual Harassment
<input type="checkbox"/>	10. Stalking
<input type="checkbox"/>	11. Lewd, Indecent, or Inappropriate Public Behavior
<input type="checkbox"/>	12. Sexual Assault/Misconduct
<input type="checkbox"/>	13. Non-Forcible Sexual Misconduct
<input type="checkbox"/>	14. Fire
<input type="checkbox"/>	15. Hazing
<input type="checkbox"/>	16. Residential Hall Policies
<input type="checkbox"/>	17. Trespassing
<input type="checkbox"/>	18. Cooperation with Haskell Employees
<input type="checkbox"/>	19. Cooperation with Students
<input type="checkbox"/>	20. Harboring
<input type="checkbox"/>	21. Misuse of Technology

Facts- _____
 Place- _____
 Time- _____
 Reporting Party- _____
 Witness(es)- _____
 Victim- _____
 Others Involved- _____

Substance Abuse Behavior Indicators	
<input type="checkbox"/>	Odor
<input type="checkbox"/>	Slurred Speech
<input type="checkbox"/>	Impaired Coordination
<input type="checkbox"/>	Bloodshot/Watery Eyes
<input type="checkbox"/>	Incoherence
<input type="checkbox"/>	Inability to Stay Focused/Concentrate
<input type="checkbox"/>	Other

List items confiscated: _____

Was Lawrence Police contacted? Yes No Was student arrested? Yes No

Comments: _____

Was Lawrence Emergency Medical Services contacted? Yes No

If yes, was student hospitalized? Yes No

Was malicious destruction of property incurred? Yes No (list of damages and fines attached)

FOR OFFICIAL USE BELOW:

Date reviewed by Department Supervisor: _____

Supervisor's Signature _____

Comments/Recommendations: _____

Referrals made or recommended: Counseling Center Safety Officer Other: (ie. Haskell Health, Bert Nash, etc.)

Date of Birth: _____ / _____ / _____ Over 21 yrs old Under 21 yrs old

Date/Time rec'd in SCO: _____

SCO Signature _____

Revised 02/19/2015

OMNIGO DATABASE INCIDENT REPORT FORM

Case Number **IR2020-0010**



HASKELL INDIAN
NATIONS UNIVERSITY

Haskell Indian Nations University
HOUSING
155 INDIAN AVENUE
LAWRENCE, KS, 66046

Incident Report

Reported by: **DANELLE MCKINNEY**

Incident Types Label	Offender	Incident Disposition
HASKELL POLICY, FEDERAL, STATE, AND LOCAL LAWS (CONDUCT)		
Report Disposition	Method of Reporting	
	OFFICER OBSERVED	
Report Recorder	Manager/Supervisor on Duty	Manager/Supervisor Notified
DANELLE MCKINNEY		
Incident Occurred Date	Incident Occurred End Date	Incident Discovered / Called In
		01/23/2020 at 3:29 PM
Location	Specific Location	
RESIDENT HALLS		

Prepared By:	Submitted Date
DANELLE MCKINNEY(danmck)	
Signature	Reviewed By/Date

Haskell Indian Nations University
NOTICE TO VACATE FORM (sample)

TO:

FROM: NAME, Student Conduct Administrator

SUBJECT: Notice to Vacate Residential Hall

DATE:

You did/did not appear for your scheduled conference on_____. You are hereby notified that you must vacate your residential hall room effective when the Director of Housing determines you must leave.

You are no longer eligible for housing because of reason(s) listed below:

You must comply with the Notice to Vacate (NTV) terms and conditions as follows:

1. You are not allowed visitation in the residential halls. You are not permitted to participate in extracurricular activities including athletic teams, intramural sports, etc. and loss of the use of Haskell facilities. You are not allowed to eat at Curtis Hall.
2. You are able to attend classes, check your campus mailbox, utilize the library and Academic Support Center, and conduct legitimate business on campus during regular office hours.
3. If you are found on campus in areas where you are not supposed to be, the Lawrence Police may be called and you could be arrested for criminal trespass under Kansas Law KSA 21-3721.

In order to regain Good Social Standing and Re-admission into Housing, you must meet the following conditions:

1. Present proof of completion to the Student Conduct Office of a substance abuse assessment and proof of completion of treatment recommendations.
2. Loss of housing for one year from the date of incident.

You may be able to continue attending classes if you have not been suspended or expelled from the university. You should check with the Registrar's Office for your academic standing.

3. Petition for re-admission into the residential hall after completion of a substance abuse program ; a decision will be made after you have submitted the request.
4. Pay a \$_____fine and complete _____hours of community connection before you can apply for re-entry into the residential hall.

Student Conduct Administrator

Date

cc: Director of Housing, Financial Aid, Food Service, Security, Student Activities, Residential Hall Staff, Athletic Director, Business Office, Registrar, Admissions, Counseling, File

Application for Diversion Program

Name _____ Date of Birth _____

Home Address _____ City _____ State _____

On campus mail box number _____ Student Identification Number _____

Do you reside on campus? (circle answer) yes no If yes, which hall? _____

If no, please list current address _____

List the offense for which this application is being submitted _____

How long have you attended Haskell? _____ List your advisor _____

What is your major? _____ When do you expect to graduate? _____

Do you know your GPA (Grade Point Average)? Current: _____ Cumulative: _____

Are you involved in any organizations or clubs on campus? _____ yes _____ no

If yes, please list and include any offices you hold.

Are you currently employed? _____ yes _____ no If yes, please list employer _____

List all offenses for which you have been written up for during your enrollment at Haskell. Include charges that were dismissed: _____

If you are under 21 years of age, and the charge involved alcohol, answer the following questions in detail (Note: any information will be used solely for this application).

From where was the alcohol obtained: _____

How did you receive the alcohol (i.e., did you or someone else purchase) _____

Were you required to show I.D.? _____ yes _____ no Did you use your real I.D.? _____

State any facts concerning the incident which in your opinion might excuse your actions: _____

Explain why you feel you could successfully complete the Diversion Program: _____

The following items will be due within 5 days of formal adjudication to the Office of Student Conduct.

- _____ Letter of intent regarding your academic goals.
- _____ Letter of support from Haskell staff or faculty.
- _____ Affected Parties Concept Map.
- _____ Completed diversion application.

I understand that if I fail to submit the above 4 items on the due date – appeal process will begin.

I solemnly swear that I have read the Diversion Program Guidelines and completed the application and all the information contained is true and correct to the best of my knowledge I understand that if any of this information is not true and correct, this will be a basis for denial of diversion or revocation of diversion.

I understand that if the Diversion Application is denied, the disciplinary process will be continued.

I hereby authorize the Student Services Department to release any information to the agency which is performing the drug, alcohol and/or anger management assessment, or any other such agency or persons for use in determining whether I am a suitable candidate for the Diversion Program.

Signature of Student

Date

Date complete application rec'd: _____

Rec'd by: _____

Reviewed by: _____

Approved/Denied: _____

NOTES: _____

Haskell Indian Nations University

GRIEVANCE REPORT FORM

Directions: (1) Please complete the following information, use additional paper if necessary;
(2) Give this form to the Supervisor of the person/office related to the complaint.

PLEASE PRINT:

To _____ Date _____
From _____ Complete Haskell ID Number _____
Residential Hall _____ Haskell Mailbox _____

GRIEVANCE SUBJECT: (Use additional paper if necessary)

Who or What is the complaint about? _____

What office or person is responsible for this problem? _____

Have you gone directly to the person or office you are unhappy with and talk to them about the problem?

Yes No If no, why? _____

If yes, what did the person tell you to do? _____

Have you done that yet? Yes No If no, why? _____

DESCRIPTION OF COMPLAINT: (Use additional paper if necessary)

What are you unhappy about? _____

When did this happen? _____

Where did this happen? _____

What would be a satisfactory resolution? _____

Name (Please Print) _____ Complete Haskell ID Number _____

Signature _____ Date _____

For official use below:

Supervisor's Signature _____ Date Supervisor Received Form _____

Date Request for Status Form: _____

Date Rec'd: _____ Date Reply Sent: _____

Action Taken: _____

**HASKELL INDIAN NATIONS UNIVERSITY
EMERGENCY SUSPENSION NOTIFICATION**

TO: _____ Student

FROM: _____ Student Conduct Administrator

RE: **EMERGENCY SUSPENSION**

DATE: _____

The following is to inform you that you are hereby placed on temporary emergency suspension as outlined in 25 CFR 42.7 Due Process and the Haskell Code of Conduct. The facts that support your placement on Emergency Suspension, which we believe are creating an immediate danger of risk to the campus community or yourself are:

The conditions of your Emergency Suspension are:

_____ Level 1 – Emergency Suspension (in-house) where student is confined to their residential hall but, may attend classes, use the library and go to the dining room. Visitation privileges are suspended and student is not allowed to attend any activities on-campus until suspension status is withdrawn. Must sign in as scheduled by residential hall staff. NOTE: Student may or may not be moved to another room or even building in cases of violence.

_____ Level 2 – Emergency suspension where student must be out of residential hall room, but still can attend classes, eat meals, use the library and be on the Haskell grounds for other school related purposes.

_____ Level 3 – Emergency suspension where the student MUST BE OFF CAMPUS COMPLETELY; they cannot eat meals, attend classes, use the library or be on the Haskell grounds for any reason.

Any violations of the above will automatically result in an off campus suspension. If you come back on campus during your emergency suspension at times that you are not supposed to be here, you may be prosecuted for criminal trespassing under Kansas Law KSA 21-3721.

You will remain on suspension until such time as you are offered a hearing. This will require a conference with the Student Conduct Administrator. A mutual agreement will be reached by the Housing Director and the Student Conduct Administrator for lifting of the Emergency Suspension or for placing conditions for on campus housing privileges.

Please check your campus mailbox daily for a notice from the Student Conduct Office regarding a disciplinary conference. If you are on a Level 3 suspension, you may make contact with the Student Conduct Office by calling 785-749-8415 for an appointment.

Student Conduct Administrator
Revised 08/2015

Date

Student Signature

Date

Haskell Indian Nations University
CODE OF STUDENT CONDUCT FORM

The Haskell Indian Nations University Code of Student Conduct emphasizes each student's individual responsibility for maintaining behavior while attending and representing the university. These are guidelines based on regulations and laws of the State of Kansas, ordinances of the City of Lawrence, and regulations found in the **Haskell Code of Student Conduct. Knowledge of these regulations, laws, ordinances, and Haskell Code of Student Conduct are the responsibility of the individual student.**

Students found in violation of the Substance Abuse policy related to being intoxicated, possession and/or transportation and trafficking of alcohol or illegal drugs risk the loss of residential housing and/or suspension or expulsion. The university will inform parents/guardians of students under the age of 21 of incidents involving substance abuse.

Violent or disruptive actions such as fighting, intimidation, and unlawful assembly are not permitted on the Haskell campus and may result in Emergency Suspension and/or expulsion from the campus. The use of possession of firearms or other lethal weapons are prohibited on campus and in the residential halls and could result in emergency suspension and/or expulsion. Harassment based on gender, tribal affiliation, degree of Indian blood, sexual orientation, disability, marital or parental status or age is not tolerated. All cases involving issues of gender and discrimination, dating and domestic violence, stalking, sexual harassment and sexual assault will fall under the Title IX and Violence Against Women Act.

Theft of personal, private and/or institutional property will not be tolerated and may lead to legal prosecution.

Show respect for property by not engaging in its defacement or destruction. Student will be liable for all costs associated with damage.

Gambling is prohibited on the campus at Haskell activities.

Each student will be given the instructions on how to find the Code of Student Conduct online and follow regulations. Haskell will not be responsible for any individuals who fail to read and understand the policies. Any statements indicating not having the knowledge of policies is not grounds for dismissal or even consideration in the due process.

Trespassing on Haskell campus may result in issuance of Criminal Trespass Form, which could result in arrest and/or prosecution.

Abide by all residential housing rules. Attend all scheduled classes. Student

must present university ID upon request by staff.

I have read and understand the above-mentioned regulations; I agree to abide by them. **I further understand that failure to observe the regulations of the Haskell Code of Student Conduct could affect my status in the residential housing program and/or student at the university.**

_____ Student Print Name

_____ Student Signature

_____ Date



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 23 2018

Memorandum

To: Assistant Secretaries
Heads of Bureaus and Offices
Solicitor
Inspector General

From: Edward T. Keable 
Acting Deputy Assistant Secretary for Human Capital and Diversity

Subject: Implementation of the Department's Prevention and Elimination of Harassing Conduct Policy

Today, we are taking the next critical step in ensuring that the Department is fully prepared to address all forms of harassment. As part of the Secretary and Deputy Secretary's commitment to ensure that proper steps are taken to deal with problems as they arise and to hold people accountable where the facts warrant, please find attached the new Department of the Interior policy on the Prevention and Elimination of Harassing Conduct, Personnel Bulletin 18-01. This policy meets the Equal Employment Opportunity Commission's recommended elements for anti-harassment programs and enables the Department to best protect our employees from harassing conduct.

The policy's purpose is to provide a work environment free from harassment by ensuring that appropriate officials are notified of and have the opportunity to promptly correct harassing conduct; clearly communicating that the Department will not tolerate harassing behavior; and requiring that management address harassing conduct and hold employees accountable at the earliest possible stage, before the conduct rises to the level of harassment within the meaning of anti-discrimination law by becoming "severe or pervasive." In addition to providing a clear definition of unacceptable harassing conduct, the policy also establishes required reporting procedures and accountability measures.

The policy will become effective on April 23, 2018, and it will be announced to all employees at that time. The intervening thirty days serve to give Bureau and Office Heads the opportunity to determine what Bureau- or Office-specific procedures, guidance, employee and/or supervisor training, or resources may be necessary and appropriate for your organization, so that management is prepared to start organizational implementation and answer employee questions when the policy becomes effective. As stated in Section 4 of the policy, this policy supersedes any other Departmental or Bureau/Office policies or procedures that conflict with it. Bureaus and Offices may issue implementing procedures consistent with the policy, but all such procedures must be reviewed and approved prior to implementation by the Director of the Department's

Office of Human Resources. While it is not expected that all Bureau- or Office-specific implementation procedures will be fully in place by April 23, Bureau and Office Heads should have a firm idea as to whether your organization requires the development of more concrete guidance and is ready to respond to violations of the policy by the end of this thirty-day window.

In order for servicing human resources, equal employment opportunity, and other consultative staff to best advise senior leadership in this process, the Office of Human Resources is offering webinars to familiarize such staff with the content of the policy. Webinar schedule information has been distributed to Bureau/Office Human Capital Officers and Equal Employment Opportunity Directors.

Once the policy is effective on April 23, the Office of the Secretary will issue an email announcement to all DOI employees to launch the policy, with press coverage likely to follow. The policy will also be posted at that time on the Department's external and internal anti-harassment websites.

If you have any questions, please contact Raymond Limon, Director, Office of Human Resources at (202) 208-5310.

Attachment:
Personnel Bulletin 18-01



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 23 2018

PERSONNEL BULLETIN NO: 18-01

SUBJECT: Prevention and Elimination of Harassing Conduct

1. Purpose. This Personnel Bulletin updates and amends the Department's policy on providing a work environment free from harassment by (1) defining unacceptable conduct that violates this policy; (2) outlining the rights and responsibilities of employees, supervisors, and managers; and (3) establishing reporting procedures and accountability measures. These procedures ensure that appropriate officials are notified of, and have the opportunity to promptly correct, harassing conduct that is, or has the potential to become, so severe or pervasive as to constitute a legal claim of harassment.

This policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

2. Effective Date. This policy is effective April 23, 2018.

3. Authorities.

- A. Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended
- B. Title 42 of the United States Code, Section 2000e through 16
- C. Title 29 of the United States Code, Section 633a and 791(f)
- D. Title 29 of the Code of Federal Regulations, Section 1604.11 and 1614
- F. Title 5 of the United States Code, Section 2302(b)(1) and (10)
- E. Title 5 of the United States Code, Chapter 75 and substantially similar authorities covering employees in alternate personnel systems
- G. Executive Order 11478, as amended
- H. 370 DM 752
- I. Secretary of the Interior Harassment Policy Statement, issued April, 12, 2017

4. Coverage. This policy applies to all employees within all Bureaus and Offices of the Department and supersedes any other Departmental or Bureau/Office policies or procedures that conflict with this policy. Bureaus/Offices may issue implementing procedures consistent with this policy. Prior to implementation, all Bureau/Office implementing procedures must be reviewed and approved by the Director of the Department's Office of Human Resources.

5. Policy.

The Department is committed to providing a work environment free of discrimination and harassment based on race, color, religion, sex (including pregnancy and gender identity), sexual orientation, national origin, age, disability, genetic information (including family medical

history), status as a parent, marital status, or political affiliation, and free from illegal retaliation. The Department will not tolerate offensive sexual or non-sexual harassing behavior against any Department employee, intern, volunteer, contractor or other non-Federal employee, visitor, or other member of the public. The Department also will not tolerate adverse treatment of employees because they report harassing conduct or provide information related to such complaints. The purpose of this policy is to ensure that the Department takes immediate and appropriate corrective action, including appropriate disciplinary action, to eliminate harassing conduct regardless of whether the conduct rises to the level of a violation of law. Therefore, the goal of this policy is to address harassing conduct at the earliest possible stage, before it becomes “severe or pervasive,” i.e., harassment within the meaning of anti-discrimination law.

A. Prohibited Harassing Conduct. The conduct prohibited by this policy includes, but is broader than, the legal definitions of harassment and sexual harassment. Harassing conduct prohibited by this policy is defined as unwelcome conduct, verbal or physical, including intimidation, ridicule, insult, comments, or physical conduct, that is based on an individual’s protected status or protected activities under this policy, when:

1. the behavior can reasonably be considered to adversely affect the work environment; or
2. an employment decision affecting the employee is based upon the employee’s acceptance or rejection of such conduct.

Protected status is defined as an individual’s race, color, religion, sex (including pregnancy and gender identity), sexual orientation, national origin, age, disability, family medical history (including genetic information), status as a parent, marital status, or political affiliation. Protected activities under this policy are defined in Section 5.B.

Although not every instance of inappropriate behavior may meet the legal definition of harassment, such behavior undermines morale and the Department's mission. Accordingly, the misconduct prohibited by this policy is broader than the definition of illegal harassment under Title VII of the Civil Rights Act to ensure that appropriate officials are notified of, and can promptly correct, harassing conduct. Harassment becomes illegal when enduring the offensive conduct becomes a condition of continued employment or the conduct is sufficiently severe or pervasive as to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. All harassing conduct, as defined above, is a violation of this policy.

Employees are subject to disciplinary action, up to and including removal, for engaging in harassing conduct while in the workplace or in any work-related situation, including while on official travel. Off-duty misconduct may subject the employee to potential discipline if the misconduct is likely to have an adverse effect on the Department (e.g., harassing a co-worker, visitor, contractor, or volunteer during off-duty hours). Harassing conduct can occur in person, through phone calls or in writing, or through the use of social media, or other forms of technology.

B. Prohibited Retaliatory Conduct. It is a violation of this policy to retaliate against employees who engage in protected activity under this policy. Protected activity includes reporting harassing conduct, discrimination or retaliation; filing a claim of harassment; providing evidence in any investigation; or intervening to protect others who may have suffered harassing

conduct, discrimination or retaliation. A manager may not fire, demote, harass, or otherwise take any personnel action against an individual for reporting an allegation of misconduct under this policy.

It is important that supervisors and managers protect employees who report alleged misconduct, and do not take any retaliatory personnel action against these individuals in order to deter reporting harassing conduct or filing a complaint. A supervisor/manager found to have engaged in retaliation is subject to disciplinary action.

The following examples are a non-exhaustive list of actions that would be prohibited retaliation if they were taken because of, or were motivated by, an employee's protected activity: transferring the complainant or witness against their will, ignoring or not communicating with the complainant or witness, engaging in verbal or physical abuse, or non-selection for an employment opportunity.

Engaging in protected activity under this policy does not shield an employee from all personnel actions. Supervisors/managers can take personnel actions, including discipline and removal, if they are motivated by *non-retaliatory and non-discriminatory* reasons that would otherwise result in such consequences (e.g., transferring an employee for legitimate business reasons or closely monitoring the performance of an employee on a Performance Improvement Plan).

C. Employee Reporting Expectations. The Department cannot correct harassing conduct if a supervisor, manager, or other Department official is not aware of it. Any employee who has been subjected to harassing conduct is encouraged to inform the person(s) responsible for the conduct that it is unwelcome and offensive, and request that it cease. If the conduct continues, is severe, or if the employee is uncomfortable addressing the responsible person(s) about the conduct, the employee ***is encouraged to*** report the matter to:

- the supervisor of the employee engaging in the misconduct;
- another supervisor or other management official;
- the servicing Human Resources office; or
- the Office of the Inspector General (OIG).

Employees who know of or witness possible harassing conduct directed at others ***are expected to*** report the matter to any of the officials or offices listed above.

Reports made pursuant to this policy do ***not*** replace, substitute, or otherwise satisfy the separate obligations of an Equal Employment Opportunity (EEO) complaint, negotiated or administrative grievance, or other complaint process. Unlike this policy, other complaint procedures typically provide for remedial relief to the victims. See Section 9 for more information about how an employee may pursue rights under one of these separate processes, in addition to reporting the misconduct under this policy.

Engaging in additional processes and services available to support employees who have experienced harassing conduct, such as consulting with a union representative to get advice, engaging in alternative dispute resolution procedures, consulting an ombuds/CORE PLUS

neutral¹, or contacting the employee assistance program, do **not** constitute a report under this policy. See Section 10 for additional information.

D. Management Duty to Act. Supervisors/managers who observe or are informed of allegations of harassing conduct must comply with the following requirements:

- a) report the conduct/allegations to the appropriate officials, even if the employee raising the allegation requests confidentiality (see Section 8.A. for additional details);
- b) ensure that a prompt, objective, and thorough investigation is conducted; and
- c) take steps to ensure that the harassing conduct is appropriately addressed to deter further misconduct, including taking disciplinary action, if appropriate.

The fact that a potential victim of harassing conduct will or has filed an EEO complaint or grievance alleging harassment **does not** relieve a supervisor/manager of their duty to act pursuant to this policy. Therefore, it is possible that multiple inquiries into a given complaint may proceed in parallel.

Appropriate corrective action, disciplinary or otherwise, up to and including removal, will be taken against any supervisor or other management official who fails to perform their obligations as set forth in this policy, including any failure to report known violations of this policy.

E. Distinction from EEO and Other Remedial Procedures. This policy and its reporting procedures are separate and distinct from the EEO process, which focuses on making employees whole after they have experienced discrimination (including harassment) by issuing remedial relief, such as compensatory damages. This policy does not replace an employee's EEO or other rights. Corrective action taken under this policy does not provide the remedies available in the EEO process, administrative or negotiated grievance procedures, or any other processes. Reporting allegations of misconduct under this policy **does not** satisfy the requirements for filing an EEO complaint, administrative or negotiated grievance, or other procedure, **nor does it delay the time limits for initiating those procedures.** See Section 9 for additional information on remedial processes.

6. Responsibilities.

As noted in Section 4, Bureaus may issue implementing procedures to add additional responsibilities to each of the below roles and/or identify additional roles within their organizational structures in order to implement this policy.

¹ Ombuds and other CORE PLUS neutrals are available to discuss any workplace-related concern, including those related to harassing or inappropriate conduct. Ombuds, in particular, work independently from management's chain of command, are impartial, and help with both individual and systemic issues.

A. Deputy Assistant Secretary for Human Capital & Diversity

The Deputy Assistant Secretary for Human Capital & Diversity, as the Department's Chief Human Capital Officer (CHCO), is responsible for:

1. Disseminating this policy to all employees on an annual basis and periodically reminding employees of their responsibilities under this policy.
2. Ensuring that performance plans of all supervisors/managers include a critical element that would rate their performance on taking appropriate action against employees for misconduct.
3. Fulfilling the role of Bureau Human Capital Officer, as defined in Section 6.C., for the Office of the Secretary.
4. Providing periodic reports to the Deputy Secretary of the Interior or their designee on information received from the Bureau Human Capital Officers pursuant to Section 6.C.5 of this policy on allegations of misconduct under this policy and the necessary corrective action taken, if any.

B. Bureau Directors and Equivalent Office Heads

Bureau/Office Heads are responsible for:

1. Ensuring that supervisors/managers are appropriately rated on the critical element described in Section 6.A.2.
2. Ensuring that their organizations are in full compliance with requirements of this policy.
3. Monitoring the work environment following a report alleging a violation of this policy to ensure that there are no further violations or incidents of retaliation against any individual who has reported harassment or participated in the investigation.

C. Bureau and Equivalent Office Human Capital Officers (Bureau HCOs)

Bureau HCOs are responsible for:

1. Developing and providing periodic communications to all Bureau/Office employees on this policy and any Bureau/Office-specific requirements, and incorporating this policy into the Bureau/Office's supervisory training curriculum.
2. Resolving any disagreements involving investigations between management officials and consulting staff from servicing Human Resources Offices or the Office of the Solicitor regarding whether and what type of investigation is necessary.
3. Providing oversight, technical assistance, and support to Bureau/Office staff to ensure compliance with this policy.
4. Ensuring that the procedures in this policy are properly executed by monitoring inquiries and investigations of reported or otherwise discovered harassing conduct; providing guidance concerning the information to be gathered and methods to be used during

inquiries and investigations; and otherwise ensuring that the investigations are swift, thorough, impartial, and appropriate to the allegation.

5. Reviewing on a monthly basis the information contained in the system used by servicing Human Resources Offices to track harassing conduct allegations, as described in Section 8.B., and providing information to the Bureau/Office Director and the CHCO as requested.
6. Providing the record of actions taken under this policy to any office handling a parallel statutory or grievance claim, as referenced in Section 7.F.

D. Servicing Human Resources Offices (HROs)

Servicing HROs (normally the Employee Relations function in particular) are responsible for:

1. Receiving reports alleging violations of this policy and, as described in Section 7 of this policy, notifying and assisting the relevant management officials in handling allegations of harassing conduct and taking corrective action, as appropriate and necessary.
2. Tracking all reports made and actions taken pursuant to this policy in line with the Department's Office of Human Resources case tracking procedures, and reporting on them to the Bureau HCO.

E. Office of the Solicitor (SOL)

The Office of the Solicitor is responsible for advising and assisting the relevant management officials and servicing HROs in handling allegations of harassing conduct and taking corrective action, as appropriate and necessary. Within SOL, the Employment and Labor Law Unit (ELLU) is the initial point of contact for issues related to harassing conduct, and is responsible for providing Harassment Duty Attorney coverage on weekdays, 8:00 am – 7:00 pm Eastern time.

F. Supervisors and Management Officials

Supervisors and management officials must:

1. Make every effort to provide a work environment free of illegal harassment.
2. Ensure that their subordinates are aware of this policy and its requirements.
3. Act promptly and effectively to stop harassing conduct of which they are aware, and hold employees who have engaged in harassing conduct accountable.
4. Receive reports alleging violations of this policy and, as described in Section 7 of this policy, make or direct further inquiries into such reports and take corrective action, as appropriate and necessary.
5. Follow any additional procedures, handbooks, or guidelines issued by the Department or the Bureau/Office as related to this policy.

6. Notify appropriate officials in their chain of command of reported or observed conduct under this policy and of their efforts to correct the conduct.
7. Appropriately evaluate and hold accountable subordinate supervisors/managers of their performance under this policy.
8. Protect employees who report misconduct from retaliation.

G. All Employees

All Department employees **must**:

1. Refrain from engaging in harassing conduct.
2. Participate in any training required under this policy.
3. Cooperate fully in any inquiry or investigation.

All Department employees **are expected to**:

1. Understand their rights and responsibilities under this policy.
2. Report harassing conduct of which they are aware or witness in the work environment, as described in Section 5.C. of this policy.

All Department employees who are victims of harassing conduct **are encouraged to** report the harassing conduct.

7. Management Response to Reports of Harassing Conduct.

A. Documenting Report of Harassing Conduct. A supervisor, manager, or HR official who receives a report of, or otherwise becomes aware of, harassing conduct, must **within one business day**:

1. Document the allegation in writing (see Appendix A, Sample Intake Form).
2. Acknowledge receipt of the report to the reporting party.

B. Supervisor/Manager Immediate Actions

1. Determinations to be made

The supervisor/manager who receives a report of, or otherwise becomes aware of, harassing conduct involving subordinates must promptly contact the servicing HRO. In consultation with the servicing HRO, the supervisor/manager must determine:

- a. What conduct is at issue, whether it arguably could be considered harassing conduct, and whether it is potentially criminal in nature;
- b. Who may be involved; and

- c. Whether the reported activity poses a security risk and whether it is necessary to alert law enforcement (e.g., in instances where there is a threat of immediate physical harm).

If the report is made outside of the regular business hours of the servicing HRO, supervisors/managers should take action based on their best judgment to minimize any perceived risk of immediate harm and contact the servicing HRO as soon as normal business hours resume.

2. Conflicts of interest of senior-level officials

If an Assistant Secretary, Deputy Assistant Secretary, Bureau or equivalent Office Head, or similar high ranking official is implicated in the potentially harassing conduct, the CHCO will designate an appropriate management official to be responsible for making the preliminary determinations and directing any further investigation that is warranted.

3. Interim measures to ensure harassing conduct does not continue

Before directing a thorough investigation into the allegations of misconduct, a supervisor/manager must take any necessary interim steps to ensure that the potentially harassing conduct does not continue. The interim measures taken will depend on the severity of the conduct alleged. The two interim measures listed below are required in cases of serious misconduct, including, but not limited to, harassing conduct of a sexual nature, depending on the circumstances.

Before implementing either of the measures below, the supervisor/manager must consult with the servicing HRO and the Harassment Duty Attorney of SOL/ELLU for advice and guidance. If the report is made outside of the regular business hours of the servicing HRO, supervisors/managers should take action based on their best judgment to minimize any perceived risk of immediate harm and contact the servicing HRO as soon as normal business hours resume.

- a. Separation of the Allegedly Harassing Employee from the Alleged Victim

If the conduct is severe or pervasive, including, but not limited to, threatening behavior, touching, punching, or other egregious harassing behavior, the supervisor/manager should separate the employee alleged with harassing conduct from the alleged victim, at least until the matter otherwise can be resolved. Management should ***not*** move the employee who reported or otherwise was the alleged victim of harassing conduct. If the alleged victim, without having been asked or prompted, specifically requests such a move or transfer, management should inform the employee that they need not leave, and that instead the employee alleged to be responsible for the harassing conduct may be moved. Nonetheless, to the extent possible, management should honor the alleged victim's request. Appropriate steps to separate the alleged victim from the alleged harasser include, but are not limited to:

- assigning the alleged harasser to a telework status or a temporary detail;
- moving them to another office space, desk or floor; or

- requesting approval to place the employee on administrative or investigative leave.
- b. Issuing No Contact Instructions

Another interim measure that a supervisor/manager may take to help ensure that harassing conduct stops is to instruct the allegedly harassing employee to have no further contact or communications with the alleged victim.

C. Notifying Appropriate Officials of Report. In implementing this policy, Bureaus may identify additional roles or change which of the below roles accomplish the notifications required in this section.

Management officials must notify the following parties *within one business day*:

1. Supervisors/managers who become aware of harassing conduct involving their subordinates must notify their own first-line supervisor or, if the conduct implicates the first-line supervisor, notify the second-line supervisor.
2. Supervisors/managers who become aware of harassing conduct involving employees outside of their chain of command must:
 - a. Notify the allegedly harassing employee's supervisor; and
 - b. Notify the alleged victim's supervisor, or, if the conduct implicates the supervisor or another manager, the Bureau HCO.
3. When a supervisor/manager has consulted with the servicing HRO regarding a report of alleged harassing conduct, the HR officer or assigned Employee Relations supervisor/specialist will:
 - a. Notify the Harassment Duty Attorney of the SOL/ELLU at SOL-Antiharass@sol.doi.gov; and
 - b. If applicable, notify the servicing HRO of the allegedly harassing employee.
4. When a report of alleged harassing conduct is made directly to the servicing HRO, the HR officer or assigned Employee Relations supervisor/specialist will:
 - a. Notify the SOL/ELLU Harassment Duty Attorney at SOL-Antiharass@sol.doi.gov; and
 - b. Notify and assist the next appropriate level of management above the allegedly harassing employee implicated in the report with immediately making the determinations described in Section 7.B. and taking any other necessary and appropriate action.

D. Conducting Further Investigation

1. Deciding whether further investigation is necessary

Within ***three business days*** of the receipt of the allegation, the supervisor/manager of the allegedly harassing employee, or other designated management official, must consult with SOL and the servicing HRO to determine whether and what type of further investigation is required (as described in Section 7.D.2), or if the preliminary inquiry is sufficient to determine whether corrective action is necessary. These decisions are fact-specific, and must be made on a case-by-case basis. Any disagreement between the responsible management official and the consulting offices will be directed to the Bureau HCO.

If it is determined that an investigation is necessary, the servicing HRO specialist will ensure that the investigative process is initiated within ***two business days*** of the decision being made regarding the appropriate investigative entity (e.g., refer the case to the OIG, initiate the funding process and prepare a statement of work for a third-party investigator). The servicing HRO specialist will serve as the primary point of contact for logistics related to getting an internal or third-party investigator in place, as well as when the allegations have been referred for criminal investigation or to the OIG.

2. Deciding who will conduct the investigation

If it is determined that further investigation is necessary, the following general guidelines will apply for choosing the type of investigation:

- a. OIG: Allegations of criminal activity, allegations implicating a member of the Senior Executive Service, or other senior or prominent management official, senior law enforcement official, or any OIG employee, and allegations tied to waste, fraud, or abuse of Department funds/programs or violations of Federal ethics regulations must be referred to OIG, which has the right of first refusal in conducting the investigation;²
- b. Bureau law enforcement internal affairs unit: Allegations involving law enforcement personnel of a Bureau's law enforcement entity must be referred to the entity's Office of Professional Responsibility or equivalent internal affairs unit;
- c. Third-party investigator³: Allegations of harassing conduct of a sexual nature.

All other allegations under this policy may be handled by a third-party investigator, employee relations specialist(s), supervisor/manager, or another employee trained to conduct investigations. The supervisor/manager of the allegedly harassing employee, or other designated management official, in consultation with the servicing HRO and SOL, will make the final decision about the investigation method based on the complexity and scope of the allegation(s) and the availability of qualified investigators.

² OIG may also undertake any criminal, civil or administrative investigations regarding allegations of any grade employee involved in a serious or notorious allegation or incident that may negatively impact the operations and efficiency of the Department.

³ A third-party investigator can be a contract investigator, a DOI HR official from outside the servicing HRO, or a management official outside the Bureau/Office/Region chain of command.

3. Conducting the investigation

All investigations must be conducted swiftly, impartially, and in a manner appropriate to the allegation. All investigations handled by a Department supervisor/manager, servicing HRO, or third-party investigator must be conducted in accordance with the Department's Investigator Guide to Conducting Administrative Investigations.

E. Taking Corrective Action. If it is determined that misconduct occurred, corrective action is necessary.

1. To determine whether corrective action is necessary, the supervisor/manager of the employee alleged to have engaged in harassing conduct must consult with the servicing HRO and SOL to determine whether any disciplinary or other corrective action would be appropriate or if the allegation should be closed with no finding of misconduct.
2. If the decision is made that the allegation should be closed with no finding of misconduct, the supervisor/manager must write a memorandum detailing why no corrective action was warranted. This memorandum must be approved by the next higher level manager and be included in the case file maintained by the servicing HRO.
3. If facts uncovered during the investigation or inquiry demonstrate that misconduct occurred, the supervisor/manager ***must*** propose disciplinary or corrective action. If there is disagreement between the supervisor/manager and the consulting offices on whether corrective action is appropriate, the next higher level of management will make the decision.
4. The appropriate corrective action will depend on the severity and/or pervasiveness of the offense, the action that would be required to end such conduct, the offender's disciplinary/conduct history, and other surrounding circumstances. Corrective action may include counseling or any disciplinary action applicable to instances of misconduct, such as reprimand, suspension, demotion, or termination, in accordance with 370 DM 752, Discipline and Adverse Actions. Where evidence indicates that employees are not sure about what conduct is appropriate and permissible, appropriate training should be provided.
5. A supervisor/manager's failure to take appropriate disciplinary and/or corrective action will generally support a charge of negligent supervision and be an actionable charge. Appropriate corrective action, disciplinary or otherwise, up to and including removal will be taken against any supervisor or other management official who fails to perform their obligations as set forth in this policy, including any unreasonable failure to report known violations of this policy. In addition, managers will appropriately evaluate and hold accountable subordinate supervisors/managers for their performance under this policy using the required supervisory critical element.

F. Responding to Reports of Harassing Conduct Raised in a Statutory, Administrative, or Negotiated Grievance Process

If an employee pursues a claim of harassment through the EEO process, an MSPB appeal, or a negotiated/administrative grievance, the Department official who receives notice of such claim will promptly notify the appropriate responsible management official. The management official

has a duty to act promptly upon learning that harassing conduct has been alleged, must treat the notice as a report under this policy, and must follow the steps outlined in this section, unless inconsistent with applicable regulatory or statutory requirements. It is possible that multiple inquiries into a given complaint may proceed in parallel.

8. Maintaining Confidentiality and Keeping Records.

A. Maintaining Confidentiality. Supervisors/managers must take action to investigate all allegations of harassing conduct, even if the employee raising the allegation requests confidentiality. All reports of harassing conduct and related information will be maintained on a confidential basis to the greatest extent possible. The identity of the employee alleging violations of this policy will be kept confidential, except as necessary to conduct an appropriate investigation into the alleged violations, to take appropriate disciplinary or corrective action, to comply with the reporting requirements of this policy, or when otherwise required by law.

Upon inquiry from the alleged victim, the supervisor/manager must notify the alleged victim of the harassing conduct about the completion of the process to the extent permitted under the Privacy Act. The alleged victim may not be provided the outcome of any disciplinary action against the allegedly harassing employee and may not be provided a copy of the fact-finding report. The supervisor/manager must consult with servicing HRO specialist and SOL about this notification.

B. Tracking Allegations of Harassing Conduct. The servicing HRO will be responsible for tracking the information related to the allegations of harassing conduct in separate case files, in accordance with established records management policies. The servicing HRO must monitor and record the status of allegations, including final resolution, in the appropriate tracking system approved by the Department's Office of Human Resources. This information will help the Department monitor compliance with this policy, understand trends related to harassing conduct, and ensure swift resolution of complaints.

9. Distinction from Statutory and Grievance Claims.

The purpose of this policy is to stop harassing conduct that has occurred and deter its occurrence in the future. However, corrective action under this policy does not provide the remedies available in the EEO, grievance, or other processes, such as compensatory damages. Filing a report under this policy does *not* satisfy the requirements for filing an EEO complaint, negotiated grievance, or other procedure and obtaining remedies pursuant to them, nor does it delay the time limits for initiating those procedures. Thus, an employee who chooses to pursue statutory, administrative, or collective bargaining remedies for unlawful harassment must select one of the available forums as follows:

A. For an EEO complaint pursuant to 29 C.F.R. §1614 (available for all claims of illegal harassment other than those based on status as a parent, marital status and political affiliation), contact an EEO counselor in the Bureau's or Office's Equal Employment Opportunity/Civil Rights Office within 45 calendar days from the most recent incident of alleged harassment (or personnel action, if one is involved), as required in 29 C.F.R. §1614.105(a)(1); or

B. For a negotiated grievance claim, file a grievance in accordance with the provisions of the applicable Collective Bargaining Agreement; or

C. For an administrative grievance claim, file a written grievance in accordance with the provisions of 370 DM 771, Administrative Grievance Procedures; or

D. For an appeal to the Office of Special Counsel (OSC) regarding claims of harassment related to marital status and political affiliation, pursuant to 5 U.S.C. §2302(b)(1) and (b)(10), file a written appeal with the OSC as described in 5 C.F.R. §1800.1 and on www.osc.gov; or

E. For an appeal to the MSPB pursuant to 5 C.F.R. § 1201.22, file a written appeal with the Board within 30 days of the effective date of an appealable adverse action as defined in 5 C.F.R. §1201.3, or within 30 days of the date of receipt of the agency's decision, whichever is later.

10. Additional Resources.

A. Consultation Options. Employees who have experienced harassing conduct have multiple resources available that can provide assistance and advice. Engaging with the following resources ***does not*** constitute a report under this policy, as these entities do not have an obligation to inform management of allegations of harassing conduct:

- **Ombuds/CORE PLUS neutrals.** Office of Collaborative Action and Dispute Resolution (CADR) ombuds work independently from management's chain of command and are impartial. CORE PLUS neutrals are qualified, certified providers of conflict management and alternative dispute resolution services. Conversations with ombuds and other CORE PLUS neutrals are confidential and informal and provide managers and employees a safe place to explore options for addressing individual or organizational concerns. Ombuds and CORE PLUS neutrals are not obliged to report discussions (outside of imminent risk of harm). Information about CADR programs is available at <https://www.doi.gov/pmb/cadr/>;
- **Employee Assistance Program (EAP).** The DOI EAP is an employee benefit program that helps employees with personal and/or work-related problems that may impact their job performance, health, and mental and emotional well-being. Information about EAP services is available at <https://www.doi.gov/pmb/hr/eap>;
- **Victim Assistance Program.** The DOI Office of Law Enforcement and Security or Bureau law enforcement office's Victim Assistance Program provides general information about rights and services available for victims of crime; and
- **Union Representative.** Employees who are covered by a bargaining unit can consult with a union representative.

B. Additional Information. To learn more about the Department's anti-harassment resources and Bureau-specific policies, visit www.doi.gov/employees/anti-harassment.

11. Inquiries.

Any Department employee or employee representative seeking further information concerning this policy may contact the appropriate Bureau HCO. Servicing HROs may contact the

Department's Office of Human Resources, Workforce Relations Division concerning questions related to this policy.

12. Distribution.

This policy will be distributed to all employees upon issuance, and annually thereafter. It will also be distributed to all employees new to the Department as part of their orientation materials. This policy also will be made available to employees on the Equal Employment and Workplace Conduct website accessible at www.doi.gov/employees/anti-harassment, which also provides additional anti-harassment resources.



Edward T. Keable
Acting Deputy Assistant Secretary
Human Capital and Diversity
Chief Human Capital Officer

Appendix A: Sample Harassing Conduct Allegation Intake Form

This sample intake form can be used by any management official to record a report of harassing conduct. It can be used as a prompt during a conversation with an employee reporting harassing conduct, or as a way to document the conversation after the fact. Gathering as much information as possible immediately from the individual reporting the alleged harassing conduct will aid management in swiftly determining the best course of action. Bureaus/Offices may wish to develop and issue their own versions of this form.

Management Official Taking the Report

Name: _____ Title: _____

Organization: _____

Date Information Reported: _____ Time: _____

Individual Reporting Harassing Conduct

Name: _____ Title: _____

Organization: _____

Phone: _____ Job location: _____

Individuals Allegedly Engaging in Harassing Conduct (if known)

1. Name: _____ Title: _____

Organization: _____

Phone: _____ Job location: _____

2. Name: _____ Title: _____

Organization: _____

Phone: _____ Job location: _____

3. Name: _____ Title: _____

Organization: _____

Phone: _____ Job location: _____

Questions to Ask the Individual Reporting the Harassing Conduct

1. Date(s) of alleged incident(s)/action(s):

2. Please describe specifically the alleged harassing conduct, including the protected status on which you believe it was based [i.e., race, color, religion, sex (including pregnancy and gender identity), sexual orientation, national origin, age, disability, family medical history (including genetic information), status as a parent, marital status, or political affiliation]:

3. Was this an isolated event or a pattern of similar events or behaviors?

4. Was the harassing conduct directed at you or someone else? If someone else, to whom was it directed?

5. What was your reaction?

6. How did this conduct or behavior affect you? How did it make you feel?

7. Did you speak to the person who engaged in harassing conduct to ask them to cease? If so, what was their response?

8. Can you identify other individuals with knowledge of the alleged conduct at issue or other actions/behaviors by the charged individual(s) in the past? (Include observations, what people heard, and who you told about the events in question.)

9. Are there any documents or physical evidence that may support the claim of alleged occurrences? If so, please identify them.

10. Do you feel that the alleged harasser(s) is a threat to your safety and well-being or that of others? If so, how?

11. Have you previously complained about this or related acts of harassing conduct by the same individual(s) to a supervisor or manager? If so, please identify the individual(s) to whom you complained, the date(s) of the complaint(s), and the resolution(s), if any.

12. Is there is any other information related to the incident(s)/action(s) or any other information related to the inquiry that you would like to provide?

From: (b) (6)
To: (b) (6); (b) (6); (b) (6)
Subject: FW: [EXTERNAL] Fw: Haskell Final Report - D. Stafford & Associates
Date: Monday, September 12, 2022 11:28:12 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[Haskell Final Report.pdf](#)

FYI!

From: Julia GoodFox <jgoodfox@HASKELL.edu>
Sent: Monday, September 12, 2022 11:04 AM
To: (b) (6)@bie.edu>
Subject: [EXTERNAL] Fw: Haskell Final Report - D. Stafford & Associates

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

(b) (6) :

Attached is the external evaluator's report RE the University's protocols and Title IX, Cleary, etc.

