



Responsible Executives:  
Vice President and Chief Human Resources Officer, Vice President for Student Affairs, Associate  
Vice President for Equity and Access, Title IX Coordinator

Responsible Offices:  
Equity and Access Office, Dean of Students, Office for the Resolution of Sexual Misconduct  
(ORSM): Title IX Institutional Compliance, Prevention & Response

Effective Date: August 14, 2020

Last Revised: July 31, 2024

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## SEXUAL MISCONDUCT POLICY

### POLICY SUMMARY

The University prohibits the exclusion of any person, on the basis of sex, from participation in, to be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by the University.<sup>1</sup> If not addressed by the University, sexual harassment and other forms of sexual misconduct as defined below constitute a form of discrimination on the basis of sex.<sup>2</sup>

### REASON FOR THIS POLICY

The purpose of this policy is to set forth the prompt and effective steps which the University will take to end sexual misconduct, prevent its recurrence, and, as appropriate, remedy its effects.<sup>3</sup>

### ENTITIES AFFECTED BY THIS POLICY

This policy applies to sexual misconduct involving the University's students, admitted students, faculty, staff, employee and student applicants and visitors and which occur against a person in the United States<sup>4</sup> or outside of the United States, including study abroad.

Any provision of any University policy or handbook which deals with sexual discrimination in any fashion is hereby superseded as of the Effective Date by this Sexual Misconduct Policy so that all forms of sexual misconduct involving the education programs of the University will be subjected to the remedial steps set forth in this policy and its associated policy and procedures.

Appendix "A" contains a list of names, physical addresses, email addresses, telephone numbers, and certain other information which may change from time to time. Appendix "A" may be updated from time to time by the Title IX Coordinators without University approval so as to maintain current information for use by the campus community.

Nothing contained in this Sexual Misconduct Policy shall be deemed to have created a contract between the University and any student, faculty member, or staff member. The University reserves the right to unilaterally change any provision of this policy without the consent of any other party.

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<sup>1</sup> 34 CFR §106.31.

<sup>2</sup> 2001 Guidance, p. 2.

<sup>3</sup> 2001 Guidance, p. iii.

<sup>4</sup> 34 CFR §106.8(c).and (d); 34 CFR §106.31(b); 2001 Guidance, p. 13.

## WHO SHOULD KNOW THIS POLICY

- Any person who facilitates in the informal resolution process or resolution process
- Title IX coordinators
- Title IX decision-makers
- Title IX investigators
- Any member of the campus community

## SECTION A. – DEFINITIONS

As used in this policy, the phrases and words listed shall have the meanings set forth below:

1. Actual Knowledge - Notice of sexual harassment or allegations of sexual harassment to the University's Title IX Coordinator(s) or any official of the University who has authority to institute corrective measures on behalf of the University. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the University with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the University. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator(s) as described in the Notification section of this policy<sup>5</sup> or to the following Officials with Authority (OWA):
  - a) Athletic Coaches
  - b) Chief Human Resources Officer
  - c) Chief of Police
  - d) College Deans
  - e) Directors (at all levels)
  - f) University President
  - g) Provost and Vice Provosts
  - h) Vice Presidents (at all levels)
2. Bystander Actions-- The University encourages employees, students and visitors to take reasonable and prudent actions to prevent or stop an act of Sexual Misconduct that they may witness, unless doing so would pose a safety risk to themselves or others. Although these strategies will depend on the circumstances, they may include direct intervention, calling law enforcement, or seeking assistance from a person in authority. In addition, the University encourages employees, students and visitors to report any incident of Sexual Misconduct that they observe or become aware of to the Office for the Resolution of Sexual Misconduct (ORSM): Title IX Institutional Compliance, Prevention & Response using the ["File a Report" button](#). Individuals who take action in accordance with this paragraph will be supported by the University, and anyone who retaliates against them will be subject to discipline.
3. Campus - Any building or property owned or controlled by the University within the same reasonably contiguous geographic area and used by the University in direct support of, or in a manner related to, the University's educational purposes, including residence halls. Any building or property that is within or reasonably contiguous to any building or property owned or controlled by the University within the same reasonably contiguous geographic area and used by the University in direct support of, or in a manner related to, University's educational purposes, that

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<sup>5</sup> 34 CFR §106.30(a)

is owned by the University but controlled by another person, is frequently used by students, and supports University purposes such as a food or other retail vendor.<sup>6</sup>

4. Campus Security Authority - A campus police department or a campus security department of the University. Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department, such as an individual who is responsible for monitoring entrance into University property. Any individual or organization specified in the University's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses. An official of the University who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings.<sup>7</sup>
5. Complainant - An individual who is alleged to be the victim of conduct that could constitute sexual harassment.<sup>8</sup>
6. Consent - As set forth in Arizona Board of Regents Policy 5-308(E)(4), Consent in the context of sexual activity means informed and freely given words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. Consent may not be inferred from: a) silence, passivity, or lack of resistance; b) a current or previous dating or sexual relationship; c) acceptance or provision of gifts, meals, drinks, or other items; or d) previous Consent to sexual activity. Consent may be withdrawn during sexual activity. Consent to one form of consensual sexual activity does not imply Consent to any other form of sexual activity. Consent may not be obtained through physical force, violence, duress, intimidation, coercion, or an express or implied threat of injury. Consent may never be given by a person who is incapacitated (by drugs, alcohol, or otherwise), unconscious, asleep, or otherwise physically or mentally unable to make informed, rational judgments. The use of alcohol or drugs does not diminish one's responsibility to obtain Consent and does not excuse conduct that violates this policy, the Student Code of Conduct, or other applicable University policy. Consent cannot be given by someone who, by virtue of age, circumstances, or other factors is deemed by law to be incapable of giving Consent.
7. Deliberately Indifferent - A response to sexual harassment or other sexual misconduct that is clearly unreasonable in light of the known circumstances.<sup>9</sup>
8. Dating Violence - Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. "Dating violence" includes, but is not limited to, sexual or physical abuse or the threat of such abuse. "Dating violence" does not include acts covered under the definition of domestic violence. Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.<sup>10</sup>
9. Domestic Violence - A felony or misdemeanor crime of violence committed by: (a) a current or former spouse or intimate partner of the victim<sup>11</sup>, (b) a person with whom the victim shares a child in common, (c) a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner, (d) a person similarly situated to a spouse of the victim under the

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<sup>6</sup> 34 CFR § 668.46(a).

