

## **SEXUAL MISCONDUCT IN VIOLATION OF TITLE IX PROCEDURE**

*The capitalized terms used herein are defined in the [Sexual Misconduct in Violation of Title IX](#) policy.*

### **Section A. – Purpose and Application**

1. This procedure describes the exclusive process that Northern Arizona University will use to resolve Formal Complaints that allege violations of its *Sexual Misconduct in Violation of Title IX* policy.
2. If the facts or occurrences forming the basis of a Formal Complaint alleging a violation of the *Sexual Misconduct in Violation of Title IX* policy also constitute a violation of other applicable University conduct policies, including but not limited to the *Nondiscrimination and Anti-Harassment* policy, the *Student Code of Conduct*, policies that govern employee conduct, or those that prohibit other types of discrimination, harassment, or retaliation, those potential policy violations also may be resolved pursuant to other applicable disciplinary procedures.
3. When appropriate, the grievance process set forth herein may proceed concurrently with any other University process addressing other aspects of the facts or occurrences giving rise to a Formal Complaint alleging violation of the University's *Sexual Misconduct in Violation of Title IX* policy.
4. The University may amend this procedure document as necessary or advisable from time to time. Such amendments may apply to grievance process ongoing at the time the amendment is made, unless the effect of the amendment is to reduce the rights of complainants or respondents, in which case the version of these procedures in effect at the time the Formal Complaint was filed will be followed.
5. Where the Respondent is a student, the Office of the Dean of Students is responsible for resolving Formal Complaints as set forth in this procedure document. Where the Respondent is an employee, the Equity and Access Office is responsible for resolving Formal Complaints as set forth in this procedure document.

### **Section B. – Supportive Measures**

1. Upon receipt of actual knowledge of a report or Formal Complaint alleging a violation of the *Sexual Misconduct in Violation of Title IX* policy, the Title IX Coordinator or designee will promptly notify the Complainant, if known, of the availability of Supportive Measures and provide information about the formal complaint process.
2. The University will: a) consider the Complainant's wishes with respect to Supportive Measures; b) will inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint; and c) explain to the Complainant the process for filing a Formal Complaint.
3. The Title IX Coordinator is responsible for ensuring the University's effective implementation of Supportive Measures. The filing of a Formal Complaint is not required to request or obtain Supportive Measures. As appropriate, Supportive Measures are available to both Complainants and Respondents.
4. The University will maintain as confidential any Supportive Measures provided to a Complainant or Respondent to the extent that doing so does not impair the University's ability to provide the Supportive Measures.

5. If requested, the University will provide written notification of a Complainant's options and available assistance with changing academic, living, transportation, and working situations, if such accommodations are reasonably available, regardless of whether the Complainant chooses to report an alleged violation of the *Sexual Misconduct in Violation of Title IX* policy that may also constitute a crime to local law enforcement. The University will respond in the manner described in this section with or without a Formal Complaint.
6. Supportive Measures will be provided to Complainants and Respondents without fee or charge.
7. When the Title IX Coordinator decides not to provide Supportive Measures, the Title IX Coordinator will document the reasons why such a response is not clearly unreasonable in light of the known circumstances and the University's obligations under 34 CRF Part 106.
8. The University may implement Supportive Measures that accord with the lawful rights of any impacted party for such duration as deemed appropriate.

### **Section C. – Confidentiality**

1. Information gathered pursuant to these procedures will be shared only with those University officials and others who have a reasonable and compelling need to know the information, including any opposite parties, as permitted under the Family Educational Rights and Privacy Act or as required by law, or to carry out the grievance procedures described herein, including the conduct of any investigation, hearing, or related judicial proceeding. Otherwise, the University will maintain as confidential—
  - a. The identity of any individual who has filed a report or Formal Complaint alleging a violation of the *Sexual Misconduct in Violation of Title IX* policy;
  - b. Who has been alleged to be the perpetrator of any such violation;
  - c. Who has contributed to a related investigation or served as a witness in any procedure conducted hereunder; and
  - d. As noted above, any Supportive Measures provided to a Complainant or Respondent to the extent that doing so does not impair the University's ability to provide the Supportive Measures.