Thank you,
Julia

T. Julia Good Fox (Pawnee Nation)
Pronouns: she/her/hers
Interim President
Haskell Indian Nations University

Text or call: (785) 766-6526
Alternate email: theda.goodfox@bie.edu

Availability: 7:30am - 4:30pm (CDT) and by evening & weekend appointment

From: Cathy Cocks <ccocks@dstaffordandassociates.com>
Sent: Sunday, September 11, 2022 6:38 AM
To: Julia GoodFox <jgoodfox@HASKELL.edu>; Salvini, Tonia L <tonia.salvini@bie.edu>
Cc: D. Stafford <Dolores@dstaffordandassociates.com>
Subject: Haskell Final Report - D. Stafford & Associates

Dear President Good Fox and Vice President Salvini,

Attached is the D. Stafford & Associates report on the process and case review of sexual misconduct cases. Please let me know if you have any questions or concerns. I am happy to follow-up with a Zoom call to answer any questions.

Thank you to you and your staff for your insights and cooperation. I appreciate how open everyone was with me.

Sincerely,

Cathy

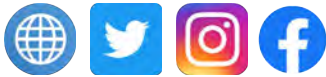
Cathy Cocks

Consultant, Student Affairs, Title IX, and Equity Compliance

D. Stafford & Associates

Email: ccocks@dstaffordandassociates.com

Phone: 860.462.8507





D. STAFFORD
& ASSOCIATES

**HASKELL INDIAN NATIONS UNIVERSITY
CASE AND PROCESS REVIEW**

Submitted by:
Dolores A. Stafford

Assessor:
Cathy Cocks, D. Stafford & Associates

9/11/2022

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Background and Scope of Work

Scope

Dolores A. Stafford, President and CEO of D. Stafford & Associates (“DSA”), was contracted to conduct a comprehensive review of Haskell Indian Nations University’s (“Haskell” or “University”) sexual misconduct/harassment; dating/domestic violence; and stalking cases and make recommendations for improving or enhancing current practices.

DSA is aware that a review, however immersive, cannot provide a complete picture of the University’s response to allegations of sexual misconduct. Therefore, while the recommendations should be thoughtfully considered, we trust University officials to know best the University’s mission, vision, values, and the expertise of its staff regarding response to sexual misconduct allegations. We also encourage the University to review the proposed recommendations with legal counsel before adopting any changes to ensure compliance with all applicable local, state, and federal laws.

Deliverables

This report provides recommendations for improving and/or enhancing the current practices for managing sexual misconduct cases and the documents that govern the University’s response.

Assessor

Cathy Cocks is a seasoned higher education professional with expertise in investigating and assessing conduct policies, practices, and services. Before joining D. Stafford & Associates in 2019, Ms. Cocks spent thirty years working in higher education in student conduct, Title IX, threat assessment, and residential life. Ms. Cocks is a past president of the Association for Student Conduct Administration, co-authored the “Philosophy of Student Conduct” chapter in the 2nd edition of “Student Conduct Practice” (2020), and was a member of the writing team for the CAS Standards’ Cross-functional Framework for Identifying and Responding to Behavioral Concerns. Ms. Cocks holds a Master of Science in Higher Education Administration from the University of Connecticut and an undergraduate degree from Fitchburg State University.

Methodology

The assessor visited campus on August 11 and 12, 2022. The visit encompassed interviews with key constituents and a review of case documents.

On-site meetings were held with:

- President T. Julia Good Fox and Vice President of Academics Francis Arpan
- Vice President of University Services Tonia Salvini
- Dean of Students Daniel Burland
- Title IX Coordinator/Student Rights Specialist Danelle Crawford McKinney and Counselor Manny King
- Bennett Tuchawena, U.S. Department of Interior, Bureau of Indian Education Human Resources

Documents reviewed included:

- Annual Fire & Security Safety Report - 2021
- Code of Student Conduct
- Executive Order #13160
- Haskell Title IX Policy and Forms
- Sexual harassment/misconduct, domestic/dating violence, and stalking cases from Spring 2021, Fall 2022, Spring 2022, and Summer 2022

Documents obtained by the assessor for reference material included:

- Doe v. Haskell Indian Nations Univ., 266 F. Supp. 3d 1277 (D. Kan. 2017)
- Executive Order #13160 Guidance Document
- Memorandum for General Counsels or Agency Heads/Civil Rights Directors, April 12, 2002
- 34 IAM 6—BIE Policy for Addressing and Responding to Sexual Violence and Abuse at BIE Post-Secondary Institutions
- U.S. Department of Education Federal Student Aid School Eligibility and Oversight Service Group Program Participation Agreement (PPA)

Acknowledgments

Haskell is a unique institution with students from over 140 tribal nations. The institutional mission and values (communication, integrity, respect, collaboration, leadership, and excellence) speak to Haskell's important role in the lives of its students. The assessor would like to extend her thanks to the staff at Haskell for their warm welcome and engagement. Their graciousness in explaining the history of Haskell and the intergenerational impact of the industrial boarding schools and government policy is deeply appreciated.

The majority of this report was written on the land of the Podunk. We honor them and other Indigenous caretakers of these lands and waters, the elders who lived here before, the Indigenous today, and the generations to come.

Higher Education Institution and Federal Agency

During the assessor's visit, a common theme was whether employees first saw themselves as higher education or federal employees. Obviously, Haskell staff members are both; however, it was surprising, and a concern raised by several interviewees, that some staff members saw themselves, first and foremost, as federal employees.

The federal employee perspective sees the student experience from a bureaucratic standpoint. The frequency that staff framed their thoughts and actions around legal codes and regulations was pronounced. Though there is no question from the assessor's perspective that all the staff she interacted with care intensely about students, much of it was framed within the context of being a federal agency. There was not a significant amount of conversation around academics or student development unless prompted explicitly by the assessor.

Though Haskell is unique in that it is one of two Bureau of Indian Education-operated postsecondary institutions, there are similarities with state public institutions. For example, the University of Kansas (KU) is an agency of the State of Kansas; therefore, its employees are State of Kansas employees. Though some employees may see themselves primarily as state employees, most see themselves as KU employees. There are many state regulations and policies, not to mention federal laws, that the KU must comply with; however, they lead with being KU rather than “state agency 682 – University of Kansas.”

We note this tendency for staff to lead with being a federal agency rather than leading with being a higher education institution because we wonder if this is hampering or holding staff back from exercising autonomy and creativity.¹ It will also be understandable if historical trauma plays a factor in this deference to being a federal agency. As David Wallace Adams explained:

It would be difficult to imagine a hypothetical instance of cultural conflict more fundamental than that which occurred in the seventeenth century when European Americans first made contact with Native Americans along the Atlantic Seaboard. In the next 200 years, as whites pushed farther west, the same meeting would occur on successive frontiers. Cultural interaction and conflict are always subtle and complex processes, but they are not always as devastatingly one-sided as in the case of Indigenous-white relations. As the Iroquois, the Shawnee, and the Arapaho would all eventually discover, the white man’s superior technology, hunger for land, and ethnocentrism seemingly knew no bounds. The threat came in many forms: smallpox, missionaries, Conestoga wagons, barbed wire, and smoking locomotives. And in the end, it came in the form of schools.²

Haskell’s vision 2020 states, “Haskell is a unique and diverse inter-tribal university committed to the advancement of sovereignty, self-determination, and the inherent rights of tribes.”³ However, working for the same government that, for hundreds of years, sought to end such advancement and for an institution working toward the advancement is a heavy burden on the staff to meet that vision. Continued emphasis on the vision and values may help to prioritize the focus. At the end of the day, the staff are federal employees; however, for the rest of the day, Haskell staff members could lead with being Haskell employees.

Executive Order 13160 and Title IX

The prevailing question during the assessor’s visit was whether Haskell needed to comply with Executive Order 13160 (EO 13160) or Title IX of the Education Amendments of 1972 (Title IX). This is not an “either-or” question; instead, it requires understanding the requirements within the framework of civil rights mandates for Federal postsecondary institutions.

Executive Order 13160

A federal agency operates Haskell, so it must comply with EO 13160 (Appendix F). EO 13160 of June 23, 2000, states, in part:

¹ When asked if Haskell had the autonomy to create processes and make decisions, the assessor was routinely told “yes.”

² Adams, D. W. (2020). *Education for extinction: American Indians and the boarding school experience, 1875-1928*. University Press of Kansas.

³ <https://www.haskell.edu/about/vision/>

The Federal Government must hold itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the education programs and activities of State and local governments, and to private institutions receiving Federal financial assistance. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs and activities—including discrimination against people with disabilities, prohibited by the Rehabilitation Act of 1973, 29 U.S.C. 701 et seq., as amended, employment discrimination on the basis of race, color, national origin, sex, or religion, prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-17, as amended, discrimination on the basis of race, color, national origin, or religion in educational programs receiving Federal assistance, under Title VI of the Civil Rights Acts of 1964, 42 U.S.C. 2000d, and sex-based discrimination in education programs receiving Federal assistance under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. Through this Executive Order, discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent will be prohibited in Federally conducted education and training programs and activities.⁴

In January 2001, the Department of Justice provided guidance in the form of “Executive Order 13160 Guidance Document: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs” (Appendix G).

The EO and guidance document provide information on the enforcement if a complaint is filed alleging that an employee of an agency discriminated on the “basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent.” In addition, the guidance document provides several examples which would constitute a violation of the EO. Three that are particularly relevant to this report are (*emphasis added*):

A male student attending a high school operated by the Bureau of Indian Affairs is told by a female teacher that he will fail algebra if he does not accompany her on a date. ***The student refuses the teacher’s request and receives a failing grade as a result. The teacher’s conduct violates the Executive Order.***⁵

A volunteer student intern at the Department of Veterans Affairs has made repeated unwelcome sexual gestures of a graphic and physical nature toward a fellow intern. On several occasions, the intern has made such gestures while following the victim and threatening to “get her alone.” The victim no longer feels that she can be by herself at the office. This conduct has been both severe and pervasive and has created a hostile educational environment. The intern tells her supervisor and the Senior Managers who oversee the program, but they refuse to investigate or otherwise stop or prevent the conduct. ***The failure to investigate and/or take appropriate corrective action violates the Executive Order.***⁶

A student in a federally conducted school is harassed by his fellow students as a result of his perceived sexual orientation. The harassment causes him severe emotional distress

⁴ Executive Order 13160 of June 23, 2000, signed by President William J. Clinton.

⁵ 66 Fed. Reg. 5403 (January 18, 2011).

⁶ 66 Fed. Reg. 5403 (January 18, 2011).

and, as a result, his grades drop and he is often absent from school. The harassment creates a hostile educational environment, and the student notifies his teachers and the school principal. ***The failure of his teachers and the principal to investigate his claims and/or take appropriate corrective action would violate the Executive Order.***⁷

The examples show either an employee's direct action, such as harassing comments, or the institution's lack of action in stopping the behavior. In cases involving a non-employee perpetrator, the failure to investigate or respond violates the Executive Order. Students do not violate the EO 13160; employees and institutions do.

Title IX

Title IX states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.⁸

The U.S. Department of Education has consistently stated that sexual harassment is sex-based discrimination. Sexual violence is sexual harassment and, therefore, prohibited under Title IX.⁹ The 2020 Title IX regulations define sexual harassment as:

Conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).¹⁰

The 2020 Title IX regulations also went farther than any previous guidance documents by providing prescriptive instructions on managing the response to sex-based harassment (e.g., sexual assault).¹¹ Previously, institutions were expected to have policies and procedures to address the behaviors; however, the 2020 Title IX regulations were unprecedented in providing such detail. In addition, they provide for the same procedures to be used for student and employee respondents. These procedures likely conflict with EO 13160 and EEOC procedures. It is important to note that Title IX has always applied to employees.

⁷ 66 Fed. Reg. 5406 (January 18, 2011).

⁸ Title IX, Education Amendments of 1972, 20 U.S.C. § 1681-1688.

⁹ An example of such guidance is the U.S. Department of Education's April 4, 2011 "Dear Colleague Letter."

¹⁰ 34 CFR § 106.30. Definitions.

¹¹ The 2020 Title IX regulations did not address any of the other areas connected to Title IX such as hiring, admissions, athletics, pregnancy, etc. The 2022 proposed regulations will cover some of those areas.

Similar to EO 13160, students do not violate Title IX; institutions do when they do not address issues of discrimination on the basis of sex. Appendices A and C provide additional information about Title IX and its expectations.

Haskell's Compliance with Title IX

Haskell is required to comply with both Title IX and the EO. Most simply stated, federal policy, federal law, signed agreements, and counsel guidance are all factors in Haskell's compliance with EO 13160 and Title IX.

Haskell participates in student financial assistance programs authorized by Title IX of the Higher Education Act of 1965. Haskell has a Program Participation Agreement (PPA) with the U.S. Department of Education's Federal Student Aid (Appendix E).¹² Specifically, Haskell is eligible to participate in the following financial aid programs:

- Federal Pell Grant
- Federal Family Education Loan
- Federal Supplemental Educational Opportunity Grant (SEOG)
- Federal Work-Study
- Iraq and Afghanistan Service Grant

As part of the agreement (***emphasis added***):

3. The Institution "agrees to comply with –"

b. Title IX of the Education Amendments of 1972 and the implementing regulations, 34 C.F.R. Part 106 (nondiscrimination on the basis of sex); ...¹³

The agreement requires Haskell to comply with Title IX and its regulations. There is no carveout in the agreement for Haskell to comply with only portions of Title IX. Just like Haskell needs to comply with EO 13160 because a federal agency operates it, Haskell needs to comply with Title IX because they have agreed to do so under the PPA.

EO 13160 and its accompanying guidance "expects all federal departments and agencies to develop appropriate outreach materials and to establish procedures for receiving and addressing the complaints."¹⁴ Accordingly, the assessor is not aware of any prohibition in EO 13160 of an institution implementing the procedural expectations of Title IX.

The assessor is aware of *Doe v. Haskell Indian Nations Univ.*, 266 F. Supp. 3d 1277 (D. Kan. 2017). Given the presence of the PPA, the assessor will not analyze the decision except to point out that much of the Memorandum and Order's analysis was whether Congress, through Title IX, had expressly waived sovereign immunity. The judge ruled that it had not and indicated that the plaintiff had an alternative remedy under EO 13160. The other item of interest is that the PPA

¹² United States Department of Education Federal Student Aid School Eligibility and Oversight Service Group Program Participation Agreement (PPA), signed by Interim President T. Julia Good Fox (August 19, 2022) and the U.S. Department of Education (August 23, 2022).

¹³ PPA, p. 2.

¹⁴ Memorandum for General Counsels or Agency Heads/Civil Rights Directors, April 12, 2002. (Appendix H)

signed in 2016 does not appear on the exhibit lists that the assessor reviewed. Therefore, it is unclear if the PPA was known or considered by the judge.

Even if an individual cannot seek monetary damages due to sovereign immunity, Haskell has still committed to complying with Title IX in order to be part of the U.S. Department of Education's Federal Student Aid programs.

Finally, compliance is understood plainly as the floor and not the ceiling. Providing a fair and impartial process for resolving complaints of sex discrimination, including sex-based harassment, is the ethical thing to do. To say to Haskell students that they should have less process than students at other institutions could be perceived as saying that Haskell students are "less than." Further, given that Haskell students represent some of the most marginalized persons historically in our country, Indigenous People, this denial of federally protected rights can and will feel like a second harm.

Other Sexual Misconduct-Related Compliance

We would like to highlight two other sexual misconduct compliance areas—the Indian Affairs Manual and the Clery Act.¹⁵

Indian Affairs Manual

The U.S. Department of the Interior's Indian Affairs Manual documents its operational policies.¹⁶ Specific to the area of sexual misconduct, "Part 34 Education (Post-Secondary)" contains "Chapter 6—BIE Policy for Addressing and Responding to Sexual Violence and Abuse at BIE Post-Secondary Institutions."¹⁷ This policy can be found in Appendix I.

Clery Act

Staff members were clear that Haskell needed to comply with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) because they receive federal assistance.

In 2013, President Barack Obama signed the Violence Against Women Reauthorization Act of 2013 (VAWA). One aspect of VAWA—the Campus Save Act—amended the Clery Act for the sixth time, adding the offenses of dating violence, domestic violence, and stalking (VAWA Offenses) and adding gender identity as a protected category for capturing hate crime statistics. This resulted in very nuanced procedural mandates for institutions. The VAWA amendments to the Clery Act nearly doubled the size of the Clery Act regulations. As a result, institutions need to compile statistics for dating violence, domestic violence, sexual assault, and stalking incidents

¹⁵ As part of the PPA, institutions must also comply with Drug-Free Schools and Communities Act. The assessor conducted a cursory search on the website for information on the biennial review given that alcohol and other drugs are often a factor in sexual assault cases. Many institutions post their DFSCA information, including the review report on their website. This is beyond the scope of this report, but Haskell may want to consider posting their DFSCA information.

¹⁶ <https://www.bia.gov/policy-forms/manual>

¹⁷ Document Identification Number: 34 IAM 6, Release Number: #12-36. (10/11/12).

and include certain policies, procedures, and programs about these incidents in their annual security reports.¹⁸

The assessor read the 2021 Annual Fire & Security Safety Report, and it appears that the required information is contained in the report;¹⁹ however, the information on an individual's options and Haskell's response is not necessarily presented linearly. Therefore, a person must go back and forth in the report to understand the process, rights, and options. In addition, it is crucial to keep in perspective that students and employees typically do not think in terms of VAWA or Title IX—they are looking for help.

The Clery Act expects that a student or employee that reports being a victim of a VAWA offense receive a written statement about their rights and options. The U.S. Department of Education expects that institutions provide this as a separate and easy-to-read document. It is our understanding that providing a victim with the institution's Annual Security report would not meet the compliance requirement.

Appendices B and C describe VAWA's expectations when responding to dating violence, domestic violence, sexual assault, and stalking.

Title IX Coordinator

On Haskell's website (<https://www.haskell.edu/consumer-disclosure/title-ix/>), the Title IX Coordinator is listed as vacant. Haskell must have a person listed as the Title IX Coordinator and provide complete contact information for that person, including applicable building and office number, even as an interim. In addition, the Title IX Policy on the website (<https://www.haskell.edu/wp-content/uploads/2020/08/Title-IX-policy-08-14-2020.pdf>) lists the former Title IX Coordinator. Both need to be updated as soon as possible.

The Title IX Coordinator is currently the student rights specialist. This arrangement is problematic for several reasons. First, the current Title IX Coordinator receives the reports, conducts the intake, provides supportive measures, investigates, and determines the course of action. Not only is this a heavy workload considering the other functions of the position, but it also can be perceived that the Title IX Coordinator is potentially biased towards respondents since the Title IX Coordinator would be involved in the intake and supportive measures for complainants. Therefore, it is far better to separate these roles. A Title IX Coordinator could manage the intake and supportive measures while overseeing the process for the rest of the tasks.

The second issue is the perception of bias. The student rights specialist works with students who may have violated the student code of conduct. A bias concern could be raised that because the student rights specialist knows of a student's past conduct history, her decision-making may be impacted by her previous knowledge and interactions with the student. We stress that we did not see evidence of such bias but raise the possibility that someone may raise the concern—not whether it would be a valid concern.

¹⁸ 34 CFR § 668.46.

¹⁹ The assessor did not review the Annual Security Report for compliance with all required policy statements, rather did a cursory review to determine if the VAWA requirements seemed present.

Third, Title IX is not just a response to allegations of student sexual misconduct. Employees and third parties may be accused of sexual misconduct. There needs to be someone in a more senior-level position to address those issues.

The fourth issue involves training. As explained in Appendix C, there is a significant training requirement under Title IX and the Clery Act. This is a time-consuming and critical responsibility and one that must be engaged in annually.

Finally, Title IX is more than sex-based harassment. For example, discrimination against pregnant students and employees is a significant focus for the current administration. Therefore, the Title IX Coordinator needs to assess and develop policies within the Title IX umbrella.

Title IX Policy

Website

The assessor looked at how a person would learn about Haskell's Title IX responsibilities through Haskell's website. There seem to be three ways to access Title IX information publicly: use the search feature and type in "Title IX," access it through the student code of conduct, or through "Consumer Disclosure."²⁰ The assessor could not find a direct link to "Title IX." It is essential to keep in mind that Title IX refers to students, employees, and anyone attempting to participate in a program or activity, including prospective students and employees; therefore, one may not think to look in the student code of conduct. Likewise, very few people would consider looking in "Consumer Disclosure." The recommended practice is to have a quick link on the front page of the institution's website and links from other pages such as University Services and Human Resources.

The website needs to have the contact information for the Title IX Coordinator. As indicated earlier, the website has the Title IX Coordinator as "vacant," which needs to be updated. In addition, the website does not provide information on how to report. The "Haskell Title IX Complaint Procedure" section refers to an emergency number but not how to file a report with the Title IX Coordinator. The website should have information on filing a report in person, by mail, by phone, or email.

Title IX requires that all Title IX personnel training materials be posted on the website.²¹ However, it does not appear that Haskell has posted any training in compliance with this requirement.

Haskell's Title IX Policy

Several areas of the policy need to be amended. The assessor examined the policy through the lens of evaluating the major timeframes and stages of the process and determined that Haskell should promptly update the document. For this section, we are referring to the official policy posted on the website.²²

²⁰ The assessor does not know if there is a more visible way through the student or faculty portals; however, Title IX information should be readily available without having to sign into the website.

²¹ 34 CFR § 106.45(b)(10)i(D).

²² The policy in the student code of conduct given to the assessor is the same policy except it has been updated with the contact information.

The Scope and Definitions section states, “A report to Haskell employees (called “Campus Security Authorities”) constitutes a report to the Haskell Title IX Coordinator and places Haskell on notice to take appropriate steps to address the situation.” A “Campus Security Authority” (CSA) is a Clery Act term. Individuals identified as CSAs are obligated to notify the designated Haskell official of alleged Clery Act crimes that they have either witnessed or been informed of that have occurred in the institution’s Clery reportable geography. The Clery Act does not mandate that a CSA share personally identifiable information regarding the victim, the alleged offender, or any witnesses. The Clery Act Appendix for FSA Handbook (2020) states, “Note that a CSA for Clery purposes may or may not include employees who meet the definition of “any official...who has the authority to institute corrective measures” for Title IX purposes under 34 CFR 106.30(a).”²³ This could create significant reporting issues.

Haskell’s Annual Fire and Security Safety Report (2021) states, “Haskell University requires that any CSA who becomes aware of a crime at Haskell or a crime involving a member of the Haskell community must immediately report the incident to Campus Security or Title IX as appropriate.” First, this states that a CSA may report to Campus Security or Title IX, relying on the CSA to know what offenses need to be reported to Title IX. A report to a CSA does not constitute actual knowledge to the Title IX Coordinator. There is another section that encourages employees who are subject to or witness unwelcome conduct of a sexual nature to report to the Title IX Coordinator or any Haskell employee. These may be overly broad statements in the Title IX policy, as it should be clear that reports should be made to the Title IX Coordinator or specific designees. There is also a section that indicates that “students shall report...” Students are not required to report. Finally, the section on CSAs is in the same listing as confidential resources, which may confuse some people.

The policy describes interim measures, which, as defined by Haskell’s policy, are called supportive measures in the regulations. The policy does not cover emergency removals or administrative leaves as defined in the Title IX regulations:

(c) Emergency removal. Nothing in this part precludes a recipient from removing a respondent from the recipient’s education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

(d) Administrative leave. Nothing in this subpart precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with § 106.45. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.²⁴

²³ Clery Act Appendix for FSA Handbook (2020).

²⁴ 34 CFR § 106.44(c)(d).

The policy indicates that the Title IX Coordinator will determine if a hearing is necessary. However, the Title IX Coordinator cannot make that determination independently. The Title IX regulations require a live hearing unless both parties are offered and voluntarily agree to an informal resolution. The regulations state:

(6) Hearings. (i) For postsecondary institutions, the recipient's grievance process must provide for a live hearing. 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, notwithstanding the discretion of the recipient under paragraph (b)(5)(iv) of this section to otherwise restrict the extent to which advisors may participate in the proceedings.²⁵

Under "Title IX Coordinator and Staff," the Haskell policy states that a Title IX Hearing Member's primary responsibility is "to listen to both sides of the complaint...." On the contrary, the hearing member's role is not to reinvestigate the case. Instead, it is to review the investigative report, including the evidence, and at the hearing, facilitate the cross-examination conducted by the parties' advisors and witnesses. There is also no mention of cross-examination in the policy.

There is no opportunity in the policy for individuals to appeal a dismissal which is a requirement under the Title IX regulations:

(8) Appeals. (i) A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.²⁶

In the Haskell policy, the rights of the complainant and respondent indicate that the advisor "may not present the case or make statements during the proceedings." Though Haskell can limit an advisor's participation in meetings and at the hearing, the advisor must conduct cross-examination at the hearing. In addition, if a respondent or complainant does not have an advisor for the hearing, the University must provide one.

The Haskell policy states, "If it is determined under the preponderance of evidence standard (more likely than not to have occurred) that the respondent is not responsible for a Sex Discrimination or Sexual Harassment policy violation the complaint will be dismissed." This is not an accurate understanding of a Title IX dismissal. If the decision-maker (not the Title IX

²⁵ 34 CFR § 106.45(b)(6)(i).

²⁶ 34 CFR § 106.45(b)(8)(i).

Coordinator) determines that there is not a violation based on the investigation and evidence, then it is a finding as described in 34 CFR § 106.45(b)(6)(i) of the regulations. It is not a dismissal.

Student Conduct Process

The Purpose of Student Conduct Processes

Before examining the response to sexual misconduct cases, it is helpful to take a step back and look at the fundamental goals of managing student conduct. This is particularly important given that Haskell's sexual misconduct policy is embedded in the code of student conduct.

Student conduct processes support the institution's mission and values. They serve as a blueprint for what is expected in the academic community from a behavioral perspective and how the institution will respond. Student conduct processes should be developmental and treat all involved ethically and with dignity.

There is a legitimate concern that student conduct processes, particularly sexual misconduct processes, are becoming de facto criminal processes. Policies are becoming more complex and legalistic. There is a tendency to impose the adversarial and punitive nature of the criminal process. Student conduct processes should neither resemble nor take the place of criminal or civil court systems. Criminal systems manage crimes. Student conduct processes manage policy violations. Though a policy violation may be a crime, the institution does not decide as to the criminal aspect. The two systems are not compatible.

The Western District of Missouri court declared in 1968:

The discipline of students in the educational community, is in all but the case of irrevocable expulsion, a part of the teaching process. In the case of irrevocable expulsion for misconduct, the process is not punitive or deterrent in the criminal law sense, but the process is rather the determination that the student is unqualified to continue as a member of the educational community. Even then, the disciplinary process is not equivalent to the criminal law processes of federal or state criminal law. For, while the expelled student may suffer damaging effects, sometimes irreparable, to his educational, social and economic future, he or she may not be imprisoned, fined, disenfranchised, or subjected to probationary supervision. The attempted analogy of student discipline to criminal proceedings against adults and juveniles is not sound.²⁷

Compliance expectations have contributed to the creeping legalism of student conduct codes. For example, the 2020 regulations of Title IX encourage an adversarial environment by, amongst other things, requiring cross-examination conducted by advisors. If not managed appropriately, sexual misconduct processes can devolve into winners and losers rather than community accountability. Don Gehring wrote:

By purposefully creating a situation in which students are set up as antagonists of each other or of the institution not only reinforces the tenuousness of social bonding, but actually eliminates the opportunity for it to take place. Where there are enemies, antagonists, or people opposed to each other, there is usually a winner and a loser. One need only look

²⁷ District Court, Kansas City, MO. Western District of Missouri. (1968). General order on judicial standards of procedure and substance in review of student discipline in tax-supported institutions of higher education.

to our criminal justice system to learn to what little extent moral and ethical teaching and learning takes place in an adversarial environment.²⁸

Student conduct processes are about learning. They are an opportunity to help students learn and grow so they can be successful members of the communities they will live in throughout their lives. Student conduct should expand upon the concept of “meeting people where they are at” and not only meet them where they are but accompany them on their journey by helping them build their capacity to handle issues and think critically. According to Brown-McClure and Cocks:

Though conduct processes have evolved over the years and compliance requirements have increased, the philosophy, or fundamental belief, that student conduct is an educational process must remain the main tenet of student conduct work. Student conduct processes exist to address behavior that is inconsistent with an institution’s mission, values, and policies while providing the student with opportunities to learn, grow, and succeed...we diminish these goals and especially our educational impact if our focus becomes teaching students what to think rather than how to think.²⁹

With this framework in mind, DSA offers observations about Haskell’s management of sexual misconduct/harassment, dating/domestic violence, and stalking cases.

Haskell’s Student Code of Conduct

The assessor was provided with a Student Code of Conduct dated “Fall, 2021 - Spring, 2022,” which she was told was in the process of being revised. However, the assessor also found a version online with an effective date of August 10, 2015, and a revision date of May 20, 2021. The two documents are similar but not the same, particularly around the information on sexual misconduct. Therefore, when referencing the code, the assessor is referring to the “Fall, 2021 - Spring, 2022” version, the one she was given.

A comprehensive review of the entire student code of conduct is beyond the scope of this report. Though this report will focus on the process, the assessor provides the following observations for Haskell’s consideration.

The code is 105 pages. The likelihood of any person, let alone a student, reading the entire document is slim. It is more likely that a student will turn to this document when there is a problem. Given the likely anxiety or concern over whatever the problem is, codes need to be easily understood and as concise as possible.

Codes can get bogged down in the minutiae of procedures. We encourage Haskell to consider “What is a policy vs. a procedure vs. helpful information?” Students need to be informed of the process and understand the procedure to carry out the process; however, they do not need to know all of the procedural steps that Haskell would take. For example, most forms in the code are not forms a student will use. Instead, they are forms the school will use. Therefore, there is little value in providing these forms in the code. In addition, there are several “question and answer”

²⁸ Gehring, Donald D. “The Objectives of Student Discipline and The Process That’s Due: Are They Compatible?” *Journal of Student Affairs Research and Practice* 38, no. 4 (Summer 2001): 466-81. doi:10.2202/1949-6605.1155.

²⁹ Brown-McClure, F. C. L., & Cocks, C. L. (2020). *The Philosophy of Student Conduct and the Student Conduct Professional*. In D. M. Waryold & J. M. Lancaster (Eds.), *Student conduct practice: The Complete Guide for Student Affairs Professionals* (pp. 23–35). essay, Stylus Publishing.

sections. Those can be quite helpful to students; however, placing them in a conduct code is not a standard practice. Questions and answers should be on websites or in separate documents as they are not institutional policy.

Institutions are often faced with the challenge of being in compliance with various laws but not bogging down the student with bureaucratic language. Overly referring to the law might be seen by students that Haskell is only providing certain rights because they must rather than it being the right thing to do.

There are multiple references to Title 25 of the Code of Federal Regulations, specifically part 42—Student Rights (25 CFR Part 42). 25 CFR § 42.10 requires that each school must:

- (a) Develop a student handbook that includes local school policies, definitions of suspension, expulsion, zero tolerance, and other appropriate terms, and a copy of the regulations in this part;
- (b) Provide all school staff a current and updated copy of student rights and responsibilities before the first day of each school year;
- (c) Provide all students and their parents or guardians a current and updated copy of student rights and responsibilities every school year upon enrollment; and
- (d) Require students, school staff, and to the extent possible, parents and guardians, to confirm in writing that they have received a copy and understand the student rights and responsibilities.³⁰

These requirements are typical practice; however, most schools do not continually reference the applicable federal or state laws. A reader may deduce that Haskell provides no other rights except for the minimum.

Language matters. In addition to being aware of overly legalistic language, codes should not be too informal or inadvertently convey a negative message. For example, on page 9 (both versions), the code states, “In order to be clear, if you get in trouble on or off campus....” Unfortunately, the word “trouble” minimizes the critical work of student conduct professionals. Ideally, the student rights staff are not in the “trouble” or “discipline” business but the education business.

An added layer is the possible lived experiences of students with the existing judicial system (law enforcement and courts). If a student equates the student conduct process with the judicial system, they are less likely to want to engage in what should be an educational process.

The code uses “respect” approximately eighteen times. As the institutional values define, respect means “To honor and promote the diversity of beliefs, rights, responsibilities, cultures, accomplishments of self and others, including our non-human relations.” Respect is a challenging word as it is subjective and, at times, divisive. Too often, the concept of respect has been abused by individuals in authority to demean or exert power. Rather than treating someone ethically and with dignity, some authority figures have used “respect” to demand obedience. We encourage Haskell to reflect on whether the use of “respect” in the code is consistent with how it is defined in their values.

³⁰ 25 CFR Part 42—Student Rights (Revised as of April 1, 2020).

25 CFR § 42.1 expects Bureau-funded schools to “afford students consideration of and rights equal to the student’s traditional Native customs and practices.” Formally incorporating some of the customs and practices of the tribal nations represented into the student code of conduct would reflect the mission and values of Haskell.

Therefore, the assessor recommends Haskell reimagine its student code of conduct with a focus on creating a student handbook, incorporating student development and customs and traditions in the actual student code while minimizing the references to federal law and crimes. A student code is about the community’s expectations and the process for resolving matters when those expectations may not be met. Again, a code does not manage crimes—police do. Instead, codes manage alleged policy violations.

Sexual Misconduct Response - Students

The assessor reviewed seven cases between September 2021 and June 2022. When conducting a review, the assessor focused solely on the actual written record as that is the “official story” of the case. Like a story, case files should have a beginning, middle, and end. A reader should not have to infer what happened or need to seek out additional information. Cases must be thoroughly documented from start to finish because a verbal account of the University’s response will not satisfy complaints against the institution, lawsuits, and audits.

Cases

The case folders are labeled with a case number (#year-unique number) and a date on which the formal complaint was signed. Each folder also had “unscheduled” on the label.

#21-001—09/13/2021 (student complainant/student respondent): This file contained one document—Formal Student Title IX Complaint. A friend of the alleged victim signed the formal complaint; however, this is not allowed per the instructions on the form or by Title IX. There should be an option to submit a report which would then trigger outreach to the victim and a review by the Title IX Coordinator. Page two of the form appears to have been filled out by a second person as the handwriting differs. If that is the case, the second person filling out the form should be identified. Lastly, there is no information in the file as to any action taken once this form was received.

#21-002—12/20/2021 (student complainant/employee respondent): This case involved a student complainant and an employee respondent for an incident on November 13, 2021. The student included a typed statement with the form. In addition, there is a photo of what appears to be a napkin or piece of paper with the student’s contact information and several phrases related to the incident. We recommend any handwritten notes such as this be converted into an official University note with context and details.

This file contains an email from Daniel Burland to Tamarah Pfeiffer, the President at the time. There is no response to the email nor any information on the resolution of the matter. The last document in the folder is the “Explanation of Complainant Rights and Responsibilities.” The document indicates that the student was explained her rights and options. The current Title IX form only indicates that this information was discussed with the student. It is unclear as to what, if anything, they received in writing. Student complainants should receive the information identified

on the form in writing as well. ³¹It is not stated whether supportive measures were offered or provided to the complainant. There is no information about what occurred once she filed the formal complaint. Dr. Burland's email indicated that he was working on a no-contact order; however, there is no information to indicate if that was issued.

#22-001—01/25/2022 (student complainant/student respondent): This case involved a student complainant and a student respondent. It is unclear why this was considered sexual misconduct. The allegation was that the respondent used "foul language" and was "rude and disrespectful" when the student worker asked him to wear a face mask. It is unclear if the language was on the basis of sex and whether it potentially created a hostile environment.

Both parties are students, and the complainant is a student and an employee. The Title IX case form indicates that the alleged incident occurred on January 20, 2022, and Title IX received the information on that same day. The notice letter sent to the respondent on January 25, 2022, is insufficient. It informed the respondent that a report was received alleging "harassment." No other incident details, not even the incident date, were provided.

The Title IX Coordinator interviewed the complainant and respondent on January 26, 2022. The form indicates that a "concluding letter" was sent to both parties on January 27, 2022; however, there is no such letter in the file. Instead, the note on the form indicates "ADR with student emails."³²

The Title IX Coordinator's meeting with the complainant on January 26, 2022, occurred two hours after the respondent's meeting; therefore, the decision to proceed with an ADR was made before a meeting with the complainant. Regardless if this was under the jurisdiction of Title IX or not, deciding on the resolution prior to meeting with the complainant is not a recommended practice. In addition, the notes from the meeting indicated that the Title IX Coordinator shared a summary of her meeting with the respondent and told the complainant that the respondent felt a "sense of remorse." This is also not recommended practice as it can inadvertently sway the complainant as to whether she wants to proceed further. There is also no indication that the ADR required both students to agree, which is problematic. ADRs should only be done with the written consent of both parties.

The Title IX Coordinator issued a no-contact order to both parties on January 24, 2022. Also, on January 24, 2022, the respondent's housing privileges were suspended for the Spring 2022 semester. There is no information in the file explaining the justification for the removal.

On the same day, the Title IX Coordinator reviewed with the respondent his rights and responsibilities; she also interviewed him. There is not a notice of allegation in the folder. The Title IX Coordinator wrote a summary of her meeting with the respondent on January 26, 2022. The notes indicate they discussed the incident and a resolution ("an alternative dispute resolution will be worked on"). The "Student Disposition Summary Form" states that the "offense" is "inappropriate behavior." Under "Adjudication/Disposition," "Student admitted to facts of incident

³¹ Though this incident would not classify as a VAWA offense, we would like to stress that for VAWA offenses (sexual assault, stalking, domestic violence, and dating violence), the Clery Act requires a written notification of rights and options. This is a recommended practice for all types of incidents.

³² An "ADR" is an alternate dispute resolution. ADRs can be mediation, conflict resolution, sanctions, etc. For Title IX-related cases, both parties must agree, in writing, to the ADR.

report as being true” is checked, and the “Evidence utilized by Student Conduct Officer” is “an event of miscommunication.” Inappropriate behavior is not listed as prohibited conduct in the code, nor is miscommunication. There is no information on an actual determination of the alleged behavior and any code violation under which the behavior would fall.

A January 27, 2022, email from the complainant to the Title IX Coordinator indicated that she was not interested in an apology letter and wanted to move on. The Title IX Coordinator recommended the apology letter. We do not recommend using apology letters as they are forced, lack sincerity, and are punitive. There is no educational value in them.

The file lacked an official allegation notice, an ADR description, and a findings/resolution letter. If this case was determined to not be under Haskell’s Title IX obligations, there needed to be a Title IX dismissal letter as most of the documents used stated “Title IX.” When a case is dismissed for Title IX purposes, the parties have a right to appeal the decision, even if it is referred to another policy.³³

The assessor’s final observation on this case is that the respondent is the same for case #21-001. Given the small number of cases reviewed, having the same respondent in two different cases is concerning and may indicate a behavioral pattern requiring additional evaluation.

#22-003—04/14/2022 (student complainants/student respondent): This case involved several student complainants and a student respondent. The complaints alleged nonconsensual sexual contact; however, they all indicated they “suspected” the complainant. There is no information in the file that provides evidence beyond suspicion. Pertinent excerpts from the staff notes are:

Complaint 1: *“She noticed that when she woke up, she had hickies and bruises all over her body. She knew right away that someone did something to her, but could not remember what happened. It was at that point that she suspected it was [respondent].”* This complaint provided no information as to why the respondent was suspected.

Complaint 2: *“She indicated that fell asleep, but when she woke up she was naked and it hurt for her to pee afterwards. She suspected that the respondent had something to do with it.”* This incident occurred when the complainant was with a friend and the respondent in a residence hall.

Complaint 3: *“He informed me that he was heavily intoxicated and believed he may have been sexually assaulted by [respondent]. He mentioned to me that he had bit marks on his chest when he woke up. They were partying together and the last person he remembered being with was [respondent].”* There is no information to explain what “being with” means.

On April 18, 2022, a no-contact order was issued to the respondent about two of the complainants. A second no-contact order was issued on April 21, 2022, adding the third complainant.

There were two action letters sent on April 21, 2022, to the respondent:

- A letter informing the respondent of a permanent loss of housing with no right to appeal and an emergency suspension (level I) with the right to appeal. However, the respondent

³³ Even EO 13160 requires an appeal option if a complaint is dismissed.

was told that any appeal would not take place until right before the fall 2022 semester. Such a delay would likely be a due process concern for being untimely.

- A second letter was sent imposing an emergency suspension (level III) with no right to an appeal and a permanent sanction of expulsion with the right to an appeal.

There is no information in the file about why these decisions were made without notice and a meaningful right to respond. It is also not clear if one of these letters supersedes the other. According to the file, the respondent is under two emergency suspensions, lost her housing, and was expelled.

It is unclear if the student appealed and what the final decision was in the case. Beyond the no-contact letters, there is no information notifying the complainants about the allegations, final decision, or right to an appeal.

Finally, in her meeting with a staff member, the respondent disputed the allegations and accused one of the complainants of sexual assault. There is no information in this file regarding the response to that allegation.

#22-004—05/16/2022 (student complainants/student respondent): This case involved alleged nonconsensual sexual penetration. The respondent received a memo informing him of an incident report for multiple violations. However, it provided no details, including any alleged violations. The respondent's housing privileges were suspended for the Fall 2022 semester. No contact letters were sent. There is no other information in this file to indicate Haskell's response. The alleged incident was off-campus, which may not make it a Title IX-related case; however, Haskell still has obligations to respond under the Clery Act, and the student had filed a Title IX complaint form. Therefore, the case either needed to stay in Title IX or be dismissed. If it was dismissed, there needed to be an opportunity to appeal the dismissal, and the case should be referred to the student code.

There is a note on the case form that the respondent refused to cooperate. The respondent can refuse to participate in the process; however, the process needs to continue.

#22-005—06/22/2022 (student complainant/employee respondent): This case involved alleged unwanted contact and comments by an employee. The matter was referred to Human Resources. There is no information in the file regarding the response from Human Resources.

#22-006—06/21/2022 (student complainant/unknown respondent): The student reported to a CRA that she was being stalked and groped by a stranger. Information in the file indicates that procedural information and resources were shared with the student. No other information was included in the file to include any rights and options Haskell is required to provide to a student or employee alleging to be the victim of a VAWA offense.

Key Takeaways from Interviews and Case Review

1. Caring, student development, compliance, and formality are not mutually exclusive. You can be kind while being fair and impartial. You can use student development language while complying with the law. You can have standard written documentation that is not overly burdensome.

2. There seems to be a paternalistic attitude among some staff (e.g., signing a complaint on behalf of a student), and though well-intended, the approach does not serve students well. We cannot substitute the student's perspective and experience with our own. Though we may have similar lived experiences, they are not the same. There also seems to be either a boarding or military school attitude. Haskell is a higher education institution. As stated previously, higher education works to help students build their capacity to manage issues. When students leave the University, they will not have the same access to resources; therefore, we cannot hold their hands but instead should teach them to manage issues.
3. Staffing resources are a challenge. With only one person managing all aspects of the cases, it is difficult to have a thorough investigation, fair and impartial decision, and follow-up for any sanctions imposed. A consequence of the lack of staffing is that case management seems to drop off after the initial intake or response.
4. Clear procedures and standard documentation are needed. Documentation includes, but is not limited to, reporting forms, complaint forms, a notice of allegations, investigation letters, witness notifications, resolution letters, rights and options, and ADR resolution letters. All letters except for a findings letter should be written in a way that is not determinative of the allegations. In addition, references to legal statutes, codes, and regulations are unnecessary. Letters should have a formal air but do not need to be legalistic.
5. None of the cases had what would be considered sufficient resolution details. Resolution documentation should include:
 - a. a description of the alleged behavior;
 - b. a listing of the alleged prohibited conduct copied from the policy;
 - c. what the behavior was determined to have occurred;
 - d. the findings as to the code violations with a rationale;
 - e. any sanctions or response;
 - f. and how to appeal, if offered.
6. Several complaints were signed by someone other than the person alleged to be harmed (complainant). Staff and other students should not be signing formal complaints for students. Any Title IX complaint needs to be signed by the complainant or Title IX Coordinator. In addition, any person should be able to submit a report alerting Haskell of a potential issue. This report is not the same as a complaint. They can submit reports, but it needs to be the student's decision to sign a formal complaint.
7. The Title IX complaint form should only be used for cases where, on its face, it alleges behavior that is prohibited under the Title IX policy. If the form is used and the Title IX process is not used, the case must be dismissed before being referred to another process. This dismissal includes offering both parties an opportunity to appeal.
8. There was no documentation in the folders indicating agreement by the parties to an ADR. There were also no details as to what the ADRs entailed. If a complaint is resolved through an ADR, documentation must be in the folder identifying the resolution, the next steps, and

when it was completed. For Title IX-related cases, both parties must consent in writing to resolve the matter through an ADR.