<sup>7</sup> 34 CFR § 668.46(a).

<sup>8</sup> 34 CFR §106.30(a)

<sup>9</sup>34 CFR §106.44(a).

<sup>10</sup> 34 CFR §668.46.

<sup>11</sup> The use of the word "victim" in this policy stems from the use of that word in 34 CFR §668.46 and is not intended to infer the guilt or innocence of any party with respect to any crime or any violation of this policy.

domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or (e) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.<sup>12</sup>

10. Education Program or Activity of a University – Locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.<sup>13</sup>

11. Formal Complaint - A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in, attempting to participate in, or formerly participated in the education program or activity of the University with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator in Appendix "A", and by any additional method designated by the University. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under 34 CFR 106 or under 34 CFR 106.45, and must comply with the requirements of 34 CFR 106, including 34 CFR 106.45(b)(1)(iii).<sup>14</sup>

12. Hostile Environment – An environment where the conduct of one or more individuals is sufficiently serious that it denies or limits a student's, faculty member's, or staff member's ability to participate in or benefit from the University's program based on sex. In determining whether a hostile environment exists, the University shall consider all relevant circumstances, including the following factors: (a) the degree to which the conduct affected the University's educational programs, (b) the type, frequency and duration of the conduct, (c) the age and sex of the alleged harasser and the subject or subjects of the harassment, (d) the location of the incidents and the context in which they occurred, (e) other incidents at the University, and (f) incidents of gender-based, but nonsexual harassment.

13. Incapacitation – Any situation in which a person is incapable of giving consent due to the student's age, state of consciousness, use of drugs or alcohol, or an intellectual or other disability.

14. Intimidation – The intentional act of coercing or frightening someone to engage or not engage in conduct of a sexual nature against the person's will.

15. Non-consensual Sexual Contact - Any physical touching of a sexual nature which is not preceded by consent or which continues after a previous consent is withdrawn.

16. Non-consensual Sexual Intercourse - Any sexual intercourse which is not preceded by consent or which continues after previous consent is withdrawn.

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<sup>12</sup> 34 CFR §668.46.

<sup>13</sup> 34 CFR §106.44(a)

<sup>14</sup> 34 CFR §106.30(a)

17. Respondent - Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.<sup>15</sup>

18. Responsible Employees- Except for Confidential Resources, all University Employees are designated Responsible Employees and thereby required to report of potential Sexual Misconduct Policy violations. Responsible Employees include all faculty, staff, including student employees (in any non-confidential capacity), and affiliates. Responsible Employees must report immediately any information about suspected sexual or gender-based harassment, sexual assault, sexual exploitation, stalking, intimate partner violence, or retaliation for reporting regardless of when (both prior to or during their time at the University) or where (both on and off campus) the alleged misconduct occurred, or whether or not it is covered by the definition of Title IX Sexual Harassment. Reports must include any known details such as identities of the parties and the date, time and location of the incident. Responsible employees must report retaliation when they are aware of acts consistent with the policy definition of retaliation, and they have reason to believe it is occurring because of a party's participation in a sexual misconduct report/investigation.

19. Confidential Resources who do not have to report as Responsible Employees include those working in the Counseling Center, Health Center, and the Office of the Faculty Ombuds.

20. Retaliation- The act of hurting someone or doing something harmful to someone,<sup>16</sup> related to matters covered by this policy, including but not limited to intimidation, threats, or coercion.

21. Sexual Assault<sup>17</sup> - An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program.<sup>18</sup>

22. Sexual Exploitation – A person taking non-consensual or abusive sexual advantage of another, that does not constitute Sex-based Harassment as defined in this Policy, for their own benefit or for the benefit of anyone other than the person being exploited.<sup>19</sup>

23. Sexual Harassment – Conduct on the basis of sex that satisfies one or more of the following:

- a. An employee of the university conditions the provision of an aid, benefit, or service of the university on an individual's participation in unwanted sexual conduct.
- b. Unwelcome conduct of a sexual nature (including unwelcome sexual advances or activity) which is sufficiently severe or pervasive to create an intimidating, hostile, or offensive environment for academic pursuits, employment, or participation in university sponsored programs or activities.

24. Sexual Intercourse - Vaginal or anal penetration by a penis, object, tongue or finger and oral copulation.

25. Sexual Misconduct – Any act of sexual harassment, sexual violence, non-consensual sexual contact, non-consensual sexual intercourse, sexual exploitation, quid pro quo, intimidation, or any act that creates a hostile environment or any act of retaliation against a complainant or anyone involved in a grievance procedure under this policy.

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<sup>15</sup> 34 CFR §106.30(a)

<sup>16</sup> <https://dictionary.cambridge.org/us/dictionary/english/retaliation> (July 29, 2024).

<sup>17</sup> 34 CFR § 668.46(a).

<sup>18</sup> 34 CFR § 668.46(a).

<sup>19</sup> This offense is not classified under Title IX as "Sex-based Harassment," but it is included here in this Policy as a tool to address a wider range of behaviors.

26. Sexual Violence - Physical sexual acts perpetrated against a person's will or with a person who suffers from incapacitation. It also means same-sex conduct that violates the University's prohibition on sexual violence.

27. Stalking<sup>20</sup> - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for the person's safety or the safety of others or (b) suffer substantial emotional distress.<sup>21</sup> Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.<sup>22</sup>

28. Standard of Evidence – The standard of evidence that shall be used is the preponderance of the evidence standard where the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true.

