

## COMPLAINANT/GRIEVANCE PROCEDURES - A (Appendix A)

Note: NMU is required to abide by all applicable law and governmental regulation and guidance as amended. To the extent this procedure is in conflict with any law or government regulation and guidance, NMU reserves the right to determine that the relevant law and/or guidance will apply.

Complaint/Grievance Procedures - A applies to reported Prohibited Conduct in certain cases. Prohibited Conduct includes:

- Relationship Violence
  - Dating Violence/Domestic Violence
- Sexual Misconduct
  - Sexual Assault
    - Rape
    - Sodomy
    - Sexual Assault with an Object
    - Fondling
    - Incest
    - Statutory Rape
  - Sexual Exploitation
  - Sexual harassment
  - Harassment on the basis of sex or pregnancy status\*
- Stalking

In a case involving a student, Procedures A shall be used for any form of reported Prohibited Conduct. In a case involving employee conduct, where a student is not a party, Procedures A shall be utilized where there is a report of Relationship Violence, Sexual Assault, Sexual Exploitation, and/or Stalking. All other employee cases shall be investigated utilizing Procedures B. NMU also reserves the right, however, to utilize Procedures A for any allegations brought forward as they deem necessary and notice of such a decision will be provided to the Parties at the start of a formal investigation.

*\*Modification and Accommodation concerns due to a pregnancy condition related to education and/or work are addressed under the Pregnancy, Childbirth and Pregnancy-Related Conditions Policy.*

The Relationship Violence, Sexual Misconduct, and Stalking Policy requires all Mandatory Reporters to promptly report any reported conduct or complaints of which they become aware that may be in violation of the Policy to an Official With Authority. The Officials With Authority at NMU are the Title IX Coordinator and the Executive Director of Equal Opportunity and Title IX. Through this policy and supporting procedures, Northern Michigan University ("NMU") addresses Prohibited Conduct pursuant to its obligations under state and federal law.

### **Inclusion of Other NMU Offices**

The Title IX Coordinator/Title IX Administrator may invite other NMU units or offices to participate in an investigation if the Title IX Coordinator/Title IX Administrator determines that its

investigation may lead to violations of other NMU policies subject to different unit's jurisdiction. The Title IX Coordinator also reserves the right to transfer requests for modification or accommodation (including, but not limited to, due to disability, religion or pregnancy status) to Disability Services, Human Resources or the applicable office.

### **Conflict of Interest**

If the Complainant or Respondent believes that the Investigator or Decision Maker assigned to the Formal Complaint has a conflict of interest or is impermissibly biased in the matter, the Complainant or Respondent may request an alternative individual conduct the investigation or issue a decision. This request must be made orally or in writing to the Title IX Coordinator/Title IX Administrator within five (5) business days of when the Complainant or Respondent knew or should have known of the alleged conflict of interest or impermissible bias. The written request must contain sufficient information and details to establish that the Investigator or Decision Maker has a conflict of interest or impermissible bias. The Title IX Coordinator/Title IX Administrator will grant or deny this request in writing. The decision to grant or deny a conflict of interest request is not grounds for appeal.

An Investigator or Decision Maker may seek to be recused from an investigation if they believe there may be a conflict of interest that prevents them from being unbiased in carrying out the investigation. A request by an Investigator or Decision Maker to recuse themselves must be made in writing to the Title IX Coordinator/Title IX Administrator and state the basis for the request. The Title IX Coordinator/Title IX Administrator will grant or deny this request in writing. It is within the Title IX Coordinator/Title IX Administrator's discretion to: appoint an alternative Investigator or Decision Maker; direct the Investigator or Decision Maker to fairly address the conflict of interest or impermissible bias during the investigation or Hearing; or reject the request on the grounds that no conflict of interest or impermissible bias was demonstrated.

In the event that the Title IX Coordinator/Title IX Administrator has a conflict of interest or is impermissibly biased, the University's Vice President of Finance and Administration and General Counsel, or designees, may retain a neutral, outside third party that will serve in the role of the Title IX Coordinator/Title IX Administrator with respect to that specific investigation. The University's Vice President of Finance and Administration and/or General Counsel, or designees, will notify the Title IX Coordinator/Title IX Administrator of the actions taken in the matter and any conclusions therein so that the Title IX Coordinator/Title IX Administrator may carry out their duties, including but not limited to, aggregate reporting and/or other required files per federal and/or state regulations and NMU Policy and procedures.