### **Section D. – Emergency Removal**

1. When the University determines that a Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual arising from alleged violations of the *Sexual Misconduct in Violation of Title IX* policy, the University may, on an emergency basis, remove the Respondent from the University's Education Program or Activity. The University will first conduct an individualized assessment of the safety factors to determine whether the emergency removal is justified.
2. The University will provide both the Complainant and the Respondent notice of the emergency removal that will include the terms of the removal and notice of the right to challenge the decision immediately following the removal. A written challenge to an emergency removal must be received no later than five (5) business days following the effective date of the removal. The University will notify each party of any challenge to the removal and of their right to submit a written response to the challenge within two (2) business days.
3. The University will determine whether the emergency removal order should remain in place. If upheld, the removal will remain in effect until either a final determination regarding responsibility has been made or University determines that the reasons for imposing the removal no longer exist. The University will take no longer than ten (10) business days to decide an emergency removal appeal.
4. Emergency removal decisions will be made by an *ad hoc* interdisciplinary behavioral intervention team comprised of representatives from appropriate offices. University officials who participate in an emergency

removal process shall not have a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent.

5. In a manner consistent with other applicable policy, the University may place an employee on paid or unpaid administrative leave if, in accordance with the procedures set forth in this section, the University determines that their removal from the University's Education Program or Activity is advisable.

## Section E. – Grievance Process

### 1. Basic Requirements

- a. The University will follow these grievance procedures, which provide for a prompt, fair, and impartial investigation and resolution of alleged violations of the *Sexual Misconduct in Violation of Title IX* policy. These procedures and the University's actions hereunder shall be consistent with Title IX.
- b. The University will treat Complainants and Respondents equitably by following the procedures set forth in this section before imposing disciplinary sanctions or other actions that are not Supportive Measures against a Respondent.
- c. Respondents are presumed to be not responsible for alleged violations of University policy until a determination regarding responsibility is made at the conclusion of the grievance process. This presumption may only be overcome if a preponderance of the evidence, to support a finding of responsibility. This standard of evidence applies for the resolution of all Formal Complaints filed against students and employees, including faculty.
- d. Preponderance of the evidence means that based upon all the available convincing evidence and its probable truth or accuracy, it is more likely than not that the alleged violation occurred. Alternatively stated, Preponderance of the Evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- e. These grievance procedures require the objective evaluation of all relevant inculpatory and exculpatory evidence. Any credibility determinations made may not be based on a person's status as a Complainant, Respondent, or witness.
- f. University officials who participate in or who are responsible for this grievance process, including Title IX Coordinator(s), investigators, and decision-makers, shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
- g. These procedures provide for reasonably prompt time frames for the conclusion of the grievance process, including for the filing and resolving of appeals and any informal resolution process. For good cause, temporary delays and/or limited extensions of established time frames with written notice to the Complaint and the Respondent of the delay or extension and reasons for the action, may be granted. As used in this paragraph, "good cause" includes, but is not limited to, considerations such as the absence or unavailability of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need to arrange for language assistance or reasonable accommodation of disabilities.
- h. The University will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do.

### 2. Reports vs. Formal Complaints

- a. Reporting alleged violations of Title IX and filing a Formal Complaint are separate processes that differ in important respects. The most important distinction is that filing a report triggers the

University's obligation to respond, but only the filing of a Formal Complaint can initiate this grievance process. Potential Complainants may report alleged Title IX violations and determine later whether they wish to file a Formal Complaint.

- b. The University's online [ReportIt](#) incident reporting function may be used to submit reports of alleged violations of the *Sexual Misconduct in Violation of Title IX* policy (including anonymous reports) where the Respondent is a student, but it cannot be used to file a Formal Complaint. Likewise, where the Respondent is an employee, one may use the online Equity and Access complaint form to make a report. (<https://in.nau.edu/eao/equity-and-access-office-complaint-form/>).