29. Supportive Measures - Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The University must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.<sup>23</sup>

30. Title IX Coordinator – The person designated as such by the University's President or the person temporarily designated by the Title IX Coordinator to serve in that capacity during the Title IX Coordinator's incapacity or absence from the University's campus.

31. Title IX Sexual Harassment – Conduct based on sex, occurring in the United States, that constitutes one or more of the following:

- a. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- b. 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 University's education program or activity; or
- c. "Sexual assault," "dating violence," "domestic violence," or "stalking" as defined herein.<sup>24</sup>

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<sup>20</sup> 34 CFR § 668.46(a).

<sup>21</sup> 34 CFR § 668.46(a).

<sup>22</sup> 34 CFR § 668.46(a).

<sup>23</sup> 34 CFR § 106.30(a)

<sup>24</sup> 34 CFR § 106.30(a)

32. Unwelcome Conduct - Conduct is unwelcome if an individual did not request or invite it and regarded the conduct as undesirable or offensive. Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.<sup>25</sup>

## **SECTION B. – POLICY**

### **1. Notification Requirements**

- a. The University hereby notifies applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the University that the names of the employees designated as the Title IX Coordinators are set forth in Appendix “A.”<sup>26</sup>
- b. The University hereby notifies such persons that (a) the University does not discriminate on the basis of sex in the education programs or activities that the University operates, (b) the University is required by Title IX not to discriminate in such a manner, and (c) the requirement of the University not to discriminate in the education programs or activities extends to employment and admission.<sup>27</sup>
- c. Inquiries about the application of Title IX to the University may be referred to the employee(s) designated by the University as its Title IX Coordinator(s) or to the Assistant Secretary of the Office of Civil Rights at the United States Department of Education, or both.<sup>28</sup>
- d. A notice of the University’s policy of nondiscrimination shall be widely disseminated on the University’s campus and the University will prominently display a statement of this policy on its website and in each handbook or catalog that it makes available to applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the University.<sup>29</sup> The notice of nondiscrimination shall also state the contact information for the Title IX Coordinator(s).<sup>30</sup> The University shall use or distribute a publication stating that the University does not treat applicants, students, or employees differently on the basis of sex.<sup>31</sup>
- e. The University has adopted and published grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that is prohibited by Title IX. Additionally, the University’s Title IX Sexual Harassment grievance procedure complies with Title IX §106.45 for formal complaints.<sup>32</sup> The University hereby provides notice of the University’s grievance procedures and processes to applicants for admission and employment, students and employees, and all unions of professional organizations holding collective bargaining or professional agreements, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the University will respond in such cases, all of which is set forth in Sections 5 through 9 below .<sup>33</sup>

### **2. Title IX Coordinator**

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<sup>25</sup> 2001 Revised Sexual Harassment Guidance, pp. 7-8.

<sup>26</sup> 34 CFR §106.8(a)

<sup>27</sup> 34 CFR §106.8(b)(1)

<sup>28</sup> 34 CFR §106.8(b)(1)

<sup>29</sup> 34 CFR §106.8(b)(2)(i)

<sup>30</sup> 34 CFR §106.8(b)(2)(i)

<sup>31</sup> 34 CFR §106.8(b)(2)(ii)

<sup>32</sup> 34 CFR §106.8(c)

<sup>33</sup> 34 CFR §106.8(c)

- a. The University's current Title IX Coordinator and any deputy Title IX Coordinator(s) are the individuals specified in Appendix "A."<sup>34</sup> The names and current contact information for these individuals, including the office address, electronic mail address, and telephone number can be found in Appendix "A" and on the University's website at <https://nau.edu/title-ix><sup>35</sup> All of the University's Title IX Coordinators shall work together to ensure consistent enforcement of its policies and Title IX.<sup>36</sup> The lead and deputy Title IX Coordinator(s) shall coordinate the University's efforts to comply with its responsibilities under this policy, guidance from the United States Department of Education, and federal statutes and regulations governing sexual misconduct.<sup>37</sup> Further, when designating a Title IX coordinator, the University will make efforts to designate a coordinator whose other job responsibilities will not create a conflict of interest.<sup>38</sup>
- b. The Title IX Coordinator will assist the University in complying with Title IX and promoting gender equity in education.<sup>39</sup>
- c. The University will ensure that the Title IX Coordinator(s) are/is appropriately trained and possess comprehensive knowledge in all areas over which the Title IX Coordinator(s) has/have responsibility in order to effectively carry out those responsibilities, including University policies and procedures on sex discrimination and all complaints raising Title IX issues throughout the University.<sup>40</sup>

### 3. University's Response to Sexual Harassment

- a. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the impacted party of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator(s), or by any other means that results in the Title IX Coordinator(s) receiving the person's verbal or written report.<sup>41</sup> Such report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator(s) or their reporting designees.<sup>42</sup>
- b. Response to Title IX Sexual Harassment in General

When the University has actual knowledge of sexual harassment occurring in any of the University's education programs or activities against a person in the United States, the University shall respond promptly in a manner that is not deliberately indifferent.<sup>43</sup> The University shall treat complainants and respondents equitably by offering supportive measures to a complainant, and by following the University's grievance policy before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.<sup>44</sup> Additionally, the Title IX Coordinator or designee will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the

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<sup>34</sup> 34 CFR §106.8(a)

<sup>35</sup> 34 CFR §106.8(a)

<sup>36</sup> OCR Guidance on Title IX Coordinators (April 24, 2015), pp. 2-3

<sup>37</sup> 34 CFR §106.8(a)

<sup>38</sup> OCR Guidance on Title IX Coordinators (April 24, 2015), p. 3

<sup>39</sup> OCR Guidance on Title IX Coordinators (April 24, 2015), p. 4

<sup>40</sup> OCR Guidance on Title IX Coordinators (April 24, 2015), p. 6

<sup>41</sup> 34 CFR §106.8(a)