In the event that a complaint is filed against the Title IX Coordinator/Title IX Administrator, the University's Vice President of Finance and Administration and General Counsel, or designees, may retain a neutral, outside third party that will serve in the role of the Title IX Coordinator/Title IX Administrator with respect to that specific investigation. The University's Vice President of Finance and Administration and General Counsel, or designee, will notify the Title IX Coordinator/Title IX Administrator of the actions taken in the matter and any conclusions therein so that the Title IX Coordinator/Title IX Administrator may carry out duties, including but not limited to aggregate reporting and/or other required files per federal and/or state regulations and NMU Policy and procedures.

## **Initial Evaluation**

The Title IX Coordinator/Title IX Administrator conducts an initial evaluation typically within seven (7) business days of receiving Notice/Complaint/Knowledge of alleged misconduct. The initial evaluation typically includes:

- Assessing whether the reported conduct may reasonably constitute a violation of the Policy.
  - If the conduct does not reasonably constitute a violation of the Policy, taking the report as true, the matter is dismissed from this process, consistent with the dismissal provision in these procedures. It may then be referred to another process, if applicable.
- Determining whether NMU has jurisdiction over the reported conduct, as defined in the Policy.
  - If the conduct is not within NMU jurisdiction, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. If applicable, the conduct will be referred to the appropriate University office for resolution.
- Offering and coordinating supportive measures for the Complainant.
- Offering and coordinating supportive measures for the Respondent, as applicable.
- Notifying the Complainant, or the person who reported the allegation(s), of the Complaint/Grievance Process, including a supportive and remedial response, an Informal Resolution option, or the Complaint/Grievance Process described below.
- Determining whether the Complainant wishes to make a Complaint.
- Notifying the Respondent of the Complaint/Grievance Process, including a supportive and remedial response, an Informal Resolution option, or the Complaint/Grievance Process described below, if a Complaint is made.
- Notifying any need-to-know departmental or human resources unit, as applicable, of the reported conduct.

## **Complainant - Initiating a Formal Investigation**

To file a formal complaint, a Complainant or other reporting person should contact the Title IX Office at:

**Title IX Office of Northern Michigan University**  
**105 Cohodas Hall**  
**Marquette, MI 49855**  
**Phone: 906-227-2416, Email: [TitleIX@nmu.edu](mailto:TitleIX@nmu.edu)**

Upon the direction of the Title IX Coordinator/Title IX Administrator, a prompt and equitable investigation of an alleged violation of this Policy will be undertaken.

The University will use its best efforts to complete its Complaint/Grievance Process, including appeals and Notice of Outcome, within one hundred and twenty (120) business days of the initiation of the Formal Complaint, although this timeline may be extended for good cause. Good cause may include, but is not limited to the complexity of each allegation, a request to coordinate or cooperate with law enforcement, the availability of witnesses, University breaks or vacations, or other legitimate reasons. In the event a time frame is extended, both the Complainant and

Respondent will be notified of the extension and the reason for the extension.

### **Formal Complaint**

A complaint may be filed with the Title IX Coordinator/Title IX Administrator by the Complainant, other reporter, or Mandatory Reporter, in writing, in person, by mail, online web form submission, or by electronic mail, by using the contact information listed in the Relationship Violence, Sexual Assault and Stalking Policy.

If notice of a complaint is submitted in a form that requires clarity, the Title IX Coordinator/Title IX Administrator will contact the Complainant to ensure that it is filed correctly. A parent or legal guardian may file a Formal Complaint on behalf of their minor dependent with a disability.

A Formal Complaint may also be signed by the Title IX Coordinator/Title IX Administrator alleging a policy violation by a Respondent and requesting that NMU investigate the allegation(s). In doing so, the Title IX Coordinator/Title IX Administrator does not become a Complainant or a Party for the case.