### 3. Filing a Formal Complaint

- c. To file a Formal Complaint, a Complainant must submit a document that contains:
  - i. An allegation against a Respondent of conduct that occurred in the United States that constitutes a violation of Title IX;
  - ii. A statement of what action by the University the Complainant is requesting;
  - iii. A statement that the Complainant is currently participating in or attempting to participate in the University's Education Program or Activity; and
  - iv. The Complainant's digital or physical signature.
- d. Formal Complaints must be filed with the Title IX Coordinator (not a designee) by hand delivery to the Title IX Office, by campus or U.S. mail, or by electronic mail ([titleix@nau.edu](mailto:titleix@nau.edu)). Because a Formal Complaint must be in writing and signed by the Complainant, the University strongly encourages that Formal Complaints be filed electronically via scanning the signed document to [titleix@nau.edu](mailto:titleix@nau.edu).
- e. The Title IX Coordinator will review the Formal Complaint. If it is not clear from the submitted material that the Complainant intended to file a Formal Complaint and to initiate this grievance process, the Title IX Coordinator will contact the Complainant to verify their intention to engage in the Title IX grievance process. The Title IX Coordinator shall review a submitted Formal Complaint within five (5) business days from receipt of the Formal Complaint containing the required elements listed in Section E(3)(c) of this procedure.
- f. As set forth in Section B above, the Title IX Coordinator will ensure that the University engages the Complainant in an interactive process to discuss available Supportive Measures, which are available whether or not the Complainant files a Formal Complaint, and to explain the Title IX grievance process.
- g. The Title IX Coordinator must also notify the Complainant of the:
  - i. Importance of preserving evidence as may be necessary to the proof of criminal Domestic Violence, Dating Violence, Sexual Assault, or Stalking, or in obtaining a protection order,
  - ii. Agencies to whom the alleged offense may be reported,
  - iii. Options regarding law enforcement, including notification of the Complainant's option to notify local proper law enforcement authorities, be assisted by the University in notifying the proper law enforcement authorities if the Complainant so chooses, and to decline to notify such authorities.
- h. The University strongly encourages potential Complainants to file a Formal Complaint as soon as possible after alleged Title IX violations occur, as prompt reports enable the University to investigate the facts, determine the issues, and provide appropriate remedies or sanctions. The ability to investigate Formal Complaints may be negatively impacted (e.g., the memories, reliability, or

availability of witnesses may decrease, collection or preservation of evidence may be impeded) when Formal Complaints are not filed promptly.

- i. The Title IX Coordinator (not a designee) may also file a Formal Complaint. In such cases, the Complainant is the individual who is alleged to have experienced the conduct that could constitute a violation of the *Sexual Misconduct in Violation of Title IX* policy.
- j. The University may consolidate Formal Complaints alleging violations against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in these procedures to the singular "party," "Complainant," or "Respondent" include the plural, as applicable.

#### 4. Notice of Allegations

- a. Following confirmation by the Title IX Coordinator of the University's receipt of a Formal Complaint, the assigned investigator will issue to the Complainant and Respondent a notice of allegations, which shall contain a:
  - i. Statement describing the alleged violation(s) of Title IX with details sufficient to enable the Respondent to effectively respond (the specific details that must be included are: i) the alleged violations of University policy; ii) the date, time, and location of the alleged incident, if known; and iii) and the identities of the parties involved in the incident, if known);
  - ii. Copies of or links to the *Sexual Misconduct in Violation of Title IX* policy and these procedures;
  - iii. Statement that the Respondent is presumed to be not responsible for the alleged violations and that a determination regarding responsibility will be made at the conclusion of the grievance process;
  - iv. Statement that the University applies the preponderance of the evidence standard of evidence and that the University bears the burden of proof;
  - v. Statement that each party may have an advisor of their choice, who may be, but is not required to be, an attorney, who may inspect and review the evidence gathered; and that all advisors must abide by the University's Role of Advisor Guidelines;
  - vi. Statement informing the parties that their absence or decision not to participate will not prevent a finding of responsibility and possible sanctions from being determined at the conclusion of the grievance process;
  - vii. Statement explaining each parties' obligation to provide truthful information, that providing information in good faith even if the information later proves to be faulty or the facts alleged are not later substantiated does not constitute misconduct, but that initiating a false report or intentionally providing false or misleading information in bad faith, or falsifying or withholding evidence, or inducing another person to do the same, or otherwise hindering an investigation with malicious intent all constitute misconduct subject to disciplinary action up to and including suspension, expulsion, or termination of employment;
  - viii. Statement that there is no restriction on either party's ability to discuss the allegations under investigation or their own knowledge of facts, or to gather and present relevant evidence throughout the grievance process;
  - ix. Statement that all evidence directly related to the Formal Complaint will be shared with both parties and/or their advisors and that all evidence gathered will be available for inspection by the parties and/or their advisors, if any; and

- x. Statement that if, in the course of the investigation additional allegations about the Complainant or Respondent are determined that are included in the initial notice of allegations, that an additional notice of allegations to the parties whose identities are then known will be provided to all affected parties.
- b. The notice of allegations will be sent to both parties at least five (5) business days prior to any scheduled investigative interview to allow the Complainant and Respondent sufficient time to prepare a response and to arrange to attend the meeting. The parties may request a reasonable delay in the scheduling of an initial investigative interview or other meeting conducted as part of the grievance process to arrange for the participation of their advisor.