<sup>42</sup> 34 CFR §106.8(a)

<sup>43</sup> 34 CFR §106.44(a)

<sup>44</sup> 34 CFR §106.44(a)



availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.<sup>45</sup> The University will provide written notification of complainant's<sup>46</sup> options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the complainant and if such accommodations are reasonably available, regardless of whether the complainant chooses to report the crime to campus police or local law enforcement.<sup>47</sup> The University will respond in the manner described in this section with or without a formal complaint.<sup>48</sup>

c. University's Response to a Title IX Sexual Harassment Formal Complaint

- i. When a formal complaint has been filed, the University shall follow all procedures consistent with Title IX and the University's Title IX Sexual Harassment grievance procedure.<sup>49</sup>
- ii. The University may remove a respondent from the University's education program or activity on an emergency basis, after the University undertakes an individualized safety and risk analysis, determines that the respondent poses an immediate threat to the physical health or safety of any student or individual arising from the allegations of sexual harassment and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.<sup>50</sup> The University may also place a non-student employee respondent on administrative leave during the pendency of a grievance process.<sup>51</sup>

d. Confidentiality and Privilege

- i. The University will provide information, in writing, about how the University will protect the confidentiality of complainants<sup>52</sup>, including how publicly-available recordkeeping will be accomplished without the inclusion of identifying information about the complainant<sup>53</sup>, to the extent permissible by law.<sup>54</sup> The University shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.<sup>55</sup> The University shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures.<sup>56</sup> The University is required to provide information to the University's insurance providers for coverage purposes.

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<sup>45</sup> 34 CFR §106.44(a)

<sup>46</sup> Although 34 CFR §668.46 and 20 U.S.C. §1092 refer to "victim", this policy utilizes the word "complainant" because "complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment under 34 CFR§106.30(a). See Section III for the definition of "complainant."

<sup>47</sup> 34 CFR §668.46(b)(11)(v)

<sup>48</sup> 34 CFR §106.44(b)(1)

<sup>49</sup> 34 CFR §106.44(b)(1)

<sup>50</sup> 34 CFR § 106.44(c)

<sup>51</sup> 34 CFR §106.44(d)

<sup>52</sup> See Note 46 above.

<sup>53</sup> See Note 46 above.

<sup>54</sup> 34 CFR §668.46(b)(11)(A)

<sup>55</sup> 34 CFR §106.71(a)

<sup>56</sup> 34 CFR §106.30(a)

- ii. The University does 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.<sup>57</sup>

#### 4. Grievance Procedures for Title IX Sexual Harassment Formal Complaints

- a. For purposes of addressing formal complaints of Title IX Sexual Harassment, the University will comply with the grievance procedures of this section. The University's grievance procedures treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.<sup>58</sup> Remedies are designed to restore or preserve equal access to the University's education program or activity.<sup>59</sup>
- b. Basic Requirements for Title IX Sexual Harassment Grievance Procedures
  - i. Grievance proceedings shall be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.<sup>60</sup> Proceedings shall provide a prompt, fair, and impartial investigation and resolution.<sup>61</sup>
  - ii. The University's grievance procedures shall use an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.<sup>62</sup> During the grievance process, credibility determinations may not be based on a person's status as a complainant, respondent, or witness.<sup>63</sup>
  - iii. Any individual designated by the University who is to be involved in the University's grievance procedures, such as a coordinator, investigator, or decision-maker, shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.<sup>64</sup> It is presumed that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process<sup>65</sup>
  - iv. The University's grievance procedure includes reasonably prompt time frames for the conclusion of the grievance process. This includes reasonably prompt timeframes for filing and resolving appeals and informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent for the delay or extension and the reasons for the action.<sup>66</sup> "Good cause" may include consideration such as the absence of a party, a party's advisor, or a witness,

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<sup>57</sup> 34 CFR 106.45(b)(1)(x).

<sup>58</sup> 34 CFR §106.45(b)(1)(i)

<sup>59</sup> 34 CFR §106.45(b)(1)(i)

<sup>60</sup> 34 CFR §668.46(k)(2)(ii)

<sup>61</sup> 34 CFR §668.46(k)(2)(i)

<sup>62</sup> 34 CFR §106.45(b)(1)(ii).

<sup>63</sup> 34 CFR §106.45(b)(1)(ii).

<sup>64</sup> 34 CFR §106.45(b)(1)(iii).

<sup>65</sup> 34 CFR §106.45(b)(1)(iv).

<sup>66</sup> 34 CFR §106.45(b)(1)(v).

concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.<sup>67</sup>

- v. The University's grievance procedures describe the range of possible sanctions and remedies that the University may implement following any determination of responsibility.<sup>68</sup> The grievance procedures also describe the standard of evidence to be used to determine responsibility. This standard of evidence is applied for formal complaints against students as well as formal complaints against employees, including faculty.<sup>69</sup> It shall be applied to all formal complaints of sexual harassment.<sup>70</sup>

c. Supportive Measures

The University will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for impacted parties both on-campus and in the community.<sup>71</sup> The University provides such written notification in Appendix "A." There are a range of supportive measures available to complainants and respondents.<sup>72</sup> Such supportive measures may include but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

d. Notice of Allegations

- i. Upon receipt of a formal complaint from a student or employee or upon the initiation of a formal complaint by the Title IX Coordinator on behalf of the University, the University must provide the following written notice to the parties who are known: notice of the University's grievance procedures, including any information resolution process, notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.<sup>73</sup>
- ii. The University's written notice must also include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.<sup>74</sup>
- iii. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney and may inspect and review evidence. In accordance with Arizona Board of Regents Policy 5-308, Student Code of Conduct, Section F.6, the University prohibits the parties from initiating, causing, or contributing to any false report. In addition, the Faculty Handbook Code of Ethics and Conduct Section 3.1 prohibits the intentional misrepresentation of personal opinions. Such conduct is subject to disciplinary sanctions.