9. 25 CFR § 42.4 states that “ADR processes may: (1) Include peer adjudication, mediation, and conciliation; (2) Involve appropriate customs and practices of the Indian Tribes or Alaska Native Villages to the extent that these practices are readily identifiable.” An ADR needs to be more than an apology letter or restriction from a space. The Office of Collaborative Action and Dispute Resolution may be a good resource for exploring effective ADRs.³⁴
10. If formal sanctions are imposed, the case folder should contain information regarding any deadlines and completion.
11. The use of “zero tolerance” is problematic. First, making an immediate decision on an allegation without the appropriate notice, investigation, and hearing is punitive and lacks appropriate due process.³⁵ Second, zero-tolerance policies do not necessarily work and often disproportionately impact people of color.³⁶
12. An interim suspension for a Title IX-related case requires a safety and risk analysis and an opportunity for the respondent to challenge the suspension in a timely way. It is recommended that any interim decision has a solid rationale to support it, such as an imminent risk to health and safety with the opportunity to challenge. Interim actions should not be taken solely based on the allegation. To do so circumvents the basic tenets of due process. Further, in many cases, interim suspension means creating situations where a student finds themselves suddenly homeless with an added stressor of being unable to seek a timely appeal for access to their educational opportunities.
13. An unfortunate public narrative is that these cases are between two individuals only; however, they are riddled with community issues too. A complainant can decide not to participate in the process; however, the University stills need to assess the situation to determine if the University needs to go forward without the complainant's participation. No contact orders are only helpful between the two parties—it does not resolve any risk to the community. Cases must be examined not only for the complainant's safety but also for community impact and risk. Student conduct codes are about community expectations, not individual expectations. In addition, Title IX seeks to prevent sex discrimination or any reoccurrence. The reoccurrence is not exclusive to the original person who is harmed. Institutions must consider the larger community.
14. Judge Alfred P. Murrah famously said, “Hear the case before you decide it.”³⁷ This quote is commonly used in student conduct presentations as it stresses the need to gather all the information first and only when an investigation is complete should a decision be made.

³⁴ <https://www.doi.gov/pmb/cadr>

³⁵ In addition to 25 CFR Part 42, it is important to note that courts have consistently held that the 14th Amendment requires public higher education institutions to provide notice and a meaningful opportunity to be heard in student conduct cases.

³⁶ Articles on zero tolerance which may be helpful: <https://www.contextualsafeguarding.org.uk/blog/why-zero-tolerance-doesn-t-work/>; <https://www.apa.org/pubs/reports/zero-tolerance.pdf>

³⁷ Judge Murrah (1904-1975) was a judge for U.S. Court of Appeals for the Tenth Circuit and Director of the Federal Judicial Center.

Prejudging the merits of a complaint without an investigation, including an opportunity for the parties to respond, will likely result in allegations of bias on the part of the decision maker.

Sexual Misconduct Response - Employees

The scope did not include a review of employee cases; however, concerns were raised in several interviews about the response to employee respondent cases. Specifically, employees do not know if an issue was resolved, and more importantly, students are not notified of any action taken, including the outcome of the complaint, if applicable. Students are additionally not being informed regarding any remedies that may impact them (e.g., no contact orders or access restrictions).

One could argue that employee matters should be resolved under EO 13160 rather than Title IX; however, Title IX is more prescriptive, affords more procedural protections, and applies to employees and students. If Haskell were to resolve employee cases under Title IX, the same process as students would be used.³⁸ However, using EO 13160 does not shed students of their right to be involved and informed.

The EO 13160 guidance document affords complainants certain rights which, anecdotally, do not appear to be given to students at this time. The guidance encourages an informal resolution between the complainant and the respondent. If they cannot agree, a formal investigation is initiated. The guidance states, "If a decision is made to initiate a formal investigation, the investigating office must notify the complainant in writing."³⁹ The guidance also indicates that if there is a determination that no violation of EO 13160 occurred, a copy of the report is still sent to both the complainant and the respondent.

When an EO 13160 investigation is completed, a written report must be prepared with the results, and the investigating officer may make recommendations for corrective and/or remedial action. The guidance states, "A copy of the investigative report should be sent to both the complainant and the respondent, including the employee who is the subject of the report."⁴⁰

The EO 13160 guidance explains:

If the appropriate agency official does determine that the complainant is entitled to some form of remedial or corrective action, the appropriate agency official shall so notify the complainant in writing. The appropriate agency official also shall take all necessary steps to ensure that the corrective or remedial action ordered is implemented. If a determination is made that the complainant is not entitled to any corrective or remedial action, the appropriate agency official shall notify the complainant of this decision and the reasons for this determination.⁴¹

As to remedies, the EO 13160 guidance states:

As a general matter, if there has been a violation of the Executive Order, the complainant shall be entitled to all appropriate, nonmonetary, equitable relief. The appropriate agency

³⁸ The proposed regulations may offer different resolution avenues for sex discrimination and sex-based harassment.

³⁹ 66 Fed. Reg. 5403 (January 18, 2011), p. 5409 (Section 14, Item D).

⁴⁰ 66 Fed. Reg. 5403 (January 18, 2011), p. 5409 (Section 14, Item D).

⁴¹ 66 Fed. Reg. 5403 (January 18, 2011), p. 5409 (Section 14, Item E).

official should attempt to ensure that the aggrieved individual ends up in the same position he or she would have occupied absent discrimination, or a substantially equivalent position. In the context of violations of this Executive Order, specific remedies are likely to include placement in the next available education or training program of a comparable nature; the development of an individualized training opportunity; the cancellation of an unwarranted personnel action or the expungement of adverse materials from agency records; the awarding of a diploma, other certificate, or specific grade; and the provision of reasonable accommodations.⁴²

Recommendations

1. Update the Title IX website (https://www.haskell.edu/consumer-disclosure/title_ix/) and Title IX policy (<https://www.haskell.edu/wp-content/uploads/2020/08/Title-IX-policy-08-14-2020.pdf>) with the accurate contact information for the Title IX Coordinator.
2. Develop a Title IX Coordinator position, full-time or part-time, to oversee Haskell's Title IX and VAWA-related responsibilities. This person would oversee Haskell's sexual misconduct prevention education programs, the process for resolving complaints, and any other area related to Title IX. The Title IX Coordinator should not be the intake person, investigator, informal resolution facilitator, and decision-maker. Consideration could be made to have this person be responsible for related compliance areas, such as Clery Act compliance.
3. Review and rewrite the Title IX policy to ensure compliance with the current regulations. In addition, be prepared to revise as needed when the new regulations are finalized.
4. Update the website with contact information, ways to report, and an updated policy. In addition, add links to Title IX on the main webpage, University services, and Human Resources.
5. Conduct a comprehensive review and rewrite of the student code of conduct and its procedures. In addition, we encourage Haskell to use a community engagement approach seeking input and involvement from members of the Haskell community to create a developmental, fair, and impartial student conduct process.
6. Revise all Title IX and student conduct forms and letters to be more straightforward, transparent, and less legalistic. In addition, there should be a procedures document for both processes that ensure the appropriate steps are taken.
7. Provide support and encouragement for the student rights specialist to take advantage of the membership opportunities in the Association for Student Conduct Administration (ASCA). Such opportunities provide valuable knowledge and a network of professionals doing the same work.
8. Review the information related to all acts of sexual misconduct contained in the Annual Fire & Security Report and arrange so that Haskell community members can find the needed information in an order that would make sense to someone seeking to understand the steps

⁴² 66 Fed. Reg. 5403 (January 18, 2011), p. 5409 (Section 15).

as they happen. It should also be made clear that Haskell has procedures to address whether the respondent is a student or an employee.

9. Develop a standalone written statement of options and rights separate from the Annual Fire & Safety Report, as required by the Clery Act, to be given to any student or employee who reports being a victim of a VAWA offense, no matter where the incident is reported to have occurred. The current Title IX form only indicates that this information was discussed with the student. They must also receive it in writing.
10. Develop a comprehensive training program for all personnel with Title IX or Clery Act responsibilities.
11. Develop a comprehensive training program for staff and faculty to understand sex discrimination, including sex-based harassment, including the VAWA offenses.
12. Develop a memorandum of understanding with the BIE's Human Resources to ensure students receive the rights afforded under Title IX or EO 13160.
13. Utilize the retainer agreement with D. Stafford & Associates to conduct investigations. D. Stafford & Associates investigators bring a wealth of experience and knowledge. Utilizing external investigators takes pressure off of the limited staffing resources and removes any bias concerns.

Conclusion

We extend our deepest gratitude to all participants in the Haskell Indian Nations review. The care for and commitment to the University community is evident. The suggested changes are opportunities to develop processes that align with standard practices and the institution's values. We hope that the University's review and continued discussions lead to a sexual misconduct process that will serve not only the Haskell Indian Nations community well but also the home communities of the students and staff.

Appendix A: Title IX

Title IX of the Education Amendments of 1972 states, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” The law does not just apply to higher education; it provides that no person be discriminated against on the basis of sex in any educational program or activity associated with an elementary, middle school, high school, school district, or higher education program that receives federal financial assistance.

Under Title IX (and Title IV), colleges and universities that receive federal financial aid are responsible for providing students with a nondiscriminatory educational environment. Title IX is not about protecting one sex over another. Rather, it is about protecting all persons, regardless of their sex, from discrimination while pursuing their education; hence, allowing all persons to benefit from the school’s programs and activities. Title IX protections from sex-based discrimination in programs and activities associated with the institution cover both the students attending the institution as well as the employees who work there. Coverage includes, but is not limited to, admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing, and employment (to include hiring, firing, demotion, promotion, sabbatical decisions, parenting benefits, etc.).

The Department of Education’s previous Title IX regulations guiding Title IX implementation simply called for schools to “adopt and publish grievance procedures.” Most expectations for a school’s policy and procedures for addressing prohibited actions (and what actions are prohibited) stem from guidance issued by the Department of Education. In particular, in 2001, following a series of legal decisions, OCR issued “Revised Sexual Harassment Guidance,” which spelled out the responsibility of institutions to consider sexual harassment as discrimination under Title IX. This document outlined institutions’ compliance responsibilities and provided information about actions that schools should take to prevent sexual harassment or to address it effectively if it occurs.

Additional guidance was issued in 2011 to address sexual violence specifically. This guidance, issued under the Obama administration, ushered in a renewed focus on victims prompted by concerns that schools were not appropriately handling reports promptly and equitably. The 2011 “Dear Colleague” letter also clarified the responsibility of institutions to have a Title IX Coordinator in place, mandated the use of the preponderance of the evidence standard, expanded the jurisdictional scope of a school’s response, and discouraged cross-examination.

The Department of Education, under President Trump, indicated early disagreement with the previous administration, and in 2017, the Department rescinded the 2011 “Dear Colleague” letter and others. The Department indicated they would move from guidance to regulations to guide Title IX compliance. The draft regulations were released in 2018, and the final Title IX regulations were published in May 2020.

The Title IX regulations require the following:

- Designation of at least one Title IX Coordinator

- Notification of contact information to applicants, students, employees, etc.
- Notification that reports may be made in person, by mail, phone, or email.
- A report may be made “at any time,” including during non-business hours
- Dissemination of policy to students, employees, parents/guardians
- Define sexual harassment as:
 - A school employee conditioning an educational benefit or service upon a person’s participation in unwelcome sexual conduct (often called “quid pro quo” harassment);
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity; or
 - Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)). 1 of 3 U.S. Department of Education Title IX Final Rule Overview
- Create a fair grievance process that gives to both parties:
 - Written notice of the allegations
 - An equal opportunity to select an advisor of the party’s choice (who may be, but does not need to be, an attorney)
 - An equal opportunity to submit and review evidence throughout the investigation
- Use trained Title IX personnel to objectively evaluate all relevant evidence without prejudgment of the facts at issue and free from conflicts of interest or bias for or against either party
- Protect parties’ privacy by requiring a party’s written consent before using the party’s medical, psychological, or similar treatment records during a grievance process
- Obtain the parties’ voluntary, written consent before using any kind of “informal resolution” process, such as mediation or restorative justice, and not use an informal process where an employee allegedly sexually harassed a student
- Apply a presumption that the respondent is not responsible during the grievance process (often called a “presumption of innocence”) so that the school bears the burden of proof and the standard of evidence is applied correctly
- Use either the preponderance of the evidence standard or the clear and convincing evidence standard (the same standard must be used for students and employees)
- Ensure the decision-maker is not the same person as the investigator or the Title IX Coordinator
- Hold a live hearing and allow cross-examination by party advisors (never by the parties personally)

- Protect all complainants from inappropriately being asked about prior sexual history
- Send both parties a written determination regarding responsibility
- Effectively implement remedies for a complainant if a respondent is found responsible
- Offer both parties an equal opportunity to appeal
- Protect any individual, including complainants, respondents, and witnesses, from retaliation
- Make all materials used to train Title IX personnel publicly available on the school's website
- Document and keep records of all sexual harassment reports and investigations (7 years).

In June 2022, the U.S Department of Education released proposed regulations for Title IX. As of the writing of this report, the Department is engaged in the Notice and Comment period.

Appendix B: The Clery Act/Violence Against Women Act

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act” or “Clery”) is a law passed over 25 years ago intended to promote campus safety and security awareness. The law requires colleges and universities to disclose on an annual basis reported crimes occurring in specified geographical areas.

Three primary conditions determine whether a reported offense should be included in the annual crime statistics each institution must publish (an answer of “yes” to all these questions will necessitate including the reported offense in the institution’s Clery Act crime statistics in their Annual Security Report):

- Has the offense been brought to the attention of a Campus Security Authority (CSA) or local law enforcement agency?
- Is the reported offense a Clery-reportable crime?
- Was the offense reported to have occurred on or within the institution’s “Clery Geography” (i.e., those On-Campus, Public Property, or Noncampus locations for which institutions must disclose reported offenses)?

Hence, institutions will be out of compliance if they have not fully and accurately assessed their Clery Geography; identified their CSAs; advised CSAs of their duty to promptly report Clery crimes (including sexual assault and other VAWA offenses); and trained CSAs on how and to whom they should report crimes brought to their attention.

As a result of VAWA, Title IX and the Clery Act are forever intertwined. For example, many excerpts from the regulatory and sub-regulatory guidance of Title IX from 2011 were selected and codified in the Clery Act because of the VAWA amendments. In addition, the 2020 regulations expressly incorporate the Clery definitions of the VAWA offenses under the Title IX definition of sexual harassment. Currently, there are nearly 50 policy statements that institutions must address in their Annual Security Report related just to the VAWA crimes of sexual assault, dating violence, domestic violence, and stalking. Within those policy statements sit mandates related to institutions engaging in primary prevention and ongoing awareness programs. In addition, the Act lays out requirements for an institution’s procedures to resolve complaints of sexual assault, dating violence, domestic violence, and stalking.

The specific statements required for the Annual Security Report related to VAWA include the following:

- A statement that the institution prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking;
- A statement of intent, including reference to its commitment to Title IX and VAWA;
- A notice of nondiscrimination identifying the Title IX Coordinator, including complete contact information;
- Notification of the procedure to students and employees, including where to file complaints;

- Application of the procedure to complaints alleging discrimination by employees, other students, or third parties;
- The definitions of domestic violence, dating violence, sexual assault, and stalking (including a list of definitions in the applicable jurisdiction);
- The definition of consent;
- Procedures a victim should follow if there is an offense such as:
 - The importance of preserving evidence; and
 - Reporting options (including contact information) for law enforcement, internal options, and making no report
- How institutions will protect confidentiality and weigh requests for confidentiality;
- Information regarding obtaining protection orders, restraining orders, and/or other lawfully obtained orders designed to protect the safety of victims, including the institution's responsibility with regard to recognizing them; information on institutional no contact directives; and information on how the institution will assist the victim when they obtain orders;
- A list of on and off-campus resources, including specific types of resources, like health, mental health, counseling, visa and immigration assistance, legal assistance, victim advocacy, and others specific to the campus demographics, including the aging or those persons who identify as LGBTQ, indigenous, or disabled;
- Options regarding academic, living, transportation, and working accommodations;
- Internal disciplinary procedures must include:
 - That the institution will conduct a prompt, fair, and impartial investigation and resolution;
 - Procedures to be used based on the status of the respondent, including the standard of evidence;
 - Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
 - Be conducted by officials who are free from bias and conflicts of interest and who receive annual training as required by Federal law;
 - Complainant and respondent rights: advisor of choice; notified of the outcome of any procedure; appeal options; the change of any results;
 - Notice to the parties of the outcome of the complaint;
 - Designated and reasonably prompt time frames for major stages of the complaint process;
 - Possible sanctions or protective measures that an institution may impose following a final determination of an internal procedure;

- A statement against retaliation, including assurance that steps will be taken to prevent the recurrence of any discrimination and to correct its effects;
- A statement regarding educational programs to prevent domestic violence, dating violence, sexual assault, and stalking, including primary prevention and awareness programs (including definitions);
- Bystander intervention options; and
- Information on risk reduction.

Appendix C: VAWA/Title IX Training Regulations

Title IX doesn't specify the training frequency, but the Clery Act does (annually). Therefore, training should be completed annually by Title IX personnel. Under the Clery Act, the training should be updated as necessary "to address the latest issues and techniques for conducting proceedings on these topics from beginning to end." Under the current regulations, training materials must be kept for seven years and be available on the institution's website.

The following is a list of topics required by Title IX and Clery/VAWA (and labeled for each).

Title IX Coordinators (including deputies)

- Definition of sexual harassment (Title IX)
- Scope of the institution's education programs and activity (Title IX)
- Issues related to dating violence, domestic violence, sexual assault, and stalking (Clery)
- How to conduct an investigation and grievance process (Title IX) that protects the safety of the victims and promotes accountability (Clery)
- How to conduct hearings, appeals, and informal resolution processes (Title IX), including basic procedural rules (Clery)
- Relevant evidence and how it should be used during a proceeding (Clery)
- Proper techniques for questioning witnesses (Clery)
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias (Title IX), including "actual and perceived" conflicts of interest (Clery)

Decision-makers

- Definition of sexual harassment (Title IX)
- Scope of the institution's education programs and activity (Title IX)
- Issues related to dating violence, domestic violence, sexual assault, and stalking (Clery)
- How to conduct an investigation and grievance process (Title IX) that protects the safety of the victims and promotes accountability (Clery)
- How to conduct hearings, appeals, and informal resolution processes (Title IX), including basic procedural rules (Clery)
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias (Title IX), including "actual and perceived" conflicts of interest (Clery)
- Technology to be used at a live hearing (Title IX)
- Issues of the relevance of questions and evidence (Title IX) and how it should be used during a proceeding (Clery)
- Proper techniques for questioning witnesses (Clery)
- Inadmissible evidence (previous sexual history, privileged information, statements if parties do not appear) (Title IX)

Investigators

- Definition of sexual harassment (Title IX)
- Scope of the institution's education programs and activity (Title IX)
- Issues related to dating violence, domestic violence, sexual assault, and stalking (Clery)
- How to conduct an investigation and grievance process (Title IX) that protects the safety of the victims and promotes accountability (Clery)
- How to conduct hearings, appeals, and informal resolution processes (Title IX), including basic procedural rules (Clery)
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias (Title IX), including "actual and perceived" conflicts of interest (Clery)
- Issues of relevance to create an investigative report that fairly summarizes relevant evidence (Title IX)
- Proper techniques for questioning witnesses (Clery)

Training Material Content

The Title IX regulations state, "any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment." Therefore, the materials should include gender-neutral and judgment-free language.

The "neurobiology of trauma" has been at the center of what should and should not be included in training for Title IX personnel despite being referenced in the commentary in VAWA. In addition, the 2014 Title IX Guidance also discussed trauma and its neurobiological effects as an important part of any training effort.

The preamble to the 2020 regulations mentions the neurobiology of trauma several times but uses the same general language repeatedly, stating:

"The neurobiology of trauma and the impact of trauma on a survivor's neurobiological functioning is a developing field of study with application to the way in which investigators of sexual violence offenses interact with victims in criminal justice systems and campus sexual misconduct proceedings. The final regulations require impartiality in investigations and emphasize the truth-seeking function of a grievance process. The Department wishes to emphasize that treating all parties with dignity, respect, and sensitivity without bias, prejudice, or stereotypes infecting interactions with parties fosters impartiality and truth-seeking. Further, the final regulations contain provisions specifically intended to take into account that complainants may be suffering the result of trauma; for instance, § 106.44(a) has been revised to require that recipients promptly offer supportive measures in response to each complainant and inform each complainant of the availability of supportive measures with or without filing a formal complaint. To protect traumatized complainants from facing the respondent in person, cross-examination in live hearings held by postsecondary institutions must never involve parties personally questioning each other, and at a

party's request, the live hearing must occur with the parties in separate rooms with technology enabling participants to see and hear each other.”

The Title IX regulations acknowledge that many states require trauma-informed training or a trauma-informed process for Title IX Personnel and state that nothing in the regulations prohibits an institution from applying trauma-informed techniques as long as it is consistent with the requirements of the regulations.

Appendix D: Haskell Title IX Forms



Haskell Indian Nations University

Title IX Coordinators Office

Complaint Number (e.g.14-001):	Year-sequential number	Assigned to:	Danelle McKinney, Acting T9
Type of Complaint:	Harass, SA, DV Stalking	Date received by Title IX:	
Date of Offending Conduct:		Date closed:	

Complainant(s): _____

Respondent(s): _____

Brief Summary/ Nature of Complaint:

Task/ Document in File	Time Limit for Completion	Date Completed	Completed by (initials)	File Review
Complaint (with Date)	Upon Receipt			
Acknowledgement Letter to complainant(s)	7 days after receipt of complaint			
Notification Letter to Respondent(s)	3 days after verification of complaint with complainant(s)			
Letter(s) Communicating interim measures, if any (e.g., no contact order, documentation of referral for services, etc.) or contemporaneous with receipt or verification of complaint, as appropriate under the circumstances				
Interview with Complainant				
Interview with Witness				
Interview with Respondent				
Police Report (if Applicable)				
Other physical Evidence				
Extensions of Time	Within 55 days of Complaint if investigation will go beyond 60 days.			
Report and Recommendations to Administrators	Within 60 days of complaint			
Concluding Letters with result to Complaint(s) and Respondent(s)				

Pushmataha Hall | 155 Indian Avenue | Lawrence, KS 66046 | (785) 749-8415



HASKELL INDIAN NATIONS UNIVERSITY
Title IX Coordinators Office
Discrimination Complaint Resolution Process
Explanation of Complainant Rights and Responsibilities

This form documents the information shared with the Complainant regarding an investigation by the Title IX Coordinators Office, into a claim of discrimination, harassment, and/or retaliation.

- | | |
|-------|---|
| Date: | Topic Discussed: |
| _____ | Discrimination Complaint Resolution Process (Copy Provided) |
| _____ | Applicable University policies |
| _____ | Timeframe for Investigation |
| _____ | Correspondence regarding investigation |
| _____ | Opportunity to provide information verbally and/or in writing |
| _____ | Opportunity to submit supporting documentation, identify witnesses, and/or provide witness statements |
| _____ | Policy prohibiting retaliation |
| _____ | Opportunity to bring a representative to meetings |
| _____ | Abuse of Discrimination Complaint Resolution Process |
| _____ | Confidentiality |
| _____ | Anonymity (limitation on investigation) – if applicable |
| _____ | Right to file a criminal complaint – if applicable |
| _____ | Campus and community resources – if applicable |

I acknowledge that the information identified above was communicated to me by the Title IX Coordinators Office and that I have had the opportunity to ask questions about the Discrimination Complaint Resolution Process and the information provided to me. I also acknowledge that I have received a copy of the Discrimination Complaint Resolution Process.

Name of Complainant: _____

Signature of Complainant: _____ Date: _____

This information was communicated and the signature witnessed by the undersigned Title IX representative:



HASKELL INDIAN NATIONS UNIVERSITY
Title IX Coordinators Office
Discrimination Complaint Resolution Process
Explanation of Respondent Rights and Responsibilities

This form documents the information shared with the Respondent regarding the Respondent's rights and responsibilities in an investigation by the Title IX Coordinators Office, into a claim of discrimination, harassment, and/or retaliation.

- | | |
|-------|---|
| Date: | Topic Discussed: |
| _____ | Discrimination Complaint Resolution Process (Copy Provided) |
| _____ | Applicable University policies |
| _____ | Timeframe for Investigation |
| _____ | Correspondence regarding investigation |
| _____ | Opportunity to provide information verbally and/or in writing |
| _____ | Opportunity to submit supporting documentation, identify witnesses, and/or provide witness statements |
| _____ | Policy prohibiting retaliation |
| _____ | Opportunity to bring a representative to meetings |
| _____ | Confidentiality |
| _____ | Campus and community resources – if applicable |

I acknowledge that the information identified above was communicated to me by the Title IX Coordinators Office and that I have had the opportunity to ask questions about the Discrimination Complaint Resolution Process and the information provided to me. I also acknowledge that I have received a copy of the Discrimination Complaint Resolution Process.

Name of Respondent: _____


Signature of Respondent: _____ Date: _____


This information was communicated and the signature witnessed by the undersigned Title IX representative:

Appendix E: United States Department of Education Federal Student Aid School Eligibility and Oversight Service Group Program Participation Agreement (PPA)

Haskell has the entire agreement on file. This appendix contains the section applicable to Title IX (pages 1-3).

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FEDERAL STUDENT AID  "START HERE. GO FURTHER."

UNITED STATES DEPARTMENT OF EDUCATION

FEDERAL STUDENT AID

SCHOOL ELIGIBILITY AND OVERSIGHT SERVICE GROUP

PROGRAM PARTICIPATION AGREEMENT

Effective Date of Approval: The date on which this Agreement is signed on behalf of the Secretary of Education

Approval Expiration Date: **June 30, 2028**

Reapplication Date: **March 31, 2028**

Name of Institution: **Haskell Indian Nations University**

Address of Institution: **155 Indian Avenue
Lawrence, KS 66046-4800**

RECEIVED
AUG 23 2022
FSA, KANSAS CITY

OPE ID Number: **01043800**

Taxpayer Identification Number (TIN): **030489646**

The execution of this Agreement by the Institution and the Secretary is a prerequisite to the Institution's initial or continued participation in any Title IV, HEA Program.

The postsecondary educational institution listed above, referred to hereafter as the "Institution," and the United States Secretary of Education, referred to hereafter as the "Secretary," agree that the Institution may participate in those student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA Programs) indicated under this Agreement and further agrees that such participation is subject to the Institution's compliance with the terms and conditions set forth in this Agreement. As used in this Agreement, the term "Department" refers to the U.S. Department of Education.

SCOPE OF COVERAGE

This Agreement applies to all locations of the Institution as stated on the most current ELIGIBILITY AND CERTIFICATION APPROVAL REPORT issued by the Department. This Agreement covers the Institution's eligibility to participate in each of the following listed Title IV, HEA programs, and incorporates by reference the regulations cited.

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- **FEDERAL PELL GRANT PROGRAM**, 20 U.S.C. §§ 1070a *et seq.*; 34 C.F.R. Part 690.
- **FEDERAL FAMILY EDUCATION LOAN PROGRAM**, 20 U.S.C. §§ 1071 *et seq.*; 34 C.F.R. Part 682.
- **FEDERAL PERKINS LOAN PROGRAM**, 20 U.S.C. §§ 1087aa *et seq.*; 34 C.F.R. Part 674.
- **FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM**, 20 U.S.C. §§ 1070b *et seq.*; 34 C.F.R. Part 676.
- **FEDERAL WORK-STUDY PROGRAM**, 20 U.S.C. §§ 1087 *et seq.*; 34 C.F.R. Part 675.
- **IRAQ AND AFGHANISTAN SERVICE GRANT**, 20 U.S.C. §§ 1070h *et seq.*

GENERAL TERMS AND CONDITIONS

1. The Institution understands and agrees that it is subject to and will comply with, as they become effective, the program statutes and implementing regulations for institutional eligibility as set forth in 34 C.F.R. Part 600 and for each Title IV, HEA program in which it participates, as well as the general provisions set forth in Part F and Part G of Title IV of the HEA, and the Student Assistance General Provisions regulations set forth in 34 C.F.R. Part 668.
The recitation of any portion of the statute or regulations in this Agreement does not limit the Institution's obligation to comply with other applicable statutes and regulations.
2.
 - a. The Institution certifies that on the date it signs this Agreement, it has adopted and implemented the drug prevention program described in 34 C.F.R. § 86.100.
 - b. The Institution certifies that on the date it signs this Agreement, it is in compliance with the disclosure requirements of Section 485(f) of the HEA (Campus Security Policy and Campus Crime Statistics).
3. The Institution agrees to comply with --
 - a. Title VI of the Civil Rights Act of 1964, as amended, and the implementing regulations, 34 C.F.R. Parts 100 and 101 (nondiscrimination on the basis of race, color or national origin);
 - b. Title IX of the Education Amendments of 1972 and the implementing regulations, 34 C.F.R. Part 106 (nondiscrimination on the basis of sex);
 - c. The Family Educational Rights and Privacy Act of 1974 and the implementing regulations, 34 C.F.R. Part 99;
 - d. Section 504 of the Rehabilitation Act of 1973 and the implementing regulations, 34 C.F.R. Part 104 (nondiscrimination on the basis of disability); and
 - e. The Age Discrimination Act of 1975 and the implementing regulations, 34 C.F.R. Part 110.
 - f. The Standards for Safeguarding Customer Information, 16 C.F.R. Part 314, issued by the Federal Trade Commission (FTC), as required by the Gramm-Leach-Bliley (GLB) Act, P.L. 106-102. These Standards are intended to ensure the security and confidentiality of customer records and information. The Secretary considers any breach to the security of student records and information as a demonstration of a potential lack of administrative capability as stated in 34 C.F.R. § 668.16(c). Institutions are strongly encouraged to inform its students of any such breaches. Institutions are required, pursuant to the Student Aid Internet Gateway (SAIG) Agreement, to notify the Department of any suspected data breaches.
4. The Institution acknowledges that 34 C.F.R. Parts 602 and 668 require accrediting agencies, State regulatory bodies, and the Secretary to share information about institutions. The Institution agrees

https://eligcert.ed.gov/eappl/owa/ppa_doc?ope=0104388&id=61935

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PPA. OPE ID: 01043800. PPA Expiration Date: 06/30/2028

- that the Secretary, any accrediting agency recognized by the Secretary, and any State regulatory body may share or report information to one another about the Institution without limitation.
5. The Institution acknowledges that the HEA prohibits the Secretary from recognizing the accreditation of any institution of higher education unless that institution agrees to submit any dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation to arbitration prior to initiating any other legal action.
 6. The Institution acknowledges that the Department is obligated to take appropriate measures in order to safeguard its systems and information as well as borrowers' personally identifiable information (PII) as required under Federal law, including but not limited to the requirements in the Privacy Act (*see* 5 U.S.C. § 552a(e)), E-Government Act of 2002 (*see* 44 U.S.C. § 3544), the Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S.C. § 1232g; 34 C.F.R. Part 99), Federal Information Security Modernization Act (FISMA) of 2014 (44 U.S.C. § 3551, *et seq.*), and OMB Circular No. A-130. If the Institution has a cyber security incident that may negatively affect the Department's systems, the Department may terminate the Institution's access to the Department's systems. Access will be reconnected when the Department determines that the Institution has resolved any cyber security concerns and vulnerabilities to the Department's satisfaction.
 7. The Institution acknowledges that any person who knowingly and willfully commits, or attempts to commit, any criminal action described in 20 U.S.C. § 1097, shall be subject to the penalties described therein.

**SELECTED PROVISIONS FROM
GENERAL PROVISIONS REGULATIONS, 34 C.F.R. § 668.14**

An institution's program participation agreement applies to each branch campus and other location of the institution that meets the applicable requirements of this part unless otherwise specified by the Secretary.

(b) By entering into a program participation agreement, an institution agrees that--

(1) It will comply with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA, including the requirement that the institution will use funds it receives under any Title IV, HEA program and any interest or other earnings thereon, solely for the purposes specified in and in accordance with that program;

(2) As a fiduciary responsible for administering Federal funds, if the institution is permitted to request funds under a Title IV, HEA program advance payment method, the institution will time its requests for funds under the program to meet the institution's immediate Title IV, HEA program needs;

(3) It will not request from or charge any student a fee for processing or handling any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance;

(4) It will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under the Title IV, HEA programs, together with assurances that the institution will provide, upon request and in a timely manner, information relating to the administrative capability and financial responsibility of the institution to--

(i) The Secretary;

(ii) A guaranty agency, as defined in 34 C.F.R. Part 682, that guarantees loans made under the

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Appendix F: Executive Order 13160



Presidential Documents

Executive Order 13160 of June 23, 2000

Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 921–932 of title 20, United States Code; section 2164 of title 10, United States Code; section 2001 *et seq.*, of title 25, United States Code; section 7301 of title 5, United States Code; and section 301 of title 3, United States Code, and to achieve equal opportunity in Federally conducted education and training programs and activities, it is hereby ordered as follows:

Section 1. *Statement of policy on education programs and activities conducted by executive departments and agencies.*

1–101. The Federal Government must hold itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the education programs and activities of State and local governments, and to private institutions receiving Federal financial assistance. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs and activities—including discrimination against people with disabilities, prohibited by the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*, as amended, employment discrimination on the basis of race, color, national origin, sex, or religion, prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-17, as amended, discrimination on the basis of race, color, national origin, or religion in educational programs receiving Federal assistance, under Title VI of the Civil Rights Acts of 1964, 42 U.S.C. 2000d, and sex-based discrimination in education programs receiving Federal assistance under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* Through this Executive Order, discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent will be prohibited in Federally conducted education and training programs and activities.

1–102. No individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a Federally conducted education or training program or activity.

Sec. 2. *Definitions.*

2–201. “Federally conducted education and training programs and activities” includes programs and activities conducted, operated, or undertaken by an executive department or agency.

2–202. “Education and training programs and activities” include, but are not limited to, formal schools, extracurricular activities, academic programs, occupational training, scholarships and fellowships, student internships, training for industry members, summer enrichment camps, and teacher training programs.

2–203. The Attorney General is authorized to make a final determination as to whether a program falls within the scope of education and training

programs and activities covered by this order, under subsection 2–202, or is excluded from coverage, under section 3.

2–204. “Military education or training programs” are those education and training programs conducted by the Department of Defense or, where the Coast Guard is concerned, the Department of Transportation, for the primary purpose of educating or training members of the armed forces or meeting a statutory requirement to educate or train Federal, State, or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18.

2–205. “Armed Forces” means the Armed Forces of the United States.

2–206. “Status as a parent” refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

- (a) a biological parent;
- (b) an adoptive parent;
- (c) a foster parent;
- (d) a stepparent;
- (e) a custodian of a legal ward;
- (f) in loco parentis over such an individual; or
- (g) actively seeking legal custody or adoption of such an individual.

Sec. 3. Exemption from coverage.

3–301. This order does not apply to members of the armed forces, military education or training programs, or authorized intelligence activities. Members of the armed forces, including students at military academies, will continue to be covered by regulations that currently bar specified forms of discrimination that are now enforced by the Department of Defense and the individual service branches. The Department of Defense shall develop procedures to protect the rights of and to provide redress to civilians not otherwise protected by existing Federal law from discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent and who participate in military education or training programs or activities conducted by the Department of Defense.

3–302. This order does not apply to, affect, interfere with, or modify the operation of any otherwise lawful affirmative action plan or program.

3–303. An individual shall not be deemed subjected to discrimination by reason of his or her exclusion from the benefits of a program established consistent with federal law or limited by Federal law to individuals of a particular race, sex, color, disability, national origin, age, religion, sexual orientation, or status as a parent different from his or her own.

3–304. This order does not apply to ceremonial or similar education or training programs or activities of schools conducted by the Department of the Interior, Bureau of Indian Affairs, that are culturally relevant to the children represented in the school. “Culturally relevant” refers to any class, program, or activity that is fundamental to a tribe’s culture, customs, traditions, heritage, or religion.

3–305. This order does not apply to (a) selections based on national origin of foreign nationals to participate in covered education or training programs, if such programs primarily concern national security or foreign policy matters; or (b) selections or other decisions regarding participation in covered education or training programs made by entities outside the executive branch. It shall be the policy of the executive branch that education or training programs or activities shall not be available to entities that select persons for participation in violation of Federal or State law.

3–306. The prohibition on discrimination on the basis of age provided in this order does not apply to age-based admissions of participants to education or training programs, if such programs have traditionally been age-specific or must be age-limited for reasons related to health or national security.

Sec. 4. Administrative enforcement.

4-401. Any person who believes himself or herself to be aggrieved by a violation of this order or its implementing regulations, rules, policies, or guidance may, personally or through a representative, file a written complaint with the agency that such person believes is in violation of this order or its implementing regulations, rules, policies, or guidance. Pursuant to procedures to be established by the Attorney General, each executive department or agency shall conduct an investigation of any complaint by one of its employees alleging a violation of this Executive Order.

4-402. (a) If the office within an executive department or agency that is designated to investigate complaints for violations of this order or its implementing rules, regulations, policies, or guidance concludes that an employee has not complied with this order or any of its implementing rules, regulations, policies, or guidance, such office shall complete a report and refer a copy of the report and any relevant findings or supporting evidence to an appropriate agency official. The appropriate agency official shall review such material and determine what, if any, disciplinary action is appropriate.

(b) In addition, the designated investigating office may provide appropriate agency officials with a recommendation for any corrective and/or remedial action. The appropriate officials shall consider such recommendation and implement corrective and/or remedial action by the agency, when appropriate. Nothing in this order authorizes monetary relief to the complainant as a form of remedial or corrective action by an executive department or agency.

4-403. Any action to discipline an employee who violates this order or its implementing rules, regulations, policies, or guidance, including removal from employment, where appropriate, shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act of 1978, Public Law No. 95-454, 92 Stat. 1111.

Sec. 5. Implementation and Agency Responsibilities.

5-501. The Attorney General shall publish in the **Federal Register** such rules, regulations, policies, or guidance, as the Attorney General deems appropriate, to be followed by all executive departments and agencies. The Attorney General shall address:

- a. which programs and activities fall within the scope of education and training programs and activities covered by this order, under subsection 2-202, or excluded from coverage, under section 3 of this order;
- b. examples of discriminatory conduct;
- c. applicable legal principles;
- d. enforcement procedures with respect to complaints against employees;
- e. remedies;
- f. requirements for agency annual and tri-annual reports as set forth in section 6 of this order; and
- g. such other matters as deemed appropriate.

5-502. Within 90 days of the publication of final rules, regulations, policies, or guidance by the Attorney General, each executive department and agency shall establish a procedure to receive and address complaints regarding its Federally conducted education and training programs and activities. Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or guidance issued by the Attorney General within 90 days of issuance.

5-503. The head of each executive department and agency shall be responsible for ensuring compliance within this order.

5-504. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.

5-505. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.

Sec. 6. Reporting Requirements.

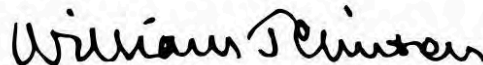
6-601. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number and nature of complaints filed with the agency and the disposition of such complaints. For the first 3 years after the date of this order, such reports shall be submitted annually within 90 days of the end of the preceding year's activities. Subsequent reports shall be submitted every 3 years and within 90 days of the end of each 3-year period.

Sec. 7. General Provisions.

7-701. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order 12250.

Sec. 8. Judicial Review.

8-801. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, *et seq.*



THE WHITE HOUSE,
June 23, 2000.

Appendix G: Executive Order 13160 Guidance Document: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs



5398

Federal Register / Vol. 66, No. 12 / Thursday, January 18, 2001 / Notices

DEPARTMENT OF JUSTICE

Executive Order 13160 Guidance Document: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs

AGENCY: Department of Justice.

ACTION: Notice: Guidance document.

SUMMARY: This Guidance Document entitled "Executive Order 13160 Guidance Document" is being issued pursuant to Executive Order 13160, which was issued on June 23, 2000. Executive Order 13160 prohibits discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent in federally conducted education and training programs. The Executive Order was issued in order to achieve equal opportunity in all federally conducted education and training programs and is premised upon the notion that the federal government should hold itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the educational programs and activities of recipients of federal financial assistance. Toward that end, the Executive Order is intended to supplement existing laws and regulations that already prohibit many forms of discrimination in both federally conducted and federally assisted educational programs. The purpose of this Guidance Document is to assist all federal agencies in complying with the nondiscrimination mandates of Executive Order 13160 by providing a basic framework for implementation of the Executive Order. Among the topics addressed in this Guidance Document are the scope of covered educational programs, applicable legal principles, examples of discriminatory conduct, enforcement procedures, remedies, and agency reporting requirements. The text of the Guidance Document appears at the end of this Notice.

DATES: Effective January 18, 2001.

ADDRESSES: Coordination and Review Section, Civil Rights Division, P.O. Box 66560, Washington, D.C., 20035-6560.

FOR FURTHER INFORMATION CONTACT: Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, (202) 307-2222.

Dated: January 11, 2001.

Janet Reno,
Attorney General, Department of Justice.

Executive Order 13160 Guidance Document

I. Introduction

On June 23, 2000, the President of the United States issued Executive Order 13160 in order to achieve equal opportunity in all federally conducted education and training programs. More specifically, Executive Order 13160 was designed to ensure nondiscrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent in federally conducted education and training programs and activities.

Executive Order 13160 is premised upon the notion that the federal government should hold itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the educational programs and activities of recipients of federal financial assistance. Toward that end, the Executive Order is intended to supplement existing laws and regulations that already prohibit many forms of discrimination in both federally conducted and federally assisted educational programs. Among the most significant of these nondiscrimination laws are the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*, as amended; the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621, *et seq.*; Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. 2000d, as amended; 42 U.S.C. 2000e-17, as amended; and Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*

In order to achieve equal opportunity in all federally conducted education programs, Section 1-102 of Executive Order 13160 provides that:

No individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a federally conducted education or training program or activity.

All federal agencies that conduct education and training programs must therefore commit themselves to providing educational environments that are entirely free from discrimination based on race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent.

Pursuant to section 5-501 of Executive Order 13160, this Guidance Document has been developed to assist all federal agencies in complying with

the nondiscrimination mandates of the Executive Order. Among the topics addressed herein are the scope of covered educational programs, applicable legal principles, examples of discriminatory conduct, enforcement procedures, remedies, and agency reporting requirements.

This Guidance Document is intended only to provide a basic framework for implementation of Executive Order 13160. This Guidance Document is not intended to be a comprehensive guide for compliance. Rather, this Guidance Document is designed only to provide a starting point for agency implementation, and this Document's failure to address a particular issue should in no way be interpreted to mean that such an issue falls outside the scope of the nondiscrimination protections established by the Executive Order or this Guidance.

In order to supplement the basic principles established in this Guidance Document, it is anticipated that, from time to time, the Department of Justice will publish additional policies or guidance documents to assist with the enforcement of this Executive Order. In addition, section 5-505 of the Executive Order provides that, "[u]pon request and to the extent practicable, the Attorney General shall provide advice and assistance to executive departments and agencies to assist in full compliance with this order." Responsibility for providing such advice and technical assistance is delegated to the Assistant Attorney General for Civil Rights, who shall conduct, handle, or supervise the performance of these functions.

II. Covered Education Programs and Activities

Executive Order 13160 applies to all federally conducted education and training programs and activities. Pursuant to section 2-201, "federally conducted education and training programs" include those that are "conducted, operated, or undertaken by" an executive department or agency.

Section 2-202 of the Executive Order provides that federally conducted "education and training programs and activities" may include, but are not limited to, the following:

- (1) formal schools,
- (2) extracurricular activities,
- (3) academic programs,
- (4) occupational training,
- (5) scholarships and fellowships,
- (6) student internships,
- (7) training for industry members,
- (8) summer enrichment camps, and
- (9) teacher training programs.

As this definition makes clear, education programs covered by

Executive Order 13160 may include both long-term, formal academic institutions (such as Department of Defense Dependents Schools, Department of Defense Domestic Dependent Elementary and Secondary Schools, and elementary or secondary schools operated by the Department of Interior, Bureau of Indian Affairs), as well as short-term job training programs (such as computer training courses for federal employees).

Some examples¹ of the types of education and training programs and activities that might be covered by Executive Order 13160 are discussed below:

Ex. 1. The Office of Government Ethics runs an agency ethics training course for federal employees from other agencies.

Ex. 2. The Federal Deposit Insurance Corporation operates a small computer school which teaches state examiners to analyze the weaknesses in the supervision of a small bank data processing operation.

Ex. 3. The Department of Veteran Affairs (VA) runs the VA Home Loan Training Program, which offers information and training to numerous private sector enterprises that cooperate in providing VA home loan benefits.

Ex. 4. The Nuclear Regulatory Commission provides radiation control training for state and local government personnel under the State Agreements Program.

Ex. 5. The Federal Bureau of Investigation (FBI) runs the FBI National Academy, an 11-week multi-disciplinary program in Quantico, Virginia, for federal, state, local, and foreign officers who are considered to have potential for further advancement in their careers.

Ex. 6. The Department of Housing and Urban Development operates the Community First Leadership Program, which provides in-depth training for representatives from state and local governments and non-profit organizations involved in housing and community development programs.

Ex. 7. The Maritime Administration conducts a Firefighting Training Program for private, licensed and unlicensed U.S. seafarers, who pay a fee for instruction in fire-fighting safety.

Ex. 8. The United States Department of Agriculture (USDA) operates the Graduate School, USDA, which provides career-related continuing education courses primarily designed to meet the educational needs of government employees.

Ex. 9. The Bureau of Alcohol, Tobacco, and Firearms operates the Anacostia Neighborhood Prevention Initiative, which provides crime prevention training to the public.

Ex. 10. The Peace Corps offers a World Wise Schools program to students interested

in broadening their geographic and cultural horizons.

Ex. 11. The National Aeronautics and Space Administration conducts a tour of its facilities to educate the public about the Space Shuttle Program.

Ex. 12. The Department of Justice conducts computer training courses to regularly update its employees on new software.

Ex. 13. The Federal Bureau of Prisons conducts an inmate boot camp to prepare inmates for reintegration into society.

Ex. 14. The U.S. Department of Agriculture conducts an annual Summer Intern Program for roughly 150 college students, who are hired to work with professional staff on projects related to the students' majors and career plans.