## 5. Advisors

- a. Throughout the grievance process, all parties may be assisted by an advisor of their choice, who may, but is not required to be, an attorney, but who is not otherwise a party in the case. Advisors may simply provide support in a manner that does not unduly disrupt or delay a proceeding or may represent the party at the live hearing.
- b. If a party intends to be accompanied by an advisor to participate in grievance proceedings, they must notify the University and provide the advisor's name, telephone number and email address at least ten (10) calendar days before the pre-hearing conference.
- c. At the live hearing, each party's advisor will have the responsibility to cross-examine the opposite party. If a party does not have an advisor present or does not select to use an advisor, the University will provide to that party without fee or charge an advisor of University's choice, who may be, but is not required to be, an attorney to question the other party and witnesses at the live hearing on behalf of that party.
- d. An advisor's refusal or failure to abide by the University's expectations for professional conduct and rules of decorum may result in their exclusion from the grievance process.

## 6. Investigation

- a. The University will investigate all allegations in a Formal Complaint. As set forth in herein, if the alleged conduct would not constitute a violation of Title IX even if proved, did not occur in the University's Education Program or Activity, or did not occur against a person in the United States, the University will dismiss the Formal Complaint with regard to that conduct for purposes of Title IX. Such dismissal does not preclude disciplinary action under other applicable University policies, however, including the *Nondiscrimination and Anti-Harassment* and *Student Code of Conduct* policies.
- b. Where the Respondent is a student, the Office of the Dean of Students will assign an investigator(s) to conduct the investigation. Where the Respondent is not a student or the allegations relate to student-employment, the Equity and Access Office will assign an investigator(s) to conduct the investigation. Where the Respondent is not a student, the Equity and Access Office will conduct the investigation, with consultation from the Office of the Dean of Students where appropriate.
- c. The burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University.
- d. The Investigator(s) will conduct a fair, impartial, and thorough investigation. The investigation is a neutral fact-gathering process to assemble all relevant inculpatory and exculpatory evidence from the parties and any other reliable source.
- e. As soon after the initiation of the investigation as possible, the designated investigator(s) will notify all University employees or students who are believed to have documentary, electronic, or tangible evidence to preserve such evidence for the investigation.

## 7. Opportunity to Present Evidence to the Investigator

- a. The lead investigator will notify each individual whose participation is anticipated of the date, time, location, participants, and purpose of any investigative interview or meeting.
- b. The Complainant and Respondent will have an equal opportunity to submit information, to identify witnesses who may have relevant evidence, and to submit questions they believe should be directed by the investigator to each other or any witness.
- c. The parties will have at least five (5) business days advance notice prior to the initial investigative interview to prepare a response, to arrange to attend the meeting, and to obtain the support from an advisor of their choice. Either party may request a reasonable delay of the scheduling of the initial investigative interview if such delay is necessary to arrange for their advisor's participation.

## 8. Equal Ability to Review Evidence

- a. The parties will have an equal opportunity to inspect and review all inculpatory and exculpatory evidence obtained by the University as part of the Formal Complaint investigation, including the evidence upon which the University does not intend to rely on in making its determination of responsibility, whether obtained from the parties or any other source. Each party will have an equally opportunity to meaningfully respond to the evidence prior to the investigation's conclusion.
- b. To maintain the confidentiality of the process, including the identity of the parties and any witnesses, each party, and their advisors, if any, are required to sign the Agreement regarding Evidence Disclosed the Title IX Formal Complaint Process provided by the University prior to receiving access to the evidence for their review.