### **Complainant's and Respondent's Rights**

During any process defined under this Policy and Procedures, the Complainant and Respondent have the Right to:

- Be treated equitably.
- Notice of the allegations and grievance procedures for resolution. An advisor, a University advisor or an attorney. An attorney would be at the Party's own cost.
- A presumption Respondent is not responsible until the grievance procedure concludes.
- Protection against retaliation.
- A complaint's resolution within a reasonable timeframe.
- A trained and impartial Title IX Coordinator/Title IX Administrator, Investigator(s), and Hearing Office/Decision Maker.
- Written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time to prepare to participate.
- A Support Person of their choosing to accompany the Party during any stage of the process.
- Meet with the Title IX Coordinator/Title IX Administrator to discuss resources, interim measures, Supportive Measures, and the investigatory process available.
- Participate or decline to participate in the process. However, even if a Party declines to participate, NMU may, in some instances, continue to investigate the matter and issue a Determination based on available information in accordance with this Policy and its Procedures.
- Access the relevant evidence related to the allegations of Prohibited Conduct.
- A reasonably confidential proceeding to the extent possible, which shall not limit the parties' ability to access relevant evidence or consult with relevant witnesses or support persons.
- Have the institution bear the burden to gather sufficient evidence to determine whether Prohibited Conduct occurred.
- The exclusion of the following types of evidence as impermissible;
  - confidential employee communication (unless waived);
  - statutory or legal privilege (unless waived); and

- complainant's sexual interests or prior sexual conduct, unless it meets one of the permissible exceptions.
- An objective evaluation of all the relevant evidence not otherwise impermissible.
- Access the relevant evidence related to the allegations of Prohibited Conduct.
- A reasonable opportunity to respond to the relevant evidence.

### **Notice to Parties**

The Title IX Coordinator/Title IX Administrator will provide written notice of the investigation and allegations (the "NOIA") to the Parties upon commencement of the Formal Complaint/Grievance Process. The NOIA will provide:

- The general nature of the allegations, including (if known): identities of the Parties; conduct allegedly constituting the policy violations; the date and location of incident(s) giving rise to the complaint; and instruction to preserve any and all related evidence, as well as link to the applicable procedures.
- A statement that the Respondent is presumed not responsible and that a determination as to responsibility will be made at the conclusion of the Complaint/Grievance Process.
- A statement that either Party may have an Adviser present through all steps of the Complaint/Grievance Process. An Adviser may be anyone you choose, a University advisor, or may be an attorney. An attorney would be at your own cost.
- Notice that the Parties Respondent will be requested to meet with the investigator(s), names of the investigator(s) will be included as well as information and process regarding Conflict of Interest concerns.
- A statement that either Party may examine any and all evidence that is collected during the investigation, whether or not NMU intends to use that evidence in reaching a decision.
- A statement that all Parties and witnesses must comply with section 2.3.27, .03, of NMU's Student Code of Conduct, which prohibits students from giving false or misleading information at any disciplinary or administrative hearing, investigation or meetings; or initiating a student conduct proceeding in bad faith.
- All NMU Employees participating in the process are prohibited from giving false or misleading information.
- Notice that if the Complainant does not elect to participate in the investigation, the Title IX Coordinator/Title IX Administrator may carry out an investigation based on available information.
- Notice that if the Respondent does not elect to participate in the investigation, the Title IX Coordinator/Title IX Administrator will carry out an investigation based on available information and the Respondent may still be subject to sanction pursuant to this Policy and Procedures.

Any notice to faculty or staff will also comply with any requirements of the applicable collective bargaining agreement, if any, regarding notice of investigation that may lead to discipline.

Additional notifications may be made to other appropriate people as required under state and/or federal laws, or NMU Policy.

## **Informal Resolution**

To initiate an Informal Resolution, a Complainant or Respondent may make such a request to the Title IX Coordinator/Title IX Administrator at any time prior to a final determination, or the Title IX Coordinator/Title IX Administrator may offer the option to the Parties, in writing. The Title IX Coordinator/Title IX Administrator will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution. The Title IX Coordinator/Title IX Administrator has the authority to approve or decline an Informal Resolution in any given case and at any given time.

Before initiation of an Informal Resolution process, the Title IX Coordinator/Title IX Administrator will provide the Parties with a NOIA that explains:

- The allegations.
- The requirements of the Informal Resolution process.
- That, prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and to initiate or resume NMU's Complaint/Grievance Process.
- That the Parties' agreement to a resolution at the conclusion of the Informal Resolution process will preclude the Parties from initiating or resuming the resolution process arising from the same allegations.
- The potential terms that may be requested or offered in an Informal Resolution agreement, including notification that an Informal Resolution agreement is binding only on the Parties.
- What information the Title IX Coordinator/Title IX Administrator will maintain, and whether and how it could disclose such information for use in its Complaint/Grievance Process.