Ex. 15. The General Counsel's Office at the Federal Emergency Management Agency hires law students to work as unpaid student interns during the school year.

III. Exemptions From Coverage

Although Executive Order 13160 is intended to provide broad-based coverage for federally conducted education and training programs, section 3 of the Executive Order does provide some exemptions from coverage. As discussed below, there are several circumstances under which the nondiscrimination prohibitions of the Executive Order do not apply to certain federally conducted education and training programs.

Military Programs

Section 3-301 explicitly states that the Executive Order does not apply to "members of the armed forces, military education or training programs, or authorized intelligence activities." Military education or training programs are defined as education programs conducted by the Department of Defense (or, where the Coast Guard is concerned, by the Department of Transportation) for the "primary purpose" of training members of the armed forces or meeting a statutory requirement to educate or train federal, state, or local civilian law enforcement officials pursuant to 10 U.S.C. chapter 18. This includes military academies, military programs that provide drug traffic prevention training to non-military law enforcement agencies, Department of Defense foreign language training and survival schools for non-military law enforcement agencies, and military training to non-military law enforcement agencies in the operation and maintenance of equipment used in the detection, monitoring, aerial reconnaissance, and communication intercepts of illegal drug trafficking.

Members of the armed forces, including students at military academies, are, however, protected from certain forms of discrimination pursuant

to regulations currently enforced by the Department of Defense and individual service branches. See, e.g., 32 CFR part 51, "Department of Defense Military Equal Opportunity Program," and 32 CFR part 56, "Nondiscrimination on the basis of Handicap in Programs and Activities Assisted or Conducted by Department of Defense." In addition, section 3-301 of Executive Order 13160 specifically provides that the Department of Defense shall develop procedures to protect the rights of, and to provide redress to, civilians involved in Department of Defense federally conducted military education and training programs if such civilians are not otherwise protected by existing federal law from discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent.

Finally, it is important to emphasize that this exemption does not apply to the Department of Defense Dependent Schools and Department of Defense Domestic Dependent Elementary and Secondary Schools. These schools must comply with the Executive Order and with all applicable legal principles set forth in this Guidance Document.

Affirmative Action

Any otherwise lawful affirmative action plan or program is exempt from coverage under the Executive Order. Pursuant to section 3-302, the Executive Order "does not apply to, affect, interfere with, or modify the operation of any otherwise lawful affirmative action plan or program."

Programs Established Consistent With Federal Law

Section 3-303 of the Executive Order provides that an individual shall not be deemed subject to discrimination by virtue of his or her "exclusion from the benefits of a program established consistent with federal law or limited by federal law to individuals of a particular race, sex, color, disability, national origin, age, religion, sexual orientation, or status as a parent different from his or her own." For example, pursuant to 25 CFR §§ 31.1 and 31.3, education or training programs or activities conducted by the Department of Interior's Bureau of Indian Affairs are, subject to a few exceptions, limited to Native American students "of one-fourth or more degree of Indian blood."

Bureau of Indian Affairs Programs

Section 3-304 of the Executive Order exempts from coverage any ceremonial or similar education or training program or activity of a school conducted by the Department of Interior's Bureau of

¹ These examples were drawn from data provided by various federal agencies during the development of Executive Order 13160. The programs enumerated above, however, are not necessarily still in existence and, in some cases, are merely hypothetical examples.

Indian Affairs, provided such program is "culturally relevant" to the children represented in the school. The Executive Order defines "culturally relevant" as any class, program, or activity that is "fundamental" to a tribe's "culture, customs, traditions, heritage, or religion." For example, certain educational classes involving traditional Native American dance instruction may be "culturally relevant" to the children represented in the school and therefore exempt from coverage under the Executive Order. In making determinations as to whether classes, programs, or activities are "culturally relevant," substantial deference shall be given to the views of the relevant tribes.

Selections of Foreign Nationals and Selections Made Outside the Executive Branch

Section 3-305 provides an exemption for selections of foreign nationals based on national origin if the selections pertain to participation in covered education programs or activities that "primarily concern national security or foreign policy matters." Thus, for example, the Executive Order would not cover the selection of participants, on the basis of national origin, for the Department of State's Antiterrorism Assistance training programs if the primary mission of these programs is to train foreign nationals in deterring and managing terrorist threats.

Section 3-305 further provides an exemption for "selections or other decisions made by entities outside the executive branch." For example, if a local school district selects students to participate in a federally conducted education program, the selection decisions of the local school district would not be subject to Executive Order 13160 as they represent selection decisions made by an entity outside the executive branch.² However, the students selected for participation in the federally conducted education program would be protected from discrimination under Executive Order 13160 during the duration of their participation in the federally education conducted program.

In addition, section 3-305 provides that it "shall be the policy of the executive branch that education or training programs or activities shall not be available to entities that select persons for participation in violation of Federal or State law." Thus, if a company responsible for selecting employees to participate in a federally

² Such selection decisions might, however, be covered by other civil rights statutes, including Title VI of the Civil Rights Act of 1964, as amended, and Title IX of the Education Amendments of 1972, as amended.

conducted education program were to refuse to consider selecting members of a particular race in violation of Title VII of the Civil Rights Act of 1964, as amended, executive departments should, as a matter of policy, refrain from making their educational programs available to such a company.

Age-Based Admissions

Section 3-306 provides an exemption for age-based admissions to federally conducted education and training programs if such programs have "traditionally been age-specific" or "must be age-limited for reasons related to health or national security." See Section XI of this Guidance Document for further information regarding these age-related exemptions.

Final Determinations Regarding Coverage and Exemptions

As a general matter, Executive Order 13160 will apply to all federally conducted education and training programs or activities not subject to a specific exemption set forth in Section 3 of the Executive Order. Executive departments or agencies and individuals with questions regarding whether a particular program or activity is subject to Executive Order 13160 should contact the Department of Justice's Civil Rights Division.

Pursuant to section 2-203 of the Executive Order, the Attorney General is authorized to make final determinations as to whether a given program falls within the scope of covered education and training programs under section 2-202 or is excluded from coverage under section 3. See Section XIV(C), "Administrative Enforcement," for further information pertaining to applicable procedures for requesting a final determination from the Attorney General regarding coverage of a particular program.

IV. Applicable Legal Principles

Executive Order 13160 requires executive departments and agencies to ensure nondiscrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent in all federally conducted education and training programs. In order to comply with the antidiscrimination mandates of this Executive Order, agencies must ensure that individuals involved in federally conducted education and training programs and activities are not subjected to discrimination on the basis of any one of these protected characteristics. The most common forms of discrimination prohibited by the Executive Order are discussed below.

Disparate Treatment

Under Executive Order 13160, all individuals involved in federally conducted education or training programs or activities must be treated equally and not be subjected to discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent. In order to comply with the Executive Order, all federal agencies that provide education or training programs or activities must ensure that individuals are not subjected to unjustified disparate treatment based on a protected status.³ Examples of disparate treatment may include, but are not limited to:

- Selecting or failing to select an individual because of his or her protected status.
- Denying an individual any aid, benefit, or service offered in connection with a federally conducted education program because of his or her protected status.
- Failing to provide or allocate aid, benefits, or services as a result of an individual's protected status.
- Promoting or failing to promote an individual because of his or her protected status.
- Giving a positive or negative performance evaluation to an individual because of his or her protected status.
- Segregating an individual because of his or her protected status.
- Assigning an individual to a particular education or training program or activity, or a particular project, because of his or her protected status.
- Treating an individual less favorably with respect to the terms, conditions, or privileges of an education or training program or activity because of his or her protected status.

In addition to prohibiting individual instances of unjustified disparate treatment, the Executive Order also prohibits federal agencies from engaging in a "pattern or practice" of unlawful discrimination. Moreover, federal agencies may not rely on policies or practices that explicitly classify individuals on the basis of a protected characteristic absent a lawful justification for the use of such a classification.

It is important to note, however, that, under certain circumstances, compliance with the Executive Order may permit federal agencies to treat

³ Throughout the remainder of this document, the term "protected status" may be used to refer generally to the nine protected characteristics which are the subject of this Executive Order: race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent.

individuals differently on the basis of a protected characteristic. For example, under certain limited circumstances, agencies may legitimately treat individuals differently on the basis of sex if sex is a bona fide occupational qualification (BFOQ). Similarly, remedial situations may justify differential treatment. Moreover, in educational environments, narrowly-tailored measures designed to promote the educational benefits of diversity may lawfully treat individuals differently on the basis of a protected characteristic.

In some cases, the Executive Order may even require federal agencies to treat individuals differently in order to avoid discriminating against an individual on the basis of a protected characteristic. For example, the prohibition on religious discrimination may require an agency to provide an individual with a reasonable accommodation for religious practices as discussed in section X of this Guidance Document. Similarly, under many circumstances, federal agencies have an obligation to provide reasonable accommodations for individuals with disabilities. See Section IX of this Guidance Document. As such, the examples of disparate treatment enumerated above are designed merely to illustrate the types of conduct generally prohibited by this Executive Order and agencies must, of course, evaluate individual claims of disparate treatment on a case-by-case basis.

Hostile Environment

Pursuant to Executive Order 13160, a federal agency that provides education or training programs or activities must maintain a learning environment that is free of discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent.

- Federal agencies must ensure that the learning environment is free of harassment that is so severe, persistent, or pervasive that it alters the conditions of the federally conducted education or training program or activity for a participant on the basis of a protected status. Federal agencies should ensure that no individual is subject to a hostile environment that effectively denies or limits equal access to (e.g., negatively affects an individual's participation or performance in) educational or training opportunities and benefits based on his or her protected status.

- Federal agencies should be aware that the sort of harassment that can create a hostile environment, when it is sufficiently severe, persistent, or pervasive, may take many forms

including: slurs, epithets, jokes, cartoons, unwelcome advances, and other verbal or physical derogatory conduct that targets individuals on the basis of a protected status. Federal agencies should further be aware that hostile environments may be created by supervisors, instructors, administrators, other officials, or peers.

Disparate Impact

As a general matter, federally conducted education and training programs and activities may not utilize policies, procedures, criteria, or other methods of administration which, although facially neutral, have a disproportionate and adverse effect on certain individuals on the basis of a protected characteristic, unless:

- (1) There is an educational or business necessity for the policy, procedure, criteria, or method of administration; and
- (2) There are no equally effective alternative practices that would result in less adverse impact.

Retaliation

Federal agencies that operate education and training programs may not retaliate against any individual because he or she has raised concerns, reported claims, or filed complaints alleging discrimination. Federal agencies are similarly prohibited from retaliating against any individual who has testified, assisted, or participated in any manner in an investigation or other proceeding raising claims of discrimination.

Prohibited retaliation may take many forms including, but not limited to, intimidation, threats, coercion, harassment, discrimination, and adverse actions (e.g., poor grades or performance evaluations) motivated by retaliatory purpose. Federal agencies must ensure that no individual is subject to any form of retaliation regardless of the merits (or lack thereof) of any underlying claim.

Specific Principles and Examples

The following sections address more specific applicable legal principles and examples of discriminatory conduct related to each of the nine protected bases covered by the Executive Order. It is important to note, however, that each of the following sections is intended merely to highlight certain specific forms of prohibited discrimination. The failure to include a particular legal principle (or a particular example of prohibited conduct) in one section of this Guidance Document should in no way be interpreted to mean that the legal principle (or prohibited conduct) is not covered with respect to another

protected basis. Rather, all sections of this Guidance Document should be read in conjunction with each other to provide a fuller picture of the breadth and application of the Executive Order's antidiscrimination prohibitions.⁴

V. Discrimination on the Basis of Race

Federal agencies must ensure that no individual is discriminated against on the basis of his or her race in any federally conducted education or training program or activity.

- Federal agencies must ensure that all individuals are treated equally without regard to race in any federally conducted education or training program or activity.

- Federal agencies may not utilize policies, procedures, or methods of administration which, although facially neutral, have a disproportionate and adverse effect on participants or applicants on the basis of their race, unless there is an educational or business necessity for the use of such policies and there are no equally effective alternative practices that would result in less of a disproportionate impact.

- Federal agencies may not base any decisions regarding individuals in federally conducted education or training programs on race-based stereotypes or assumptions regarding interests, competency levels, or expectations of success.

- Federal agencies must take steps to ensure that no federally conducted education or training program takes place in an environment that is intimidating, abusive, offensive, or hostile on the basis of race.

Examples⁵ of Prohibited Conduct:

- A federal law enforcement agency conducts an anti-terrorist training program in which it groups participants in various teams. Although the instructor generally makes random assignments for this exercise, he states that he has decided to assign all of the African-American participants to a single team because he believes that African-Americans work most effectively with members of their own race. The instructor's conduct violates the Executive Order.

- The Department of Justice offers an advanced prosecutorial course for its

⁴ Of course, it is also true that not every principle will be applicable to every protected basis. For example, only certain protected characteristics trigger a reasonable accommodation requirement. Individuals or agencies with specific questions regarding the Executive Order's antidiscrimination provisions should contact the Department of Justice's civil Rights Division.

⁵ All of the examples of discriminatory conduct set forth in this Guidance Document are hypothetical and are not intended to suggest that any federal agency actually engages in such discriminatory practices or necessarily even operates such an educational program.

attorneys at the Department's National Advocacy Center in Columbia, South Carolina. Due to the high demand for this course, the limited number of openings available, and the difficulty the Department has had in determining which candidates should be selected, the Department decides to require candidates to take an aptitude test and to select candidates in descending rank order of their test scores. However, the test results in disparate impact upon members of a particular race. Further, the Department lacks evidence that the test is valid; namely, that it predicts success in the course or even that it is necessary to pass the test in order to satisfactorily complete the course. Accordingly, the Department's use of this test violates the Executive Order.

VI. Discrimination on the Basis of Sex

Federal agencies must ensure that no individual is discriminated against on the basis of sex in any federally conducted education or training program or activity.

- No executive agency may admit, refuse to admit, promote, refuse to promote, or otherwise favor or disfavor, a participant or prospective participant in a federally conducted education program on the basis of sex.
- An agency may not impose, explicitly or implicitly, stricter admission or completion requirements for one sex as compared to the other.
- Federal agencies operating education or training programs may not utilize policies, procedures, or methods of administration which, although facially neutral, have a disproportionate and adverse effect on participants or applicants on the basis of sex unless there is an educational or business necessity for the use of such policies and there are no equally effective alternative practices that would result in less of an impact on the basis of sex.
- Federal agencies should ensure that no individual is subjected to gender-based harassment, which may include harassment based on sex or sex-stereotyping, in any federally conducted education or training program. Gender-based harassment may be based upon stereotypical notions regarding how persons of each gender should act or look.
- Discrimination on the basis of sex includes discrimination on the basis of pregnancy. Federal agencies must ensure that no woman is discriminated against on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, in any education or training program or activity.

Examples of prohibited conduct:

- The Director of Athletics at a Department of Defense School for dependent children of military personnel decides to allocate all of his annual athletics budget to male sports because he does not believe that female students need or want the same quality and variety of athletic services as males. Despite repeated requests from female students for a variety of programs and services, the Director refuses to consider the provision of any funding for co-ed or female sports. The Director's conduct would violate the Executive Order.⁶
- The Federal Bureau of Investigation conducts a firearms training program for state and local officials. The admissions director refuses to admit women because he believes that only men should be permitted to train for dangerous jobs. The director's refusal to consider women for participation in the program would violate the Executive Order.
- The Department of Health and Human Services conducts a nurses' training program on childhood vaccinations. One of the instructors requires the male participants to attend a seminar on infant care, but does not require the female students to attend the same seminar because she assumes that female students already possess such skills. The instructor's conduct would violate the Executive Order.
- A physical fitness instructor at the Federal Bureau of Prisons refuses to allow a pregnant inmate to participate in the physical fitness training program because he believes that pregnant women should not be physically active. Although the prison has a policy of permitting inmates with temporary disabilities to participate in physical fitness programs upon receipt of approval from a physician, the instructor refuses to consider a letter from the inmate's doctor explaining that physical activities pose no health risk to her. The instructor's decision to exclude the woman would violate the Executive Order.
- The Department of Labor conducts a week-long training seminar during which participants are evaluated for their approaches to management. Future promotion decisions are based on these evaluations. One of the evaluators gives high ratings to men who exhibit an aggressive interpersonal style, but deducts points for women who exhibit the same characteristics. The evaluator's judgments are based on sex-stereotypes and thus violate the Executive Order.

⁶ Further information on the application of these nondiscrimination principles to athletic programs in educational institutions may be obtained by consulting Guidance Documents developed by the Department of Education's Office for Civil Rights, including *Policy Interpretation—Title IX and Intercollegiate Athletics*, 45 CFR part 26 (1979); *Equal Opportunity in Intercollegiate Athletics: Requirements under Title IX of the Education Amendments of 1972*, 34 CFR part 106; *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (January 16, 1996); and various other pamphlets, memoranda, and documents that may be found on the Department of Education's website at www.ed.gov/offices/OCR/ocrprod.html.

- The Department of Justice operates an advanced law enforcement training course on an annual basis for ten individuals. During one session of the course, nine of the ten participants are male. The only woman enrolled in the course is continually taunted and hazed by her male peers who do not believe that women are capable of serving as law enforcement officers. The male instructor not only fails to take appropriate corrective action, but joins the male students in subjecting the woman to a barrage of derogatory epithets. The gender-based harassment to which the woman is subjected violates the Executive Order.

Sexual Harassment

The Executive Order's prohibition on sex discrimination requires federal agencies to ensure that no individual is subjected to sexual harassment in any federally conducted education or training program.

- Sexual harassment entails unwanted or unwelcome sexual conduct including sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature.
- Federal agencies must ensure that no individual involved in a federally conducted education or training program is subjected to any form of sexual harassment.
- No instructor, supervisor, administrator, or other official involved in a federally conducted education program may (1) Explicitly or implicitly make submission to sexual conduct a term or condition of an individual's participation in an education program, or (2) use submission to or rejection of such conduct as the basis for any decision affecting an individual. Sexual harassment of this type violates the Executive Order whether an individual resists and suffers the threatened harm or submits and thus avoids the threatened harm.
- Federal agencies must ensure that no individual involved in a federally conducted education or training program is subjected to a hostile environment on the basis of sex. An impermissible hostile environment may consist of unwelcome sexual conduct that is sufficiently severe, persistent, or pervasive so as to (1) Limit an individual's ability to participate in, or benefit from, an education or training program or activity, or (2) create a hostile or abusive educational environment. Hostile environments may be created by supervisors, instructors, administrators, other officials, or peers.

Examples of prohibited conduct:

- A male student attending a high school operated by the Bureau of Indian Affairs is told by a female teacher that he will fail algebra if he does not accompany her on a date. The student refuses the teacher's request and receives a failing grade as a result. The teacher's conduct violates the Executive Order.

- The Federal Emergency Management Agency conducts emergency preparedness training for local firefighters. A training supervisor refuses to certify that a trainee has completed the program until she accompanies him on a date. Fearing that she will lose her job if she is not certified, the trainee acquiesces to the supervisor's demand. The supervisor's behavior constitutes sexual harassment and violates the Executive Order.

- A volunteer student intern at the Department of Veterans Affairs has made repeated unwelcome sexual gestures of a graphic and physical nature toward a fellow intern. On several occasions, the intern has made such gestures while following the victim and threatening to "get her alone." The victim no longer feels that she can be by herself at the office. This conduct has been both severe and pervasive and has created a hostile educational environment. The intern tells her supervisor and the Senior Managers who oversee the program, but they refuse to investigate or otherwise stop or prevent the conduct. The failure to investigate and/or take appropriate corrective action violates the Executive Order.

VII. Discrimination on the Basis of Color

Federal agencies must ensure that no individual is discriminated against on the basis of color in any education or training program or activity.

- Discrimination on the basis of color may include, but is not limited to, discrimination on the basis of the appearance of an individual's skin tone, racial complexion, pigmentation, or hue.

- A federal agency may not, on the basis of color, admit, refuse to admit, promote, refuse to promote, or otherwise favor or disfavor, a participant or prospective participant in an education or training program or activity.

- A federal agency may not use color as a proxy for determining an individual's race or national origin.

- Federal agencies must ensure that participants in education or training programs or activities are not subjected to harassment, in the form of color-based animus, bias, hostility, stereotype, ridicule or insult, whether by instructors or fellow participants, that is sufficiently severe, persistent, or pervasive to create a hostile environment.

- Federal agencies may not utilize policies, procedures, criteria or methods

of administration which, although facially neutral, have a disproportionate and adverse impact on the basis of color, unless there is an educational or business necessity for the use of such policies and there are no equally effective alternative practices that would result in less of an impact on the basis of color.

Examples of prohibited conduct:

- An executive agency conducts a vocational training program that includes an advanced course in media and broadcast education. The only criteria for admission is that the individual demonstrate a long-term interest in the field. After conducting interviews, however, a member of the admissions committee rejects an applicant with dark skin solely because she has seen statistical data that demonstrates that individuals with dark skin experience greater difficulty in finding permanent employment in these fields. The admissions committee member's conduct violates the Executive Order.

- A federal agency is planning an education seminar to address the Native American experience during the 20th Century. The program coordinator receives applications from numerous Native Americans who wish to participate as panelists. The program coordinator refuses to select any light-skinned applicants because he believes that such individuals do not appear to be "Native American" and thus cannot effectively address this topic. The coordinator's conduct violates the Executive Order.

VIII. Discrimination on the Basis of National Origin

Federal agencies must ensure that no individual is discriminated against on the basis of national origin in any federally conducted education or training program or activity.

- Discrimination on the basis of national origin may include discrimination based upon an individual's country of birth, ancestry, or accent.

- Federal agencies must ensure that individuals are not subjected to disparate treatment on the basis of national origin.

- Federal agencies may not utilize policies, procedures, criteria or methods of administration which, although facially neutral, have a disproportionate and adverse impact on the basis of national origin unless there is an educational or business necessity for the use of such policies and there are no equally effective alternative practices that would result in less of an impact on the basis of national origin.

- Participants in a federally conducted education or training program or activity must not be

subjected to a hostile environment based upon national origin.

- Exempt from coverage under this Executive Order are selections based on national origin of foreign nationals to participate in covered education or training programs which primarily concern national security or foreign policy matters.

Examples of Prohibited Conduct:

- The Department of Health and Human Services decides to hold a conference focused on training community groups on Latino health issues. A non-Latino representative from one of these community groups wishes to attend the conference, but the Conference Coordinator denies the request because the individual is not Latino. The Conference Coordinator's conduct would violate the Executive Order.

- An agency plans to hold a training session in a large city. The conference is designed to help low-income and minority individuals across the city start their own small businesses. The agency decides to advertise the training session by posting announcements in all low-income areas of the city. An agency coordinator, however, decides not to post announcements in the Chinatown section, even though the area has a high population of low income and minority individuals, because the coordinator does not think people from that area will be interested and/or will understand the English-language training. The coordinator's decision would violate the Executive Order.

- A federal agency is conducting an educational program regarding citizenship and civic duty. An employee applies to be a member of the speakers' panel during the program, but her supervisor refuses to select her because he believes that she has a foreign accent which would undermine her credibility with the audience. The supervisor's conduct violates the Executive Order.

Limited English Proficiency

Under certain circumstances, a federal agency's failure to provide language assistance to an individual whose primary language is not English and who has a limited ability to read, write, speak, or understand English may constitute national origin discrimination. Agency obligations with respect to such individuals who are limited English proficient (LEP) are discussed below.⁷

- Agencies have an obligation to take reasonable steps to ensure that LEP

⁷ Further guidance on these principles and agency obligations with respect to LEP issues may be found by consulting Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," 65 FR 50121 (August 16, 2000), and the Department of Justice's Policy Document, "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency." 65 FR 50123 (August 16, 2000).

individuals have meaningful access to federally conducted education and training programs and activities.

- Agencies must determine what constitutes "reasonable steps" by considering a number of factors including: (1) the number or proportion of LEP persons in the eligible population to be served by the education or training program or activity; (2) the frequency with which LEP individuals come into contact with the program or activity; (3) the importance of the service provided by the program or activity; and (4) the resources available to the agency.

- If the federally conducted education program is an elementary or secondary school (e.g., Department of Defense Dependent Schools or schools operated by the Department of Interior, Bureau of Indian Affairs), the executive department or agency should comply with the Department of Education's guidance on the provision of language services to elementary and secondary education LEP students.⁸

Examples of Prohibited Conduct:

- A prison operated by the Bureau of Prisons has a very large proportion of adult LEP inmates who speak the same native language. The prison has a drug and alcohol rehabilitation program for inmates who have drug or alcohol addictions. Due to the size of this single-language speaking LEP population, the fact that this population of inmates has the same percentage of drug and alcohol addictions as the rest of the inmate population, and the importance of the program, the prison's failure to provide this group of LEP inmates with access to the program (such as a separate class in their native language or a competent interpreter) would violate the Executive Order.
- Military parents have adopted a child who is limited English proficient. They decide to enroll her in the federally conducted K-12 school for children of military personnel. The school's refusal to consider providing the LEP child with any services to overcome language barriers would constitute a violation of the Executive Order.

IX. Discrimination on the Basis of Disability

Federal agencies must ensure that no individual is discriminated against on the basis of disability in any federally conducted education or training program or activity.

- Section 504 of the Rehabilitation Act already prohibits discrimination on

the basis of disability in all federally conducted education and training programs as Section 504 applies to all federally conducted activities. Accordingly, executive departments and agencies may comply with the Executive Order by ensuring that all of their education and training programs are operated in accordance with their Section 504 regulations governing federally conducted activities.

- An individual with a disability refers to any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include walking, seeing, hearing, speaking, breathing, learning, performing manual tasks, caring for oneself, working, sitting, standing, lifting, and reading.

- Federal agencies must ensure that no otherwise qualified individual, on the basis of disability, is excluded from participation in, denied the benefits of, or subjected to discrimination in any federally conducted education or training program or activity.
- A qualified individual with a disability is any person who, with or without reasonable accommodation, can meet the essential eligibility requirements for involvement in the education or training program.

- Agencies must ensure that federally conducted education or training programs are readily accessible to qualified individuals with disabilities. In order to ensure accessibility, an agency may:

- Relocate the education or training program or activity to an accessible facility;
 - Provide the aid, benefit, or service in another manner; or
 - Make modifications to the building or facility itself.
- In determining how to achieve accessibility, agencies should attempt to provide aid, benefits, or services in the most integrated setting possible.

Examples of prohibited conduct:

- The National Endowment for the Arts conducts an education program on art history. The instructor has a limited number of tickets to a new movie regarding French impressionist works and decides to draw names randomly to decide which students can attend. When the instructor draws the name of a visually impaired participant, he reassigns the ticket because he believes that the visually impaired individual would not be able to enjoy the movie as much as a non-visually impaired participant. The instructor's conduct would violate the Executive Order.

- The Office of Government Ethics holds an ethics briefing for another agency's ethics officials in a building that has three stairs

leading up the main entrance. There is no ramp, lift, or alternative accessible entrance. Several participants use wheelchairs and, thus, cannot get into the building. The instructor tells the participants that they will not be able to attend and refuses to relocate the briefing to an available and accessible facility, despite the fact that to do so would not constitute an undue burden. The instructor's refusal to relocate the briefing would violate the Executive Order.

Reasonable Accommodation

Agencies have an obligation to provide reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability, unless the agency can demonstrate that the accommodation would impose an undue hardship.

- Agencies must furnish appropriate auxiliary aids and services when necessary to afford a qualified individual with a disability an equal opportunity to participate in a federally conducted education or training program or activity.

- Agencies must afford an individual with a disability an opportunity to request the auxiliary aid or service of his or her choice, and should honor that choice unless another effective aid or service is available.

- An agency may not charge an individual with a disability for the use of an auxiliary aid or service.

- The obligation to provide reasonable accommodations extends only to individuals with disabilities; an agency's failure to provide similar accommodations for individuals without disabilities does not constitute unlawful discrimination.

Examples of prohibited conduct:

- The Department of Justice conducts training seminars on compliance with civil rights laws for employees from other agencies. A prospective participant who is hearing impaired requests a sign language interpreter for an upcoming seminar. Although the agency employs a full-time sign language interpreter who is available to attend the seminar in question, the training coordinator refuses to enlist the interpreter's services and informs the participant that the agency will provide a video with closed-captioning that will be available ten days after the seminar is over. The coordinator's conduct would violate the Executive Order.

- A visually impaired student attending a high school operated by the Bureau of Indian Affairs requests that his class handouts be provided in Braille or on audio cassette. The principal refuses to translate any materials and urges that the student transfer to a private high school where such materials are more readily available. The principal's conduct would violate the Executive Order.

⁸ See, for example, *Identification of Discrimination and Denial of Services on the Basis of National Origin* (May 1970), 35 FR 11595; "The Office for Civil Rights Title VI Language Minority Compliance Procedures" (Dec. 3, 1985); and *Policy Updates on Schools' Obligations Toward National Origin Minority Students with Limited-English Proficiency (LEP)* (Sept. 27, 1991).

X. Discrimination on the Basis of Religion

Federal agencies must ensure that no individual is discriminated against on the basis of religion in any education or training program or activity.

- Discrimination on the basis of religion may include discrimination on the basis of an individual's religion (or lack thereof), religious beliefs, religious expression, or religious practices. Religious practices may include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.⁹

- Discrimination on the basis of religion also may include discrimination on the basis of an individual's relationship with a person of a particular religion or an individual's affiliation with a group, including an employee or student organization, that is associated with religious issues or whose membership is composed largely of people of a particular religion.

- No executive agency may admit, refuse to admit, promote, refuse to promote, or otherwise favor or disfavor, a participant or prospective participant in a federally conducted education program because of his or her religion (or lack thereof), religious beliefs, religious expression, or religious practices.

- An agency may not impose, explicitly or implicitly, stricter admission or completion requirements for a particular religious group or an individual who espouses particular religious beliefs.

- Individuals involved in a federally conducted education program may not be subjected to a hostile environment in the form of religiously-based discriminatory intimidation, or pervasive or severe religious abuse, ridicule or insult, whether by instructors or fellow participants. A hostile environment is not created, however, simply by virtue of religious expression with which some participants might disagree.

Examples of prohibited conduct:

- An instructor in a Department of Justice computer training course requires a participant who is an atheist to complete five extra hours of training because that participant does not share the instructor's religious beliefs. The instructor's conduct would violate the Executive Order.

- A group of participants, attending a federally conducted training course, share a common faith. This group engages in a pattern of verbal attacks on other participants

⁹ See Equal Employment Opportunity Commission "Guidelines On Discrimination Because Of Religion," 29 CFR 1605.1.

who do not share their religious views. These attacks occur repeatedly and are both severe and pervasive, creating a hostile educational environment. The agency is aware of this situation but fails to take effective corrective action. The agency's failure to take effective corrective action would violate the Executive Order.

Reasonable Accommodation of Religious Practices

The Executive Order's prohibition on religious discrimination also includes an obligation on the part of federal agencies to provide reasonable accommodation for religious practices. If an individual notifies an executive department or agency of his or her need for a religious accommodation with respect to a federally conducted education program, the agency has an obligation to reasonably accommodate the individual's religious observances or practices.

- Reasonable accommodations for religious observances or practices are those that do not impose an undue hardship. Though an agency need not make an accommodation that will result in more than a *de minimis* burden to the agency, the cost or other hardship nevertheless must be real rather than speculative or hypothetical. An accommodation should be made unless: (1) It would create an actual cost for the agency or other participants, (2) it would cause an actual disruption in the conduct of the education program, or (3) such accommodation is otherwise barred by law.

- Individuals involved in federally conducted education programs must be permitted to wear religious clothing, jewelry, or other accessories, if wearing such attire is part of an individual's religious practice or expression, so long as the wearing of such attire does not unduly interfere with the conduct of the education program.

- Agencies should be flexible in the scheduling of education and training courses when participants request scheduling changes in order to observe religious traditions, such as the Sabbath or particular holidays, unless to do so would result in more than a *de minimis* burden.

- Agencies should attempt to honor requests for alternative work assignments when completion of a particular work assignment would contravene an individual's religious practices or beliefs.

Examples of prohibited conduct:

- The National Aeronautics and Space Administration conducts a space camp program every Saturday and Sunday morning, and participants are randomly assigned to each session. The agency refuses

to even consider a Catholic youth group's request to be placed in the Saturday morning program so that the group can participate without missing Mass. The agency's failure to even consider providing this religious accommodation would violate the Executive Order.

- The Department of Interior requires its national park service employees to wear uniforms during public instruction, and imposes sanctions for deviation from specific guidelines. A Muslim employee wishes to wear a head scarf or hijab during instruction, but her supervisor refuses to consider her request. The supervisor's refusal to consider the employee's request would violate the Executive Order.

XI. Discrimination on the Basis of Age

Federal agencies must ensure that no individual is discriminated against on the basis of age in any federally conducted education or training program or activity.

As a general matter, age may not be used as a basis upon which to condition the allocation of benefits within, or qualification for, or participation in, a federally conducted education or training program or activity. More specifically:

- Age distinctions may not be used to exclude individuals from a program or activity unless age is a bona fide qualification for participation in the program or activity, that is necessary to the achievement of a programmatic objective or necessary to the normal operation of the program or activity.

- Although agencies may, under certain circumstances, rely on age-based distinctions because it is impracticable to measure characteristics that are necessary to the achievement of an essential programmatic objective on an individualized basis, age may *not* be used as a proxy if it is not a substantially accurate measure of those characteristics.

- Age-based classifications may not be used to achieve any objective that is not essential to the achievement of a statutory objective or the normal operation of a program or activity.

Under certain circumstances, however, agencies may legitimately use age distinctions with respect to the operation of federally conducted education or training programs. For example:

- Agencies may use age-based admissions policies for education or training programs that have traditionally been age-specific.

- Agencies may use age-based admissions policies for education or training programs that must be age-limited for reasons related to health or national security.

- Agencies may rely on age when acting in accordance with laws designed

to provide special benefits or assistance to members of a particular age group, such as children or the elderly.

Examples of Prohibited Conduct:

- An executive agency conducts an education program through which it provides computer science training for high school graduates. The agency permits only individuals under the age of 30 to apply for, and participate in, the program. The agency's policy is based upon the belief that age can be used as an acceptable proxy for measuring an individual's likely long-term commitment to a career in computer science. The agency's policy would violate the Executive Order because age is not an accurate or acceptable measure of an individual's likely commitment to a long-term career in computer science.

- An executive agency operates a business development training program to train entrepreneurs starting new and novel businesses. The training program is only available to individuals under the age of 50. The agency claims that it uses this age requirement to measure characteristics, such as entrepreneurial ingenuity, that are essential to an individual's ability to start a novel business. The agency's conduct violates the Executive Order because age is not an accurate measure of entrepreneurial ingenuity—a characteristic which may be necessary to the achievement of an essential programmatic objective, but which is properly assessed on an individualized basis, such as by reviewing applicant business plans.

XII. Discrimination on the Basis of Sexual Orientation

Federal agencies must ensure that no individual is subjected to discrimination on the basis of his or her sexual orientation in any federally conducted education or training program or activity.

- "Sexual orientation" refers to heterosexuality, homosexuality, or bisexuality.

- Discrimination on the basis of sexual orientation includes discrimination on the basis of an individual's:

- (i) Sexual orientation or perceived sexual orientation;

- (ii) Relationship with an individual of a particular sexual orientation;

- (iii) Affiliation with a group, including an employee or student organization, that is associated with sexual orientation issues or whose membership is composed largely of people of a particular sexual orientation.

- Federal agencies must ensure that all individuals involved in federally conducted education or training programs are treated without regard to sexual orientation.

- Federal agencies must ensure that no individual involved in a federally conducted education program is

subjected to harassment based on his or her sexual orientation. Sexual orientation harassment may include slurs, epithets, unwelcome sexual advances, jokes, cartoons, or other derogatory behaviors that target individuals on the basis of sexual orientation and that are sufficiently severe, persistent, or pervasive to create a hostile educational environment.

Examples of Prohibited Conduct:

- A teacher in a Bureau of Indian Affairs federally conducted school is discharged on the basis of her sexual orientation. The discharge would violate the Executive Order.

- A student in a federally conducted school is harassed by his fellow students as a result of his perceived sexual orientation. The harassment causes him severe emotional distress and, as a result, his grades drop and he is often absent from school. The harassment creates a hostile educational environment, and the student notifies his teachers and the school principal. The failure of his teachers and the principal to investigate his claims and/or take appropriate corrective action would violate the Executive Order.

- A guidance counselor at a Department of Defense high school for the dependent children of military personnel refuses to permit a homosexual student to attend a training session on developing a career in business. The guidance counselor advises the student to consider a career as an interior decorator or a chef because she believes these professions are among the most suitable for gay men. The guidance counselor's conduct would violate the Executive Order.

- The internship coordinator at a federal agency refuses to select a heterosexual student as a summer intern because the student is being raised by two homosexual men. The coordinator's decision would violate the Executive Order.

- A federal agency holds an annual training retreat and invites the spouses or significant others of participating employees to accompany the group. However, when a homosexual employee arrives at the retreat with his partner, the retreat coordinator refuses to allow his partner to attend. The retreat coordinator's conduct violates the Executive Order.

XIII. Discrimination on the Basis of Status as a Parent

Federal agencies must ensure that no individual is discriminated against on the basis of his or her status as a parent in any federally conducted education or training program or activity.

- "Status as a Parent" refers to the status of any individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

- (i) A biological parent;
- (ii) An adoptive parent;
- (iii) A foster parent;
- (iv) A stepparent;

- (v) A custodian of a legal ward;

- (vi) In loco parentis over such an individual; or

- (vii) Actively seeking legal custody or adoption of such an individual.

- The prohibition on discrimination based on status as a parent is designed to protect both men and women who become fathers and mothers through childbirth, foster parentage, adoption, legal guardianship, or marriage.

- Federal agencies may not rely on an individual's status as a parent in determining whether a person satisfies any policy or criterion for selection or admission to a federally conducted education program.

- Federal agencies may not rely on an individual's status as a parent in recruiting and/or selecting participants and instructors for federally conducted education programs.

- An individual may not be excluded from, denied the benefits of, or subjected to discrimination in any federally conducted education program as result of his or her perceived parental responsibilities.

Examples of prohibited conduct:

- The Admissions Committee for a summer training program operated by the Department of Health and Human Services refuses to admit mothers of young children because the committee members believe mothers should stay home and take care of their children. The Admissions Committee's conduct violates the Executive Order.

- The head of the French Department at the Department of Agriculture's Graduate Language Program twice passed over a single father with custody of two young children for promotion to a Senior Instructor position because she believed that the father would not be interested in a position with evening and weekend obligations due to his parental responsibilities. The failure to consider the father for promotion based upon his status as a parent violates the Executive Order.

- The Nuclear Regulatory Commission does not recruit graduate students with children for their Graduate Fellowship Program because the agency believes that the Graduate Fellowship Program is too rigorous for students with parental responsibilities. This recruitment practice constitutes discrimination on the basis of status as a parent and violates the Executive Order.

- An instructor for the VA Home Loan Training Program at the Department of Veterans Affairs is told by his supervisor that, if he proceeds to become a foster parent, he will not be eligible for a promotion to Senior Instructor because the new position will require too much travel. The instructor becomes a foster parent and is passed over for promotion as a result. The failure to consider the instructor for promotion based on his status as a foster parent violates the Executive Order.

- The Department of Justice is conducting a day-long training seminar for its employees and is planning to offer the course on three consecutive dates. Employees are assigned to

dates alphabetically on the basis of their last names. One of the employees requests to take the training course on a different date as she is scheduled to attend a parent-teacher conference at her child's school. Although the training coordinator has honored other employee requests to switch dates, he refuses to grant the mother's request because he believes that she should prioritize work over her parental responsibilities. The training coordinator's conduct violates the Executive Order.

XIV. Administrative Enforcement

Section 4 provides for administrative enforcement of the antidiscrimination provisions of Executive Order 13160. General guidelines for administrative enforcement are discussed below. Before turning to these guidelines, however, it is important to address three preliminary matters.

First, Executive Order 13160 covers all individuals involved in federally conducted education and training programs. Although many such individuals are likely to be members of the general public, rather than federal employees, there will, of course, be many federal employees covered by the Executive Order by virtue of their employment-related participation in federally conducted educational programs. Such individuals, however, are already protected under a number of existing Equal Employment Opportunity (EEO) laws, regulations, and Executive Orders, including Title VII of the Civil Rights Act of 1964 (Title VII) (race, color, religion, sex, and national origin), sections 501 and 504 of the Rehabilitation Act (Sections 501 and 504) (disability), the Age Discrimination in Employment Act (ADEA) (age), the Equal Employment Opportunity Commission's Federal Sector Equal Employment Opportunity Regulations, 29 CFR 1614, and Executive Order 11478, as amended, (race, color, religion, sex, national origin, disability, age, sexual orientation, and status as a parent). Therefore, in order to promote the consistent and effective enforcement of equal employment opportunity mandates for all federal employees, and to preserve the integrity of statutorily protected equal employment opportunity rights, complaints filed under both this Executive Order and existing equal employment opportunity laws should be consolidated and adjudicated under the relevant equal employment opportunity statutes (*i.e.*, Title VII, sections 501/504, and/or the ADEA).¹⁰ This approach will not only

¹⁰ In cases where a complaint raises claims under both Executive Order 13160 and Executive Order 11478 (but does not raise statutory claims), the appropriate complaint processing procedures will

provide a streamlined procedure for resolving complaints, but will also protect an aggrieved employee's opportunity to recover any monetary damages that are available under the EEO statutes but not under this Executive Order.

As a practical matter, this means that a federal employee seeking to file a complaint under this Executive Order must indicate whether the complaint is related to his or her employment¹¹ and, if so, whether he or she has filed any other EEO claims arising out of the same circumstances. If so, the complaint filed under this Executive Order should be transferred to the office handling the related claim and the enforcement procedures set forth below will be deemed inapplicable. If a federal employee chooses to proceed solely under this Executive Order, the enforcement procedures set forth below will govern the disposition of his or her complaint.¹²

If a federal employee indicates that he or she has not filed any other EEO claims at the time of filing a complaint under this Executive Order, the employee may nevertheless subsequently elect to file a related claim under Title VII, section 504, the ADEA, or Executive Order 11478, provided the employee follows the appropriate EEO filing procedures and contacts an EEO counselor and files a complaint within the relevant statutory time limit. In such

depend upon whether the federal agency conducting the education program has an existing complaint process for handling claims filed under Executive Order 11478. If a federal agency has complaint procedures for claims filed under Executive Order 11478, claims filed under both Executive Order 13160 and Executive Order 11478 may be consolidated and adjudicated under Executive Order 11478. If a federal agency does not have a complaint procedure for claims arising under Executive Order 11478, and a complaint alleges a violation of Executive Order 13160 and Executive Order 11478 (but does not raise any statutory claims), the complaint should be processed in accordance with the procedures for Executive Order 13160 set forth below. If a complainant raises claims under Executive Order 13160, Executive Order 11478, and an EEO statute, the complaint should be consolidated and adjudicated under the relevant EEO processes.

¹¹ Federal employees participating as members of the general public in a federally conducted education program will, of course, be subject to the same enforcement procedures as outside participants.

¹² For instance, the enforcement procedures set forth in this Guidance Document may govern the resolution of a complaint filed by an employee involved in a training program conducted by a federal agency other than the federal agency for whom the employee works. For example, if an employee of the Department of Justice participates in a training course conducted by the Department of Education, the employee may choose to file an Executive Order 13160 claim directly against the Department of Education if he or she chooses not to, or is not able to, invoke existing EEO laws and regulations at the Department of Justice.

cases, the employee should notify the investigating office that he or she has decided to contact an EEO counselor and file a related EEO claim so that the Executive Order 13160 complaint may be transferred to the appropriate office as provided for above. Federal agencies must ensure that all federal employees filing Executive Order 13160 complaints have adequate notice that they should advise the investigating office handling the Executive Order 13160 complaint if they decide to pursue their claims through the EEO process.

Second, the enforcement procedures set forth below are designed solely to provide general guidance. Under Section 5-502 of the Executive Order, all executive departments and agencies must establish procedures to receive and review complaints within 90 days of January 18, 2001. As all executive departments and agencies already have procedures in place for adjudicating claims regarding federally conducted programs under Section 504 of the Rehabilitation Act, it is recommended that agencies consider utilizing the same investigative and adjudicating offices for handling complaints under Executive Order 13160. However, agencies are of course free to develop different procedures and to supplement or modify the following enforcement procedures as appropriate.

Third, after developing individual procedures to receive and review complaints, each executive department and agency should prepare some sort of outreach materials to ensure that all individuals involved in federally conducted education and training programs are aware of Executive Order 13160 and are advised as to the proper procedures for filing complaints. These outreach materials should provide individuals with specific information, including, but not limited to, the general antidiscrimination mandates of Executive Order 13160, details regarding how to obtain copies of this Guidance Document, timelines for filing complaints, the name(s) and address(es) of the office(s) to which such complaints should be sent, and specific procedures established by the relevant federal agency regarding the processing of complaints.

All executive departments and agencies should further ensure that these outreach materials provide clear instructions to federal employees regarding their respective rights under Executive Order 13160 and Title VII, sections 501/504, the ADEA, and Executive Order 11478. Specifically, these outreach materials should clearly state the differing timelines for filing claims under the Executive Order and

these three statutes, as well as the availability (or unavailability) of different remedies. As discussed above, federal employees should also be clearly advised that claims filed under both the Executive Order and an equal employment opportunity statute will be adjudicated only under the relevant statute (or under Executive Order 11478, if an agency has existing procedures for receiving such complaints).