## 9. Draft Investigation Report

- a. At the conclusion of the initial phase of the investigation, the investigator(s) will prepare a "Draft Investigation Report" that will fairly summarize all relevant inculpatory and exculpatory evidence gathered while identifying the uncontested and contested information. The Draft Investigation Report will not include any individualized credibility determinations or recommendation regarding findings of responsibility.
- b. The report will include a description of the procedural steps taken from the receipt of the Formal Complaint through the preparation of the draft investigation report while detailing the investigator's objective evaluation of the relevant inculpatory and exculpatory evidence.
- c. The investigator may not make credibility determinations. The investigator will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- d. Privileged records only will be included if the party has provided voluntary, written consent for both their use and disclosure in this grievance process.
- e. Upon completing the draft investigation report, the investigator will provide each party, and their advisors if any, with secure access to the draft investigation report. Parties and their advisors may receive a copy of the draft investigation report (and the final investigation report) provided that they sign the Agreement regarding Evidence Disclosed the Title IX Formal Complaint Process provided by the University.
- f. Within ten (10) business days of receiving the draft investigation report, the parties may provide to the investigator a written response that suggests any additional questions, information, evidence, the identify any other party or witness who may have information relevant to the investigation, and

any personal statement responding to draft investigation report. All party responses to the draft investigation report will be appended to the final investigation report described below.

- g. Absent extraordinary circumstances, information discoverable through reasonably diligent, persistent effort by a Complainant or Respondent that is not provided to the Investigator by the conclusion of the five (5) business day Draft Investigation Report response period will not be considered in the determination of responsibility for alleged violations of University policy.

#### 10. Final Investigation Report

- a. Following the receipt of any statements submitted by the parties in response to their review of the draft investigation report, the investigator will conduct any additional investigation that may be warranted considering the additional input.
- b. The investigator will then prepare the final investigation report by appending any statements submitted by the parties and updating the report as appropriate considering any additional investigation conducted or new information. The final investigation report will not contain any individualized credibility determinations or recommendation regarding findings of responsibility. The investigator will provide the final investigation report to the hearing panel chair appointed to conduct the hearing.

#### 11. Notice of Live hearing

- a. The University will appoint a three (3) member hearing panel comprised of trained individuals and will designate one (1) member to serve as the hearing panel's chair. The Title IX Office, with input from the Complaint and Respondent, will appoint two members of the panel from the Title IX Hearing Panel pool. Where the Respondent is a student, the Vice President for Student Affairs (or designee) is responsible for appointing a third panel member from the Title IX Hearing Panel pool to serve as chair. Where the Respondent is an employee, the Associate Vice President, Equity and Access (or designee) is responsible for appointing a third panel member from the Title IX Hearing Panel pool to serve as chair. All panel members will complete disclosure and conflict of interest forms that will be available to the parties for review. The chair will preside at the hearing and at any pre-hearing conferences.
- b. The hearing panel chair will prepare and transmit a written "Notice of Hearing" to the parties, and to the Office of the Dean of Students and/or the Equity and Access Office as appropriate, no less than twenty (20) calendar days prior to the hearing date. This notice will be directed to the Complainant and Respondent's University email addresses and the email addresses of record for any party's advisor. The notice will include:
  - i. A statement of the date, time, location, and nature of the hearing and the authority and jurisdiction to hold such a hearing;
  - ii. Notice of the length of time set for the hearing and the time limitation for the presentation of evidence;
  - iii. References to the notice(s) of allegations previously provided to the Complainant and the Respondent that detailed the specific alleged policy violations that the hearing panel will consider;
  - iv. A copy of or instructions on how to securely access the final investigation report;
  - v. Copies of or links to the *Sexual Misconduct in Violation of Title IX* policy and these procedures.
  - vi. Notice of the right to be assisted or represented by an advisor that explains that the exercise of this right is at the party's sole expense;



- vii. Notice of the procedural rules, including rules of decorum, that will be applicable to the proceeding;
- viii. A statement that each party will have an equal opportunity to present witnesses, including fact and expert witnesses, and identify or provide inculpatory and exculpatory evidence;
- ix. The names of the appointed hearing panel members and the chair's name and physical campus and email business addresses;
- x. Notice of right to challenge the participation of any hearing panel member based perceived or actual conflict of interest or bias, and the deadline and procedure for doing so;
- xi. A statement of the date, time, location, and nature of any pre-hearing conference scheduled at the hearing panel chair's discretion; and
- xii. Notice of the applicable range of discipline that may result from a finding of responsibility for the alleged policy violation(s).