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<sup>67</sup> 34 CFR §106.45(b)(1)(v).

<sup>68</sup> 34 CFR §106.45(b)(1)(vi).

<sup>69</sup> 34 CFR §106.45(b)(1)(vii).

<sup>70</sup> 34 CFR §106.45(b)(1)(viii).

<sup>71</sup> 34 CFR §668.46 (b)(11)(iv)

<sup>72</sup> 34 CFR §106.45(b)(1)(ix)

<sup>73</sup> 34 CFR §106.45(b)(2)(i)(A)-(B)

<sup>74</sup> 34 CFR §106.45(b)(2)(i)(B).

- iv. If, in the course of investigation, the University decides to investigate allegations about the complainant or respondent that are not included in the notice requirements above, then the University will provide notice of the additional allegations to the parties whose identities are known.<sup>75</sup>
- e. Investigations of a Title IX Sexual Harassment Formal Complaint
  - i. The University must investigate the allegations in a formal complaint.<sup>76</sup> If the conduct alleged in the formal complaint would not constitute Title IX Sexual Harassment 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, then the University must dismiss the formal complaint with regard to that conduct.<sup>77</sup> However, such a dismissal does not preclude action under another provision of the University's other associated procedures (listed in Appendix A).<sup>78</sup>
  - ii. As soon after the initiation of the investigation as possible, the Title IX Coordinator or the designated investigator shall notify all University employees or students who are believed to have documentary, electronic, or tangible evidence to preserve such evidence for the investigation.<sup>79</sup> The University also will notify the complainant<sup>80</sup> of: (a) the 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, (b) the agencies to whom the alleged offense should be reported, (c) options regarding law enforcement and campus authorities, including notification of the complainant's<sup>81</sup> option to (i) notify proper law enforcement authorities, including on-campus and local police, (ii) be assisted by campus authorities in notifying law enforcement authorities if the complainant<sup>82</sup> so chooses, and (iii) decline to notify such authorities.<sup>83</sup>
  - iii. When investigating a formal complaint, the University must ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties, provided that the University cannot 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.<sup>84</sup>
  - iv. The University must provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or

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<sup>75</sup> 34 CFR §106.45(b)(2)(ii)

<sup>76</sup> 34 CFR §106.45(b)(3)(i).

<sup>77</sup> 34 CFR §106.45(b)(3)(i).

<sup>78</sup> 34 CFR §106.45(b)(3)(i)

<sup>79</sup> 34 CFR §668.46((b)11)(ii)(A)

<sup>80</sup> See Note 46 above.

<sup>81</sup> See Note 46 above.

<sup>82</sup> See Note 46 above.

<sup>83</sup> 34 CFR §668.46((b)11)(ii)(A)

<sup>84</sup> 34 CFR §106.45(b)(5)(i).

exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.<sup>85</sup>

- v. The University also must provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.<sup>86</sup> In addition, the University may not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.<sup>87</sup>
- vi. The University must provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice.<sup>88</sup> The University may not limit the choice of advisor or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding.<sup>89</sup> Advisors are not required to be attorneys.<sup>90</sup> Additionally, the University may not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding.<sup>91</sup> However, the University may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.<sup>92</sup>
- vii. The University also must provide to the party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, investigative interview, or other meetings with a party, with sufficient time for the party to prepare to participate.<sup>93</sup>

f. Investigative Report

The University is required to create an investigative report that fairly summarizes relevant evidence.<sup>94</sup> Prior to completion of an investigative report, the University must send each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format, or a hard copy, and the parties must have at least ten (10) business days to submit a written response, which the investigator will consider prior to completion of the investigative report.<sup>95</sup> The University must also provide a copy of the investigative report at least ten (10) business days prior to a hearing or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.<sup>96</sup>

g. Live Hearing

- i. The University is required under Title IX to have a live hearing as part of the University's Title IX Sexual Harassment grievance procedure.<sup>97</sup>

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<sup>85</sup> 34 CFR §106.45(b)(5)(vi)

<sup>86</sup> 34 CFR §106.45(b)(5)(ii)

<sup>87</sup> 34 CFR §106.45(b)(5)(iii)

<sup>88</sup> 34 CFR §106.45(b)(5)(iv)

<sup>89</sup> 34 CFR §106.45(b)(5)(iv)

<sup>90</sup> 34 CFR §105.45(b)(5)(iv)

<sup>91</sup> 34 CFR §106.45(b)(5)(iv)

<sup>92</sup> 34 CFR §106.45(b)(5)(iv)

<sup>93</sup> 34 CFR §106.45(b)(5)(v).

<sup>94</sup> 34 CFR §106.45(b)(5)(vii).

<sup>95</sup> 34 CFR §106.45(b)(5)(vi).

<sup>96</sup> 34 CFR §106.45(b)(5)(vii).

<sup>97</sup> 34 CFR §106.45(b)(6)(i).

- ii. During a live hearing, the University and the University's 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.<sup>98</sup> Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the parties' advisor of choice and never by a party personally, notwithstanding the discretion of the University to otherwise restrict the extent to which advisors may participate in the proceedings.<sup>99</sup> If a party does not have an advisor present at the live 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.<sup>100</sup>
- iii. The University also must make all evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examinations.<sup>101</sup>
- iv. Only relevant cross cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) first must determine whether the question is relevant and explain any decision to exclude a question as not relevant.<sup>102</sup> Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior 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.<sup>103</sup>
- v. Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because the party or witness does not attend the hearing or because the party or witness attends but decline to participate in some or all questioning. The Decision-maker(s) only may rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness' absence from the hearing or refusal to submit to cross-examination or answer other questions.
- vi. Live hearings may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.<sup>104</sup> The University must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.<sup>105</sup> At the request of either party, the University must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.<sup>106</sup>

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<sup>98</sup> 34 CFR §106.45(b)(6)(i).

<sup>99</sup> 34 CFR §106.45(b)(6)(i).