NMU generally offers two categories of Informal Resolutions:

- 1) Educational Conversation. When the Title IX Coordinator/Title IX Administrator can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations.
- 2) Accepted Responsibility. When the Respondent is willing to accept responsibility for violating Policy and is willing to agree to actions that will be enforced similarly to sanctions, and the Complainant(s) and NMU are agreeable to the resolution terms. The individual facilitating an Informal Resolution must be trained and cannot be the Investigator, Decision Maker, or Appeal Decision Maker.

It is not necessary to pursue Informal Resolution first in order to pursue a Complaint/Grievance Process. Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time prior to its conclusion and initiate or resume the Complaint/Grievance Process.

If an investigation is already underway, the Title IX Coordinator/Title IX Administrator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

### **Categories of Informal Resolution**

- 1) Educational Conversation

The Complainant(s) may request that the Title IX Coordinator/Title IX Administrator

address their allegations by meeting with the Respondent(s) to discuss reported conduct, concerning behavior and institutional policies and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the Informal Resolution for the matter, if it takes place. If the Respondent declines to meet, the Title IX Coordinator/Title IX Administrator will inform the Parties that they may move forward with a formal complaint, the Title IX Coordinator/Title IX Administrator may move forward with the complaint, or the matter must be closed. Both Parties will be informed of any potential outcomes.

## 2) Accepted Responsibility

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator/Title IX Administrator will determine whether Informal Resolution is an option.

Informal Resolution is available, the Title IX Coordinator/Title IX Administrator will determine whether all Parties and NMU are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Title IX Coordinator/Title IX Administrator implements the accepted finding that the Respondent is in violation of NMU Policy, implements agreed-upon restrictions and remedies, and determines the appropriate responses in coordination with other appropriate administrator(s), as necessary.

Informal Resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Resolution Process will either continue or resume.

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the Prohibited Conduct, both on the Complainant and the community.

## **Investigation and Investigative Report**

NMU is permitted to independently, and on its own volition, retrieve any and all information available to it.

All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Assist with referring Complainant or Respondent to the Title IX Coordinator/Title IX Administrator for any necessary supportive measures.
- Inform the Parties of their right to have the assistance of an Adviser who may be an attorney at their own cost, or a University appointed Adviser for a hearing attended by the Party.
- Provide the Complainant, Respondent, and witness(es) an opportunity to review and verify the Investigator's summary notes of the relevant evidence/testimony from their respective interviews and meetings.

- Provide the Complainant and Respondent with written notice of the date, time, and location of the meeting, as well as the purpose.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Provide regular status updates to the Complainant and the Respondent throughout the investigation.
- Write an investigation report summarizing the investigation, all witness interviews, and addressing all relevant evidence.
- The Investigator(s) gathers information and evidence, makes no conclusions, engages in no policy analysis, and renders no recommendations as part of their report.

Upon the conclusion of the investigation into an allegation of a violation of this Policy, the Title IX Coordinator/Title IX Administrator will produce an investigative report to the Parties and their Adviser for a review containing the following: an overview of the investigation undertaken; and a summary of all the evidence and statements reviewed and considered.

The Title IX Coordinator/Title IX Administrator will provide simultaneous written notice to the Parties and their Advisers that the Draft Investigative Report is available for review. The Title IX Coordinator/Title IX Administrator will make the Draft Investigative Report available for ten (10) business days. The Investigator will incorporate any relevant feedback, and the Final Report is then shared with all Parties and their Advisers by the Title IX Coordinator/Title IX Administrator through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The Parties are also provided with a file of any directly related evidence that was not included in the report. The Parties may elect to waive the full ten (10) business days.