## 12. Pre-Hearing Conference and Order

- a. The hearing panel chair will conduct a pre-hearing conference with the parties and their advisors. Prehearing conferences allow all parties to gain a better understanding of how the process will work and increase the chair's ability to preside fairly and efficiently at the live hearing.
- b. To facilitate efficiency during the hearing, parties are encouraged but not required to submit to the hearing panel chair, at least two (2) business days prior to the pre-hearing conference, those questions they intend to ask of the other party or any witness.
- c. At the pre-hearing conference, the parties shall be prepared to discuss the witnesses and evidence they intend to present at the hearing, all evidentiary issues or questions they anticipate arising at the hearing, and any other matters that may benefit from resolution by the hearing panel chair.
- d. In accordance with 34 CRF Part 106, the hearing panel chair may, in their sole discretion, exclude from the hearing evidence, questions, or topics for the parties and witnesses based on relevance, including on the basis that they are repetitive or abusive. The hearing panel chair will ordinarily address any proposed questions to be posed to a party or witness outside the presence of other parties or in writing directed to the requesting party only. The hearing panel chair will explain and document any decisions to exclude questions or evidence based on relevance.
- e. Following the pre-hearing conference, and prior to the hearing, the parties will be provided a Pre-Hearing Order that identifies a list of approved hearing witnesses, documents, and other evidence for use during the hearing. The hearing panel chair, at their sole discretion, may also memorialize any other rulings made during the pre-hearing conference, including the relevance of proposed questions (or topics) to be posed to another party or any witness.
- f. The Pre-Hearing Order will be subject to reconsideration during the hearing and, based on arguments or circumstances presented by the parties, and will be revised by the hearing panel chair in accordance with 34 CRF Part 106.

## 13. Live Hearing

- a. Unless the Complainant withdraws their Formal Complaint or the Respondent accepts responsibility for the alleged violations, the University will conduct a live hearing in the manner set forth herein to determine responsibility for the alleged *Sexual Misconduct in Violation of Title IX* policy violations.
- b. Only the following persons may be present during the hearing: the hearing panel members; the parties and their advisors, witnesses; and the hearing panel's counsel, if any. Witnesses may be present only when being questioned unless the hearing panel chair authorizes them to be present for another portion of the hearing.

- c. The hearing panel's obligation is to independently and impartially evaluate relevant the inculpatory and exculpatory evidence presented during the hearing to independently reach its findings of fact and determination regarding responsibility for the alleged violation(s).
- d. The investigator(s), who will not be present at the hearing, will ensure all evidence is available at the hearing for the parties' inspection, review, use and an opportunity to refer to such evidence during the hearing, including for purposes of cross-examination, regardless of whether it is identified in the Pre-Hearing Order or earlier determined to be not relevant.
- e. The hearing panel chair may, on their own initiative, invite any University student or employee to appear as a witness at the hearing.
- f. The hearing will be conducted with all parties physically present in the same geographic location or virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, or by University decision, the hearing will occur with the parties located in separate rooms with technology enabling the hearing panel and parties to simultaneously see and hear the party or the witness answering questions.
- g. Following an introductory statement by the hearing panel chair stating the nature and scope of the hearing, the basic procedures to be followed, and the appropriate decorum to be maintained, the parties may present opening statements. All witnesses will be placed under oath. Thereafter:
  - i. The hearing panel chair will call for questioning the Complainant and any relevant witnesses provided by the Complainant. The hearing panel members will first question the Complainant. The Respondent's advisor may then question the Complainant. The hearing panel, the Complainant's advisor and the Respondent's advisor, in that order, may question the Complainant's witnesses.
  - ii. The hearing panel chair will then call for questioning the Respondent and any relevant witnesses provided by the Respondent. The hearing panel will first question the Respondent. The Complainant's advisor may then question the Respondent. The hearing panel, the Respondent's advisor and the Complainant's advisor, in that order, may question the Respondent's witnesses.
  - iii. The hearing panel chair shall permit each party's advisor to ask the other party and witnesses relevant and approved questions and follow-up questions, including those that challenge credibility. Such questioning may be conducted only by advisors, and never by a party personally. Before any party or witness may answer a question posed by an advisor, the hearing panel chair shall determine whether the question is relevant and explain any decision to exclude it.
  - iv. After questions have been put to a party or witness by the hearing panel and the parties' advisors, if a party believes that there are follow-up questions that should be asked of the other party or witnesses, the advisor may advise the hearing panel chair. The hearing panel chair, at their sole discretion, may allow such additional questions.
  - v. The hearing panel may ask questions of any party or witness at any time during the hearing and may also recall witnesses and/or direct that additional witnesses be called to testify.
  - vi. Following the presentation of all evidence, the parties may provide closing statements.
- h. Advisors are expected to adjust their schedules to allow them to attend the hearing. Technology is available should an advisor need to appear virtually.
- i. The hearing will be recorded by an audio or video recording device and the recording will be available to the parties and their advisors for inspection and review.