<sup>100</sup> 34 CFR §106.45(b)(6)(i).

<sup>101</sup> 34 CFR §106.45(b)(5)(vi).

<sup>102</sup> 34 CFR §106.45(b)(6)(i).

<sup>103</sup> 34 CFR §106.45(b)(6)(i).

<sup>104</sup> 34 CFR §106.45(b)(6)(i).

<sup>105</sup> 34 CFR §106.45(b)(6)(i).

<sup>106</sup> 34 CFR §106.45(b)(6)(i).

## 5. Determination Regarding Responsibility

- a. For the purpose of making a determination regarding responsibility, the University must appoint decision-maker(s) who cannot be the same person(s) as the Title IX Coordinator(s) or the investigator(s) for the University's Title IX Sexual Misconduct grievance procedure.<sup>107</sup> When making a determination regarding responsibility, the University must apply the standard of evidence as defined above.<sup>108</sup>
- b. The University's decision-maker(s) must issue a written determination regarding responsibility.<sup>109</sup> The University must provide the written determination to the parties simultaneously.<sup>110</sup> The University's written determination must include:
  - i. identification of the allegations potentially constituting sexual harassment;
  - ii. 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;
  - iii. findings of fact supporting the determination;
  - iv. conclusions regarding the application of the University's policy to the facts;
  - v. a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the complainant; and
  - vi. the University's Title IX Sexual Harassment procedure and permissible bases for the complainant and respondent to appeal.<sup>111</sup>
- c. The University must list all of the possible sanctions or supportive measures that the University may impose following the results of any University disciplinary proceeding for an allegation of dating violence, domestic violence, sexual assault, or stalking in its annual security report, all of which are listed in Appendix "B".<sup>112</sup> In cases of alleged violence, sexual harassment, dating violence, sexual assault, or stalking, both the complainant and the respondent shall be simultaneously informed in writing of the outcome of any institutional disciplinary proceeding, the institution's procedures for the accused and the complainant<sup>113</sup> to appeal the results of the institutional disciplinary proceeding, any change to the results that occurs prior to the time that such results become final, and when such results become final.<sup>114</sup>
- d. 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.<sup>115</sup>
- e. The Title IX Coordinator or designee is responsible for effective implementation of any remedies.<sup>116</sup>

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<sup>107</sup> 34 CFR §106.45(b)(7)(i).

<sup>108</sup> 34 CFR §106.45(b)(7)(i).

<sup>109</sup> 34 CFR §106.45(b)(7)(i).

<sup>110</sup> 34 CFR §106.45(b)(7)(iii).

<sup>111</sup> 34 CFR §106.45(b)(7)(ii)(A)-(F).

<sup>112</sup> 34 CFR §668.46(k)(1)(k)(iii)

<sup>113</sup> See Note 46 above.

<sup>114</sup> 20 U.S.C. § 1092(f)(8)(B)(iv)(III).

<sup>115</sup> 34 CFR §106.45(b)(7)(iii).

<sup>116</sup> 34 CFR §106.45(b)(7)(iv).

## 6. Appeals

- a. The University must offer both parties an appeal from a determination regarding responsibility, and from a University'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; (c) the Title IX Coordinator, Deputy 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;<sup>117</sup> (d) excessive severity of the sanction; and/or (e) the decision is not reasonably justified by the evidence or is contrary to law.
- b. As to all appeals, the University must (a) notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties; (b) ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator; (c) ensure that the decision-maker(s) for the appeal complies with the standards set forth in this policy and Title IX; (d) give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome; (e) issue a written decision describing the result of the appeal and the rationale for the result; and (f) provide the written decision simultaneously to both parties.<sup>118</sup>

## 7. Informal Resolution Process

- a. A University may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section.<sup>119</sup>
- b. Similarly, a University may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed for conduct defined as Title IX Sexual Harassment.<sup>120</sup>
- c. However, at any time prior to reaching a determination regarding responsibility, the University may facilitate an informal resolution process, such as facilitation, that does not involve a full investigation and adjudication, provided that the University (a) provides to the parties a written notice disclosing: (i) the allegations, (ii) the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and (iii) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; (b) obtains the parties' voluntary, written consent to the informal resolution process; and (c) does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.<sup>121</sup>

## 8. Record Keeping

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<sup>117</sup> 34 CFR §106.45(b)(8)(i),

<sup>118</sup> 34 CFR §106.45(b)(8)(iii).

<sup>119</sup> 34 CFR §106.45(b)(9).

<sup>120</sup> 34 CFR §106.45(b)(9).

<sup>121</sup> 34 CFR §106.45(b)(9)(i)-(iii).



- a. A University must maintain for a period of seven (7) years records of each Title IX Sexual Harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the University's education program or activity; any appeal and the result therefrom; any informal resolution and the result therefrom; and all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.<sup>122</sup> Materials used to train Title IX Coordinators, investigators, decision-makers, and any persons who facilitates an informal resolution process will be publicly available on the University's website.<sup>123</sup>
- b. The University shall create, and maintain for a period of seven (7) years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of Title IX Sexual Harassment.<sup>124</sup> In each instance, the University shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's education program or activity.<sup>125</sup> If the University does not provide a complainant with supportive measures, then the University must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.<sup>126</sup> The documentation of certain bases or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken.<sup>127</sup>

## 9. Prevention and Education

The University shall provide education programs to promote the awareness of rape, acquaintance rape, domestic violence, sexual assault, sexual harassment, and stalking, which shall include:

1. Primary prevention and awareness programs for all incoming students and new employees, which shall include:
  - a. A statement that the University prohibits the offenses of domestic violence, dating violence, sexual assault, sexual harassment, and stalking;
  - b. The definition of domestic violence, dating violence, sexual assault and stalking in the state of Arizona;
  - c. The definition of consent, in reference to sexual activity, in the state of Arizona;
  - d. Safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, sexual assault, sexual harassment, or stalking against a person other than such individual;
  - e. Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks.
  - f. Information described in 20 U.S.C. 1092(f)(8)(B)(ii) through (vii); and
2. Ongoing prevention and awareness campaigns for students and faculty including the information described in clauses (a) through (f) of subparagraph 1 above.<sup>128</sup>

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<sup>122</sup> 34 CFR §106.45(b)(10)(i)(A)-(D).