### **Notification Prior to Hearing**

The Title IX Coordinator/Title IX Administrator will seek the availability of Parties and their Advisers, and then schedule a hearing. The Title IX Coordinator/Title IX Administrator will notify the Complainant, Respondent and witnesses of the date, time and location of the scheduled hearing no less than ten (10) business days prior to the hearing. Once emailed, (NMU's preferred means of communication), and/or received in person/via mail, notice will be presumptively delivered. The Title IX Coordinator/Title IX Administrator will seek the availability of Parties and their Advisers, and then schedule a hearing. The notice to the Complainant and Respondent will contain:

- The time, date, and location of the cross-examination hearing and a reminder that attendance is requested, superseding all other campus activities.
- A statement that if any Party or witness does not appear at the scheduled hearing, the hearing may be held in their absence and any statements or testimony may be considered by the Decision Maker(s).
- For compelling reasons, the Title IX Coordinator/Title IX Administrator may reschedule the hearing.
- Notification that the live hearing will occur using technology, such as Zoom, that enables the Decision Maker(s), Complainant, Respondent to see and hear each other and witnesses answering questions.
- The name of the Decision Maker. All objections to any Decision Maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator/Title IX Administrator within three (3) business days upon receipt. Decision Makers will only be removed if the Title IX Coordinator/Title IX Administrator concludes



that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

- A list of all those who are invited to attend the hearing.
- Information on how the hearing will be recorded and Complainant and Respondent may have access to review the recording, upon request.
- Notification that the Complainant and Respondent may have the assistance of an Adviser of their choosing at the hearing and will be required to have one present for any questions they may desire to have asked. Each Party must have an Adviser present for the cross-examination hearing, and the Adviser must conduct any questioning. There are no exceptions.
- Complainant, Respondent, their Advisers, will be given access to review all of the materials provided to the Decision Maker(s) to be used in determining a finding.
- An invitation to the Complainant and Respondent to provide to the Title IX Coordinator/Title IX Administrator an impact statement that must be submitted prior to the Hearing that the Decision Maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator/Title IX Administrator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least ten (10) business days prior to the hearing.
- Notification that mobile phones/devices are allowed into the hearing, however, must be silenced. Taking photos or recording any portion of the cross-examination hearing is prohibited.

After the hearing date is confirmed, an email is sent to coordinate a prehearing Zoom meeting that will be held with the Decision Maker, Complainant, Respondent, Advisers, and hearing facilitator.

The Title IX Coordinator/Title IX Administrator will give the Decision Maker a list of the names of the Complainant, Respondent, witnesses, and Advisers within five (5) business days of the Hearing. Any Decision Maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the Parties, witnesses, and Advisers in advance of the Hearing. If a Decision Maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator/Title IX Administrator as soon as possible.

### **Cross Examination Hearing**

After providing each Party (and Advisers, as necessary) with the Investigative Report, the Title IX Coordinator/Title IX Administrator will schedule a live hearing using technology, such as Zoom, during which each Party's Adviser is permitted to ask the other Party, as well as any witnesses, all relevant cross-examination questions and follow up questions, including those that challenge credibility.

### **Hearing**

- Participants at the hearing may include the Hearing Officer/Decision Maker, Title IX Coordinator/Title IX Administrator, hearing facilitator, the Parties, Advisers to the Parties, any participating witnesses, and anyone providing authorized accommodations or assistive services.
- The Hearing Officer/Decision Maker may be a staff member of NMU or a neutral, outside third party. For hearings, neither the Investigator nor the Title IX

Coordinator/Title IX Administrator may be the Hearing Officer/Decision Maker.

- A hearing facilitator will be present. The hearing facilitator may attend to: logistics of rooms for various Parties/witnesses as they wait; flow of Parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.
- All hearings will be run in a manner that ensures a fair process for both Parties.
- Any cross examinations taking place at the Hearing will be conducted directly, orally, and in real time by the Party's Adviser of choice.
- If a Party does not have an Adviser present for the hearing, that Party will provide their questions to the Hearing Officer/Decision Maker to ask the other Party, as well as any witnesses, all relevant cross-examination and follow up questions, including those that challenge credibility.
- All hearings are closed to the public.
- A sole recording or transcript of the hearing will only be made by the Title IX Office. Any other recording of the hearing is prohibited.
- If requested, the Title IX Coordinator/Title IX Administrator will make the recording or transcript available to the Parties for inspection and review. Copies will not be provided to the Parties.
- The Investigator(s) may serve as a witness.
- New evidence at the hearing will only be permitted under exceptional circumstances.
- The Title IX Office will not return any evidence it receives or collects at the hearing.
- The Hearing Officer/Decision Maker will announce that the hearing has concluded.