#### 14. Exclusion of Evidence

- a. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- b. The hearing panel will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless that party gives voluntary, written consent to do so for a grievance process.

#### 15. Cross-Examination

- a. Each party's advisor will have the opportunity to ask the other party and any witnesses all relevant questions and follow-up questions, including questions challenging credibility.
- b. If a party does not have an advisor present at the hearing, the University will provide without fee or charge to that party, an advisor of the University's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- c. Cross-examination at the hearing must be conducted directly, orally, and in real time by each party's advisor but never by a party personally.
- d. Only relevant questions and follow-up questions, including questions challenging credibility, may be asked during cross-examination of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the hearing panel chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- e. If a party or witness does not submit to cross-examination at the hearing, the hearing panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the hearing panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.
- f. Subsection 15(e) above requires a party or witness to submit to cross-examination to avoid exclusion of their statements. The same exclusion of statements rule does not apply to a party or witness's refusal to answer questions posed by the decision-maker. If a party or witness refuses to respond to a decision-maker's questions, the decision-maker is not precluded from relying on that party or witness's statements.

#### 16. Decision Regarding Responsibility

- a. Following the closing statements and before reaching a decision, the hearing panel members will discuss the information presented during the hearing and the reasonable inferences to be drawn from it. The hearing panel's obligation is to fairly and impartially evaluate the relevant inculpatory and exculpatory evidence presented during the hearing to independently reach its decision regarding findings of responsibility.
- b. Only the hearing panel and its legal advisor, if any, may be present during the hearing panel's private deliberations, which will not be recorded. The hearing panel's decision must be supported by a simple majority of the hearing panel members.
- c. Where the hearing panel finds the Respondent not responsible for a policy violation, within five (5) business days of making its determination, the hearing panel chair will simultaneously transmit the hearing panel's written decision to the parties, and as appropriate, to the Office of the Dean of

Students or the Equity and Access Office, which serve as the offices of record for the University's Title IX recordkeeping.

- d. Where the hearing panel finds the Respondent responsible for one or more policy violations, within five (5) business days of making its determination, the hearing panel chair will transmit the hearing panel's written decision to either the Dean of Students or the employee's supervisor, as appropriate, who are responsible for determining the appropriate sanction and/or remedy and then notifying the parties simultaneously of the outcome.
- e. The hearing panel's written decision will include the following:
  - i. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - ii. A statement of the standard of evidence applied (preponderance of evidence) and that the burden of proof and of gathering and presenting sufficient evidence to reach a determination regarding responsibility rests with the University.
  - iii. Identification of the allegation(s) potentially constituting a violation of the *Sexual Misconduct in Violation of Title IX* policy;
  - iv. Findings of fact supporting the determination;
  - v. Conclusions regarding the application of the *Sexual Misconduct in Violation of Title IX* policy alleged violations to the facts;
  - vi. A statement of, and rationale for, the result as to a determination of responsibility regarding each allegation;
  - vii. A statement of, and rationale whether remedies designed to restore or preserve equal access to the University's Education Program or Activity will be provided to the Complainant; and
  - viii. A statement that the parties are entitled to appeal the determination regarding responsibility, any the sanctions imposed as either insufficient or excessive, and a notice of appeal rights which shall include:
    - A statement of the permissible bases for the complainant and respondent to appeal;
    - A statement that the determination regarding responsibility becomes final on the date which an appeal will no longer be considered timely if no appeal is filed.
    - A statement that each party may file an appeal or a statement in support of, or challenging, the outcome within fifteen (15) days after the decision is issued. Any filed appeal or statement will be shared with all parties;
    - Indication of whether information from either party's prior Student conduct record was used, the purpose of its use, and whether either party's sexual history was deemed relevant; and
    - When appropriate, notice to the parties of their right to seek judicial review pursuant to A.R.S. § 12-904.
- f. The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

- g. A determination regarding responsibility for alleged violations of the Sexual Misconduct in Violation of Title IX policy does not preclude or affect action under any other University policy.