<sup>123</sup> 34 CFR §106.45(b)(10)(i)(A)-(D)

<sup>124</sup> 34 CFR §106.45(b)(10)(iii).

<sup>125</sup> 34 CFR §106.45(b)(10)(ii).

<sup>126</sup> 34 CFR §106.45(b)(10)(ii).

<sup>127</sup> 34 CFR §106.45(b)(10)(ii).

<sup>128</sup> 34 CFR §668.46(j)

## 10. Training

- a. The University ensures that Title IX coordinators, investigators, and decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the University's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.<sup>129</sup> Coordinator(s) should be knowledgeable about other applicable Federal and State laws, regulations, and policies that overlap with Title IX.<sup>130</sup> Additionally, the University ensures that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.<sup>131</sup> Furthermore, the University ensures that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.<sup>132</sup>
- b. The University uses training materials that do not rely on sex stereotypes to train coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.<sup>133</sup> The University also uses materials that promote impartial investigations and adjudications of formal complaints of sexual harassment to train coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.<sup>134</sup>

## 11. Retaliation Prohibited

- a. The University or any other person may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.<sup>135</sup> Intimidation, threats, coercion, or discrimination, including charges against an individual for other policy violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.<sup>136</sup>
- b. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination.<sup>137</sup> The exercise of rights protected under the First Amendment does not constitute retaliation.<sup>138</sup> Charging an individual with a university policy violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation.<sup>139</sup> However, a determination regarding responsibility alone will not be sufficient to conclude that any party made a materially false statement in bad faith.<sup>140</sup>

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<sup>129</sup> 34 CFR §106.45(b)(1)(iii)

<sup>130</sup> OCR Guidance on Title IX Coordinators (April 24, 2015), p. 6.

<sup>131</sup> 34 CFR §106.45(b)(1)(iii)

<sup>132</sup> 34 CFR §106.45(b)(1)(iii).

<sup>133</sup> 34 CFR §106.45(b)(1)(iii)

<sup>134</sup> 34 CFR §106.45(b)(1)(iii)

<sup>135</sup> 34 CFR §106.71(a).

<sup>136</sup> 34 CFR §106.71(a).

<sup>137</sup> 34 CFR §106.71(a)

<sup>138</sup> 34 CFR §106.71(b)(1)

<sup>139</sup> 34 CFR §106.71(b)(2).

<sup>140</sup> 34 CFR §106.71(b)(2)

## 12. Limited Amnesty

- a. The health and safety of every student at the University is of utmost importance. The University recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that prohibited conduct under these procedures occurs may be hesitant to report incidents due to fear of potential consequences for their own conduct. The University strongly encourages students to report such prohibited conduct.
- b. A student bystander or complainant acting in good faith who discloses any incident of prohibited conduct under this policy to a University official or to law enforcement shall not be subject to action under the University's Student Code of Conduct or other applicable policy for violation of alcohol and/or drug use occurring at or near the time of the commission of the prohibited conduct. While no disciplinary action will be taken, the University reserves the right to take steps necessary to address health and safety concerns for the individual and the community, as well as the right to report truthfully to licensing bodies.

### SECTION C. – RESPONSIBILITIES

1. Title IX Coordinator and Deputy Title IX Coordinators shall receive training, respond, and conduct procedures in accordance to the regulations and the Sexual Misconduct Policy and associated procedures.
2. Decision-makers shall receive training, respond, and conduct procedures in accordance to the regulations and the Sexual Misconduct Policy and associated procedures.
3. Investigators shall receive training, respond, and conduct procedures in accordance to the regulations and the Sexual Misconduct Policy and associated procedures.
4. Any person who facilitates an informal resolution process or resolution process shall receive training, respond, and conduct procedures in accordance to the regulations and the Sexual Misconduct Policy and associated procedures.

### SECTION D. – PROCEDURES

The Informal Resolution Process, Title IX Sexual Harassment Procedure, Student Sex-based Harassment and Misconduct Procedure and Nondiscrimination and Anti-harassment Policy and its associated procedures accompany this Sexual Misconduct Policy to facilitate the policy's implementation.

### SECTION E. – REPORTING

If you believe that a student, staff member (including student employees), faculty member, affiliate, or visitor has been subjected to a form of sexual harassment, including but not limited to, sexual assault or interpersonal violence, please submit a report to:

Office for the Resolution of Sexual Misconduct (ORSM): Title IX Institutional Compliance, Prevention & Response using the Report Button located at <https://nau.edu/titleix>, by e-mail message to [titleix@nau.edu](mailto:titleix@nau.edu), in person on the Third Floor of Gammage, or by private telephone message at 928.523.5434

If there is an immediate safety concern, please contact NAU Police Department at 911 or your local law enforcement.

### SECTION F. – RELATED INFORMATION

## Forms or Tools

There are no forms or tools associated with this policy.