The development of these outreach materials should ensure that all individuals receive adequate notice of their rights under Executive Order 13160. These materials will also serve to ensure that individuals participating in federally conducted education and training programs are properly advised as to the appropriate procedures for filing complaints. Finally, these materials should assist in clarifying questions federal employees may have regarding the ramifications of filing a complaint under Executive Order 13160 versus filing a complaint under Title VII, sections 501/504, the ADEA, or Executive Order 11478.

A. Definitions

For purposes of this Guidance Document, the term—

Appropriate agency official means the officer or officers within an executive department or agency designated to determine what, if any, disciplinary action, remedial action, or corrective action should be taken as a result of a violation of the Executive Order.

Complete complaint means a written statement that contains the complainant's name, address, and phone number, describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and approximate date of the alleged violation, and identifies whether the complainant is an employee of the agency alleged to have committed the discrimination and whether the complainant's involvement in the relevant education or training program was related to his or her employment. A complete complaint must be signed by the complainant or by someone authorized by the complainant to sign on his or her behalf.

Investigating office means the office or offices within an executive department or agency that are designated to investigate complaints regarding violations of this Order or its implementing rules, regulations, policies, or guidance.

Respondent means the organizational unit in which the alleged discrimination occurred.

B. Filing a Complaint

Any individual who believes himself or herself to be aggrieved by a violation of Executive Order 13160 or its implementing regulations, rules, policies or guidance, including this Guidance Document, may, personally or through a representative, file a written complaint with the agency that he or she believes is in violation of this Order or any of its implementing regulations, rules, policies, or guidance. All written complaints should be filed with the appropriate Investigating Office as designated by the relevant agency.

1. Complete Complaints

In order to be accepted by an agency's Investigating Office, all written complaints must be "complete complaints." As defined above, a complete complaint must include the name, address, and phone number of the complainant, must identify whether the complainant is a federal employee and whether the complainant's involvement in the relevant education program was related to his or her employment, and must describe the alleged discriminatory conduct in sufficient detail to inform the agency as to the nature and approximate date of the alleged violation. A complete complaint also must be signed by the complainant or by someone authorized by the complainant to sign on his or her behalf.

2. Time Limits for Filing Complaints

As a general matter, all complaints must be filed within 180 days of the alleged discrimination. However, the appropriate Investigating Office may extend this time limit:

- (a) If the complainant can demonstrate that he or she had no notice of the time limit and was not otherwise aware of it; or
- (b) If the complainant can demonstrate that he or she was prevented by circumstances beyond his or her control from submitting the complaint in a timely fashion; or
- (c) For other reasons, or under other circumstances, considered sufficient by the agency.

For purposes of determining when a complaint is timely filed, a complaint mailed to the agency will be deemed filed on the date that it is postmarked. Any other complaint will be deemed filed on the date that it is received by the appropriate Investigating Office, by any agency supervisor, or by any other agency employee designated by the agency to receive such complaints.

If a complaint is filed within 180 days of the alleged discrimination, but the agency subsequently determines that the complaint is not a "complete complaint," the complainant's claims

shall nevertheless be deemed filed in a timely manner, and the complainant shall be given an appropriate opportunity to amend his or her original complaint. See Section C below for further information regarding the process for requesting additional information from a complainant in order to supplement an incomplete complaint.

3. Class Complaints

Any individual who believes that any specific class of persons has been subjected to discrimination prohibited by Executive Order 13160 or any of its implementing regulations, rules, policies, or guidance, including this Guidance Document, may file a class complaint with the appropriate Investigative Office, provided that individual is either a member of the allegedly aggrieved class of persons or a representative of a member of the allegedly aggrieved class of persons. Each executive department or agency should develop specific procedures to deal with the resolution of class complaints.

4. Legal Representation

Any individual filing a complaint under Executive Order 13160 or any of its implementing regulations, rules, policies, or guidance may be represented and assisted in all stages of these proceedings by an attorney or representative of his or her own choosing. An individual has a responsibility to promptly inform the agency if legal counsel is retained. In addition, an individual has an obligation to notify the appropriate Investigating Office if he or she wishes to have any other representative included in these proceedings. It is the responsibility of the complainant to provide the appropriate Investigating Office with the name, address, and phone number of any attorney or other representative. In addition, it is an ongoing responsibility of the complainant to advise the appropriate Investigating Office as to any changes with respect to the status of his or her legal and/or non-legal representation in any proceeding under this Executive Order or any of its implementing regulations, rules, policies, or guidance. Each federal agency has a duty to ensure that all complainants have adequate notice of these obligations.

C. Initial Review by the Investigating Office

Upon receipt of a complaint filed under this Executive Order, the investigating office must assess the complaint and determine how to proceed. The investigating office should

specifically consider whether the complaint is a complete complaint, whether it was filed in a timely manner, and, in the case of a federal employee, whether the complaint should be consolidated with another complaint and transferred, if necessary.

After reviewing the complaint, the investigating office may need to obtain additional information from the complainant. For example, the investigating office may ask the complainant to supply additional information if the complaint is not complete. Additional information also may be required by the investigating office to determine whether to waive the time limits for filing a complaint or whether to consolidate and transfer a federal employee's claim. If a complainant fails to provide additional information, or otherwise respond to the investigating office's request, within 30 days, without good cause shown, the investigating office may dismiss the complaint.

In certain instances, the investigating office may determine that a complaint should be dismissed because the alleged discriminatory conduct did not occur in a federally conducted education or training program. In such cases, the investigating office should issue a brief written determination setting forth the basis for the dismissal and advising the complainant of his or her right to appeal this decision to the Attorney General for a final determination regarding coverage pursuant to Section 2-203 of the Executive Order. Responsibility for issuing such final determinations regarding coverage is delegated to the Assistant Attorney General for Civil Rights, who shall conduct, handle, or supervise the performance of this function.

D. Informal Resolution or Formal Investigation

Before undertaking a formal investigation, agencies are strongly encouraged to pursue resolution of all complaints filed under this Executive Order through efforts to achieve voluntary compliance. Toward this end, agencies should make use of alternative dispute resolution techniques whenever appropriate.

If an informal resolution of a complaint between a complainant and respondent cannot be reached within a reasonable period of time (generally 45 days), or if efforts to achieve an informal resolution appear to become futile, the investigating office should initiate a formal investigation. However, efforts to achieve voluntary compliance should be undertaken whenever possible and should continue throughout the course

of a formal investigation if and when appropriate opportunities arise.

If a decision is made to initiate a formal investigation, the investigating office must notify the complainant in writing. The investigating office should attempt to complete the investigation within 180 days of the agency's receipt of a complete complaint. The investigation should include a thorough review of the circumstances under which the alleged discrimination occurred and any other circumstances which may constitute, or appear to constitute, discrimination against the complainant.

A formal investigation may require the cooperation and participation of other agency employees. Employees who are required by the investigating office to participate in any investigation concerning violations of this Executive Order will do so as part of their official duties and during the course of regular working hours.

Upon completion of a formal investigation, the investigating office must prepare a written report setting forth the results of the investigation. If a determination is made that any agency employee has not complied with the Executive Order or any of its implementing rules, regulations, policies, or guidance, Section 4-402 requires the investigating office to complete a report and refer a copy of the report and any relevant findings or supporting evidence to the appropriate agency official. The investigating office also may make recommendations for any corrective and/or remedial action. A copy of the investigative report should be sent to both the complainant and the respondent, including the employee who is the subject of the report.

If a determination is made that there has been no violation of the Executive Order or any of its implementing rules, regulations, policies, or guidance, a copy of the report also shall be sent to both the complainant and the respondent. In such cases, although no action is required, a copy of the report should nevertheless be sent to the appropriate agency official.

E. Referral to the Appropriate Agency Official

Upon receipt of a report from an investigating office that indicates there has been a violation of the Executive Order or its implementing rules, regulations, policies, or guidance, the appropriate agency official shall review the report and all relevant supporting material in order to determine what, if any, disciplinary action is appropriate. Any action taken to discipline an employee, including removal, must be

taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act of 1978, Public Law No. 95-454, 92 Stat. 1111.

The appropriate agency official also shall review the report of the investigating office in order to determine whether any corrective or remedial action should be initiated. Pursuant to Section 4-402(b), however, nothing in the Executive Order authorizes monetary relief to the complainant as a form of remedial or corrective action. If the appropriate agency official does determine that the complainant is entitled to some form of remedial or corrective action, the appropriate agency official shall so notify the complainant in writing. The appropriate agency official also shall take all necessary steps to ensure that the corrective or remedial action ordered is implemented. If a determination is made that the complainant is not entitled to any corrective or remedial action, the appropriate agency official shall notify the complainant of this decision and the reasons for this determination.

Although agencies are free to designate any employee as the appropriate agency official, agencies should bear in mind that section 5-503 provides that the head of each executive department or agency shall be responsible for ensuring compliance with the Executive Order. As such, agencies should consider designating a senior level official for this important post.

XV. Remedies

As discussed above, in addition to making final decisions regarding disciplinary measures, the appropriate agency official shall have the authority to order corrective and/or remedial action, where appropriate. As a general matter, if there has been a violation of the Executive Order, the complainant shall be entitled to all appropriate, non-monetary, equitable relief. The appropriate agency official should attempt to ensure that the aggrieved individual ends up in the same position he or she would have occupied absent discrimination, or a substantially equivalent position. In the context of violations of this Executive Order, specific remedies are likely to include placement in the next available education or training program of a comparable nature; the development of an individualized training opportunity; the cancellation of an unwarranted personnel action or the expungement of adverse materials from agency records; the awarding of a diploma, other certificate, or specific grade; and the

provision of reasonable accommodations.

Federal agencies must ensure that appropriate agency officials are accorded sufficient authority to provide all appropriate forms of relief. Complainants should be aware, though, that Section 8 of the Executive Order specifically provides that the Order "is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees." Section 8 further provides, however, that the Order is not intended "to preclude judicial review of final decisions in accordance with the Administrative Procedures Act, 5 U.S.C. 701, *et seq.*"

XVI. Reporting Requirements

Section 6 of the Executive Order establishes reporting requirements for federal agencies. For the first three years following issuance of this Executive

Order, all federal agencies shall file annual reports with the Attorney General that summarize the number, nature, and disposition of complaints filed under the Executive Order. Such reports are to be submitted to the Assistant Attorney General for Civil Rights within 90 days of the end of the preceding year's activities. Subsequent reports are to be submitted every three years and within 90 days of the end of each three year period.

XVII. Conclusion

As discussed above, this Guidance Document is intended to provide executive departments and agencies with a basic framework for ensuring compliance with Executive Order 13160. Pursuant to Section 5-502 of the Executive Order, each agency has 90 days from January 18, 2001 to establish procedures for receiving and addressing complaints. Each agency also shall take "all necessary steps" to effectuate any

subsequent rules, regulations, policies, or guidance issued by the Attorney General or the Assistant Attorney General for Civil Rights in connection with this Executive Order within 90 days of issuance.

The mandate of Executive Order 13160 is clear: to ensure that all individuals, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent, have an equal opportunity to participate in, enjoy the benefits of, and be free from discrimination in, federally conducted education and training programs. Federal agencies should strive to achieve these objectives to the fullest extent possible and are encouraged to use this Guidance Document as a starting point for achieving these important goals.

[FR Doc. 01-1494 Filed 1-17-01; 8:45 am]

BILLING CODE 4410-13-U

**Appendix H: Memorandum for General Counsels or Agency
Heads/Civil Rights Directors, April 12, 2002**



U. S. Department of Justice


Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 12 2002

MEMORANDUM FOR GENERAL COUNSELS OR AGENCY HEADS/
CIVIL RIGHTS DIRECTORS

FROM: Ralph F. Boyd, Jr. 
Assistant Attorney General
Civil Rights Division

SUBJECT: Executive Order 13160

I am writing with regard to Executive Order 13160, "Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs." This Executive Order was issued on June 23, 2000, and a Guidance Document entitled "Ensuring Equal Opportunity in Federally Conducted Education and Training Programs" was published in the *Federal Register* on January 18, 2001. Copies of both documents are attached for your convenience.

I would like to take this opportunity to remind you that the Executive Order and the Guidance Document require all federal departments and agencies to develop appropriate outreach materials and to establish procedures for receiving and addressing complaints.

In addition, the Executive Order contains a mandatory agency reporting requirement. Pursuant to §6-601 of the Executive Order, each federal agency and department must submit to the Attorney General reports summarizing the number, nature, and disposition of Executive Order 13160 complaints. More specifically, the Executive Order states that, for the first three years following the issuance of the Order, such reports are to be submitted annually within 90 days of the preceding year's activities. Since the Guidance Document was issued in January of 2001, and 2001 was the first full calendar year

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following issuance of the Executive Order, all agency reports should have been submitted to the Department of Justice by March 31, 2002.

If your agency has not already filed an Executive Order 13160 complaint report, please complete the attached form and submit your agency's report to:

Coordination and Review Section - NYA
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Please note that, for this first reporting period, you should include information regarding all complaint activity from the date the Executive Order was issued in June of 2000 until December 31, 2001. This will ensure that the Division has a complete record of all complaints filed under the Executive Order (although I recognize that it is unlikely that any complaints were filed prior to the issuance of the Guidance Document in January of 2001). For all future reports, each calendar year will be deemed to constitute a single year's worth of complaint activity.

If you have any questions regarding the completion of the complaint report form or any other matters related to the Executive Order or the Guidance Document, please feel free to contact Ms. Merrily A. Friedlander, Coordination and Review Section Chief, or Ms. Beth Pincus, staff attorney, at (202) 307-2222.

Thank you for your attention to these important matters. I look forward to continuing to work with your agency in ensuring compliance with the Executive Order and providing equal opportunity in all federally conducted education and training programs.

Enclosures

Appendix I: 34 IAM 6—BIE Policy for Addressing and Responding to Sexual Violence and Abuse at BIE Post-Secondary Institutions


**INDIAN AFFAIRS
DIRECTIVES TRANSMITTAL SHEET**

(modified DI-416)

DOCUMENT IDENTIFICATION NUMBER 34 IAM 6	SUBJECT BIE Policy for Addressing and Responding to Sexual Violence and Abuse at BIE Post-Secondary Institutions	RELEASE NUMBER #12-36
FOR FURTHER INFORMATION Juanita Mendoza Bureau of Indian Education 202-208-3559		DATE 10/11/12

EXPLANATION OF MATERIAL TRANSMITTED:

The purpose of this chapter is to establish policy for responding in a timely manner to sexual violence and abuse by implementing procedures to address sexual assault, stalking, dating and domestic violence at Bureau of Indian Education post-secondary institutions.


 Brian Drapeaux
 Acting Director, Bureau of Indian Education

FILING INSTRUCTIONS:

Remove: None

Insert: 34 IAM 6

INDIAN AFFAIRS MANUAL

Part 34
Chapter 6

Education (Post Secondary)
Addressing and Responding to Sexual Violence and Abuse
at BIE Post-Secondary Institutions

Page 1

- 1.1 Purpose.** To respond in a timely manner to sexual violence and abuse by implementing a policy to address sexual assault, stalking, dating and domestic violence at Bureau of Indian Education (BIE) post-secondary institutions.
- 1.2 Scope.** This policy applies to Southwestern Indian Polytechnic Institute (SIPI) and Haskell Indian Nations University (Haskell) and does not replace existing institutional policies on sexual harassment, violence and abuse.
- 1.3 Policy.** SIPI and Haskell will address the requirements of this policy within their academic institutional settings by taking the following actions:

A. Coordinated community approach.

External partnerships will consist of the following:

- a. Response Team to be composed of multi-disciplinary representatives, including at least one local non-profit, non-governmental victim services organization within the institutional community, and at least one external law enforcement system.
- b. Response Team should be representative of the variety of organizations that are involved in campus life.
- c. Maintain ongoing collaboration with Response Team through regularly scheduled communication and meetings.
- d. Consult Response Team when making any changes to policies and protocol.

Internal partnerships include multiple department and offices; faculty and staff; and student participation that will work to:

- a. Develop a Response Team.
- b. Establish a college/university policy addressing sexual violence and abuse.
- c. Identify a school coordinator.
- d. Identify a student coordinator.
- e. Designate a Response Team point of contact (POC).

B. Prevention and education.

- a. Required prevention and awareness education for incoming students should:
 - i. Establish a system to account for participation.
 - ii. Include campus policies and protocols, student code of conduct, local and national resources, hotlines, legal, medical, mental, and other assistance resources.
 - iii. Establish pre-orientation, possibly a required online pre-orientation session, arrival and ongoing program actions.
- b. Establishment of a school/student campaign to be overseen by student leadership and institutional staff.

Release # 12-36, Issued: 10/11/12
New

 INDIAN AFFAIRS MANUAL

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- c. Dormitory meetings – Resident Assistant will arrange dormitory meetings to discuss school policies regarding sexual violence and abuse and will include prevention and awareness in other dormitory events.
- d. Student groups – With the assistance of the institution providing educational materials and/or speakers, student groups will work to include prevention and education regarding sexual violence and abuse in their meetings and events.
- f. Events – Students and staff will make an effort to include information about prevention and education regarding sexual violence and abuse at school events.
- g. Classroom – The policy will be discussed in health education and physical education courses.
- h. Dissemination of prevention and awareness promotional materials.
- i. School electronic boards, websites, and other electronic venues will be utilized. Documentation will be displayed around the campus, especially in dormitories and student gathering areas.
- j. Institution staff training.
- k. Required yearly training for all school staff.
- l. Policy information will be included in staff handbook and available to the public on school website.

C. Response protocol.

First point of contact flow chart

- a. Resident Assistant > Security > Response Team POC
- b. Dormitory Supervisor > Security > Response Team POC
- c. Security > Response Team POC
- d. Counseling staff > Security > Response Team POC
- e. Staff/Faculty > Security > Response Team POC

If victim appears to be in any medical distress, call 911 first.

D. Staff response to victim reporting of incidents of sexual violence and assault.

- a. Resident Assistant will keep victim safe and remove victim from open areas where a crowd may gather to ensure privacy for victim. Remain calm and supportive of victim. Contact security and/or law enforcement and counseling staff.
- b. Dormitory Supervisor will keep victim safe and remove victim from open areas where a crowd may gather to ensure privacy for victim. Remain calm and supportive of victim. Contact security and/or law enforcement and counseling staff.
- c. Security will keep victim safe and remove victim from open areas where a crowd may gather to ensure privacy for victim. Remain calm and supportive of victim. Contact supervisor and law enforcement and counseling staff.

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- d. Non-Counseling Staff/ Faculty will keep victim safe and remove victim from open areas where a crowd may gather to ensure privacy for victim. Remain calm and supportive of victim. Contact security and/or law enforcement and counseling staff.
- e. Counseling staff will assess victim's emotional stability, comfort victim, and provide information about on-campus services and off-campus services. Explain options of law enforcement involvement, create a safety plan with victim, provide contact information for any agency the victim wishes to have involved, provide victim with contact information for follow up care and support, set follow-up meeting.

E. Response Team members communication action plan.

- a. Security Director will contact local law enforcement and probation and parole personnel, if necessary.
- b. Housing/Dormitory Supervisors will communicate with their staff.
- c. Staff will meet with victim and offender separately; contact institution counseling services, campus teaching staff, and student advisers.
- d. Disciplinary and Judicial Board will contact the Director of the disciplinary panel.
- e. Director of student health/or comparable position will meet and work with victim and local hospital or medical care, if necessary.
- f. Campus Safety Director will advise Response Team of campus-wide policy and best practices.
- g. Wellness Center Director/or comparable position will keep open communication with student and campus services or their designee.

F. Response Team communication plan.

- a. Response Team > student services and campus leadership > President's office > BIE Central Office > Assistant Secretary - Indian Affairs, Department of the Interior
- b. All Press/Media questions shall be referred to school President.

G. Response Team debriefing.

- a. Response Team members will meet to discuss the incident and evaluate response protocol implementation.
- b. Response Team will provide a report to institutional leadership.
- c. Institutional leadership will forward report to BIE Central Office.

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H. Campus safety and security personnel training.

- a. Mandatory campus safety and security personnel training in collaboration with the Response Team. If existing training meets the needs of the institution, the institution may adopt that training for this policy's purposes. Include local victim's advocacy group in the training process.
- b. Establish a training schedule and system of accounting for participation.
- c. Make the training a requirement for all security personnel.

I. Judicial/disciplinary board training

- a. Required yearly training on sexual violence and abuse prevention that includes the participation of local advocacy groups and law enforcement. Training shall include current federal and state laws.

1.4 Authority.**A. Statute.**

- a. Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*
- b. The Jeanne Clery Act, 20 U.S.C. § 1092f
- c. The Family Educational and Privacy Rights Act (FERPA), 20 U.S.C. § 1232g

B. Guidance.

- a. State & National Ethics Codes of Licensed Counselors

1.5 Roles and Responsibilities.

- A. President.** The President is responsible for the distribution of the policy to institutional leadership and the campus community and for monitoring adherence to the policy.
- B. Vice President of Academic Programs.** The Vice President of Academic Programs is responsible for the distribution of the policy to staff under his/her supervision.
- C. Vice President of College Operations.** The Vice President of College Operations is responsible for the distribution of the policy to staff under his/her supervision.
- D. Director of Housing and Recreation.** The Director of Housing and Recreation is responsible for the distribution of the policy to staff under his/her supervision, including staff responsible for housing safety, and for the implementation of the policy in dormitories.

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- E. Director of Counseling.** The Director of Counseling is responsible for the implementation of the policy in the student counseling setting.
- F. School Safety and Security Manager.** The School Safety and Security Manager is responsible for adhering to the policy and distributing the policy to staff under his/her supervision. The School Safety and Security Manager is also responsible for adhering to any federally required reporting procedures of crime statistics.

1.6 Definitions. The following definitions are not an exhaustive list of forms of sexual violence and abuse. The list includes forms of violence that may be experienced in a post-secondary educational setting.

- a. **Dating** - A social relationship of a romantic or intimate nature.
- b. **Domestic Violence** - Abusive behavior by an intimate partner toward the other intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.
- c. **Sexual Assault** - Any type of sexual contact or behavior that occurs by force or without consent of the recipient of the unwanted sexual activity. Falling under the definition of sexual assault is sexual activity such as forced sexual intercourse, forcible sodomy, unwanted fondling, and attempted rape. It includes sexual acts against people who are unable to consent either due to age or lack of capacity.
- d. **Stalking** - Repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear.
- e. **Cyberstalking**¹ - Use of the Internet, email, instant messages, blog entries, websites or other electronic communications to stalk.
- f. **Threats** - Use of words, gestures, or weapons to communicate the intent to cause death, disability, injury, or physical harm.

ALLEGATIONS OF HARASSING CONDUCT

U.S. Department of Interior

Bureau of Indian Affairs

Bureau of Indian Education

Haskell Indian Nations University

Lawrence, Kansas

Case # DOI-22-HCI-033-BIA

INVESTIGATIVE REPORT

This investigative report was prepared by the undersigned investigator and submitted to the agency on this 15th day of July 2022.

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FACT FINDING INVESTIGATOR

(b)(6)

NOTICE OF RESTRICTED USAGE

Access to, and usage of, this Fact-Finding Report file is **RESTRICTED** to the Agency officials who must have access to the files to discharge their Official duties.

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DECLARATIONS:

- A. (b) (6) Cross Country runner
Haskell Indian Nations University
Lawrence, Kansas
- B. (b) (6) Cross Country runner
Haskell Indian Nations University
Lawrence, Kansas
- C. (b) (6) Cross Country runner
Haskell Indian Nations University
Lawrence, Kansas
- D. (b) (6) Cross Country runner
Haskell Indian Nations University
Lawrence, Kansas
- E. (b) (6) Cross Country runner
Haskell Indian Nations University
Lawrence, Kansas
- F. (b) (6) Cross Country runner
Haskell Indian Nations University
Lawrence, Kansas
- G. (b) (6) Cross Country runner
Haskell Indian Nations University
Lawrence, Kansas
- H. (b) (6) Cross Country runner
Haskell Indian Nations University
Lawrence, Kansas

- I. (b) (6) Cross Country runner
Haskell Indian Nations University
Lawrence, Kansas
- J. Clay Mayes Head Cross Country Coach (contractor)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas
- K. (b) (6) (b) (6)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas
- L. (b) (6) (b) (6)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas
- M. (b) (6) (b) (6)
U.S. Department of Interior
Bureau of Indian Education
Haskell Indian Nations University
Lawrence, Kansas

* Students (b) (6) (b) (6) did not return signed declarations.

[FACT FINDERS NOTE: In addition to the witnesses interviewed, former Haskell Athletic Director (b) (6), and students (b) (6), (b) (6) (b) (6) were identified as witnesses to be interviewed. The fact-finder was informed by the agency that (b) (6) (b) (6) would not be interviewed as (b) (6) is retired. The fact-finder was not provided with contact information for (b) (6). The fact-finder contacted the remaining student witnesses via email and/or phone with no response. The student contact list used by the fact-finder is included behind the Miscellaneous Documents Tab.]

Attachment to Declaration B:

Text messages between (b) (6) and Clay Mayes

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Attachment to Declaration J:

Clay Mayes' emails and text messages on various dates with respect to the claims made by the student athletes and the investigation

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Attachment to Declaration K:

(b) (6) emails and documentation on various dates with respect to the claims made by the student athletes and the investigation

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Attachment to Declaration L:

Missouri Southern Stampede, September 18, 2021, race results

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EXHIBITS

DOCUMENT	# OF PAGES
1. Letter of Concern dated October 28, 2021	2
2. Emails regarding Missouri Southern Stampede	12
3. Clay Mayes notification of No-Contact Order dated November 4, 2021	3
4. Team notification of No-Contact Order dated November 4, 2021	1
5. Cross Country Coach statement of work	5
6. Secretary of Interior, Personnel Bulletin No: 18-01, Prevention and Elimination of Harassing Conduct, March 23, 2018	18

INVESTIGATIVE SUMMARY

Statement of Claims and Issues to be Investigated:

Gather evidence and testimony with respect to allegations by (b) (6) regarding Clay Mayes' communication and ability to coach in a manner they deserve as student athletes when the following occurred:

1. Inappropriate conversation with runner (b) (6): proof of texts, bullying into running even though (b) (6), inappropriate/ hurtful comments addressing the runner's ego and motivation;
2. Lack of communication: unattached running stipulations (men's and women's cross country teams), lack of academic support; runners voiced concern for grade checks/ studying hours especially to help support those who are struggling in classes;
3. Inappropriate and threatening comments: "If I was an athlete and had to do grade checks he would not share (b) (6) grades with (b) (6) coach because that is embarrassing", "I'll throw you under the bus and I'll be the one driving it", "If you don't get off your phone, I'll shove it where the sun don't shine", calling one of our previous coaches a sociopath, mentioning that he will contact our parents if we do not follow the rules or if we are struggling academically even though we have not consented to that, continuing to bad mouth our previous coach although we told him it made us uncomfortable/ mad when he does this;
4. False promises: gear that he never provides to us, certain meets, changes in behavior, lying consistently, etc...;
5. Makes it obvious who are his favorites, the favorites know that they are his favorites;
6. Talks badly about our athletic trainer, (b) (6), saying "(b) (6) doesn't know what he's doing";
7. In general makes comments about other Haskell employees in a negative manner;
8. Treats athletes with medical treatments such as Graston with binder clips, wrenches, used with lotion, biofreeze and hand sanitizer. Has done this to (b) (6);
9. Missouri Southern Stampede: Runners at Missouri Southern Stampede stated that (b) (6) did not run when athletics received an email from Mayes stating otherwise;
10. Encouraging ineligible runners to run unattached while they are ineligible with the runners not knowing that this will affect their eligibility in the future;
11. Continuous bib mix up during meets/disorganization;
12. Asking runners and others to watch (b) (6) when he is not able to at the Haskell home meet;
13. Running runners in XC jerseys that are not Nike--Brooks is not a brand approved by athletics;
14. Emotional manipulation: when he is called out by his runners, he continuously makes excuses to make them feel bad for him;
15. Talks about previous runner's personal lives and name drops;
16. Shares runner's personal information with other runners without consent;
17. He is constantly late to practice and always changing practice times and locations; and

18. Served a suspension for violating rules within six months of being hired.

INVESTIGATION CHRONOLOGY

The United States Department of Interior (DOI) Bureau of Indian Education requested, on December 2, 2021, the U.S. Postal Service, National Equal Employment Opportunity Investigative Services Office (NEEOISO) conduct an investigation into the allegations that were raised by (b) (6)

(b) (6) cross country runners at Haskell Indian Nations University (HINU) in Lawrence, Kansas. Investigator (b) (6) was assigned the fact-finding investigation on December 7, 2021. At the request of the agency the investigation was on hold during the period from December 2021 through February 16, 2022. This investigation was conducted telephonically between March 11, 2022 and June 1, 2022.

DECLARATION TESTIMONY:

[FACT FINDERS NOTE: The fact-finder began each witness interview by explaining (b) (6) role; the purpose of the interview; and the need for the witness to cooperate. The witnesses were also advised of freedom from retaliation for participating in the investigation and to whom to report retaliation should it occur. At the close of each interview, the witnesses were asked if there was any other information they wished to offer and asked not to discuss their testimony with others. Each witness was also advised to provide any documentation to support or corroborate their individual testimony.]

Allegation 1: *Inappropriate conversation with runner (b) (6): proof of texts, bullying into running even though (b) (6), inappropriate/ hurtful comments addressing the runner's ego and motivation*

(b) (6) is a Cross Country runner at Haskell Indian Nations University in Lawrence, Kansas.

(b) (6) states (b) (6) did not experience any bullying or inappropriate/hurtful comments from Mr. Mayes but many of (b) (6) teammates did. Mr. Mayes called one of (b) (6) teammates (b) (6) "fat" and told (b) (6) needed to lose weight in front of everyone (the cross country team, approximately 15-20 people). Mr. Mayes would curse often and would put down prior cross country team accomplishments. When (b) (6) spoke with Mr. Mayes about (b) (6) schedule (b) (6) was taking 20 credits), (b) (6) questioned (b) (6) multiple times if (b) (6) missed practice and questioned (b) (6) effort after (b) (6) explained (b) (6) class situation. (b) (6) friend (b) (6) received messages from Mr. Mayes that if (b) (6) did not run conference, (b) (6) would not be able to run next season, which left (b) (6) crying.

[Declaration A]

(b) (6) is a Cross Country runner at Haskell Indian Nations University in Lawrence, Kansas.

(b) (6) states one day they were in the library and (b) (6) came in crying and showed us text messages from Mr. Mayes. (b) (6) did not want to run that weekend because (b) (6) did not want to waste a year of eligibility on one race. Mr. Mayes wanted (b) (6) to run to try to get the (b) (6) to Nationals. Mr. Mayes' texts said that (b) (6) (b) (6) had been lethargic all season and that (b) (6) was being selfish in not wanting to run. A screen shot of these text messages was included in their report. **[Declaration C]**

(b) (6) is a Cross Country runner at Haskell Indian Nations University in Lawrence, Kansas.

(b) (6) states (b) (6) came to them (b) (6) (b) (6) and (b) (6) crying one day about how Mr. Mayes was talking to (b) (6) over text messages when he was trying to get (b) (6) to race in conference. (b) (6) did not want to use (b) (6) eligibility for one race. **[Declaration D]**

(b) (6) is a Cross Country runner at Haskell Indian Nations University in Lawrence, Kansas.

(b) (6) states (b) (6), who is one of their faster runners but was ineligible for the season, told (b) (6) and a few other runners in the library that Mr. Mayes wanted (b) (6) to run for conference and after (b) (6) told (b) (6) did not want to run because (b) (6) was ineligible, Mr. Mayes told (b) (6) that if (b) (6) did not run this would be the last time (b) (6) would be running. (b) (6) was crying when (b) (6) told them about this interaction with Mr. Mayes. This was not how a coach should be talking to a student. This is when they reported Mr. Mayes' conduct to (b) (6) via email because the other runners also had experienced Mr. Mayes' negative conduct. (b) (6) experienced Mr. Mayes putting (b) (6) down. They ((b) (6) (b) (6), (b) (6) and herself) knew at that point Mr. Mayes was not being honest with them (for example, he was not certified to be doing Graston on (b) (6) leg) and not treating them with respect (for example, he would yell at them and tell them to shut up). **[Declaration E]**

(b) (6) is a Cross Country runner at Haskell Indian Nations University in Lawrence, Kansas.

(b) (6) states (b) (6) is an upperclassman. (b) (6) had not run competitively for all (b) (6) years at Haskell and did not figure out (b) (6) eligibility. It was understood (b) (6) was supposed to run with the team. Coach Mayes asked (b) (6) to run but (b) (6) did not want to. (b) (6) knows (b) (6) and (b) (6), (b) (6) (b) (6), would show up late to practice and would go out drinking and partying all night. (b) (6) and (b) (6) felt like they should not be reprimanded for showing up late to practice or not following Mr. Mayes' rules. (b) (6) thinks a lot of the tension was because of Mr. Mayes' rules (no drinking, no smoking, no partying, keep social media content clean). **[Declaration H]**

(b) (6) is a Cross Country runner at Haskell Indian Nations University in Lawrence, Kansas.

(b) (6) states (b) (6) knows some girls (b) (6) made statements that they did not like how Mr. Mayes coached them. He tried to be nice and understanding with the girls. Coach Mayes was lenient with everyone because he was a new coach. He tried to be careful with what he said and did because he did not want to be disliked by the team members. (b) (6) heard that the practices under the prior coach, (b) (6), were really laid back and did not involve much work while the practices under Mr. Mayes were more serious. Mr. Mayes wants them to be successful and representative of their community. (b) (6) thinks the problem was that Mr. Mayes was serious and (b) (6) were not. (b) (6) did not want to do any work during practice.

(b) (6) states Mr. Mayes never forced them to run. (b) (6) told (b) (6) (b) (6) was ready to run and wanted to run. **[Declaration I]**

Clay Mayes is the Head Cross Country Coach (contractor) assigned to the Haskell Indian Nations University, Bureau of Indian Education in Lawrence, Kansas.

Mr. Mayes states (b) (6) did not do (b) (6) NAIA eligibility. He rarely had an in person conversation with (b) (6) as (b) (6) stopped attending practices and he did not text (b) (6). Most of their communications were via Facebook messenger. He provided copies of his messenger communications with (b) (6) none of which was bullying. (b) (6) never reported to him that (b) (6) felt like he was bullying (b) (6) or made hurtful comments to (b) (6). **[Declaration J]**

Allegation 2: *Lack of communication: unattached running stipulations (men's and women's cross country teams), lack of academic support; runners voiced concern for grade checks/ studying hours especially to help support those who are struggling in classes*

(b) (6) states Mr. Mayes did not start asking about their grades until the last two and a half weeks of the season. The students who were not eligible to run were encouraged by Mr. Mayes to run unattached, which would make them ineligible to run the next season. **[Declaration A]**

(b) (6) is a Cross Country runner at Haskell Indian Nations University in Lawrence, Kansas.

(b) (6) states (b) (6) went to the Haskell Invite (an open meet) in October 2021 in which (b) (6) ran as an unattached runner after (b) (6) had quit the Haskell team. Mr. Mayes cheered for (b) (6) at that meet but (b) (6) never met (b) (6). After that meet Mr. Mayes texted (b) (6) that he wanted (b) (6) to run for Haskell in conference. (b) (6) told (b) (6) (b) (6) was not going to do that.

He texted (b) (6) that (b) (6) was not being fair to (b) (6) teammates, to think about (b) (6) teammates and how (b) (6) not running would affect them.

(b) (6) states one time (b) (6) asked Mr. Mayes why he had not sent (b) (6) the week's workouts and he told (b) (6) he sent them through the group chat, but (b) (6) was not included in the group chat. (b) (6) asked him to add (b) (6) to the group chat and he told (b) (6) (b) (6) had to have a teammate add (b) (6) to the group chat, which was hard because (b) (6) only knew about four people on the team because most of them were new. (b) (6) asked one of (b) (6) teammates to add (b) (6) to the chat, which (b) (6) did. **[Declaration B]**

(b) (6) states Mr. Mayes often came to (b) (6) for help/advice since this was his first year and (b) (6) was a team captain. (b) (6) told him that previously they had to do grade checks to make sure that they were doing well academically. He told (b) (6) if he was a student and had to do grade checks, he would be embarrassed to give his grade check to his coach. He thought it was easier for him to contact teachers directly, which is what he did. There had never been any issues before in terms of the runners giving grade checks to the coach. **[Declaration C]**

(b) (6) states Mr. Mayes did not enforce grade checks. (b) (6) thinks there was a feeling that he should have focused more on academics and not just on them being athletes. Mr. Mayes did not understand when (b) (6) teammates would miss practice. Mr. Mayes encouraged runners who were academically ineligible to run for Haskell (b) (6) (b) (6) to run in races unattached, which could negatively impact their ability to run in future years. **[Declaration D]**

(b) (6) states Mr. Mayes did not provide academic support. During previous semesters they were supposed to meet a certain number of study hours. Under Coach (b) (6) they had study hours and every two weeks they would take their grade check to Coach (b) (6) who would help runners who were having difficulty in classes. (b) (6) and (b) (6) talked to Mr. Mayes about the team needing more academic support because some of the new runners talked about failing classes. Mr. Mayes blew it off and made a snarky comment back to them, i.e., "If I was an athlete and had to do grade checks he would not share my grades with my coach because that is embarrassing." **[Declaration E]**

(b) (6) is a Cross Country runner at Haskell Indian Nations University in Lawrence, Kansas.

(b) (6) states (b) (6) did not experience a lack of communication or lack of academic support from Mr. Mayes. (b) (6) always arranged study time and study groups for the team. **[Declaration F]**

(b) (6) is a Cross Country runner at Haskell Indian Nations University in Lawrence, Kansas.

(b) (6) states neither the Haskell Athletic Department nor Mr. Mayes did grade checks, but Mr. Mayes did tell them to let him know if they needed help. (b) (6) felt like Mr. Mayes communicated well with the team. **[Declaration G]**

(b) (6) states Mr. Mayes did not have access to their grades, so (b) (6) knows there was some miscommunication there, but he asked them about their grades. Mr. Mayes did reach out to (b) (6) professors because (b) (6) was not doing well and (b) (6) was able to get (b) (6) grades up. He also set up mandatory study hall for freshman but (b) (6) was the only one who showed up ((b) (6) was the only freshman girl). When they did tell Mr. Mayes they were having troubles, he did advocate for them. **[Declaration H]**

(b) (6) states Mr. Mayes checked in on them and asked how their academics were. He told them he could email their teachers if they needed anything.

(b) (6) states (b) (6) did not want to communicate with Mr. Mayes about their progress. Mr. Mayes always told them communication was the key. These girls were showing up late to practice and were saying they wanted to do "a (b) (6) workout." All they would talk about was (b) (6), (b) (6). Coach Mayes is not going to work with a runner who does not want to do the work. (b) (6) never witnessed a time when Mr. Mayes did not communicate with the team members. **[Declaration I]**

Clay Mayes states, in terms of lack of academic support, he set up study hall. He emailed professors regularly for a lot of the student athletes for academic updates. None of the student athletes came to him regarding concerns about their grades. The only times he heard about student grades was through emails of professors. During the team meeting on October 30, 2021, (b) (6) asked him who was doing poorly with their grades. He told (b) (6) he could not share that information and (b) (6) responded angrily that (b) (6) could help. Other than this, no one complained to him about a lack of academic support. After this meeting, (b) (6), (b) (6) approached the women's basketball coach, (b) (6), and repetitively asked if (b) (6) could document events of the meeting that (b) (6) did not attend or that it happened as a way to "document."