#### 17. Decision Regarding Sanctions

- a. Following a finding of responsibility made by the hearing panel, the Dean of Students or the employee's supervisor, as appropriate, is responsible for determining the appropriate sanction and then notifying the parties simultaneously of the outcome.
- b. Written decisions imposing disciplinary sanctions must include a statement of the sanctions and the rationale for each sanction to be imposed on the Respondent the University's procedures for the Complainant and/or Respondent to appeal the sanctions as either insufficient or excessive.
- c. The Title IX Coordinator is responsible for ensuring the effective implementation of any remedies.

#### 18. Dismissal of a Title IX Formal Complaint

- a. At all times during the grievance process, the University will evaluate the matter to ensure that the allegations if proved would constitute a violation of the *Sexual Misconduct in Violation of Title IX* policy and thus are eligible for resolution pursuant to these procedures.
- b. A Formal Complaint may be dismissed if:
  - i. a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw their Formal Complaint or any allegations therein;
  - ii. the Respondent is no longer enrolled or employed by the University; or
  - iii. specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
- c. A Formal Complaint must be dismissed if:
  - i. the conduct alleged in the Formal Complaint would not constitute a violation of the *Sexual Misconduct in Violation of Title IX* policy even if proved;
  - ii. the alleged conduct did not occur in the University's Education Program or Activity; or
  - iii. the alleged conduct did not occur against a person in the United States.
- d. A Formal Complaint dismissal decision-maker will notify the parties in writing of a dismissal determination which will include:
  - i. Reasons for the determination;
  - ii. A statement that each party may file an appeal or a statement in support of, or challenging, the outcome within ten (10) business days after the decision is issued;
  - iii. Notice that any filed appeal or statement will be shared with all parties; and
  - iv. A statement that the dismissal determination becomes final on the date which an appeal will no longer be considered timely if no appeal is filed.
- e. A dismissal determination of a Formal Complaint alleging violations of the *Sexual Misconduct in Violation of Title IX* policy does not preclude or affect action under any other University policy.

## 19. Appeals

- a. The University's decisions regarding findings of responsibility and any sanctions imposed as a result will become final and effective after fifteen (15) calendar days from the date the decisions are issued unless the Complainant and/or the Respondent files an appeal.
- b. Appeals filed by faculty members will be heard and decided by the Provost or designee. Appeals filed by employees or other non-student respondents will be heard and decided by the Executive Vice President and Chief of Staff or designee. Appeals filed by students will be heard and decided by the Vice President for Student Affairs or designee.
- c. As to all appeals, the University must:
  - i. notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
  - ii. ensure that the decision-maker for the appeal is not the same person as the decision-makers that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
  - iii. ensure that the appeal decision-maker complies with the standards set forth in this policy and Title IX;
  - iv. give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
  - v. issue a written decision describing the result of the appeal and its rationale; and
  - vi. provide the written decision simultaneously to both parties.
- d. Appeal requests must be based on one or more of the following grounds:
  - i. Procedural irregularity that affected the outcome of the matter;
  - ii. New evidence that was not reasonably available at the time the determination regarding responsibility that could affect the outcome of the matter;
  - iii. Insufficiency or excessive severity of the sanction;
  - iv. The decision is not reasonably justified by the evidence or is contrary to law; or
  - v. the Title IX Coordinator(s), 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.
- e. Following a request for appeal, the appeal decision-maker will first determine whether the request sets forth proper grounds and will then undertake or direct whatever additional action is deemed necessary to resolve the issue(s).
- f. The appeal decision-maker can uphold or modify the previous decision or grant a rehearing. The decision by appeal decision-maker is final and constitutes the University's final administrative action on the matter.
- g. The appeal decision-maker will issue a written decision simultaneously to both parties, describing the result of the appeal and the rationale for the result within fifteen (15) calendar days from the date no further appeal can be filed.

- h. Unless a rehearing is granted, the appeal process shall take no more than thirty (30) calendar days.