## Cross-References

Arizona Board of Regents, Student Code of Conduct:

<https://public.azregents.edu/Policy%20Manual/5-308-Student%20Code%20of%20Conduct.pdf>

## Sources

Arizona Board of Regents Policy Manual: <https://www.azregents.edu/board-committees/policy-manual>

Department of Education, Office for Civil Rights, Dear Colleague Letter of Title IX Coordinators, April 24, 2015: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>

Institutional Security Policies and Crime Statistics Regulations, 34 C.F.R. § 668.46: <https://www.law.cornell.edu/cfr/text/34/668.46>

Department of Education, Office for Civil Rights, Revised Sexual Harassment Guidance: Harassment of Students by University Employees, Other Students, or Third Parties, Title IX: <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>

Department of Education, Title IX Regulations: <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

APPENDIX\*

**Appendix "A"**  
**Contact Information for Title IX Coordinator**  
**and Supporting Services**  
**Date: July 31, 2024**

Title IX Coordinator's Name and Contact Information	Name: Elyce C. Morris Physical Address: Gammage, Third Floor Email Address: <a href="mailto:Elyce.Morris@nau.edu">Elyce.Morris@nau.edu</a> Telephone No.: 928-523-5434
Deputy Title IX Coordinator's Name and Contact Information	Name: Josh C. Floyd Physical Address: Gammage, Third Floor Email Address: <a href="mailto:Josh.Floyd@nau.edu">Josh.Floyd@nau.edu</a> Telephone No.: 928-523-5434
Assistant Deputy Title IX Coordinator's Name and Contact Information	Name: Cassie Luke, Director, Campus Operations Physical Address: North Hall, Second Floor Email Address: <a href="mailto:Cassie.Luke@nau.edu">Cassie.Luke@nau.edu</a> Telephone No.: 928-523-7479
Assistant Deputy Title IX Coordinator's Name and Contact Information	Name: Sara Olson, Director, Campus Operations Physical Address: North Hall, Second Floor Email Address: <a href="mailto:sara.Olson@nau.edu">sara.Olson@nau.edu</a> Telephone No.: 928-523-7631
Assistant Deputy Title IX Coordinator's Name and Contact Information	Name: Beth Vechinski, Senior Associate Athletic Director Physical Address: Gammage, Third Floor Email Address: <a href="mailto:beth.Vechinski@nau.edu">beth.Vechinski@nau.edu</a> Telephone No.: 928-523-3326
Assistant Deputy Title IX Coordinator's Name and Contact Information	Name: Robert M. Zbikowski, Senior Associate Dean, Student Life Physical Address: Student Union, First Floor Email Address: <a href="mailto:Robert.Zbikowski@nau.edu">Robert.Zbikowski@nau.edu</a> Telephone No.: 928-523-5181
On-Campus Counseling Services	Name: Campus Health Services Counseling Physical Address: Health and Learning Center, First Floor Email Address: <a href="mailto:campushealth@nau.edu">campushealth@nau.edu</a> Telephone No.: 928-523-2261
Off-Campus Counseling Services in Flagstaff	Name: Northland Family Help Center Physical Address: 2532 N Fourth St #506, Flagstaff, AZ 86004 Email Address: <a href="mailto:nfhc@northlandfamily.org">nfhc@northlandfamily.org</a> Telephone No.: 928-527-1900 or 1-877-634-2723
On-Campus Healthcare Services	Name: Campus Health Services Medical Physical Address: Medical and Learning Center, First Floor Email Address: <a href="mailto:campushealth@nau.edu">campushealth@nau.edu</a> Telephone No.: 928-523-2131
Healthcare Services in Flagstaff	Name: NACASA at North Country HealthCare Physical Address: 2920 N. Fourth St. Flagstaff, AZ 86004 Telephone No.: 928.522.9460
On-Campus Mental Health Services	Name: Campus Health Services Counseling Physical Address: Health and Learning Center, First Floor Email Address: <a href="mailto:campushealth@nau.edu">campushealth@nau.edu</a> Telephone No.: 928-523-2261
Mental Health Services in Flagstaff	Name: The Guidance Center Physical Address: 2187 N Vickey St, Flagstaff, AZ 86004 Telephone No.: (928) 527-1899

Victim Advocacy Services in Flagstaff	Name: Victim Witness Services Physical Address: 201 E Birch Ave #4, Flagstaff, AZ 86001 Email Address: <a href="https://vwscoconino.org/contact/">https://vwscoconino.org/contact/</a> Telephone No.: 928-856-7676
On-Campus Legal Services	Name: Student Legal Counsel Physical Address: Building 30 ASNAU Office, Student Union Email Address: Matthew.Poirier@nau.edu Telephone No.: 928-523-4971
Legal Services in Flagstaff	Name: Northland Family Help Center Physical Address: 2532 N Fourth St #506, Flagstaff, AZ 86004 Email Address: nfhc@northlandfamily.org Telephone No.: (928) 233-4306
Emergency Medical Services in Flagstaff (with other injuries)	Name: Flagstaff Medical Center Physical Address: 1200 N Beaver St, Flagstaff, AZ 86001 Telephone No.: (928) 779-3366
Campus Security/Police Department	Name: NAU Police Department Physical Address: Building 98A Email Address: askNAUPD@nau.edu Telephone No.: 928-523-3000 (emergency); 928-523-3611
Local Police Department	Name: Flagstaff Police Department Physical Address: 911 E. Sawmill Rd., Flagstaff, AZ 86001 Telephone No.: 911, 928-774-1414 (non-emergency), 928-556-2316 (general info.)
Local Sheriff's Office	Name: Coconino County Sheriff's Office Physical Address: 911 E. Sawmill Rd., Flagstaff, AZ 86001 Telephone No.: 911 or 928-774-4523, 1-800-338-7888
State Police	Name: Arizona Department of Public Safety Physical Address: 2222 W. Encanto Blvd., Phoenix, AZ 85009 Telephone No.: 602.223.2000

Other NAU locations may access resources located at <https://nau.edu/title-ix/extended-campus-resources/>.

## **Appendix "B"**

### **Possible Sanctions or Supportive Measures That University May Impose Following the Results of Any University Disciplinary Proceeding under this Policy**

The following sets forth a non-exhaustive list of potential remedies for complainants, which the University may impose. Possible sanctions include additional training or education, suspension, termination, and expulsion.

The University may provide immediate steps and interim measures to ensure the safety and well-being of the complainant, such as counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

\*Disclaimer: all documents, links, or other materials included in this policy's appendix are provided solely for the user's convenience and are not part of official University policy.