Mr. Mayes states, in terms of unattached runners, they had a home meet on October 7, 2021. He did not work the registration table. He had nothing to do with the runners registering as unattached. He wanted runners to race if they wanted to and told them to sign up if they wanted to do so. No one complained to him about unattached runners. **[Declaration J]**

Allegation 3: *Inappropriate and threatening comments: "If I was an athlete and had to do grade checks he would not share my grades with my coach because that is embarrassing", "I'll throw you under the bus and I'll be the one driving it", "If you don't get off your phone, I'll shove it where the sun don't shine", calling one of their previous coaches a sociopath, mentioning that he will contact their parents if they do not follow the rules or if they are struggling academically*

even though they have not consented to that, continuing to bad mouth their previous coach although they told him it made them uncomfortable/ mad when he does this

(b) (6) states (b) (6) heard Mr. Mayes say "I'll throw you under the bus and I'll be the one driving it," which he said on the bus after a meet. Mr. Mayes was talking to a freshman runner but (b) (6) does not know the context of the comment. There were a lot of weird things Mr. Mayes would say that felt uncomfortable. (b) (6) thought maybe this was just his way of coaching but he has a very different character than (b) (6) previous coach. (b) (6) also heard Mr. Mayes say "If I was an athlete and had to do grade checks he would not share my grades with my coach because that is embarrassing," but (b) (6) does not remember when he said this or what the context was. (b) (6) knows one of the runners had suggested a study hall and this is when Mr. Mayes made this comment. (b) (6) heard Mr. Mayes say in the weight room doing core, "If you don't get off your phone, I'll shove it where the sun don't shine." He told them a story about a student at one of his prior work locations who filmed him when he was yelling at the team. (b) (6) understood this to be the reason Mr. Mayes did not want them to have their phones at practices. (b) (6) does not know who he said this to, but there was a no phone rule when they did core work. Mr. Mayes would tell them he had all of their parents' numbers and would call them if they were not doing well academically or had broken any rules. (b) (6) felt like he treated them like high school students. Mr. Mayes had them write down their parents' numbers for (b) (6) Mr. Mayes would speak poorly about (b) (6) prior assistant coach, (b) (6), including calling (b) (6) a "psychopath" when he was talking about how he felt the prior coach, (b) (6), was trying to get him fired. **[Declaration A]**

(b) (6) states (b) (6) heard Mr. Mayes say in the weightlifting room while in Coffin a couple of times, "I'll throw you under the bus and I'll be the one driving it" when he was talking to the team about if he caught them drinking or partying. (b) (6) remembers hearing Mr. Mayes say once at an away meet while they were eating at a Pizza Hut to (b) (6), who was on his phone, "If you don't get off your phone, I'll shove it where the sun don't shine." Mr. Mayes wanted them to be off their phones. (b) (6) heard that Mr. Mayes referred to (b) (6) as a "sociopath" when speaking to the men's team. Mr. Mayes often spoke poorly about (b) (6) including saying (b) (6) was crazy. (b) (6) would say every other day Mr. Mayes would bring up (b) (6) and say something negative about (b) (6) Mr. Mayes told them he would call their parents if they were not doing well academically or if they were caught drinking because he thought it would be more effective if they were chewed out by their parents. (b) (6) thinks the team did not feel comfortable enough to express to Mr. Mayes that they did not like his comments, but they did address with him his disorganization and lack of communication. **[Declaration C]**

(b) (6) states Mr. Mayes said to the whole team on one occasion "If I was an athlete and had to do grade checks he would not share my grades with my coach because that is embarrassing" after a team member asked him if he could do grade checks to make sure everyone was doing well in their classes. (b) (6) heard Mr. Mayes say "I'll throw you under the bus and I'll be the one driving it" during a core workout when he was talking to them about breaking the rules (being on time, what they do on their free time). (b) (6)

also heard Mr. Mayes say one time to (b) (6) teammate (b) (6), who was on (b) (6) phone, "If you don't get off your phone, I'll shove it where the sun don't shine." (b) (6) did not hear Mr. Mayes refer to one of their previous coaches, (b) (6), as a sociopath, but (b) (6) knows (b) (6) teammates heard this. Mr. Mayes would say to them that he would contact their parents if they were not doing well academically or had broken any rules. **[Declaration D]**

(b) (6) states (b) (6) heard Mr. Mayes say during practice "I'll throw you under the bus and I'll be the one driving it." (b) (6) does not remember why he said this but (b) (6) remembers feeling like it was not funny. Before practice he would tell the team to put their phones away. (b) (6) remembers hearing Mr. Mayes say twice, "If you don't get off your phone, I'll shove it where the sun don't shine" to a runner who was talking on the phone. (b) (6) heard that Mr. Mayes referred to (b) (6) as a "sociopath" when he was talking to the boys' team. The (b) (6) heard about this from their teammates. Other times Mr. Mayes would randomly talk about (b) (6) reporting him if he did not do the right thing. Mr. Mayes told them he would call their parents if they were not doing well academically or if they had been drinking even though they were all over 18. (b) (6) (b) (6) told them no one is supposed to call their parents unless they have a signed form from the students. Mr. Mayes also spoke poorly about Coach (b) (6). He told (b) (6) (b) (6) and (b) (6) that Coach (b) (6) did not know how to recruit. (b) (6) took offense to this comment because all three of them had been recruited by Coach (b) (6). **[Declaration E]**

(b) (6) states (b) (6) never heard Mr. Mayes state "If I was an athlete and had to do grade checks he would not share my grades with my coach because that is embarrassing", "I'll throw you under the bus and I'll be the one driving it" or "If you don't get off your phone, I'll shove it where the sun don't shine." **[Declaration F]**

(b) (6) states (b) (6) does not recall Mr. Mayes saying "If I was an athlete and had to do grade checks (b) (6) would not share my grades with my coach because that is embarrassing" or "If you don't get off your phone, I'll shove it where the sun don't shine" or calling a former coach a sociopath. (b) (6) did hear Mr. Mayes say "I'll throw you under the bus and I'll be the one driving it" when Mr. Mayes was talking to a runner on the Haskell team (b) (6), who was a runner for Mr. Mayes at the University of Antelope Valley) in a joking way because they had a joking relationship. Mr. Mayes had a few team rules and mentioned that he would call their parents if the rules were broken. (b) (6) does not believe Mr. Mayes ever called anyone's parents. **[Declaration G]**

(b) (6) states (b) (6) did not hear Mr. Mayes say "If I was an athlete and had to do grade checks he would not share my grades with my coach because that is embarrassing." Mr. Mayes was the opposite. When (b) (6) told (b) (6) (b) (6) was failing, he did not shame (b) (6) he thanked (b) (6) for communicating and helped (b) (6) work through some of (b) (6) grades. (b) (6) did not hear Mr. Mayes say "I'll throw you under the bus and I'll be the one driving it." Mr. Mayes has never said "If you don't get off your phone, I'll shove it where the sun don't shine." He did tell them to stay off their phones and if they did not, he would not allow phones at practice. Team members would use phones during practice

to look at TikTok or memes of shuffle through music instead of doing their workout. Mr. Mayes did call (b) (6) a "sociopath." There were a few different instances when this happened. (b) (6) did not feel this was professional when he said this. Part of Mr. Mayes holding them accountable was that he would contact their parents if they violated the rules—this was an extra level of accountability for them. (b) (6) knew the prior coach, (b) (6) because (b) (6) signed (b) (6) for track and field. (b) (6) did not hear Coach Mayes bad mouth (b) (6). **[Declaration H]**

(b) (6) states (b) (6) does not recall hearing Mr. Mayes say "If I was an athlete and had to do grade checks he would not share my grades with my coach because that is embarrassing," "I'll throw you under the bus and I'll be the one driving it" or "If you don't get off your phone, I'll shove it where the sun don't shine." (b) (6) heard teammates talking about Mr. Mayes making the bus comment, but (b) (6) never heard him say it. (b) (6) was not around Mr. Mayes much because (b) (6) was always running. (b) (6), (b) (6) and (b) (6) were always around Mr. Mayes because they were trying to get something out of him. (b) (6) does not recall hearing Mr. Mayes calling one of their previous coaches a sociopath. (b) (6) knows Mr. Mayes disliked (b) (6) for all of the things (b) (6) was doing to him, but (b) (6) never heard him say this. Mr. Mayes told them he would only contact their parents if they were caught drinking or partying. (b) (6) thinks this is one of the reasons those girls did not like Mr. Mayes because they went out every night and then would miss practices in the morning. (b) (6) is pretty sure those (b) (6) did not want their families to know they were doing this. **[Declaration I]**

Clay Mayes states he never said to the student athletes, "If I was an athlete and had to do grade checks he would not share my grades with my coach because that is embarrassing." He does not recall saying, "I'll throw you under the bus and I'll be the one driving it," but he does joke around, including saying "he feels like he has been hit by a bus" if he was tired from a workout. He did tell students, including (b) (6) and (b) (6) (b) (6) to stop using their phones because they would be on their phones instead of practicing. He may have said "If you don't get off your phone, I'll shove it where the sun don't shine," but not in a threatening manner. He may have said this joking around, but he does not specifically remember saying this. He never called a previous coach (b) (6) (b) (6) a sociopath, although he does say the word sociopath a lot, but not in a degrading manner. The only way he could contact parents is if he had a FERPA release from the students. The only time he remembers telling a student that he would contact their parents was if they did not follow the rules or if they were struggling academically. This happened only one time, with (b) (6). He does not remember telling the team this and, if he did, it was intended to motivate them. **[Declaration J]**

Allegation 4: *False promises: gear that he never provides to them, certain meets, changes in behavior, lying consistently, etc...*

(b) (6) states (b) (6) was supposed to get a pair of racing flats. Mr. Mayes told (b) (6) he would pay out of pocket if needed. (b) (6) never received the racing flats. **[Declaration A]**

(b) (6) states right before a meet Mr. Mayes asked everyone their shoe sizes and told them he would have better shoes for them at the next meet, but he never did. He constantly told them he would do something (buy them donuts, get them spikes) and never did. (b) (6) thinks in the Native community a lot of them were harmed by false promises from a coach who they were supposed to trust because they have a long history of false promises from the government. **[Declaration C]**

(b) (6) states some of (b) (6) teammates told (b) (6) they needed new shoes or other items and Mr. Mayes would constantly put it off by saying he would get it to them but never followed through in getting it to them. (b) (6) needed new flats for one of the races and would constantly remind Mr. Mayes, but (b) (6) never got them. **[Declaration D]**

(b) (6) states throughout the whole season they only received two shirts and a pair of shorts. Their school is sponsored by Nike and these were not Nike items. They also received a backpack and a jacket that were left over from the prior year. Some runners needed new shoes and spikes and no one got new spikes. Every other team received purple sweaters but the cross country team did not. One time they were at Mr. Mayes' house for a team dinner and saw boxes of gear, including the purple sweaters. It seemed like he had boxes of gear at (b) (6) house that he was not giving to them. **[Declaration E]**

(b) (6) states Mr. Mayes gave them a lot of apparel and if they needed more running shoes, they would ask (b) (6) and he would get them some more. **[Declaration F]**

(b) (6) states (b) (6) does not think Mr. Mayes broke any promises. He provided gear to the team. **[Declaration G]**

(b) (6) states the gear they received was the gear he promised them. Mr. Mayes told them he would try to get them other gear if they wanted it. He never specifically promised them additional gear. (b) (6) did not feel like (b) (6) was promised anything that (b) (6) did not get. **[Declaration H]**

(b) (6) states Mr. Mayes provided them with gear, including shoes. **[Declaration I]**

Clay Mayes states there was one student, (b) (6) who told him the wrong shoe size and (b) (6) received the wrong size shoes. He went out and bought (b) (6) a pair of shoes with his own money, so (b) (6) did receive shoes, but not long after (b) (6) stopped showing up to practices and did not show up to (b) (6) race for (b) (6) last two cross country meets. He thinks the students are complaining because he had structured rules in having people at practices, following HINU's codes of conduct, and never bought them personal gifts or took them out to eat individually, which the prior coach (b) (6) did. There were (b) (6) who reported to him (on April 10, 2022 and April 12, 2022) that they were groped by (b) (6), which he reported to the police immediately. **[Declaration J]**

Allegation 5: *Makes it obvious who are his favorites, the favorites know that they are his favorites*

(b) (6) states Mr. Mayes gave (b) (6) a jacket that no one else had. (b) (6) was not a team captain but Mr. Mayes would often give (b) (6) leadership roles. (b) (6) felt Mr. Mayes did not appreciate the novice runners enough while he would post frequently about the top four runners ((b) (6), (b) (6) and (b) (6) (b) (6)). One of the (b) (6) (b) (6) stated (b) (6) was one of his favorites. **[Declaration A]**

(b) (6) states on Mr. Mayes' Instagram he would post pictures most frequently of certain runners (the top/fastest couple of women and men). One of his favorites, (b) (6) had a jacket that none of the rest of them got. (b) (6) told them (b) (6) got it because Mr. Mayes "owed it to (b) (6)(b) (6) said to (b) (6) (b) (6) and (b) (6) that (b) (6) knew that (b) (6) (b) (6) was one of Mr. Mayes' favorites. **[Declaration C]**

(b) (6) states Mr. Mayes definitely had his favorites and everyone noticed it. For example, Mr. Mayes gave (b) (6) gear that no one else had and treated (b) (6) as a captain even though (b) (6) was not a captain. **[Declaration D]**

(b) (6) states at the beginning of the cross country season Mr. Mayes assigned two female captains and two male captains. Mr. Mayes gave a sweater to (b) (6) that he did not give to the rest of them. (b) (6) told (b) (6) Mr. Mayes gave (b) (6) the sweater because he owed (b) (6) for something. During the last meeting with Mr. Mayes on October 31, 2021, they told (b) (6) they did not appreciate how he favors certain runners. Mr. Mayes said he did not have favorites. (b) (6) stated (b) (6) was not his favorite and said Mr. Mayes had a different favorite at (b) (6) (b) (6), where Mr. Mayes transferred from), which basically confirmed that Mr. Mayes has favorites. **[Declaration E]**

(b) (6) states (b) (6) did not feel like Mr. Mayes had favorites. Mr. Mayes put more effort into runners who worked harder. He paid pretty good attention to everyone. **[Declaration F]**

(b) (6) states (b) (6) felt like Mr. Mayes had favorites, which were the people, including (b) (6) who communicated with Mr. Mayes about training updates. Some of the team members were not communicating with Mr. Mayes about training updates and Mr. Mayes seemed to have a hard time bonding with them. **[Declaration G]**

(b) (6) states many of the team members thought (b) (6) was a favorite of Coach Mayes, but (b) (6) thinks many of the team members did not communicate enough with Coach Mayes. (b) (6) did not feel Mr. Mayes had favorites, it is just that those who communicated more got more attention because they communicated what they needed. **[Declaration H]**

(b) (6) states (b) (6) was bullied because (b) (6) (b) (6) (b) (6) and (b) (6) saw (b) (6) as a favorite of Mr. Mayes. They would not talk to (b) (6) and this

year has been really bad for (b) (6) and (b) (6). You have to meet your coach half-way. Mr. Mayes would pay more attention to those team members who communicated with him. **[Declaration I]**

Clay Mayes states there is some truth to him having favorites because he was overly respectful to the people who made the complaints ((b) (6) and (b) (6) (b) (6)) and let them slide with less-than-ideal behavior (in terms of them being out of shape), so he treated the people who made complaints more favorably than he did the other runners in the hope that they would not get too discouraged. He had a desire to see people do well and change courses. If someone goes out and breaks the codes of conduct, they have to do community service in response. He likes them to maintain healthy lifestyles while training consistently. Everyone on the team got the same jackets (a Storm Shelter jacket and a windbreaker). He never took back the gear from the athletes who quit. **[Declaration J]**

Allegation 6: Talks badly about their (b) (6) saying "(b) (6) doesn't know what he's doing"

(b) (6) states Coach Mayes used a butter knife and a binder clip for an injury for (b) (6). When (b) (6) told Coach Mayes about the diagnosis the athletic trainer, (b) (6), had given (b) (6) Coach Mayes told (b) (6) (b) (6) did not know what (b) (6) was talking about even though (b) (6) diagnosis given to (b) (6) by (b) (6) was confirmed by a hospital. Coach Mayes was trying to tell (b) (6) (b) (6) needed a boot. **[Declaration A]**

(b) (6) states (b) (6) did not hear Mr. Mayes say (b) (6) did not know what (b) (6) was doing, but (b) (6) heard about this from (b) (6) (b) (6) never directly heard Coach Mayes speak badly about (b) (6), but (b) (6) knows other people heard this. **[Declaration C]**

(b) (6) states (b) (6) heard Coach Mayes say during practice to (b) (6), who was injured, that (b) (6) misdiagnosed (b) (6) and (b) (6) did not know what (b) (6) was doing. This freaked (b) (6) out because (b) (6) thought (b) (6) was getting better. It turned out that (b) (6) was fine and what (b) (6) was doing was helping (b) (6) **[Declaration D]**

(b) (6) states (b) (6) was getting help from the (b) (6), because (b) (6) was injured. (b) (6) told (b) (6) to run 10-15 minutes or however long (b) (6) felt comfortable. (b) (6) ran for 10 minutes. Coach Mayes told (b) (6) he needed (b) (6) to take two weeks off based on the way (b) (6) was running and while (b) (6) took (b) (6) two weeks off "(b) (6) should just sit on the couch, watch movies and eat chips" rather than taking into consideration that (b) (6) was hurt and struggling with (b) (6) injury. Coach Mayes should have insisted that (b) (6) continue to recover with physical therapy and possibly get another opinion. Mr. Mayes did not mention any of that to (b) (6) as a student athlete. (b) (6) felt discouraged and neglected. Coach Mayes told (b) (6) (b) (6) was a runner for many years and that (b) (6) leg was broken, which scared (b) (6). Mr. Mayes asked (b) (6) what (b) (6) had told (b) (6). Mr. Mayes told (b) (6) (b) (6) did not know what he was talking about and had

misdiagnosed (b) (6) (b) (6) leg was not broken and (b) (6) did not have any bone fractures. [Declaration E]

(b) (6) states (b) (6) did not hear Mr. Mayes speak badly about their (b) (6) (b) (6), by saying (b) (6) "doesn't know what (b) (6) doing." [Declaration F]

(b) (6) states (b) (6) heard Mr. Mayes say one time about (b) (6) (b) (6) "doesn't know what (b) (6) doing" when a team member had an injury. (b) (6) believed Mr. Mayes was referring to (b) (6) in the context of (b) (6) having so many athletes to treat. [Declaration G]

(b) (6) states Coach Mayes and (b) (6) worked well together. (b) (6) sprained (b) (6) knee recently and Coach Mayes recommended that (b) (6) work with (b) (6). (b) (6) does not believe the allegation that Mr. Mayes spoke poorly about (b) (6) is true because Mr. Mayes' actions show otherwise. [Declaration H]

(b) (6) states (b) (6) did not hear Coach Mayes say (b) (6) did not know what (b) (6) was doing. [Declaration I]

Clay Mayes states (b) (6) came to a practice limping with multiple teammates present. He told (b) (6) to stop running due to this injury. He called (b) (6) the (b) (6) (b) (6) immediately and told him. They mutually agreed (b) (6) should take a week off. He did not say (b) (6) did not know what he was doing nor did he suggest this. From what he could see, (b) (6) did a good job. [Declaration J]

Allegation 7: *In general makes comments about other Haskell employees in a negative manner*

(b) (6) states Mr. Mayes seemed to have an issue with their previous coaches (stating they were messing up their eligibility and not looking at their transcripts). The team felt split between (b) (6) and Mr. Mayes. The runners who had been coached by (b) (6) did not appreciate hearing Mr. Mayes' concerns about what was going on with the Haskell administration or hearing Mr. Mayes speak negatively about (b) (6) (b) (6) felt like the freshman runners who had not run under (b) (6) seemed to have bad thoughts about (b) (6) because of what Mr. Mayes said about (b) (6) (b) (6) a runner who followed Mr. Mayes to Haskell, had a hard time understanding how Mr. Mayes made them (the returning Haskell runners) feel when he spoke negatively about (b) (6). (b) (6) feels like (b) (6) witnessed a lot of hurt feelings from Mr. Mayes.

(b) (6) states, in addition to (b) (6) Mr. Mayes spoke negatively about (b) (6) and (b) (6) (b) (6) always felt Mr. Mayes was trying to one up (b) (6) in coaching skills. At random times Mr. Mayes would say "Oh, did (b) (6) do this for you?" [Declaration A]

(b) (6) states Mr. Mayes made negative comments about (b) (6) (b) (6) and (b) (6) (b) (6) does not remember if Mr. Mayes specifically used (b) (6)

(b) (6) name in front of (b) (6) because Mr. Mayes knew they would get upset when he talked poorly about their prior coach, but he would say "did your past coach do this for you" or "I will probably be the only coach who will do this for you guys." (b) (6) and (b) (6) (b) (6) had a meeting with Coach Mayes early in the season to let him know they felt uncomfortable when he spoke badly about (b) (6). [Declaration C]

(b) (6) states (b) (6) is not aware of Mr. Mayes making comments about Haskell employees, other than (b) (6) and (b) (6), in a negative manner. [Declaration D]

(b) (6) states Mr. Mayes made negative comments about (b) (6) (b) (6) and (b) (6) as described above. [Declaration E]

(b) (6) states (b) (6) did not hear Mr. Mayes talk about other Haskell employees in a negative manner. [Declaration F]

(b) (6) states (b) (6) did hear Mr. Mayes talk about other Haskell employees in a negative manner, although (b) (6) cannot say specifically what Mr. Mayes said. (b) (6) knows Mr. Mayes made some remarks about some staff at Haskell, including the athletic trainer, but (b) (6) does not recall any other names. [Declaration G]

(b) (6) states other than (b) (6), (b) (6) did not hear any negative comments made by Mr. Mayes about Haskell employees. Mr. Mayes did say (b) (6) was hosting sleepovers with some athletes or would meet them at bars, but (b) (6) did not think these were negative comments as these things were happening based on what (b) (6) was seeing online. (b) (6) made unprofessional comments to (b) (6) (for example, telling (b) (6) (b) (6) should not use a stationary bike unless (b) (6) was an old man). [Declaration H]

(b) (6) states (b) (6) never heard Mr. Mayes making negative comments about Haskell employees. [Declaration I]

Clay Mayes states he has not made negative comments about (b) (6) or (b) (6) but he has reported (b) (6) for calling him a child, changing his budget from 38,000 to -11,000, limiting his work duties without any stated reason, i.e., stating he was to stop recruitment with all recruits, (b) (6) and (b) (6) for taking Federal property and violating rules and basic freedoms, such as speech for administrators and students. On March 25, 2022, (b) (6) told several student athletes (b) (6) and (b) (6) they would have to remain quiet about their concerns and ongoing issues. All these student athletes stated they felt intimidated and bullied to comply and to remain silent by (b) (6) and (b) (6) in multiple meetings. He did not make any comments about (b) (6) because he does not know (b) (6) training style nor had he been to (b) (6) practices. [Declaration J]

Allegation 8: *Treats athletes with medical treatments such as Graston with binder clips, wrenches, used with lotion, biofreeze and hand sanitizer. Has done this to (b) (6)*

(b) (6), (b) (6), (b) (6), (b) (6)
and (b) (6)

(b) (6) states Graston is a therapy technique for sore muscles that uses silver metal tools. Only athletic trainers are supposed to do this procedure and Coach Mayes was performing it on runners (b) (6), (b) (6), (b) (6) and (b) (6) (b) (6) with binder clips. **[Declaration A]**

(b) (6) states (b) (6) believes Mr. Mayes gave (b) (6) the Graston treatment. One time (b) (6) used a binder clip and the second time (b) (6) used a broken piece of equipment that was in the gym. They (the runners) did not know at the time that someone has to be certified to do the treatment. (b) (6) had an injury and a physical therapist told (b) (6) that you need to be certified and have to use specific tools. The runners believe the treatment by Mr. Mayes made (b) (6) injury worse. (b) (6) knows when (b) (6) had it done it did not make (b) (6) feel better and (b) (6) had bruises on (b) (6) legs. **[Declaration C]**

(b) (6) states Mr. Mayes would do Graston therapy on runners sometimes before runs and after runs. (b) (6) never did this to (b) (6) **[Declaration D]**

(b) (6) states at the beginning of the season Mr. Mayes told them if they needed any scraping (on the calf), he was willing to help. (b) (6) and (b) (6) tried it. Mr. Mayes used a wrench and a binder clip, which hurt. (b) (6) went to (b) (6) and (b) (6) told (b) (6) that (b) (6) muscle was tight. (b) (6) told (b) (6) how Mr. Mayes was treating it. (b) (6) told (b) (6) Mr. Mayes was not supposed to be doing that. (b) (6) also went to a physical therapist who told (b) (6) Mr. Mayes needs to be certified to perform Graston. Everyone Mr. Mayes was using Graston on was getting hurt. (b) (6) is still recovering from the scraping that Mr. Mayes did to (b) (6) (b) (6) was finally able to run again in December 2021. **[Declaration E]**

(b) (6) states Graston is a type of procedure that helps your legs recover. Mr. Mayes did this with (b) (6) when (b) (6) needed him to. If (b) (6) legs were super sore or really tired, (b) (6) would ask Mr. Mayes to do that. **[Declaration F]**

(b) (6) states Mr. Mayes did Graston with (b) (6) when (b) (6) needed him to and it worked. **[Declaration G]**

(b) (6) states Mr. Mayes never forced medical treatments on them and it was never one on one. Sometimes (b) (6) would use hand sanitizer for Graston when they could not find lotion, but the athletes consented to that. **[Declaration H]**

(b) (6) states (b) (6) saw Mr. Mayes do Graston therapy on runners with lotion to get out the knots. (b) (6) seemed to be very aware of what (b) (6) was doing because (b) (6) knew about the muscle groups. **[Declaration I]**

Clay Mayes states the people he worked out, i.e., rolled their calves, are the people who later proceeded to complain (b) (6). He rolled them out with a calf roller because they approached him and asked him to roll their legs. At no

point did he offer to roll them out and they only got rolled out if they asked him to. In order to do Graston (basically rolling the calves), you would have to have \$2,000 in equipment. What he did was a recreational therapeutic, not a medical treatment, using a muscle roller from the training room that anyone could borrow at any time. He states multiple students and coaches had worked each other out previously. He does not recall using binder clips or wrenches to do the calf rolling. **[Declaration J]**

Allegation 9: Missouri Southern Stampede: Runners at Missouri Southern Stampede stated that (b)(6) did not run when athletics received an email from Mayes stating otherwise

(b)(6) states their first race (the Missouri Stampede) included a non-Haskell athlete who was one of Mr. Mayes' prior runners and wore a Haskell bib. Mr. Mayes told a freshman runner (b)(6) to whom the bib belonged to say that (b)(6) ran and could not finish the race even though (b)(6) did not race. **[Declaration A]**

(b)(6) states (b)(6) was at the Missouri Southern Stampede, which was their first meet. There were a number of bib mix-ups. (b)(6) saw (b)(6) name on the leaderboard even though (b)(6) was not at the meet because (b)(6) was injured. (b)(6) ran under (b)(6) bib after Mr. Mayes gave (b)(6) bib to (b)(6) when (b)(6) gave them the bibs the night before the meet. This mistake could have used up a year of eligibility for (b)(6) because (b)(6) did not run in a meet at all that season. Freshman (b)(6) did not run in the race because (b)(6) was injured but (b)(6) came to the meet to see (b)(6) family. A non-Haskell runner, (b)(6), ran under (b)(6) bib. **[Declaration C]**

(b)(6) states (b)(6) was at the Missouri Southern Stampede to meet (b)(6) but (b)(6) did not run that race as far as (b)(6) knows. Mr. Mayes had (b)(6) who was not even a Haskell student yet, run under (b)(6) bib. **[Declaration D]**

(b)(6) states (b)(6) was not at the Missouri Southern Stampede. (b)(6) roommate, (b)(6) told (b)(6) that (b)(6) did not run and (b)(6) who was one of Mr. Mayes' previous runners, ran instead even though (b)(6) was not on the Haskell team. **[Declaration E]**

(b)(6) states (b)(6) was supposed to run at the Missouri Southern Stampede but (b)(6) got injured at the race before the race started. (b)(6) thinks someone may have run under (b)(6) bib. (b)(6) thinks this occurred because Mr. Mayes may have grabbed the wrong bib. **[Declaration F]**

(b)(6) states (b)(6) is not sure if (b)(6) ran at the Missouri Southern Stampede. **[Declaration H]**

(b)(6) states (b)(6) knows (b)(6) went with them to the Missouri Southern Stampede for support and (b)(6) heard that the school thought (b)(6) ran because (b)(6) went with

them. (b)(6) was aware (b)(6) was not going to run and was just going to be there for support. [Declaration I]

Clay Mayes states (b)(6) went to the Missouri Southern Stampede but (b)(6) got hurt and did not finish (DNF) the race. (b)(6) conveyed this information to athletics. [Declaration J]

Allegation 10: *Encouraging ineligible runners to run unattached while they are ineligible with the runners not knowing that this will affect their eligibility in the future*

(b)(6) states the students who were not eligible to run were encouraged by Mr. Mayes to run unattached, which would make them ineligible to run the next season. [Declaration A]

(b)(6) states they had a non-conference meet at Haskell on October 9, 2021 and there were a number of team members ((b)(6) (b)(6) and (b)(6)) who were ineligible for the season due to academic reasons but Mr. Mayes encouraged them to run unattached, which could affect their NAIA eligibility for future seasons. All of these individuals ran unattached at the Haskell meet and several of them ran unattached at a later meet in Kansas. The runners did not know that they could not run unattached because if you are not eligible you are not supposed to race at all. [Declaration C]

(b)(6) states there was a meet (b)(6) drove to with two ineligible runners (b)(6) (b)(6) and (b)(6)). (b)(6) did not know at that time that they were not supposed to run, but they ran in the meet as unattached. There was also a meet in Lawrence at which (b)(6) and (b)(6) ran unattached. (b)(6) learned through NAIA that ineligible runners are not supposed to be racing at all unless there is a signed certificate that they are able to run, which Mr. Mayes did not have. [Declaration E]

(b)(6) states (b)(6) does not know about Mr. Mayes encouraging ineligible runners to run unattached. [Declaration F]

(b)(6) states (b)(6) knows Mr. Mayes encouraged ineligible runners to run unattached, although it never happened to him because he was always eligible. [Declaration G]

(b)(6) states they had a meet at Haskell that was open and runners could run unattached. (b)(6) does not know if this impacted eligibility. [Declaration H]

(b)(6) states (b)(6) does not think Mr. Mayes encouraged ineligible runners to run. (b)(6) wanted them to run, but only if academically eligible. (b)(6) doubts Mr. Mayes would have encouraged ineligible runners to run. [Declaration I]

Clay Mayes states there were two races where runners ran unattached (at a home Haskell meet and Mid-States on October 22, 2021), which runners are allowed to do. He cannot stop them and it does not affect their eligibility. The runners registered themselves for these races, he did not register them, and found their own means of travel to the races. No one was forced to run. He did not encourage anyone who was ineligible to run. **[Declaration J]**

Allegation 11: Continuous bib mix up during meets/disorganization

(b)(6) states Mr. Mayes mixed up bibs. He ran someone else under (b)(6) (b)(6) bib number, but (b)(6) is not sure which race this was. **[Declaration A]**

(b)(6) states the very first meet there were bib mix-ups between (b)(6) (b)(6) and (b)(6), and also (b)(6) and (b)(6). At the Haskell meet on October 9, 2021 Mr. Mayes had a basketball player on the roster ((b)(6)) who was not on the cross country team but did not run at the meet. (b)(6) does not think (b)(6) (b)(6) even knew (b)(6) name was on the roster. Later in the season, at the very last meet, Mr. Mayes had three softball girls run at the meet who were not members of the cross country team. (b)(6) recently learned that one of the softball girls ran under (b)(6) number. (b)(6) learned this from the (b)(6) the week prior to (b)(6) interview for this inquiry when (b)(6) asked about (b)(6) times and (b)(6) told (b)(6) could not look at (b)(6) racing times because someone had run under (b)(6) number. **[Declaration C]**

(b)(6) states at the Missouri Southern Stampede race (b)(6) name appeared on the results even though (b)(6) was back on campus. (b)(6) does not know if someone else ran with (b)(6) bib. Mr. Mayes claimed (b)(6) time showed up because someone walked by the finish area while holding (b)(6) bib. **[Declaration D]**

(b)(6) states Mr. Mayes mixed up (b)(6) bib with another girl at the very first race of the season (September 18, 2021 Missouri Southern Stampede) even though (b)(6) did not run in that race, which could affect (b)(6) eligibility for the next season. When (b)(6) went to the Winfield meet, Mr. Mayes did not have a canopy set up for them, water or a medical bag. He did not have anything set up for the runners, which was odd because he has been a cross country coach for so long. **[Declaration E]**

(b)(6) states Mr. Mayes was not disorganized. He was always organized and he would always give them what they needed the day before the race. He does not recall bibs being mixed up. **[Declaration G]**

(b)(6) states the bib mix-up was due to the race organizers (Missouri Southern State race), not Coach Mayes. **[Declaration H]**

(b)(6) states (b)(6) thinks there was only one race, their first race, where there was a bib mix-up. (b)(6) thinks (b)(6) picked up (b)(6) bib, but (b)(6) is not sure what happened or how there was a mix-up. Mr. Mayes took full responsibility for the mix-up

and told them he had reported the incident to NAIA. (b) (6) remembers he did not coach them for two weeks because of this incident. [Declaration I]

Clay Mayes states to his knowledge there were no bib mix-ups. He was not disorganized, just overwhelmed with his job always being in danger. The college had a couple of administrators meeting outside of work with past students they coached composing erroneous complaints in an effort to build a case. (b) (6) was aware of this. These administrators directly benefited from these complaints. (b) (6) never coached previously but was named the head track coach in March 2022 by (b) (6). [Declaration J]

Allegation 12: Asking runners and others to watch (b) (6) children when (b) (6) is not able to at the Haskell home meet

(b) (6) states Mr. Mayes asked a (b) (6) of one of (b) (6) teammates (b) (6) who had volunteered to help with a meet, if (b) (6) could watch (b) (6) during the meet. [Declaration A]

(b) (6) states (b) (6) told (b) (6) that at the October 9, 2021 Haskell home meet (b) (6) asked Mr. Mayes what (b) (6) could help him with (in terms of the meet) and he told (b) (6) (b) (6) (b) (6) could watch (b) (6). He never asked (b) (6) to watch (b) (6). [Declaration C]

(b) (6) states Mr. Mayes asked (b) (6) (b) (6) to watch (b) (6) at the one Haskell meet of the season. Mr. Mayes also asked (b) (6) to watch (b) (6) at that meet. Mr. Mayes never asked (b) (6) to watch (b) (6). [Declaration D]

(b) (6) states (b) (6) was helping to do bibs on October 9, 2021 at the (b) (6) Invitational when Mr. Mayes asked (b) (6) to help (b) (6) (b) (6) then asked (b) (6) to watch the (b) (6) while (b) (6) helped with the meet. Mr. Mayes' (b) (6) would sometimes be with him during practice and climbing all over things, and team members wound up watching them even though Mr. Mayes did not ask them to do so. [Declaration E]

(b) (6) states (b) (6) does not know about Mr. Mayes asking runners and others to watch (b) (6) at a Haskell home meet. [Declaration F]

(b) (6) states Mr. Mayes asked (b) (6) and former runners who were not part of the race to watch (b) (6) for him if they could. Mr. Mayes did ask (b) (6) to watch (b) (6) at his house, which (b) (6) did, because (b) (6) was staying with Mr. Mayes at the time while (b) (6) was waiting for (b) (6) apartment to open up. [Declaration G]

(b) (6) states (b) (6) does not know if Coach Mayes asked runners to watch (b) (6). (b) (6) knows Mr. Mayes' (b) (6) was present at the meet and whenever (b) (6) saw (b) (6) they were with (b) (6) (b) (6) [Declaration H]

(b)(6) states (b)(6) is not aware of Mr. Mayes asking runners to watch (b)(6) at the Haskell home meet. They did not have enough volunteers and Mr. Mayes' (b)(6) was handing out bibs. (b)(6) was watching the (b)(6) [Declaration I]

Clay Mayes states at the Haskell home meet (b)(6) was watching (b)(6) (b)(6). He did not ask anyone to watch (b)(6) at the home meet. He did not have runners baby-sit for him when they would go out, but (b)(6) did babysit for them when he and (b)(6) went out to eat one time in the fall. [Declaration J]

Allegation 13: *Running runners in XC jerseys that are not Nike--Brooks is not a brand approved by athletics*

(b)(6) states Haskell has a contract with Nike and Coach Mayes bought Brooks racing shorts and singlets. (b)(6) does not know the rules around the contract or how this would affect the school. [Declaration A]

(b)(6) states Mr. Mayes gave them Brooks racing jerseys and running shorts that (b)(6) had printed and that they raced in. They are sponsored by Nike and if they do not race in Nike gear, Nike can pull their sponsorship. [Declaration C]

(b)(6) states (b)(6) believes Haskell is sponsored by Nike and they are supposed to be wearing Nike gear. Coach Mayes gave them Brooks gear. [Declaration D]

(b)(6) states (b)(6) does not know if they should have been running in Brooks or Nike apparel. (b)(6) knows they were not signed by anyone. [Declaration F]

(b)(6) states (b)(6) heard that Haskell gets a big discount on Nike gear and Mr. Mayes was looking at other gear that he thought was less expensive or more comfortable for them to wear during races. [Declaration G]

(b)(6) states Haskell has a deal with Nike that they get a discount, but (b)(6) understanding is that they are not contracted with them, so getting Brooks gear should not have impacted their contract. (b)(6) thinks this is a coaching concern rather than a student concern. [Declaration H]

(b)(6) states Mr. Mayes told them they were not sponsored by Nike and they were wearing New Balance gear. (b)(6) thinks (b)(6) and (b)(6) wanted to wear Nike gear. They would say things like (b)(6) would never have them wear something like this." [Declaration I]

Clay Mayes states the previous cross country coach did not hand over gear to him or respond to multiple emails about obtaining past cross country apparel. The coach refused to pass off any uniforms to him. He was told this was due to past cross country gear being taken by (b)(6) and (b)(6), which they gave to their family and friends. He has validated this with submitted documents and messages. He reported this to his CFO/supervisor multiple times. They went with Brooks gear because Brooks had the

sizes they needed when they ordered late (in July) and Nike did not have the right sizes. This order with Brooks was first approved by the AD and the Chief Financial Officer. The softball team also does not have Nike uniforms and no one has reported them. **[Declaration J]**

Allegation 14: *Emotional manipulation: when he is called out by his runners, he continuously makes excuses to make them feel bad for him*

(b)(6) states (b)(6) brought up with Mr. Mayes a concern about his disorganization. He listed all the things he was dealing with and said he had a lot on his plate. Every time a concern was brought up throughout the season he would resort back to having so much on his plate. (b)(6) felt like this was his job and if he felt overworked, then maybe the job was not for him. (b)(6) met with him to discuss (b)(6) concerns (his disorganization and him creating a negative environment in practice by speaking badly about their former coach) and he told (b)(6) they would meet the following Monday to come up with a plan. That meeting never happened and by then (b)(6) had decided to quit the team. (b)(6) does not remember when that occurred. **[Declaration A]**

(b)(6) states when they would call out Mr. Mayes on his disorganization or lack of communication, he would say he had a lot going on (b)(6) children, people in the athletic department are out to get him). His only job was to coach them and he would say these things to make people feel sorry for him. This allowed him to make excuses for not doing anything in response to the concerns they raised. When he talked to them about drinking, he would tell them they were representatives of their community and they should not be seen out, which made them feel bad if they did go out. **[Declaration C]**

(b)(6) states when the team would bring up concerns about what Mr. Mayes could do to help them, he would constantly say that he was busy and that he had other responsibilities (b)(6) children, parenting classes) that he was stressed out about, which made them feel bad and have pity for him. **[Declaration D]**

(b)(6) states one time (b)(6) and (b)(6) talked to Mr. Mayes about how they needed more organization and support. Mr. Mayes said he had a lot going on and manipulated them into believing that he would change. When they asked him questions, he would tell them how much he had going on with (b)(6) (b)(6) and recruiting, and how he did not get a lot of sleep. At the last meeting they had on October 31, 2021, Mr. Mayes kept saying "how would you feel if you were me" when they were asking about wanting changes for the team. **[Declaration E]**

(b)(6) states (b)(6) did not experience that Mr. Mayes continuously made excuses to make runners feel bad for him when he was called out by his runners. **[Declaration F]**

(b)(6) states (b)(6) does not think Mr. Mayes makes excuses to make them feel bad for him. **[Declaration G]**

(b)(6) states (b)(6) did not see any emotional manipulation by Mr. Mayes. He was honest with them (he would explain a situation) but (b)(6) never felt emotionally manipulated by him. **[Declaration H]**

(b)(6) states Mr. Mayes has never been manipulative towards (b)(6) or made (b)(6) feel bad for him. (b)(6) does not believe Mr. Mayes made excuses. **[Declaration I]**

Clay Mayes states he did not emotionally manipulate runners, make excuses or try to make them feel bad for him. Per what other Haskell administrators told him, the runners had been groomed to be loyal by the prior coach by taking runners out to dinner or buying them multiple gifts. He did not buy runners gifts or take them out to dinner. He did have requirements to be on the team, which was more structured than the previous coach's requirements, e.g., consistently go to practice as one has to attend practices to race at meets. **[Declaration J]**

Allegation 15: Talks about previous runner's personal lives and name drops

(b)(6) states Mr. Mayes talked about a previous non-Haskell runner ("I helped a prior Native runner recover from (b)(6) alcoholism"). (b)(6) would say that Haskell is known to have students who like to party and drink. (b)(6) felt Mr. Mayes was saying do not be part of the stereotype that Native Americans are drunks. His rules for getting caught drinking were very different—they had to go to church or perform community service and do barrel rolls before practice. (b)(6) thought making them go to church was weird for a Native American institution with the history of Native Americans being forced to go to boarding schools that were run by churches. **[Declaration A]**

(b)(6) states Mr. Mayes would often talk himself up (how he is an amazing coach). One time he told them he helped one of his previous runners, who he mentioned by name, overcome alcoholism. (b)(6) does not remember the individual's name. This occurred in the cardio room in Coffin and Mr. Mayes was talking to them about not wanting them to drink. It felt like he told this story to make them scared to drink. **[Declaration C]**

(b)(6) states during core workouts in the evenings Mr. Mayes would talk about prior runners without saying their names in trying to relate a story to them. He said twice that his past runners were alcoholics but that he saved them, which he mentioned when he was talking to them about his rules and what they did in their free time outside of Haskell. **[Declaration D]**

(b)(6) states Mr. Mayes constantly would talk about a past non-Haskell runner ((b)(6) does not recall (b)(6) name), mainly referring to how alcohol affected him and how (b)(6) teammates did not tell him (b)(6) was an alcoholic. (b)(6) did not know the previous runner but (b)(6) knew the previous runner. **[Declaration E]**

(b)(6) states (b)(6) never heard Mr. Mayes talk about previous runners' personal lives. **[Declaration F]**

(b)(6) states Mr. Mayes did talk about previous runners' personal lives but did not identify the previous runners. He was telling them stories to try to motivate them. Mr. Mayes would tell them stories about former runners to make them more motivated. He was trying to push them to be better. **[Declaration G]**

(b)(6) states when Coach Mayes shared a story about a previous runner, he did it anonymously or he would suggest a team member talk to a teammate who might be having struggles, but Mr. Mayes did not share personal details. **[Declaration H]**

(b)(6) states Mr. Mayes would bring up students' personal lives if they gave permission. Mr. Mayes spoke about a prior runner who had mental health concerns. Mr. Mayes asked this prior runner if it was okay if he used the prior runner's story to bring attention to the runner's condition. **[Declaration I]**

Clay Mayes states he never said anything negative about his past runners. Nothing will ever stop him from saying good things about his past runners. He talks about their perseverance, but not their personal circumstances. He never talked about past runners being alcoholics or having alcohol problems because he did not previously have those kinds of runners due to who he focused recruitment on. He previously had no returning runners at his past two colleges as he was able to build an entirely new team with the type of young men and women that he felt confident in. **[Declaration J]**

Allegation 16: Shares runner's personal information with other runners without consent

(b)(6) states one of (b)(6) teammates (b)(6) was caught drinking and Mr. Mayes would often discuss (b)(6) character in conversations with other students, mainly freshman, using (b)(6) as an example or discussing (b)(6) reactions. There was a video recorded of Coach Mayes talking about (b)(6) to another runner, which was submitted to (b)(6).

(b)(6) states Mr. Mayes had one of (b)(6) teammates ((b)(6), who is no longer a student at Haskell because of this situation) talk about his mental health, recorded it and then posted it to Mr. Mayes' cross country Instagram team page without (b)(6) permission, which left (b)(6) crying. Mr. Mayes deleted the video after (b)(6) asked him to, but there had already been a number of views of the video. **[Declaration A]**

(b)(6) states Mr. Mayes would have people spy on them on their social media. (b)(6), an assistant coach, would look on Snapchat and watch team members' stories and report to Mr. Mayes if they were out drinking or partying. Mr. Mayes liked to micromanage them. He wanted them in bed by 10 p.m. and if he saw that they were on Facebook after that, he would tell them the next day that he wanted them in bed earlier. One of the runners (b)(6) was kicked off the team for drinking. In the van to their first meet Mr. Mayes was talking about that runner's situation to (b)(6) (b)(6) There were 10-11 people in the van. **[Declaration C]**

(b)(6) states in the van on the way to a meet Mr. Mayes talked the whole time with (b)(6) about (b)(6), who had been caught drinking. (b)(6) did not think it was right that Mr. Mayes was talking about (b)(6), a teammate, with another teammate, (b)(6), about (b)(6) personal information. **[Declaration D]**

(b)(6) states (b)(6) was sitting behind Coach Mayes and (b)(6) in the van on the way to a meet and heard Mr. Mayes telling (b)(6) that (b)(6) (b)(6) should not be going out to the bars, that he trusted (b)(6) and that is why (b)(6) was the captain, he could not believe (b)(6) let him down, and that (b)(6) had lied about drinking alcohol. (b)(6) started recording this conversation on (b)(6) phone once (b)(6) heard Mr. Mayes mention (b)(6) because they are friends with (b)(6) and (b)(6) sent the recording to their group chat. (b)(6) (b)(6) was not on the van nor was (b)(6) **[Declaration E]**

(b)(6) states (b)(6) does not believe (b)(6) heard Mr. Mayes share a runner's personal information with other runners. **[Declaration F]**

(b)(6) states (b)(6) does not think Mr. Mayes shared the personal information of any runner. **[Declaration G]**

(b)(6) states Mr. Mayes talked to (b)(6) in the van about (b)(6), a friend of hers, who had been kicked off the team. They were not slandering or speaking negatively about (b)(6). They were both stating that (b)(6) was a good addition to the team and what (b)(6) needed to do to rejoin the team. (b)(6) discussed with (b)(6) what (b)(6) and Coach Mayes had talked about, and (b)(6) felt the conversation was appropriate. (b)(6) feels this situation was blown out of proportion by someone who overheard the conversation (b)(6) and Coach Mayes had. **[Declaration H]**

(b)(6) states Mr. Mayes, with (b)(6) permission, talks to the team about (b)(6) experience and how (b)(6) got here and where (b)(6) come from (a small community--Pinon). **[Declaration I]**

Clay Mayes states in the van on a four-hour drive on October 21, 2021, (b)(6) and (b)(6) were trying to get a sound bite by asking him who on the team was an alcoholic. He does not remember talking about (b)(6) with (b)(6) on the van for a four-hour drive, but if he did, he did not say anything negative or personal about (b)(6) **[Declaration J]**

Allegation 17: *He is constantly late to practice and always changing practice times and locations*

(b)(6) states there were times that Coach Mayes was late to practice and changed practice times at the last minute, but (b)(6) would not say this occurred constantly. It happened enough times to irritate the runners. **[Declaration A]**

(b) (6) states another part of Mr. Mayes' disorganization and lack of communication was that they were used to a set practice schedule and Mr. Mayes would often (3-4 times a week) change practice time to accommodate his schedule or the schedules of specific runners. For example, if they had practice scheduled for 4 p.m., Mr. Mayes would change it to 2 p.m. Sometimes these changes were made the day of the practice or the night before. Mr. Mayes would then get mad at them if they were not able to make the changed practice. Even after runners, including (b) (6) talked to him about wanting a set schedule because that worked best, he still did not keep a set schedule. There was one practice where Mr. Mayes missed a whole practice because he said he slept through his alarm. There were other times (about five times) when Mr. Mayes was late to practice (10-30 minutes). Their season is not that long. (b) (6) was late to practice once the entire season. If team members were late to practice, they would have to do bear rolls. **[Declaration C]**

(b) (6) states almost every week Mr. Mayes was late to practice (once or twice a week). Mr. Mayes always told them the practice times at the last minute. He would let them know the day before what time the next day's practice would be. The team suggested to Mr. Mayes that they have a set schedule because they had classes and other things to prioritize. Mr. Mayes never made a set schedule. About once a week he would also change the practice time after he had already told them earlier that day what the next day's practice time would be. **[Declaration D]**

(b) (6) states Mr. Mayes would always get on them about being late to practice but then he would be late (this happened about 10-12 times). There were times they were in the gym working out and he would not show up at all. (b) (6) was told to leave Coffin twice because their coach was not there while they were working out. There were other times when they had practice at a certain time and Mr. Mayes told them he could not make it and would change the time to a time that conflicted with class schedules. (b) (6) told him he should keep the practice at a set time because it made it difficult for them to change their schedules when he changed the practice time at the last minute. **[Declaration E]**

(b) (6) states Mr. Mayes was not really late to practice. Mr. Mayes did change practice locations so they did not run the same route every day, which gets boring. **[Declaration F]**

(b) (6) states Mr. Mayes was sometimes late for practice (at least once a week), usually due to (b) (6) (b) (6). Mr. Mayes did change practice times and locations due to weather or schedule changes of the runners. Mr. Mayes liked to keep everyone together for practice to make them better. Mr. Mayes would change locations so that they could have a better running experience and not stay on the same Haskell trail. **[Declaration G]**

(b) (6) states Coach Mayes did change practice times and locations, but it was situational. For example, if it was going to be humid in the afternoon, he would have them practice in the morning. He did show up late to some practices (a few here and there) due to a situation he could not control. **[Declaration H]**

(b)(6) states Mr. Mayes was never late to practice. If he changed practice times, it was for (b)(6), (b)(6), (b)(6) and (b)(6), who could not make early practice so they could make the practice and they could practice together as a group. (b)(6) was so fed up with the changes because (b)(6) is an early bird. Even when Mr. Mayes would change the practice time, those girls still did not come to practice. **[Declaration I]**

Clay Mayes states sometimes he would have a second practice and sometimes he would change practice times because returning student athletes were not showing up to practice, usually because they were sleeping in. He was occasionally (not constantly) a few minutes late to practice here and there. There was one time he changed a practice location because a runner (b)(6) said (b)(6) was not going to a particular road, so he changed the location for that practice. **[Declaration J]**

Allegation 18: Served a suspension for violating rules within six months of being hired

Clay Mayes states the very first meet they ran there was one girl who was not cleared to run (b)(6). He was never told (b)(6) was not cleared to run by their eligibility coordinator (b)(6). He gave up a two-week paycheck for this violation. Right after this, on October 15, 2021 (b)(6) told (b)(6) that parents were calling (b)(6) alleging he was breaking rules. The following day, (b)(6) asked (b)(6) to provide the parent contact information so he could report it. (b)(6) changed (b)(6) statement and told (b)(6) that it was not parents who complained, but instead (b)(6) had heard that he was violating rules when (b)(6) walked by students in the hallways. (b)(6) stated (b)(6) changed (b)(6) story. **[Declaration J]**

GENERAL HOSTILE WORK ENVIRONMENT ALLEGATIONS

(b)(6) states (b)(6) has been a student at Haskell since the fall of 2017 or 2018. (b)(6) has been on the cross country team for three seasons. (b)(6) coach this past season was Clay Mayes. (b)(6) previous coach was (b)(6)

(b)(6) states (b)(6) has known Mr. Mayes since the summer of 2021 when he reached out to (b)(6) as the new coach. (b)(6) interacted with Mr. Mayes during every practice during the season, which was 4-5 days a week. (b)(6) last interacted with Mr. Mayes almost five months ago.

(b)(6) states Coach Mayes is a great coach in terms of his practice plans and making runners faster. He is disorganized when it comes to management of the team. (b)(6) has been a runner since fourth grade and (b)(6) has never been in a program that has been this stressful. The last meeting (b)(6) had with Mr. Mayes was when (b)(6) voiced (b)(6) concerns to him (as described above). (b)(6) left the meeting feeling like there would be change, but then nothing changed. (b)(6) thinks that is why Mr. Mayes is such a great recruiter and is able to recruit such fast runners—(b)(6) promises a lot of things. If (b)(6)

teammates had not spoken with (b) (6) about how they felt about the season, (b) (6) would not have spoken up to address the situation because (b) (6) is a senior and this was (b) (6) last season as a cross country runner. **[Declaration A]**

(b) (6) states (b) (6) has been a student at Haskell since 2018. (b) (6) has been on the cross country team for three seasons. (b) (6) coach this year was Clay Mayes. (b) (6) previous coach was (b) (6)

(b) (6) states (b) (6) has never met Mr. Mayes in person. He called (b) (6) several times (four or five) over the summer of 2021 when he became the new coach. He wanted to learn about (b) (6) but he never let (b) (6) talk, which (b) (6) thought was odd if he was trying to get to know (b) (6). Each call lasted about 30 minutes. He said some weird things over the phone, including "sometimes the boys get on my nerves and are being knuckleheads and I want to swerve into them and hit them with the car." (b) (6) did not say anything in response because (b) (6) could never get a word in when he called to talk to (b) (6). (b) (6) does not specifically remember any of the other weird comments Mr. Mayes made to (b) (6)

(b) (6) states (b) (6) is off campus this year doing student teaching in Udalf, Kansas. (b) (6) was going to run cross country for the team with Coach Mayes telling (b) (6) where to be for the races. (b) (6) told (b) (6) the first race was at Oklahoma State. Two days before (b) (6) was supposed to leave (b) (6) found out through an Instagram post that the team was not going to Oklahoma State but was going to Missouri State instead, so (b) (6) was not able to run in that meet. After that Mr. Mayes told (b) (6) he would call (b) (6). He never called (b) (6) until (b) (6) sent him a text message on September 17, 2021 telling him that he was not communicating with (b) (6) and this was too stressful so (b) (6) would not be running with the team. He told (b) (6) he wanted to call (b) (6) to talk to (b) (6) about (b) (6) decision to quit, but he never did that. Instead, he had one of (b) (6) former teammates (b) (6) reach out to (b) (6) to ask (b) (6) to rejoin the team, which (b) (6) declined.

(b) (6) states the above is the extent of (b) (6) interactions with Mr. Mayes. (b) (6) last interacted with Mr. Mayes via text in November 2021 when he texted (b) (6) about wanting (b) (6) to run conference.

(b) (6) states (b) (6) heard from (b) (6) that things were not going well with Mr. Mayes as the new coach, but (b) (6) did not tell (b) (6) specifically what was going on.

(b) (6) states there were times during the group chat that Mr. Mayes stated he was being reported for things, which (b) (6) thought was odd for him to share with the team. **[Declaration B]**

(b) (6) states this is (b) (6) fourth year as a student at Haskell. (b) (6) has been on the cross country team since (b) (6) has been at Haskell. (b) (6) coach is Clay Mayes. (b) (6) prior coach was (b) (6)

(b) (6) states (b) (6) first met Mr. Mayes by phone during the summer of 2021 and then met him in person in August 2021 when school started. (b) (6) interacted with Mr. Mayes

every day during the season except for Saturday. (b) (6) last interacted with Mr. Mayes when they had a meeting on October 31, 2021 during which it felt like Mr. Mayes was retaliating against (b) (6) because they (b) (6) (b) (6) and herself) had filed a complaint against him with (b) (6) (b) (6) because Mr. Mayes had texted one of their teammates (b) (6) in a way that was rude and made (b) (6) feel bad. Part of their complaint was a recording of Mr. Mayes talking about one runner ((b) (6), who had been kicked off the team) to a different runner (b) (6) in a van on the way to a meet, so anyone on the van could hear the conversation. During the October 31st meeting Mr. Mayes said to (b) (6) that (b) (6) was "sitting there being passive aggressive" (b) (6) was sitting with (b) (6) legs crossed over one another) and told (b) (6) (b) (6) fabricated lies and created drama on the team. Mr. Mayes did not state what (b) (6) was referring to. (b) (6) was confused because (b) (6) was a team captain and had not created any drama on the team. When (b) (6) told (b) (6) (b) (6) was fabricating lies, (b) (6) assumed (b) (6) was referring to the report they made. When they made the report they requested to remain anonymous, so (b) (6) is not sure how Mr. Mayes found out who made the report. He said this to (b) (6) in front of the entire men's and women's teams (about 20 people). (b) (6) (b) (6) and (b) (6) walked out of the meeting. When they walked out, (b) (6) and (b) (6) were crying. The women's basketball team was practicing and they told the coach, (b) (6), about what happened (that they walked out of the meeting because they felt uncomfortable). (b) (6) asked them if they tried to talk to Mr. Mayes. They said they had and (b) (6) tried to comfort them.

[Declaration C]

(b) (6) states (b) (6) has been a student at Haskell since the fall of 2021. (b) (6) was on the cross country team in the fall. (b) (6) coach was Clay Mayes.

(b) (6) states (b) (6) has known Mr. Mayes since July 2021 when (b) (6) would contact (b) (6) every week regarding workouts. (b) (6) interacted with Mr. Mayes during every practice, which was almost every day. (b) (6) last interacted with Mr. Mayes on October 31, 2021.

(b) (6) states they had a team meeting the last time (b) (6) spoke with Mr. Mayes, which was on October 31, 2021. Mr. Mayes was very upset because he had scheduled a practice on Halloween and only herself, (b) (6) and (b) (6) showed up for practice. Mr. Mayes then targeted (b) (6) (b) (6) and (b) (6) during this meeting. Mr. Mayes had found out that (b) (6) recorded what he said to (b) (6) on the van and sent it to (b) (6). They were telling him he had favorites on the team. Mr. Mayes also said to (b) (6), "Is that why you are fabricating lies?" (b) (6) (b) (6) recorded the October 31, 2021 meeting on (b) (6) watch. Mr. Mayes did not know the meeting was being recorded. **[Declaration D]**

(b) (6) states (b) (6) has been a student at Haskell since the fall of 2019. (b) (6) has been on the cross country team since then. (b) (6) coach is Clay Mayes.

(b) (6) states (b) (6) first met Mr. Mayes by phone during the summer of 2021 and then met him person in August 2021 when school started. (b) (6) interacted with Mr. Mayes

during practice every day during the season. (b) (6) last interacted with Mr. Mayes when they had a tough meeting in Coffin on October 31, 2021. **[Declaration E]**

(b) (6) states (b) (6) has been a student at Haskell since September 2021. (b) (6) has been on the cross country team at Haskell for one season. (b) (6) coach this year was Clay Mayes.

(b) (6) states (b) (6) has known Mr. Mayes since last summer. Mr. Mayes recruited him to run at Haskell. During the season (b) (6) interacted with Mr. Mayes every day they had practice. (b) (6) last interacted with Mr. Mayes the last day of the season in the fall, which was in November 2021.

(b) (6) states (b) (6) does not have any concerns with the way (b) (6) was coached by Mr. Mayes or any interactions (b) (6) has had with Mr. Mayes.

(b) (6) states (b) (6) thinks a lot of the things that are being stated are not what happened. Team members did not seem unhappy during the season. Half of the things (b) (6) was asked during this interview are shocking to him. The people complaining are no longer here (team members who quit the team and left all the other team members in the dirt in terms of bringing this whole case and leaving the rest of the teammates without a coach—this whole thing is a joke) while (b) (6) is putting in the work and would like to have a coach during the off season, which (b) (6) has not had for the past several months. (b) (6) would not have moved to Haskell if (b) (6) did not trust Coach Mayes.

(b) (6) asks when is (b) (6) coach going to come back? **[Declaration F]**

(b) (6) states (b) (6) has been a student at Haskell since 2018. (b) (6) was on the cross country team at Haskell for all (b) (6) years. (b) (6) coach this year was Clay Mayes.

(b) (6) states (b) (6) has known Mr. Mayes since he was announced as their head coach in 2021. (b) (6) interacted with Mr. Mayes every day they had practice. (b) (6) last interacted with Mr. Mayes in December 2021 or January 2022 when (b) (6) saw Mr. Mayes in the cardio room when (b) (6) was working out.

(b) (6) states (b) (6) does not have any concerns with the way (b) (6) was coached by Mr. Mayes or any interactions (b) (6) has had with him. Some team members thought Mr. Mayes was a bad person when that was not the case, Mr. Mayes was always looking to make them better. There was non-stop complaining about the coach. (b) (6) did not have complaints about the coaching.

(b) (6) states (b) (6) coaching style and training were not very good for him ((b) (6) had a number of injuries), but (b) (6) was good at connecting with students and reaching out to people to get connections for students. Mr. Mayes' training was pretty good, Mr. Mayes really improved him as a runner, and Mr. Mayes was good at connecting with students, but Mr. Mayes could improve on getting resources for the students (academic, setting up tutors, connecting with a teacher or advisor), but Mr. Mayes is new

to Haskell and is learning as well. (b)(6) thinks Mr. Mayes was better than their previous coach (b)(6) who was (b)(6) coach for three years). **[Declaration G]**

(b)(6) states (b)(6) has been a student at Haskell since the fall of 2021. (b)(6) was on the cross country team in the fall. (b)(6) coach was Clay Mayes.

(b)(6) states (b)(6) has known Mr. Mayes since July 2021. (b)(6) interacted with Mr. Mayes six days a week when they had practice. (b)(6) last interacted with Mr. Mayes a few days prior to the interview for this inquiry because the no contact order was lifted. They had a run and Mr. Mayes had the team over for a meal.

(b)(6) states for the most part Coach Mayes was professional (other than the comments he made about (b)(6)). (b)(6) thinks part of the tension was that (b)(6) had been coaching at Haskell for a long time. (b)(6) had different rules—(b)(6) allowed smoking, drinking and partying. Coach Mayes was new and had different rules. A number of the runners had been friends for a long time. There may have also been cultural tension because some runners came from the South and others (like herself) came from the North. (b)(6) has a lot of sexual harassment claims against him because (b)(6) tends to get unprofessional with the ladies. For example, one of the runners who was on the team last semester had some problems with (b)(6) being unprofessional with (b)(6). There were instances where (b)(6) was unprofessional towards (b)(6) as a female runner. (b)(6) personally has never had any problems with Coach Mayes. It is out of character for Mr. Mayes to say many of the claims (b)(6) was asked about, but (b)(6) was not always there because (b)(6) did not get along with the other runners. **[Declaration H]**

(b)(6) states (b)(6) has been a student at Haskell since the fall of 2021. (b)(6) was on the cross-country team in the fall. (b)(6) coach was Clay Mayes.

(b)(6) states (b)(6) has known Mr. Mayes since the University of Antelope Valley during the 2020/2021 school year where Mr. Mayes was (b)(6) cross-country coach. (b)(6) interacted with Mr. Mayes while at Haskell every other day during the season because they had to report back to him on their splits and how they were feeling. Mr. Mayes is a close family friend.

(b)(6) states (b)(6) has been trying to talk to people about how these claims affected the rest of the runners. It is not fair that the voices of only the runners who complained were heard. These complaints not only affected their lives, it affected the rest of them as well. Mr. Mayes is trying to raise the profile of the school and these are the people who did not want to work. These girls were so mean to (b)(6) and (b)(6) would just mind (b)(6) own business. They also messed up the lives of Coach Mayes' family. Other runners followed Coach Mayes here and they want their voices heard as well, it is not just them (the runners who are complaining). They were not asked how they are doing. Their mental health is important. (b)(6) remembers one time they went to a meeting with (b)(6) and (b)(6) told them Coach Mayes might not be coming back and they might want to look at other opportunities (other colleges). It felt like they were being threatened. (b)(6) tried to talk to

(b)(6) and (b)(6) about how this has affected (b)(6) but (b)(6) never had time to listen to (b)(6). (b)(6) feels like (b)(6) does not like (b)(6). (b)(6) was (b)(6) advisor and now (b)(6) is not. (b)(6) was supposed to be graduating with (b)(6) Associate's degree and now (b)(6) is not. (b)(6) does not know why now (b)(6) is not graduating with (b)(6) Associate's degree. **[Declaration I]**

Clay Mayes states he has worked for DOI since June 22, 2012~~21~~ as a contractor, always in his current position. His supervisor was (b)(6), who retired at the end of December 2021. His current supervisor is (b)(6). On April 18, 2022 he was sent a letter that his contract was eliminated effective immediately.

Mr. Mayes states he has not been made aware of the Agency policy regarding harassing conduct. He has not received training on the agency's policy. Even though he asked Human Resources and (b)(6) for policies multiple times via email, they responded that there is no good place to find HINU's rules and regulations. He reported harassment multiple times by email during the spring of 2022, but never received a response from his supervisor.

Mr. Mayes states the students never raised concerns about him with him in any form or any manner. He had a team meeting on October 30, 2021, which he recorded because (b)(6) were becoming aggressive. They told him the environment was tense and he should have known it was tense, but were never able to explain why. The student athletes did not identify specific complaints during this meeting. The (b)(6), told him there were indirect complaints going on. (b)(6) stated that for the next cross country season (2022) (b)(6) should hold try-outs as that would eliminate the students causing complaints as these issues concerned students from the past coach who did not show up to practice often, almost all of who were ineligible, and were not as competitive compared to the new student athletes Mr. Mayes recruited. With (b)(6) stance and knowing there were no legitimate concerns, (b)(6) never made him aware of specific complaints. **[Declaration J]**

(b)(6) is the Dean of Students, GS-12, assigned to the Haskell Indian Nations University, Bureau of Indian Education in Lawrence, Kansas.

(b)(6) states (b)(6) has worked for DOI since March 2021, always in (b)(6) current position. (b)(6) supervisor is (b)(6), (b)(6).

(b)(6) states (b)(6) is aware of the Agency policy regarding harassing conduct. (b)(6) has received training on the agency's policy. (b)(6) can access the policy on the DOI website.

(b)(6) states (b)(6) oversees housing, dining, counseling, recreation and student conduct. Clay Mayes works for Athletics, which (b)(6) believes is under the Office of the President whereas (b)(6) works for the VP of University Services. (b)(6) has known about Mr. Mayes since October 28, 2021. (b)(6) has only seen Mr. Mayes one time.

(b)(6) states on October 28, 2021 (b)(6) forwarded to him, (b)(6) (b)(6) (b)(6) and (b)(6) an email from student (b)(6) (b)(6) regarding concerns with how Mr. Mayes was handling practices and interacting with students. There were some serious allegations and (b)(6) said the matter should be investigated by (b)(6). (b)(6) responded that (b)(6) and the contracting officer (COR) would investigate. (b)(6) responded that (b)(6), who is (b)(6) subordinate, was already investigating and would coordinate with (b)(6) and the COR. (b)(6) followed up with the students and obtained documentation.

(b)(6) states, on November 2, 2021, (b)(6) submitted an email to (b)(6) and (b)(6) (b)(6) as to which allegations were substantiated and which were not. (b)(6) also provided substantiating evidence.

(b)(6) states, on November 4, 2021, (b)(6) sent an email to (b)(6) and Clay Mayes stating (b)(6) and others "had not quit the team, we just don't want to be around you [Coach Mayes]."

(b)(6) states, on November 8, 2021, Mr. Mayes sent an email to (b)(6) with a copy to (b)(6) stating he caught several students drinking ((b)(6) (b)(6) and (b)(6)) on October 29, 2021 and that several students had quit the team since then. (b)(6) replied that since the drinking incident had happened more than five days earlier, it could not be investigated.

(b)(6) states, on December 8, 2021, (b)(6), who works for Athletics, wrote to (b)(6) that Mr. Mayes was seen in the gym with (b)(6) around students after Mr. Mayes had been told not to be around students.

(b)(6) states, on May 16, 2022, a student reported to (b)(6) a sexual assault by someone other than Mr. Mayes but told (b)(6) that one of the individuals at Haskell that (b)(6) trusted was Mr. Mayes, who the student said (b)(6) reported the sexual assault to. The student told (b)(6) that Mr. Mayes told (b)(6) he was a mandated reporter. The school has no record that Mr. Mayes reported the alleged sexual assault. The student also told (b)(6) that Mr. Mayes was holding cross country practices even though he is no longer affiliated with Haskell. (b)(6) does not know how or why Mr. Mayes' employment with Haskell ended. **[Declaration K]**

(b)(6) is a Student Rights Specialist, GS-09, assigned to the Haskell Indian Nations University, Bureau of Indian Education in Lawrence, Kansas.

(b)(6) states (b)(6) has worked for DOI for 23 years, 10 years in (b)(6) current position, always at Haskell. (b)(6) supervisor is (b)(6). (b)(6) has been (b)(6) supervisor for a year.

(b)(6) states (b)(6) is aware of the Agency policy regarding harassing conduct. (b)(6) has received training on the agency's policy. (b)(6) can access the policy on the BIA or DOL websites.

(b)(6) states there is no supervisory relationship between (b)(6) position and Clay Mayes' position. (b)(6) has known Mr. Mayes since October or November 2021. (b)(6) did not interact with him hardly at all until the complaint came forward. (b)(6) has seen him four or five times since then and they have talked by phone and email. When students have issues, they come to (b)(6) and (b)(6) advocates for the students. (b)(6) last interacted with Mr. Mayes when (b)(6) sent (b)(6) an email in January or February 2022.

(b)(6) states around the end of October 2021 (b)(6) received a letter from three students (b)(6) who came to (b)(6) office with 18 listed items the students were upset about and two proposed solutions. (b)(6) looked at the items and picked out the top three or four items that most concerned (b)(6) and started asking questions of the students about those items for an initial investigation to turn over to HR. Some of the students submitted emails and texts about their concerns, which (b)(6) collected. (b)(6) contacted (b)(6) and asked about the process. (b)(6) told (b)(6) (b)(6) was collecting information about the students' concerns and (b)(6) (b)(6) told (b)(6) (b)(6) would forward (b)(6) information that (b)(6) could send to HR along with the information (b)(6) was collecting. (b)(6) did not work with (b)(6) with respect to the evidence (b)(6) was collecting, (b)(6) only told (b)(6) that (b)(6) was collecting information.

(b)(6) states (b)(6) supervisor's supervisor, (b)(6), called (b)(6) at the end of November/beginning of December 2021 and indicated (b)(6) had a concern that possibly (b)(6) was working with (b)(6) to go after Mr. Mayes. It was not long after that when (b)(6) really backed off from talking to anyone about what (b)(6) was collecting. (b)(6) told (b)(6) (b)(6) was communicating with someone in HR to have an independent investigation conducted. (b)(6) forwarded all of the information (b)(6) had to (b)(6). (b)(6) impression from (b)(6) was that (b)(6) and (b)(6) were on a "witch hunt" against Mr. Mayes. (b)(6) tried to limit talking about the case to anyone other than the students, regarding their concerns about the complaint.

(b)(6) states (b)(6) stopped collecting evidence about the students' concerns at the end of December/beginning of January. Mr. Mayes contacted (b)(6) several times and (b)(6) tried to guide him to keep him from doing anything to further injure students, which would also hurt him in the long run.

(b)(6) states (b)(6) did not see a surge of additional complaints against Mr. Mayes—(b)(6) received a steady number of complaints about Mr. Mayes between October and December 2021. (b)(6) received notice from (b)(6) in early December that Mr. Mayes was on campus and meeting with student athletes.

(b)(6) states (b)(6) did not witness any interactions between Clay Mayes and the student athletes. (b)(6) collected the evidence as it was given to (b)(6) (b)(6) forwarded the information to (b)(6).

(b)(6) states (b)(6) saw the list of complaints from the students and picked out the most serious/ egregious issues to collect information on. One of the most egregious concerns raised was that Mr. Mayes violated rules by running an unattached runner (who was not enrolled at Haskell). Another egregious concern was that Mr. Mayes was performing the Graston technique without the proper tools.

(b)(6) states (b)(6) was also concerned about Mr. Mayes violating the Family Education and Records Privacy Act (FERPA) by talking about students with other students (talking about a student who was caught drinking and that the student violated the code of conduct). Mr. Mayes wrote up that student after that student (and others) made complaints against him, which made the write up appear to be retaliatory. After Mr. Mayes was given the no contact order in December 2021, Mr. Mayes then posted a video on social media of a runner who disclosed a mental health condition. (b)(6) understanding was that this video was posted without the student's permission in January or February 2022 after the student had already left Haskell in December 2021. (b)(6) never saw the video. (b)(6) believes (b)(6) or (b)(6) would have a copy of the video. Haskell should not be posting something this private and personal on social media.

(b)(6) states (b)(6) other concern was that Mr. Mayes was having the students babysit (b)(6) young children while the students were working out.

(b)(6) states many of the things Mr. Mayes was doing were serious enough that it could create liability for Haskell. (b)(6) was concerned about what else would Mr. Mayes might violate since (b)(6) was violating Federal regulations. The evidence (b)(6) was seeing about Mr. Mayes' actions was very serious. **[Declaration L]**

(b)(6) is a Sports Specialist, GS-11, assigned to the Haskell Indian Nations University, Bureau of Indian Education in Lawrence, Kansas.

(b)(6) states (b)(6) has worked for DOI for 15 years, always in (b)(6) current position. (b)(6) supervisor is (b)(6)

(b)(6) states (b)(6) is aware of the agency policy regarding harassing conduct. (b)(6) has not received training on the agency's policy. (b)(6) does not know where (b)(6) could access the policy.

(b)(6) states (b)(6) worked with Clay Mayes for a few months. (b)(6) did not have any interactions with Mr. Mayes outside of work. (b)(6) has known Mr. Mayes since Mr. Mayes began working at Haskell in June 2021. They interacted several times a week. They interacted on issues related to the student athletes. (b)(6) last interacted with Mr. Mayes probably in December 2021.

(b)(6) states there were several student athletes (b)(6) who had concerns about the way Mr. Mayes interacted with them. (b)(6) became aware of these concerns when the student athletes came to him as the trainer and shared this information with him. The

concerns grew to the point of some of the student athletes not wanting to be members of the team. Returning athletes seemed to be treated like outcasts by Mr. Mayes. It was clear who Mr. Mayes' favorites were—the athletes he brought with him from his prior university, including (b) (6) and (b) (6) (b) (6) (who transferred in December 2021 and ended (b) (6) running career—(b) (6) (b) (6) told him a video was made that included sensitive information that Mr. Mayes uploaded to the internet, which has since been removed, and (b) (6) did not feel safe being here anymore). This is a concern to him because they are here to serve all the athletes, not just some of them.

(b) (6) states the student athletes also spoke to him about poor communication from Mr. Mayes. For example, they had mandatory weekly COVID testing and each week (b) (6) would be missing half of Mr. Mayes' roster. (b) (6) would ask the students why they did not show up for the testing and they told him they were not aware of the testing. It was Mr. Mayes' responsibility to disseminate this information to the student athletes.

(b) (6) states as a medical care provider (b) (6) major concern was Mr. Mayes providing medical treatments that he was not qualified to perform (Graston technique), which injured a runner (b) (6). A certification is required to perform the technique. (b) (6) is certified on the technique and the procedure requires a certain set of tools and lotion. (b) (6) was told Mr. Mayes was using hand sanitizer, regular skin lotion, wrenches, binder clips and a butterknife. To (b) (6) knowledge Mr. Mayes has not been certified to perform Graston.

(b) (6) states the students who raised these concerns about Mr. Mayes are trustworthy. (b) (6) has known some of them at least two years. (b) (6) does not know about any of the complaints in detail because (b) (6) did not see Mr. Mayes interact with the student athletes, but (b) (6) knows treatment was one of the issues that was raised.

(b) (6) states HINU has a Healthy Roster program, which includes a pre-participation physical. (b) (6) did not have this for a number of the cross-country team members. Until late September 2021 (b) (6) was not sure who was even on the team. (b) (6) told Mr. Mayes that if people were not on Healthy Roster, they could not be on the team. On August 11, 2021 (b) (6) set up a time for Mr. Mayes' team to set up their medical records. Mr. Mayes told him he would have about 12 people there and then only three people showed up. Mr. Mayes did not have a clear reason as to why he missed this timeframe.

(b) (6) states (b) (6) told the student athletes to raise these issues with the then (b) (6) (b) (6) (b) (6) did little to help the student athletes. (b) (6) relationship with Mr. Mayes was always protecting Mr. Mayes. (b) (6) told the student athletes that if they did not get an answer from (b) (6) they needed to, as a group, raise their concerns to the Dean of Students, the University VP or (b) (6) with Student Rights. The student athletes worked together to create a statement about what was going on that was sent to (b) (6) which (b) (6) received a copy of. (b) (6) (b) (6) turned the statement over to (b) (6) (b) (6) knows the student athletes were very nervous about submitting the statement as they were concerned about

retaliation. (b) (6) did not have any more interaction with the student athletes regarding these concerns.

(b) (6) states (b) (6) knows Mr. Mayes had been trying to come to Haskell to become a coach for probably six years. (b) (6) had been a successful cross-country coach here for well over 20 years. (b) (6) had a bad habit of taking personal calls during meetings. (b) (6) overheard conversations in which (b) (6) said they had to hurry up and hire Mr. Mayes. (b) (6) believes there was collusion to bring Mr. Mayes here. (b) (6) believes Mr. Mayes was pre-selected for the position before it was even posted.

(b) (6) states the week prior to (b) (6) interview for this inquiry (b) (6) and Mr. Mayes uploaded sensitive information to the Lawrence Times, which (b) (6) believes is an on-line newspaper, that sheds a negative light on (b) (6) and the Athletic Department. On March 2, 2022, (b) (6) wrote a letter to Tony Dearman, BIE Director, stating Mr. Mayes should be brought back as the cross country coach even though (b) (6) retired from Haskell in December 2021. (b) (6) is distraught about all the negative information that is circulating now about the Athletic Department, which is causing further harm to the University.

(b) (6) states Haskell tried to work with Mr. Mayes and gave him a fair shot. Mr. Mayes did not listen to anything they had to say. In (b) (6) mind Mr. Mayes is not a team player.
[Declaration M]

RECORD EVIDENCE:

Letter of Concern dated October 28, 2021. **[Exhibit 1]**

Emails regarding Missouri Southern Stampede. **[Exhibit 2]**

Missouri Southern Stampede, September 18, 2021, race results. **[Attachment to Declaration L, pages 5-63]**

Clay Mayes notification of No-Contact Order dated November 4, 2021. **[Exhibit 3]**

Team notification of No-Contact Order dated November 4, 2021. **[Exhibit 4]**

Text messages between (b) (6) and Clay Mayes. **[Attachment to Declaration B, pages 4-9]**

Clay Mayes' mails and text messages on various dates with respect to the claims made by the student athletes and the investigation. **[Attachment to Declaration J, pages 7-76]**

(b) (6) emails and text messages on various dates with respect to the claims made by the student athletes and the investigation. **[Attachment to Declaration K, pages 4-41]**

Cross Country Coach statement of work. **[Exhibit 5]**

Secretary of Interior, Personnel Bulletin No: 18-01, Prevention and Elimination of Harassing Conduct, March 23, 2018. **[Exhibit 6]**

DECLARATION OF (b) (6)

Job Title: Cross Country runner
Work Location: Haskell Indian Nations University
Lawrence, KS
Date of Interview: March 11, 2022

I, (b) (6), hereby make this Declaration.

I understand that I am making this statement under penalty of perjury; that it is the equivalent of a sworn statement made under oath; and that it may be filed in proceedings in accordance with or before the merit Systems Protection Board (MSPB) or the Equal Employment Opportunity Commission (EEOC), in the grievance process or before an Arbitrator, in court, or in any other similar proceeding. This statement is voluntary and no promises of any kind have been made to me and I have not been subjected to any threatening or coercive behavior for the purpose of obtaining this declaration. I understand that this declaration is part of an official management investigation and that this investigation is not part of the Equal Employment Opportunity (EEO) process.

(b) (6)

I have been a student at Haskell since the fall of 2017 or 2018. I have been on the Cross Country team for three seasons. My coach this past season was Clay Mayes. My previous coach was **(b) (6)**.

I have known Mr. Mayes since the summer of 2021 when he reached out to me as the new coach. I interacted with Mr. Mayes during every practice during the season, which was 4-5 days a week. I last interacted with Mr. Mayes almost five months ago.

I did not experience any bullying or inappropriate/hurtful comments from Mr. Mayes but many of my teammates did. Mr. Mayes called one of my teammates **(b) (6)**

“fat” and told him (b) (6) needed to lose weight in front of everyone (the Cross Country team, approximately 15-20 people). Mr. Mayes would curse often and would put down prior cross country team accomplishments. When I spoke with him about my schedule (I was taking 20 credits), he questioned me multiple times if I missed practice and questioned my effort after I explained my class situation. My friend (b) (6) received messages from Mr. Mayes that if (b) (6) did not run conference, (b) (6) would not be able to run next season, which left (b) (6) crying. Mr. Mayes had a teammate (b) (6) who is no longer a student at Haskell because of this situation) talk about (b) (6) mental health, recorded it and then posted it to Mr. Mayes’ cross country Instagram team page without (b) (6) permission, which left my teammate crying. Mr. Mayes deleted the video after (b) (6) asked him to, but there had already been a number of views of the video.

Mr. Mayes would speak poorly about my prior assistant coach, (b) (6), including calling (b) (6) a “psychopath” when he was talking about how he felt the prior coach, (b) (6) was trying to get him fired. Mr. Mayes seemed to have an issue with our previous coaches (stating they were messing up our eligibility and not looking at our transcripts). The team felt split between (b) (6) and Mr. Mayes. The runners who had been coached by (b) (6) did not appreciate hearing Mr. Mayes’ concerns about what was going on with the Haskell administration or hearing Mr. Mayes speak negatively about (b) (6). I felt like the freshman runners who had not run under (b) (6) (b) (6) seemed to have had thoughts about (b) (6) because of what Mr. Mayes said about (b) (6). (b) (6) a runner who followed Mr. Mayes to Haskell, had a hard time understanding how Mr. Mayes made us (the returning Haskell runners) feel when he spoke negatively about (b) (6). I feel like I witnessed a lot of hurt feelings from Mr. Mayes.

Mr. Mayes did not start asking about our grades until the last two and a half weeks of the season. The students who were not eligible to run were encouraged by Mr. Mayes to run unattached, which would make them ineligible to run the next season. Mr. Mayes mixed up bibs. Our first race (the Missouri Stampede race) included a non-Haskell athlete who was one of Mr. Mayes’ prior runners and wore a Haskell bib. Mr. Mayes told the freshman runner (b) (6) to whom the bib belonged to say that (b) (6) ran and could not finish the race even though (b) (6) did not race. Mr. Mayes also ran someone else under (b) (6) bib number, I am not sure which race this was.

I heard Mr. Mayes say “I’ll throw you under the bus and I’ll be the one driving it,” which he said on the bus after a meet. Mr. Mayes was talking to a freshman runner but I do not know the context of the comment. There were a lot of weird things he would say that felt uncomfortable. I thought maybe this was just his way of coaching but he has a very different character than my previous coach. I also heard Mr. Mayes say “If I was an athlete and had to do grade checks I would not share my grades with my coach because that is embarrassing,” but I do not remember when he said this or what the context was. I know one of the runners had suggested a study hall and this is when Mr. Mayes made this comment. I heard Mr. Mayes say in the weight room doing core, “If you don’t get off your phone, I’ll shove it where the sun don’t shine.” He told us a story about a student at one of his prior work locations who filmed him when he was yelling at

the team. I understood this to me that this was the reason he did not want us to have our phones at practices. I do not know who he said this to, but there was a no phone rule when we did core work. Mr. Mayes would tell us he had all of our parents' numbers and would call them if we were not doing well academically or had broken any rules. I felt like he treated us like high school students. He had us write down our parents' numbers for him.

I was supposed to get a pair of racing flats. Mr. Mayes told me he would pay out of pocket if needed. I never received the racing flats.

Mr. Mayes gave (b) (6) a jacket that no one else had. (b) (6) was not a team captain but Mr. Mayes would often give (b) (6) leadership roles. I felt Mr. Mayes did not appreciate the novice runners enough while (b) (6) would post frequently about the top four runners ((b) (6) myself and (b) (6)). One of the freshman girls (b) (6) stated (b) (6) was one of (b) (6) favorites.

Coach Mayes used a butter knife and a binder clip for an injury for (b) (6). When (b) (6) told Coach Mayes about the diagnosis the athletic trainer (b) (6) had given (b) (6) Coach Mayes told me (b) (6) did not know what he was talking about even though (b) (6) diagnosis given to (b) (6) by (b) (6) was confirmed by a hospital. Coach Mayes was trying to tell (b) (6) (b) (6) needed a boot.

In addition to (b) (6), Mr. Mayes spoke negatively about (b) (6) and (b) (6). I always felt he was trying to one up (b) (6) in coaching skills. At random times he would say "Oh, did (b) (6) do this for you?"

Graston is a therapy technique for sore muscles that uses silver metal tools. Only athletic trainers are supposed to do this procedure and Coach Mayes was performing it on runners ((b) (6) (b) (6), (b) (6) and (b) (6)) with binder clips.

Mr. Mayes asked a (b) (6) of one of my teammates (b) (6) who had volunteered to help with a meet, if (b) (6) could watch (b) (6) (b) (6) during the meet.

Haskell has a contract with Nike and Coach Mayes bought Brooks racing shorts and singlets. I do not know the rules around the contract or how this would affect the school.

I brought up with Mr. Mayes a concern about his disorganization. He listed all the things he was dealing with and said he had a lot on his plate. Every time a concern was brought up throughout the season he would resort back to having so much on his plate. I felt like this was his job and if he felt overworked, then maybe the job was not for him. I met with him to discuss my concerns (his disorganization and him creating a negative environment in practice by speaking badly about our former coach) and he told me we would meet the following Monday to come up with a plan. That meeting never happened and by then I had decided to quit the team. I do not remember when that occurred.

Mr. Mayes talked about a previous non-Haskell runner (“I helped a prior Native runner recover from (b) (6) alcoholism”). He would say that Haskell is known to have students who like to party and drink. I felt he was saying do not be part of the stereotype that Native Americans are drunks. His rules for getting caught drinking were very different—we had to go to church or perform community service and do barrel rolls before practice. I thought making us go to church was weird for a Native American institution with the history of Native Americans being forced to go to boarding schools that were run by churches.

One of my teammates (b) (6) was caught drinking and Mr. Mayes would often discuss (b) (6) character in conversations with other students, mainly freshman, using (b) (6) (b) (6) as an example or discuss (b) (6) reactions. There was a video recorded of Coach Mayes talking about (b) (6) to another runner, which was submitted to (b) (6) (b) (6)

There were times that Coach Mayes was late to practice and changed practice times at the last minute, but I would not say this occurred constantly. It happened enough times to irritate the runners.

Coach Mayes is a great coach in terms of his practice plans and making runners faster. He is disorganized when it comes to management of the team. I have been a runner since fourth grade and I have never been in a program that has been this stressful. The last meeting I had with him was when I voiced my concerns to him (as described above). I left the meeting feeling like there would be change, but then nothing changed. I think that is why he is such a great recruiter and is able to recruit such fast runners—he promises a lot of things. If my teammates had not spoken with me about how they felt about the season, I would not have spoken up to address the situation because I am a senior and this was my last season as a cross country runner.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. This declaration, including this page, consists of _____ pages.

Declarant's Signature

Position Title, Level

Place of Employment

Date

Fw: [EXTERNAL] Re: Administrative investigation--Draft declaration

(b) (6) - Contractor (b) (6)

Wed 3/30/2022 3:02 PM

To:

- (b) (6)

Hi (b) (6)

I have not received your signed declaration--please forward.

Thank you,

(b) (6)

Contract Investigator
35 West Mountain Road
Bernardston, MA 01337

(b) (6)

From: (b) (6) - Contractor (b) (6)

Sent: Friday, March 18, 2022 6:05 PM

To: (b) (6)

Subject: Re: [EXTERNAL] Re: Administrative investigation--Draft declaration

(b) (6)

I made the requested changes--revised version attached.

Thank you,

(b) (6)

Contract Investigator
35 West Mountain Road
Bernardston, MA 01337

(b) (6)

From: (b) (6)

Sent: Friday, March 18, 2022 4:58 PM

To: (b) (6)

Subject: [EXTERNAL] Re: Administrative investigation--Draft declaration

CAUTION: This email originated from outside USPS. **STOP and CONSIDER** before responding, clicking on links, or opening attachments.

Hello,

Declaration A
Page 6 of 7

Thank you for preparing this draft. There is a few corrections I would like you to make. Clay Mayes is no longer my coach. Also, Mayes called (b) (6) our prior assistant coach a psychopath not (b) (6) (b) (6) This declaration also states Mayes did not talk negatively about any other Haskell employees but that is incorrect. He spoke negatively about (b) (6) and (b) (6) Everything else is correct to the best of my knowledge.

Thank you

(b) (6)

On Thu, Mar 17, 2022 at 4:30 PM (b) (6) - Contractor

(b) (6) wrote:
(b) (6)

Thank you for speaking with me on March 11th. I am attaching the declaration I prepared based on the interview. Please review the draft, initial each page, sign and date the last page, and return to me on or before Friday, March 25th.

Please let me know if you have any questions.

(b) (6)

Contract Investigator
[35 West Mountain Road](#)
[Bernardston, MA 01337](#)

(b) (6)

DECLARATION OF (b) (6)

Job Title: Cross Country runner
Work Location: Haskell Indian Nations University
Lawrence, KS
Date of Interview: March 30, 2022

I, (b) (6), hereby make this Declaration.

I understand that I am making this statement under penalty of perjury; that it is the equivalent of a sworn statement made under oath; and that it may be filed in proceedings in accordance with or before the merit Systems Protection Board (MSPB) or the Equal Employment Opportunity Commission (EEOC), in the grievance process or before an Arbitrator, in court, or in any other similar proceeding. This statement is voluntary and no promises of any kind have been made to me and I have not been subjected to any threatening or coercive behavior for the purpose of obtaining this declaration. I understand that this declaration is part of an official management investigation and that this investigation is not part of the Equal Employment Opportunity (EEO) process.

(b) (6)

I have been a student at Haskell since 2018. I have been on the Cross Country team for three seasons. My coach this year was Clay Mayes. My previous coach was (b) (6)

(b) (6)

I have never met Mr. Mayes in person. He called me several times (four or five) over the summer of 2021 when he became the new coach. He wanted to learn about me but he never let me talk, which I thought was odd if he was trying to get to know me. Each call lasted about 30 minutes. He said some weird things over the phone, including "Sometimes the boys get on my nerves and are being knuckleheads and I want to swerve into them and hit them with the car." I did not say anything in response because

Page 1 of 3
Initials THH

I could never get a word in when he called to talk to me. I do not specifically remember any of the other weird comments he made to me.

I am off campus this year doing student teaching in Udalf, Kansas. I was going to run cross country for the team with Coach Mayes telling me where to be for the races. He told me the first race was at Oklahoma State. Two days before I was supposed to leave I found out through an Instagram post that the team was not going to Oklahoma State but was going to Missouri State instead so I was not able to run in that meet. After that Mr. Mayes told me he would call me. He never called me until I sent him a text message on September 17, 2021 telling him that he was not communicating with me and this was too stressful so I would not be running with the team. He told me he wanted to call me to talk to me about my decision to quit, but he never did that. Instead, he had one of my former teammates (b) (6) reach out to me to ask me to rejoin the team, which I declined.

I went to the Haskell Invite (an open meet) in October 2012 in which I ran as an unattached runner after I had quit the Haskell team. Mr. Mayes cheered for me at that meet but I never met him. After that meet Mr. Mayes texted me that he wanted me to run for Haskell in conference. I told him I was not going to do that. He texted me that I was not being fair to my teammates, to think about my teammates and how me not running would affect them.

One time I asked him why he had not sent me the week's workouts and he told me he sent them through the group chat but I was not included in the group chat. I asked him to add me to the group chat and he told me I had to have a teammate add me to the group chat, which was hard because I only knew about four people on the team because most of them were new. I asked one of my teammates to add me to the chat, which she did.

The above is the extent of my interactions with Mr. Mayes. I last interacted with Mr. Mayes via text in November 2021 when he texted me about wanting me to run conference.

I heard from (b) (6) that things were not going well with Mr. Mayes as the new coach, but she did not tell me specifically what was going on.

There were times during the group chat that Mr. Mayes stated he was being reported for things, which I thought was odd for him to share with the team.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. This declaration, including this page, consists of 3 pages.

Initials (b) (6)
Page 2 of 3

(b) (6)

Declarant's Signature

Cross Country Runner
Position Title, Level

Haskell Indian Nations University
Place of Employment

March 31, 2022
Date

(b) (6)

Initials
Page 3 of 3



(b) (6)

Active now

Clay

Since you're redshirting, I am not able to.

The 3 people who made all the reports ruined being able to ask for exceptions. If I breathe wrong, I get reported.

Clay

The last report(18th report) I received was claiming I was telling junior runners they could race in the high school race. It was a 3 page later noting.

This person didn't realize there was only 5-7 people competed in the junior high race, let alone I never said this.

This report was not anonymous like the other reports. Most know who, so for now, let's just be encouraging and positive with each other. You all have honestly been an all around blessing and I appreciate how easy you all have trained and worked together.

Clay

Looking to do a team activity

You Can't Message This Group

You're no longer in this group and can't send or receive calls or messages unless you are added back to it.



Clay Kicker

an additional assistant coach comes (b) (6) He's going through a background check.

I know it's been spotty catching up with me, but if you'd still like to consider racing, like the home meet, and conference, it's still an option for you.

I'll call you tomorrow and either can just wish you well if that's what you want or help in detail as needed.

Only 1 returner for men is eligible, so it created a panic to get all new runners for men situated (we'll have 6 races the home meet, thankfully they are solid but it spreads us thin). Stuff like this has made things incredibly busy with paperwork, meets, driving tests, etc. that process is finally dissolving.

Okay

Monday 3:44 PM

Would you want to run xc conference for us on November 6th?



iMessage





Clay Kicker >

Fri, Sep 17, 6:17 PM

That's fine.

Fri, Sep 17, 9:36 PM

(b) (6) actually been great help as of yesterday.

I don't coach with (b) (6), I'm sure he'd be great help if he did, but he's a busy instructor with classes. As of now, it's just me.

The assistant to be is migrating to ft lewis for classes. (Gotta finish degree). Ha, I really needed an assistant.

I should have more time to give to everyone, as Dakota helps, and as an additional assistant coach comes (b) (6). He's going through a background check.

I know it's been spotty catching up with me, but if you'd still like to consider racing, like the hone meet, and conference, it's still an option for you.

I'll call you tomorrow and either can



iMessage





Clay Kicker >

Fri, Sep 17, 4:24 PM

Hello Clay. I hope you are doing well. I have decided to forgo my final year of Cross Country. I found out Thursday afternoon that the meet has been moved from OSU to Missouri Southern. My parents have had to cancel their reservations and lose money on the reservations. With the lack of communications I have received and unanswered text messages, I have decided to withdraw from Cross Country. It is too stressful with never knowing when and where we were running. Good Luck with your season. #OnwardHaskell

I can give you a call later if you want, it's been a bit messy this entire time with covid and last minute modifications.

Fri, Sep 17, 6:17 PM

That's fine.

Fri, Sep 17, 9:36 PM

(b) (6) actually been great help as of yesterday.



iMessage





Clay Kicker >

Monday 3:44 PM

Would you want to run xc conference for us on November 6th?

You can just jog and run it to run it. I think the girls will win conference, so it's something you can be apart of.

Conference is at Haskell

Monday 5:07 PM

I am going to have to pass. If you had asked me to run the week before at Mid-states when you were 10 miles from my home I might have. I am running the 10k the next day anyways so it's not worth it. Plus I've already been on a nationals team and qualified as an individual it's nothing special.

Read Monday

No worries! I think the ladies are more excited for pursuing a team title with being team based/ community in mind, but to each their own. Best of luck in that 10k, roll it!



iMessage





Clay Kicker >

Sat, Aug 28, 12:41 PM

Hey coach, are we not racing on September 4? I need to know because if we aren't, my parents need to cancel their hotel reservations.

Sat, Aug 28, 7:02 PM

Yes, as of today we're canceling. Our AD caught Covid last week, and that is one reason why, I'll call soon, too

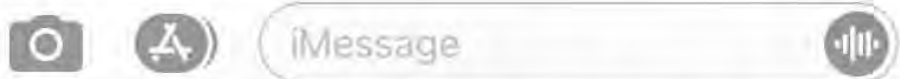
First race is OSU - jamboree the 18th

Okay so no Missouri Southern. My dad made reservations for that one too.

Sat, Aug 28, 8:50 PM

Covid has made meets limit field sizes. Tomorrow I get a verification on one last meet and I'll send a finalized xc schedule. The meets are also wanting each runner to be tested 48 hours out or be vax'd.

It's a pain but I understand



[EXTERNAL] Re: Administrative investigation--Draft declaration

(b) (6)@gmail.com>

Thu 3/31/2022 7:46 PM

To: (b) (6)

7 attachments (7 MB)

DECLARATION OF (b) (6).pdf; 145AFDEC-EDF6-4483-9596-20B873FDCA80.png; D76A0A7E-4A9F-4D49-9BD2-206D8A52A9E8.png; 8EF1D63B-C9AB-4E02-9854-131F7017D8BB.png; 20A5FD44-B54C-4904-B4AF-FEABA3DC5B01.png; AA5B1A9E-3B8A-4EFB-807C-D3A9E4986D83.png; 7A4223BF-26E0-4BF9-801F-8CFBD4C4F6B8.png;

CAUTION: This email originated from outside USPS. **STOP and CONSIDER** before responding, clicking on links, or opening attachments.

Hi (b) (6),

Here is my signed declaration plus the photos of the conversation with Mayes.

Thank you for your time,
(b) (6)

On Wed, Mar 30, 2022 at 4:05 PM (b) (6) - Contractor

(b) (6) wrote:
(b) (6)

Thank you for speaking with me today. I am attaching the declaration I prepared based on the interview. Please review the draft, initial each page, sign and date the last page, and return to me on or before Wednesday, April 6th.

Please let me know if you have any questions.

(b) (6)

Contract Investigator

(b) (6)

(b) (6)

DECLARATION OF (b) (6)

Job Title: Cross Country runner
Work Location: Haskell Indian Nations University
Lawrence, KS
Date of Interview: April 1 and 6, 2022

I, (b) (6), hereby make this Declaration.

I understand that I am making this statement under penalty of perjury; that it is the equivalent of a sworn statement made under oath; and that it may be filed in proceedings in accordance with or before the Merit Systems Protection Board (MSPB) or the Equal Employment Opportunity Commission (EEOC), in the grievance process or before an Arbitrator, in court, or in any other similar proceeding. This statement is voluntary and no promises of any kind have been made to me and I have not been subjected to any threatening or coercive behavior for the purpose of obtaining this declaration. I understand that this declaration is part of an official management investigation and that this investigation is not part of the Equal Employment Opportunity (EEO) process.

(b) (6)

This is my fourth year as a student at Haskell. I have been on the Cross Country team since I have been at Haskell. My coach is Clay Mayes. My prior coach was (b) (6)

I first met Mr. Mayes by phone during the summer of 2021 and then met him in person in August 2021 when school started. I interacted with Mr. Mayes every day during the season except for Saturday. I last interacted with Mr. Mayes when we had a meeting on October 31, 2021 during which it felt like Mr. Mayes was retaliating against me because we (b) (6), (b) (6), (b) (6), (b) (6), (b) (6) and myself) had filed a complaint against him with (b) (6) because Mr. Mayes had texted one of our teammates (b) (6) in a way that was rude and

made (b) (6) feel bad. Part of our complaint was a recording of Mr. Mayes talking about one runner (b) (6) who had been kicked off the team) to a different runner (b) (6) in a van on the way to a meet, so anyone on the van could hear the conversation. During the October 31st meeting Mr. Mayes said to me that I was "sitting there being passive aggressive" (I was sitting with my legs crossed over one another) and told me I fabricated lies and created drama on the team. He did not state what he was referring to. I was confused because I was a team captain and had not created any drama on the team. When he told me I was fabricating lies, I assumed he was referring to the report we made. When we made the report we requested to remain anonymous, so I am not sure how he found out who made the report. He said this to me in front of the entire men's and women's teams (about 20 people). My teammates (b) (6) (b) (6) and I walked out of the meeting. When we walked out (b) (6) and (b) (6) were crying. The women's basketball team was practicing and we told the coach, (b) (6) (b) (6) about what happened (that we walked out of the meeting because we felt uncomfortable). (b) (6) asked us if we tried to talk to Mr. Mayes. We said we had and (b) (6) tried to comfort us.

One day we were in the library and (b) (6) came in crying and showed us text messages from Mr. Mayes. (b) (6) did not want to run that weekend because (b) (6) did not want to waste a year of eligibility on one race. Mr. Mayes wanted (b) (6) to run to try to get the women's team to Nationals. Mr. Mayes' texts said that (b) (6) had been lethargic all season and that (b) (6) was being selfish in not wanting to run. A screen shot of these text messages was included in our report.

Mr. Mayes often came to me for help/advice since this was his first year and I was a team captain. I told him that previously we had to do grade checks to make sure that we were doing well academically. He told me if he was a student and had to do grade checks, he would be embarrassed to give his grade check to his coach. He thought it was easier for him to contact teachers directly, which is what he did. There had never been any issues before in terms of the runners giving grade checks to the coach.

I heard Mr. Mayes say in the weightlifting room while in Coffin a couple of times, "I'll throw you under the bus and I'll be the one driving it" when he was talking to the team about if he caught us drinking or partying. I remember hearing Mr. Mayes say once at an away meet while we were eating at a Pizza Hut to (b) (6) who was on (b) (6) phone, "If you don't get off your phone, I'll shove it where the sun don't shine." Mr. Mayes wanted us to be off our phones. I heard that Mr. Mayes referred to (b) (6) as a "sociopath" when speaking to the men's team. Mr. Mayes often spoke poorly about (b) (6) including saying (b) (6) was crazy. I would say every other day Mr. Mayes would bring up (b) (6) and say something negative about (b) (6). Mr. Mayes told us (b) (6) would call our parents if we were not doing well academically or if we were caught drinking because (b) (6) thought it would be more effective if we were chewed out by our parents. I think we did not feel comfortable enough to express to him that we did not like (b) (6) comments, but we did address with him (b) (6) disorganization and lack of communication.

Right before a meet Mr. Mayes asked everyone their shoe sizes and told us he would have better shoes for us at the next meet, but he never did. He constantly told us he would do something (buy us donuts, get us spikes) and never did. I think in the Native community a lot of us were harmed by false promises from a coach who we were supposed to trust because we have a long history of false promises from the government.

On Mr. Mayes' Instagram he would post pictures most frequently of certain runners (the top (fastest) couple of women and men). One of his favorites, (b) (6), had a jacket that none of the rest of us got. (b) (6) told us that (b) (6) got it because Mr. Mayes "owed it to (b) (6)." (b) (6) said to me, (b) (6) and (b) (6) that (b) (6) knew that (b) (6) (b) (6) was one of his favorites.

I did not hear Mr. Mayes say (b) (6) did not know what (b) (6) was doing, but I heard about this from (b) (6). I never directly heard Coach Mayes speak badly about (b) (6) but I know other people heard this.

Mr. Mayes made negative comments about (b) (6) and (b) (6). I do not remember if Mr. Mayes specifically used (b) (6) name in front of me because he knew we would get upset when he talked poorly about our prior coach, but he would say "did your past coach do this for you" or "I will probably be the only coach who will do this for you guys." (b) (6) and (b) (6) had a meeting with (b) (6) early in the season to let him know that we felt uncomfortable when he spoke badly about (b) (6).

I believe Mr. Mayes gave me the graston treatment. One time he used a binder clip and the second time he used a broken piece of equipment that was in the gym. We (the runners) did not know at the time that someone has to be certified to do the treatment. (b) (6) had an injury and a physical therapist told (b) (6) that you need to be certified and have to use specific tools. We believe the treatment by Mr. Mayes made (b) (6) injury worse. I know when I had it done it did not make me feel better and I had bruises on my legs.

I was at the Missouri Southern Stampede, which was our first meet. There were a number of bib mix-ups. I saw (b) (6) name on the leaderboard even though (b) (6) was not at the meet because (b) (6) was injured. (b) (6) ran under (b) (6) bib after Mr. Mayes gave (b) (6) bib when he gave us the bibs the night before the meet. This mistake could have used up a year of eligibility for (b) (6) because (b) (6) did not run in a meet at all that season. Freshman (b) (6) did not run in the race because (b) (6) was injured but (b) (6) came to the meet to see (b) (6) family. A non-Haskell runner (b) (6) ran under (b) (6) bib.

We had a non-conference meet at Haskell on October 9, 2021 and there were a number of team members (b) (6) and (b) (6) who were ineligible for the season due to academic reasons but Mr. Mayes encouraged them to run unattached, which could affect their NAIA eligibility for future seasons. All of these individuals ran unattached at the Haskell meet and several of them ran

unattached at a later meet in Kansas. The runners did not know that they could not run unattached because if you are not eligible you are not supposed to race at all.

The very first meet there were bib mix-ups between (b) (6) and (b) (6) and also (b) (6) and (b) (6). At the Haskell meet on October 9th Mr. Mayes had a basketball player on the roster (b) (6) who was not on the cross country team but did not run at the meet. I do not think (b) (6) even knew (b) (6) name was on the roster. Later in the season, at the very last meet, Mr. Mayes had three softball girls run at the meet who were not members of the cross country team. I recently learned that one of the softball girls ran under my number. I learned this from the AD (b) (6) last week when I asked about my times and (b) (6) told me (b) (6) could not look at my racing times because someone had run under my number.

(b) (6) told me that at the October 9th Haskell home meet (b) (6) (b) (6) asked Mr. Mayes what (b) (6) could help him with (in terms of the meet) and he told (b) (6) (b) (6) (b) (6) could watch (b) (6) (b) (6) (b) (6) never asked me to watch (b) (6) (b) (6)

Mr. Mayes gave us Brooks racing jerseys and running shorts that he had printed and that we raced in. We are sponsored by Nike and if we do not race in Nike gear they can pull their sponsorship.

When we would call out Mr. Mayes on his disorganization or lack of communication, he would say he had a lot going on (his children, people in the athletic department are out to get him). His only job was to coach us and he would say these things to make people feel sorry for him. This allowed him to make excuses for not doing anything in response to the concerns we raised. When he talked to us about drinking he would tell us we were representatives of our community and we should not be seen out, which made us feel bad if we did go out.

Mr. Mayes would often talk himself up (how he is an amazing coach). One time he told us he helped one of his previous runners, who he mentioned by name, overcome alcoholism. I do not remember the individual's name. This occurred in the cardio room in Coffin and he was talking to us about not wanting us to drink. It felt like he told this story to make us scared to drink.

Mr. Mayes would have people spy on us on our social media. (b) (6) an assistant coach, would look on Snapchat and watch team members' stories and report to Mr. Mayes if we were out drinking or partying. Mr. Mayes liked to micromanage us. He wanted us in bed by 10 p.m. and if he saw that we were on Facebook after that he would tell us the next day that he wanted us in bed earlier. One of the runners (b) (6) (b) (6) was kicked off the team for drinking. In the van to our first meet Mr. Mayes was talking about that runner's situation to (b) (6) while we were in the van. There were 10-11 people in the van.

Another part of Mr. Mayes' disorganization and lack of communication was that we were used to a set practice schedule and Mr. Mayes would often (3-4 times a week) change

practice time to accommodate his schedule or the schedules of specific runners. For example, if we had practice scheduled for 4 p.m. he would change it to 2 p.m. Sometimes these changes were made the day of the practice or the night before. Mr. Mayes would then get mad at us if we were not able to make the changed practice. Even after runners, including me, talked to him about wanting a set schedule because that worked best, he still did not keep a set schedule. There was one practice where he missed a whole practice because he said he slept through his alarm. There were other times (about five times) when he was late to practice (10-30 minutes). Our season is not that long. I was late to practice once the entire season. If we were late to practice we would have to do bear rolls.

I have nothing additional to add at this time.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. This declaration, including this page, consists of _____ pages.

Declarant's Signature

Position Title, Level

Place of Employment

Date

Fw: Administrative investigation--Draft declaration

(b) (6) Contractor (b) (6)

Fri 4/22/2022 12:18 PM

To:

- (b) (6)

Hi (b) (6)

I am following up as I have not received your signed declaration. Please forward.

Let me know if you have any questions,

Thank you,

(b) (6)

Contract Investigator
35 West Mountain Road
Bernardston, MA 01337

(b) (6)

From: (b) (6)

Sent: Wednesday, April 6, 2022 6:54 PM

To: (b) (6)

Subject: Administrative investigation--Draft declaration

(b) (6)

Thank you for speaking with me on April 1st and again today. I am attaching the declaration I prepared based on the interview. Please review the draft, initial each page, sign and date the last page, and return to me on or before Wednesday, April 13th.

Please let me know if you have any questions.

My point of contact at DOI/BIE is (b) (6)

(b) (6)

Thank you,

(b) (6)

Contract Investigator
35 West Mountain Road
Bernardston, MA 01337

(b) (6)

DECLARATION OF

(b) (6)

Job Title: Cross Country runner
Work Location: Haskell Indian Nations University
Lawrence, KS
Date of Interview: March 31, 2022

I, (b) (6), hereby make this Declaration.

I understand that I am making this statement under penalty of perjury; that it is the equivalent of a sworn statement made under oath; and that it may be filed in proceedings in accordance with or before the Merit Systems Protection Board (MSPB) or the Equal Employment Opportunity Commission (EEOC), in the grievance process or before an Arbitrator, in court, or in any other similar proceeding. This statement is voluntary and no promises of any kind have been made to me and I have not been subjected to any threatening or coercive behavior for the purpose of obtaining this declaration. I understand that this declaration is part of an official management investigation and that this investigation is not part of the Equal Employment Opportunity (EEO) process.

(b) (6)

I have been a student at Haskell since the fall of 2021. I was on the Cross Country team in the fall. My coach was Clay Mayes.

I have known Mr. Mayes since July 2021 when he would contact me every week regarding workouts. I interacted with Mr. Mayes during every practice, which was almost every day. I last interacted with Mr. Mayes on October 31, 2021.

(b) (6) came to us (me, (b) (6) and (b) (6) crying one day about how Mr. Mayes was talking to (b) (6) over text messages when he was trying to get (b) (6) to race in conference. (b) (6) did not want to use (b) (6) eligibility for one race.

Mr. Mayes did not enforce grade checks. I think there was a feeling that he should have focused more on academics and not just on us being athletes. Mr. Mayes did not understand when my teammates would miss practice. Mr. Mayes encouraged runners

who were academically ineligible to run for Haskell (b) (6); (b) (6) and (b) (6)) to run in races unattached, which could negatively impact their ability to run in future years.

Mr. Mayes said to the whole team on one occasion "If I was an athlete and had to do grade checks I would not share my grades with my coach because that is embarrassing" after a team member asked him if he could do grade checks to make sure everyone was doing well in their classes. I heard Mr. Mayes say "I'll throw you under the bus and I'll be the one driving it" during a core workout when he was talking to us about breaking the rules (being on time, what we do on our free time). I also heard Mr. Mayes say one time to my teammate (b) (6), who was on (b) (6) phone, "If you don't get off your phone, I'll shove it where the sun don't shine." I did not hear Mr. Mayes refer to one of our previous coaches (b) (6), as a sociopath, but I know my teammates heard this. Mr. Mayes would say to us that he would contact our parents if we were not doing well academically or had broken any rules.

Some of my teammates told me they needed new shoes or other items and Mr. Mayes would constantly put it off by saying he would get it to them but never followed through in getting it to them. (b) (6) needed new flats for one of the races and would constantly remind Mr. Mayes, but (b) (6) never got them.

Mr. Mayes definitely had his favorites and everyone noticed it. For example, Mr. Mayes gave (b) (6) gear that no one else had and treated (b) (6) as a captain even though (b) (6) was not a captain.

I heard Coach Mayes say during practice to (b) (6) who was injured, that (b) (6) (b) (6) misdiagnosed (b) (6) and (b) (6) (b) (6) did not know what (b) (6) was doing. This freaked (b) (6) out because (b) (6) thought (b) (6) was getting better. It turned out that (b) (6) was fine and what (b) (6) was doing was helping (b) (6).

I am not aware of Mr. Mayes making comments about Haskell employees, other than (b) (6) and (b) (6) in a negative manner.

Mr. Mayes would do graston therapy on runners sometimes before runs and after runs. (b) (6) never did this to me.

(b) (6) was at the Missouri Southern Stampede to meet (b) (6) (b) (6) but (b) (6) did not run that race as far as I know. Mr. Mayes had (b) (6), who was not even a Haskell student yet, run under (b) (6) bib.

At the Missouri Southern Stampede race (b) (6) name appeared on the results even though (b) (6) was back on campus. I do not know if someone else ran with (b) (6) bib. Mr. Mayes claimed (b) (6) time showed up because someone walked by the finish area while holding (b) (6) bib.

Mr. Mayes asked (b) (6) (b) (6) to watch his children at the one Haskell meet of the season. Mr. Mayes also asked (b) (6) to watch his children at that meet.

Mr. Mayes never asked me to watch his children.

I believe Haskell is sponsored by Nike and we are supposed to be wearing Nike gear. Coach Mayes gave us Brooks gear.

When the team would bring up concerns about what he could do to help us, he would constantly say that he was busy and that he had other responsibilities (his children, parenting classes) that he was stressed out about, which made us feel bad and have pity for him.

During core workouts in the evenings Mr. Mayes would talk about prior runners without saying their names in trying to relate a story to us. He said twice that his past runners were alcoholics but that he saved them, which he mentioned when he was talking to us about his rules and what we did in our free time outside of Haskell.

In the van on the way to a meet Mr. Mayes talked the whole time with (b) (6) about (b) (6), who had been caught drinking. I did not think it was right that Mr. Mayes was talking about (b) (6), a teammate, with another teammate, (b) (6) about (b) (6) personal information.

Almost every week Mr. Mayes was late to practice (once or twice a week). Mr. Mayes always told us the practice times at the last minute. He would let us know the day before what time the next day's practice would be. The team suggested to him that we have a set schedule because we had classes and other things to prioritize. Mr. Mayes never made a set schedule. About once a week he would also change the practice time after he had already told us earlier that day what the next day's practice time would be.

We had a team meeting the last time I spoke with Mr. Mayes, which was on October 31, 2021. Mr. Mayes was very upset because he had scheduled a practice on Halloween and only myself, (b) (6) and (b) (6) showed up for practice. Mr. Mayes then targeted me, (b) (6) and (b) (6) too during this meeting. He had found out I had recorded what he said to (b) (6) on the van and sent it to (b) (6). We were telling him he had favorites on the team. Mr. Mayes also said to (b) (6), "Is that why you are fabricating lies?" (b) (6) recorded the October 31, 2021 meeting on (b) (6) watch. Mr. Mayes did not know the meeting was being recorded.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. This declaration, including this page, consists of pages.

Declarant's Signature

(b) (6)

Position Title, Level

Cross-country runner

Place of Employment

Student-Athlete at Haskell Indian Nations University

Date

4-7-2021

Initials _____
Page _____ of _____

DECLARATION OF

(b) (6)

Job Title: Cross Country runner
Work Location: Haskell Indian Nations University
Lawrence, KS
Date of Interview: March 31, 2022

I, (b) (6), hereby make this Declaration.

I understand that I am making this statement under penalty of perjury; that it is the equivalent of a sworn statement made under oath; and that it may be filed in proceedings in accordance with or before the Merit Systems Protection Board (MSPB) or the Equal Employment Opportunity Commission (EEOC), in the grievance process or before an Arbitrator, in court, or in any other similar proceeding. This statement is voluntary and no promises of any kind have been made to me and I have not been subjected to any threatening or coercive behavior for the purpose of obtaining this declaration. I understand that this declaration is part of an official management investigation and that this investigation is not part of the Equal Employment Opportunity (EEO) process.

(b) (6)

I have been a student at Haskell since the fall of 2019. I have been on the Cross Country team since then. My coach is Clay Mayes.

I first met Mr. Mayes by phone during the summer of 2021 and then met him person in August 2021 when school started. I interacted with Mr. Mayes during practice every day during the season. I last interacted with Mr. Mayes when we had a tough meeting in Coffin on October 31, 2021.

(b) (6) who is one of our faster runners but was ineligible for the season, told me and a few other runners in the library that Mr. Mayes wanted (b) (6) to run for conference and after (b) (6) told him (b) (6) did not want to run because (b) (6) was ineligible, Mr. Mayes told (b) (6) that if (b) (6) did not run this would be the last time (b) (6) would be running. (b) (6) was crying when (b) (6) told us about this interaction with Mr. Mayes. This was not how a coach should be talking to a student. This is when we reported Mr. Mayes' conduct to (b) (6) via email because the other runners also had

experienced Mr. Mayes' negative conduct. I experienced him putting me down. We (b) (6) and myself) knew at that point he was not being honest with us (for example, he was not certified to be doing graston on my leg) and not treating us with respect (for example, he would yell at us and tell us to shut up).

Mr. Mayes did not provide academic support. During previous semesters we were supposed to meet a certain number of study hours. Under (b) (6) we had study hours and every two weeks we would take our grade check to (b) (6) who would help runners who were having difficulty in classes. (b) (6) and I talked to Mr. Mayes about the team needing more academic support because some of the new runners talked about failing classes. Mr. Mayes blew it off and made a snarky comment back to us—"If I was an athlete and had to do grade checks I would not share my grades with my coach because that is embarrassing."

I heard Mr. Mayes say during practice "I'll throw you under the bus and I'll be the one driving it." I do not remember why he said this but I remember feeling like it was not funny. Before practice he would tell us to put our phones away. I remember hearing Mr. Mayes say twice "If you don't get off your phone, I'll shove it where the sun don't shine" to a runner who was talking on the phone. I heard that Mr. Mayes referred to (b) (6) as a "sociopath" when he was talking to the boys team. The girls team heard about this from our teammates. Other times Mr. Mayes would randomly talk about (b) (6) reporting him if he did not do the right thing. Mr. Mayes told us he would call our parents if we were not doing well academically or if we had been drinking even though we were all over 18. (b) (6) told us no one is supposed to call our parents unless they have a signed form from us. Mr. Mayes spoke poorly about (b) (6) and (b) (6) when he would say (b) (6) would report him if he did not do something right. He also said to me, (b) (6) and (b) (6) that (b) (6) did not know how to recruit. I took offense to this comment because all three of us had been recruited by (b) (6).

Throughout the whole season we only received two shirts and a pair of shorts. Our school is sponsored by Nike and these were not Nike items. We also received a backpack and a jacket that were left over from the prior year. Some runners needed new shoes and spikes and no one got new spikes. Every other team received purple sweaters but the cross country team did not. One time we were at Mr. Mayes' house for a team dinner and saw boxes of gear, including the purple sweaters. It seemed like he had boxes of gear at his house that he was not giving to us.

At the beginning of the cross country season Mr. Mayes assigned two female captains and two male captains. Mr. Mayes gave a sweater to (b) (6) that he did not give to the rest of us (b) (6) told me Mr. Mayes gave (b) (6) the sweater because he owed (b) (6) for something). During the last meeting with Mr. Mayes on October 31, 2021, we told him we did not appreciate how he favors certain runners. Mr. Mayes said he did not have favorites. (b) (6) stated (b) (6) was not his favorite and said Mr. Mayes had a different favorite at UAV (University of Antelope Valley where Mr. Mayes transferred from), which basically confirmed that Mr. Mayes has favorites.

I was getting help from the athletic trainer, (b) (6) because I was injured. (b) (6) told me to

run 10-15 minutes, however long I felt comfortable. I ran for 10 minutes. Coach Mayes told me he needed me to take two weeks off based on the way I was running and while I take my two weeks off "I should just sit on the couch watch movies and eat chips," rather than taking into consideration that I was hurt and struggling with my injury. He should have insisted that I continue to recover with physical therapy, and possibly get another opinion. He did not mention any of that to me as a student-athlete. I really felt discouraged and neglected. Coach Mayes told me he was a runner for many years and that my leg was broken, which scared me. He asked me what (b) (6) had told me. Mr. Mayes told me (b) (6) did not know what (b) (6) was talking about and had misdiagnosed me. My leg was not broken and I did not have any bone fractures.

Mr. Mayes made negative comments about (b) (6) and (b) (6) as described above.

At the beginning of the season Mr. Mayes told us if we needed any scraping (on the calf), he was willing to help. (b) (6) and I tried it. Mr. Mayes used a wrench and a binder clip, which hurt. I went to (b) (6) and (b) (6) told me my muscle was tight. I told him how Mr. Mayes was treating it. (b) (6) told me Mr. Mayes was not supposed to be doing that. I also went to a physical therapist who told me Mr. Mayes needs to be certified to perform graston. Everyone Mr. Mayes was using graston on was getting hurt.

I was not at the Missouri Southern Stampede. My roommate (b) (6) told me that (b) (6) did not run and (b) (6) who was one of Mr. Mayes' previous runners, ran instead even though (b) (6) was not on the Haskell team.

There was a meet I drove to with two ineligible runners (b) (6) and (b) (6) (b) (6) I did not know at that time that they were not supposed to run but they ran in the meet as unattached. There was also a meet in Lawrence at which (b) (6) (b) (6) and (b) (6) ran unattached. I learned through NAIA that ineligible runners are not supposed to be racing at all unless there is a signed certificate that they are able to run, which Mr. Mayes did not have.

Mr. Mayes mixed up my bib with another girl at the very first race of the season (September 18, 2021 Missouri Southern Stampede) even though I did not run in that race, which could affect my eligibility for the next season. When I went to the Winfield meet Mr. Mayes did not have a canopy set up for us, water or a medical bag. He did not have anything set up for the runners, which was odd because he has been a cross country coach for so long.

I was helping to do b bs on October 9, 2021 at the Billy Mills Invitational when Mr. Mayes asked me to help (b) (6) (b) (6) with the (b) (6) (b) (6) then asked me to watch the (b) (6) while (b) (6) helped with the meet. (b) (6) (b) (6) would sometimes be with him during practice and climbing all over things and we wound up watching them even though Mr. Mayes did not ask us to do so.

One time there were two girls (b) (6) and (b) (6) who talked to Mr. Mayes about how we needed more organization and support. Mr. Mayes said he had a lot going on and manipulated them into believing that he would change. When we

asked him questions, he would tell us how much he had going on with (b) (6) and recruiting, and how he did not get a lot of sleep. At the last meeting we had on October 31st he kept saying "how would you feel if you were me" when we were asking about wanting changes for the team.

Mr. Mayes constantly would talk about a past non-Haskell runner (I do not recall (b) (6) name), mainly referring to how alcohol affected him and how (b) (6) teammates did not tell him (b) (6) was an alcoholic. I did not know the previous runner but (b) (6) knew the previous runner.

(b) (6) was sitting behind Coach Mayes and (b) (6) in the van on the way to a meet and heard Mr. Mayes telling (b) (6) that (b) (6) should not be going out to the bars, that he trusted (b) (6) and that is why (b) (6) was the captain, (b) (6) could not believe (b) (6) let him down, and that (b) (6) had lied about drinking alcohol. (b) (6) started recording this conversation on (b) (6) phone once (b) (6) heard Mr. Mayes mention (b) (6) because we are friends with (b) (6) and (b) (6) sent the recording to our group chat. I was not on the van nor was (b) (6)

Mr. Mayes would always get on us about being late to practice but then he would be late (this happened about 10-12 times). There were times we were in the gym working out and he would not show up at all. I was told to leave Coffin twice because our coach was not there while we were working out. There were other times when we had practice at a certain time and he told us he could not make it and would change the time to a time that conflicted with class schedules. I told him he should keep the practice at a set time because it made it difficult for us to change our schedules when he changed the practice time at the last minute.

I am still recovering from the scraping that Mr. Mayes did to me. I was finally able to run again in December 2021.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. This declaration, including this page, consists of pages.

Declarant's Signature

(b) (6)

Position Title, Level

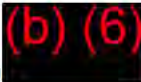
Women's Cross Country

Place of Employment

Student-Athlete at Haskell Indian Nations university

Date

04/07/22

Initial 
Page _____ of _____

DECLARATION OF **(b) (6)**

Job Title: Cross Country runner
Work Location: Haskell Indian Nations University
Lawrence, KS
Date of Interview: April 27, 2022

I, **(b) (6)**, hereby make this Declaration.

I understand that I am making this statement under penalty of perjury; that it is the equivalent of a sworn statement made under oath; and that it may be filed in proceedings in accordance with or before the merit Systems Protection Board (MSPB) or the Equal Employment Opportunity Commission (EEOC), in the grievance process or before an Arbitrator, in court, or in any other similar proceeding. This statement is voluntary and no promises of any kind have been made to me and I have not been subjected to any threatening or coercive behavior for the purpose of obtaining this declaration. I understand that this declaration is part of an official management investigation and that this investigation is not part of the Equal Employment Opportunity (EEO) process.

(b) (6)

I have been a student at Haskell since September 2021. I have been on the Cross Country team at Haskell for one season. My coach this year was Clay Mayes.

I have known Mr. Mayes since last summer. He recruited me to run at Haskell. During the season I interacted with Mr. Mayes every day we had practice. I last interacted with Mr. Mayes the last day of the season in the fall, which was in November 2021.

I did not experience a lack of communication or lack of academic support from Mr. Mayes. He always arranged study time and study groups for us.

I never heard Mr. Mayes make any of the following comments: "If I was an athlete and had to do grade checks I would not share my grades with my coach because that is embarrassing", "I'll throw you under the bus and I'll be the one driving it", "If you don't get off your phone, I'll shove it where the sun don't shine."

Mr. Mayes gave us a lot of apparel and if we needed more running shoes, we would ask him and he would get us some more.

I did not feel like Mr. Mayes had favorites. He put more effort into runners who worked harder. He paid pretty good attention to everyone.

I did not hear Mr. Mayes speak badly about our athletic trainer (b) (6) saying "(b) (6) doesn't know what he's doing."

I did not hear Mr. Mayes talk about other Haskell employees in a negative manner.

Graston is a type of procedure that helps your legs recover. He did this with me when I needed him to. If my legs were super sore or really tired, I would ask Mr. Mayes to do that.

I was supposed to run at the Missouri Southern Stampede but I got injured at the race and before the race started. I think someone may have run under my bib. I think this occurred because Mr. Mayes may have grabbed the wrong bib.

I do not know about Mr. Mayes encouraging ineligible runners to run unattached or about him asking runners and others to watch his children at a Haskell home meet.

I do not know if we should have been running in Brooks or Nike apparel. I know we were not signed by anyone.

I did not experience that Mr. Mayes continuously made excuses to make runners feel bad for him when he was called out by his runners.

I never heard Mr. Mayes talk about previous runners' personal lives. I do not believe I heard Mr. Mayes share a runner's personal information with other runners.

Mr. Mayes was not really late to practice. He did change practice locations so we did not run the same route every day, which gets boring.

I do not have any concerns with the way I was coached by Mr. Mayes or any interactions I have had with him.

I think a lot of the things that are being stated are not what happened. Team members did not seem unhappy during the season. Half of the things I was asked during this interview are shocking to me. The people complaining are no longer here (team

members who quit the team and left all the other team members in the dirt in terms of bringing this whole case and leaving the rest of the teammates without a coach—this whole thing is a joke) while I am putting in the work and would like to have a coach during the off season, which I have not had for the past several months. I would not have moved to Haskell if I did not trust Coach Mayes.

When is my coach going to come back?

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. This declaration, including this page, consists of _____ pages.

Declarant's Signature

Position Title, Level

Place of Employment

Date

Administrative investigation--Draft declaration

(b) (6) Contractor (b) (6)

Fri 5/6/2022 6:22 PM

To:

- (b) (6)

(b) (6)

Thank you for speaking with me on April 27th. I am attaching the declaration I prepared based on the interview. Please review the draft, initial each page, sign and date the last page, and return to me on or before Wednesday, May 11th.

Please let me know if you have any questions.

Thank you,

(b) (6)

Contract Investigator
35 West Mountain Road
Bernardston, MA 01337

(b) (6)

DECLARATION OF (b) (6)

Job Title: Cross Country runner
Work Location: Haskell Indian Nations University
Lawrence, KS
Date of Interview: April 29, 2022

I, (b) (6), hereby make this Declaration.

I understand that I am making this statement under penalty of perjury; that it is the equivalent of a sworn statement made under oath; and that it may be filed in proceedings in accordance with or before the merit Systems Protection Board (MSPB) or the Equal Employment Opportunity Commission (EEOC), in the grievance process or before an Arbitrator, in court, or in any other similar proceeding. This statement is voluntary and no promises of any kind have been made to me and I have not been subjected to any threatening or coercive behavior for the purpose of obtaining this declaration. I understand that this declaration is part of an official management investigation and that this investigation is not part of the Equal Employment Opportunity (EEO) process.

(b) (6)

I have been a student at Haskell since 2018. I was on the Cross Country team at Haskell for all my years. My coach this year was Clay Mayes.

I have known Mr. Mayes since he was announced as our head coach in 2021. I interacted with Mr. Mayes every day we had practice. I last interacted with Mr. Mayes in December 2020 or January 2021 when I saw him in the cardio room when I was working out.

Neither the Haskell Athletic Department nor Mr. Mayes did grade checks, but Mr. Mayes did tell us to let him know if we needed help. I felt like Mr. Mayes communicated well with the team.

I do not recall Mr. Mayes make the following comments: "If I was an athlete and had to do grade checks I would not share my grades with my coach because that is embarrassing" or "If you don't get off your phone, I'll shove it where the sun don't shine" or calling a former coach a sociopath. I did hear Mr. Mayes say "I'll throw you under the bus and I'll be the one driving it" when he was talking to a runner on the Haskell team (b) (6) who was a runner for Mr. Mayes at the University of Antelope Valley) in a joking way because they had a joking relationship. Mr. Mayes had a few team rules and mentioned that he would call our parents if the rules were broken. I do not believe he ever called anyone's parents.

I do not think Mr. Mayes broke any promises. He provided gear to the team.

I felt like Mr. Mayes had favorites, which were the people, including me, who communicated with Mr. Mayes about training updates. Some of the team members were not communicating with Mr. Mayes about training updates and Mr. Mayes seemed to have a hard time bonding with them.

I heard Mr. Mayes say one time about our athletic trainer (b) (6) "(b) (6) doesn't know what he's doing" when a team member had an injury. I believed Mr. Mayes was referring to (b) (6) in the context of (b) (6) having so many athletes to treat.

I did hear Mr. Mayes talk about other Haskell employees in a negative manner, although I cannot say specifically what he said. I know he made some remarks about some staff at Haskell, including the athletic trainer but I do not recall any other names.

Mr. Mayes did Graston with me when I needed him to and it worked.

I know Mr. Mayes encouraged ineligible runners to run unattached, although it never happened to me because I was always eligible.

Mr. Mayes was not disorganized. He was always organized and he would always give us what we needed the day before the race. I do not recall bibs being mixed up.

Mr. Mayes asked (b) (6) (b) (6) and former runners who were not part of the race to watch (b) (6) (b) (6) for him if they could. He did ask me to watch (b) (6) (b) (6) at his house, which I did, because I was staying with Mr. Mayes at the time while I was waiting for my apartment to open up.

I heard that Haskell gets a big discount on Nike gear and Mr. Mayes was looking at other gear that he thought was less expensive or more comfortable for us to wear during races.

I do not think Mr. Mayes makes excuses to make us feel bad for him. He would tell us stories about former runners to make us more motivated. He was trying to push us to be better.

Mr. Mayes did talk about previous runners' personal lives but did not identify the previous runner. He was telling us stories to try to motivate us.

I do not think Mr. Mayes shared the personal information of any runner.

Mr. Mayes was sometimes late for practice (at least once a week), usually due to (b) (6). He did change practice times and locations due to weather or schedule changes of the runners. He liked to keep everyone together for practice to make us better. He would change locations so that we could have a better running experience and not stay on the same Haskell trail.

I do not have any concerns with the way I was coached by Mr. Mayes or any interactions I have had with him. Some team members thought he was a bad person when that was not the case, Mr. Mayes was always looking to make us better. There was non-stop complaining about the coach. I did not have complaints about the coaching.

(b) (6) coaching style and training were not very good for me (I had a number of injuries), but (b) (6) was good at connecting with students and reaching out to people to get connections for students. Mr. Mayes' training was pretty good, he really improved me as a runner, and he was good at connecting with students, but he could improve on getting resources for the students (academic, setting up tutors, connecting with a teacher or advisor), but Mr. Mayes is new to Haskell and is learning as well. I think Mr. Mayes was better than our previous coach (b) (6) who was my coach for three years).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. This declaration, including this page, consists of _____ pages.

Declarant's Signature

Position Title, Level

Place of Employment

Date

Administrative investigation--Draft declaration

(b) (6)

- Contractor (b) (6)

Fri 5/6/2022 6:45 PM

To:

- (b) (6)

(b) (6)

Thank you for speaking with me on April 29th. I am attaching the declaration I prepared based on the interview. Please review the draft, initial each page, sign and date the last page, and return to me on or before Wednesday, May 11th.

Please let me know if you have any questions.

Thank you,

(b) (6)

Contract Investigator
35 West Mountain Road

(b) (6)

Re: [EXTERNAL] Draft

(b) (6) Contractor (b) (6)

Tue 7/5/2022 11:17 AM

To:

- (b) (6)

Good morning,

I am finalizing my investigation and am following up regarding your signed declaration. I received the email below from you on May 13th, but I was unable to open the attachment (which I assume is your signed declaration). Please re-send in a different format (PDF), if possible.

Thank you,

(b) (6)

Contract Investigator
35 West Mountain Road
Bernardston, MA 01337

(b) (6)

From: (b) (6)

Sent: Friday, May 13, 2022 4:57 PM

To: (b) (6) - Contractor (b) (6)

Subject: [EXTERNAL] Draft

CAUTION: This email originated from outside USPS. STOP and CONSIDER before responding, clicking on links, or opening attachments.

DECLARATION OF (b) (6)

Job Title: Cross Country runner
Work Location: Haskell Indian Nations University
Lawrence, KS
Date of Interview: May 19, 2022

I, (b) (6), hereby make this Declaration.

I understand that I am making this statement under penalty of perjury; that it is the equivalent of a sworn statement made under oath; and that it may be filed in proceedings in accordance with or before the Merit Systems Protection Board (MSPB) or the Equal Employment Opportunity Commission (EEOC), in the grievance process or before an Arbitrator, in court, or in any other similar proceeding. This statement is voluntary and no promises of any kind have been made to me and I have not been subjected to any threatening or coercive behavior for the purpose of obtaining this declaration. I understand that this declaration is part of an official management investigation and that this investigation is not part of the Equal Employment Opportunity (EEO) process.

(b) (6)

I have been a student at Haskell since the fall of 2021. I was on the Cross Country team in the fall. My coach was Clay Mayes.

I have known Mr. Mayes since July 2021. I interacted with Mr. Mayes six days a week when we had practice. I last interacted with Mr. Mayes a few days ago because the no contact order was lifted. We had a run and he had the team over for a meal.

(b) (6) is an upperclassman. **(b) (6)** had not run competitively for all ^{(b) (6)} years at Haskell. ^{(b) (6)} did not figure out ^{(b) (6)} eligibility. It was understood **(b) (6)** was supposed to run with the team. Coach Mayes asked **(b) (6)** to run but ^{(b) (6)} did

not want to. I know (b) (6) and (b) (6) boyfriend, (b) (6), would show up late to practice and would go out drinking and partying all night. (b) (6) and (b) (6) (b) (6) felt like they should not be reprimanded for showing up late to practice or not following Mr. Mayes' rules. I think a lot of the tension was because of Mr. Mayes' rules (no drinking, no smoking, no partying, keep social media content clean).

Mr. Mayes did not have access to our grades, so I know there was some miscommunication there, but he asked us about our grades. Mr. Mayes did reach out to my professors because I was not doing well and I was able to get my grades up. He also set up mandatory study hall for freshman but I was the only one who showed up (I was the only freshman girl). When we did tell Mr. Mayes we were having troubles he did advocate for us.

I did not hear Mr. Mayes say "If I was an athlete and had to do grade checks I would not share my grades with my coach because that is embarrassing." He was the opposite. When I told him I was failing he did not shame me, he thanked me for communicating and helped me work through some of my grades. I did not hear Mr. Mayes say "I'll throw you under the bus and I'll be the one driving it." Mr. Mayes has never said "If you don't get off your phone, I'll shove it where the sun don't shine." He did tell us to stay off our phones and if we did not, he would not allow phones at practice. Team members would use phones during practice to look at TikTok or memes of shuffling through music instead of doing their workout. Mr. Mayes did call (b) (6) a "sociopath." There were a few different instances when this happened. I did not feel this was professional when he said this. Part of Mr. Mayes holding us accountable was that he would contact our parents if we violated the rules—this was an extra level of accountability for us. I knew the prior coach, (b) (6), because (b) (6) signed me for track and field. I did not hear Coach Mayes bad mouth (b) (6).

The gear we received was the gear he promised us. Mr. Mayes told us he would try to get us other gear if we wanted it. He never specifically promised us additional gear. I did not feel like I was promised anything that I did not get.

Many of the team members thought I was a favorite of Coach Mayes, but I think many of the team members did not communicate enough with Coach Mayes. I did not feel Mr. Mayes had favorites, it is just that those who communicated more got more attention because they communicated what they needed.

Coach Mayes and (b) (6) worked well together. I sprained my knee recently and Coach Mayes recommended that I work with (b) (6). I do not believe the allegation that Mr. Mayes spoke poorly about (b) (6) is true because Mr. Mayes' actions show otherwise.

Other than (b) (6) I did not hear any negative comments made by Mr. Mayes about Haskell employees. Mr. Mayes did say (b) (6) was hosting sleepovers with some athletes or would meet them at bars, but I did not think these were negative comments as these things were happening based on what I was seeing online. (b) (6)

(b) (6) made unprofessional comments to me (for example, telling me I should not use a stationary bike unless I was an old man).

Mr. Mayes never forced medical treatments on us and it was never one on one. Sometimes he would use hand sanitizer for graston when we could not find lotion, but the athletes consented to that.

I am not sure if (b) (6) ran at the Missouri Southern Stampede.

We had a meet at Haskell that was open and runners could run unattached. I do not know if this impacted eligibility.

The bib mix-up was due to the race organizers (Missouri Southern State race), not Coach Mayes.

I do not know if Coach Mayes asked runners to watch (b) (6). I know (b) (6) was present at the meet and whenever I saw the (b) (6) they were with their (b) (6).

Haskell has a deal with Nike that we get a discount, but my understanding is that we are not contracted with them, so getting Brooks gear should not have impacted our contract. I think this is a coaching concern rather than a student concern.

I did not see any emotional manipulation by Mr. Mayes. He was honest with us (he would explain a situation) but I never felt emotionally manipulated by him.

Mr. Mayes talked to me in the van about (b) (6) a friend of mine, who had been kicked off the team. We were not slandering or speaking negatively about (b) (6). We were both stating that (b) (6) is a good addition to the team and what (b) (6) needed to do to rejoin the team. I discussed with (b) (6) what Coach Mayes and I had talked about, and (b) (6) felt the conversation was appropriate. I feel this situation was blown out of proportion by someone who overheard the conversation Coach Mayes and I had.

When Coach Mayes shared a story about a previous runner he did it anonymously or he would suggest a team member talk to a teammate who might be having struggles but without sharing personal details.

Coach Mayes did change practice times and locations but it was situational. For example, if it was going to be humid in the afternoon, he would have us practice in the morning. He did show up late to some practices (a few here and there) due to a situation he could not control.

For the most part Coach Mayes was professional (other than the comments he made about (b) (6)). I think part of the tension was that (b) (6) had been coaching at Haskell for a long time. (b) (6) had different rules—(b) (6) allowed smoking, drinking and partying. Coach Mayes was new and had different rules. A number of the runners

had been friends for a long time. There may have also been cultural tension because some runners came from the South and others (like myself) came from the North.

(b) (6) has a lot of sexual harassment claims against him because (b) (6) tends to get unprofessional with the ladies. For example, one of the runners who was on the team last semester had some problems with (b) (6) being unprofessional with (b) (6). There were instances where (b) (6) was unprofessional towards me as a female runner. I personally have never had any problems with Coach Mayes. It is out of character for Mr. Mayes to say many of the claims I was asked about, but I was not always there because I did not get along with the other runners.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. This declaration, including this page, consists of _____ pages.

Declarant's Signature

Position Title, Level

Place of Employment

Date

Administrative investigation--Draft declaration

(b) (6)

Contractor (b) (6)

Fri 5/27/2022 6:45 PM

To:

• (b) (6)

(b) (6)

Thank you for speaking with me on May 19th. I am attaching the declaration I prepared based on the interview. Please review the draft, initial each page, sign and date the last page, and return to me on or before Friday, June 3rd.

Please let me know if you have any questions.

Thank you,

(b) (6)

Contractor Investigator

Bernardson, MA 13

(b) (6)