#### Role of the Hearing Officer/Decision Maker

- Explains the procedures and introduces the participants.
- Is responsible for maintaining an orderly, fair, impartial and respectful hearing.
- Conducts the hearing according to the hearing script
- Has broad authority to respond to disruptive behavior, including adjourning the hearing or excluding any offending individual.
- Will determine the method for questioning at the hearing. The methods of cross examination questioning may include, but are not limited to, in-person, via speaker telephone, via video conferencing, or other methods identified by the Hearing Officer/Decision Maker that enables real time questioning.
- Will answer all questions of procedure and may consult with the hearing facilitator.
- Will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Hearing Officer/Decision Maker and the Parties and will then be excused.
- Will determine if any witness(es) should be recalled.

#### Questioning at the Hearing

- The Hearing Officer/Decision Maker may ask questions.
- The Parties/witnesses will submit to questioning by the Hearing Officer/Decision Maker and then by the Parties through their Advisers ("cross-examination").
- The Hearing Officer/Decision Maker will make determinations whether specific questions are allowed. Only relevant cross-examination questions shall be permitted to be asked of a

Party or witness. Relevance will be determined by the Hearing Officer/Decision Maker after each question is asked of a Party or witness. The proceeding will pause to allow the Hearing Officer/Decision Maker to consider the question, and the Hearing.

- Officer/Decision Maker will determine whether the question will be permitted, disallowed, or rephrased. The Hearing Officer/Decision Maker will explain any decision to exclude a question as not relevant.
- The Hearing Officer/Decision Maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Hearing Officer/Decision Maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance. The Hearing Officer/Decision Maker has final say on all questions and determinations of relevance. The Hearing Officer/Decision Maker may ask Advisers to frame why a question is or is not relevant from their perspective but will not entertain arguments from the Advisers on relevance once the Hearing Officer/Decision Maker has ruled on a question.
- The Adviser, who will remain seated during questioning, will pose the question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Hearing Officer/Decision Maker upon request).
- No questions or evidence may be asked or provided about the Complainant's sexual interest or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to provide that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with Respondent that is offered to provide consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.
- Anyone appearing at the hearing to provide information will respond to questions on their own behalf.
- Anyone appearing at the hearing may choose to not answer a question by stating so.

#### Deliberation, Decision Making, and Standard of Proof

- Witnesses will be present only while being questioned, but not during deliberations.
- Complainant, Complainant's Adviser, Respondent, and Respondent's Adviser will be present during the entire hearing process, but not during deliberations.
- At the close of the hearing, the Hearing Officer/Decision Maker has ten (10) business days to deliberate and determine whether the Respondent is responsible, not responsible, or insufficient information to make a determination for the Policy violation(s) in question. The preponderance of the evidence standard of proof is used.
- If the Respondent is found responsible, the Hearing Officer/Decision Maker may ask the Title IX Coordinator/Title IX Administrator and/or the Dean of Students Office (DSO) representative to contribute pertinent information in the sanction assessment stage. Pertinent information may include past violations, if any. The Title IX Coordinator/Title IX Administrator and/or the DSO representative shall also be consulted by the Hearing Officer/Decision Maker if there is any particular knowledge to be given that may assist the Hearing Officer/Decision Maker in assessing a sanction or selecting a special condition.
- When there is a finding of responsibility on one or more of the allegations, the Hearing Officer/Decision Maker may then consider any previously submitted Party impact

statements in determining appropriate sanction(s).

- The Hearing Officer/Decision Maker will include impact statements provided by either Party in their Notice of Outcome. The Hearing Officer/Decision Maker may – at their discretion – consider the statements, but they are not binding.
- The Hearing Officer/Decision Maker will determine the appropriate sanction(s).
- The Hearing Officer/Decision Maker will then prepare a written deliberation statement which will include any impact statements, if appropriate, and deliver it to the Title IX Coordinator/Title IX Administrator. The Deliberation Statement details the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions.
- The Hearing Officer/Decision Maker has ten (10) business days to deliberate and submit their report to the Title IX Coordinator/Title IX Administrator, unless the Title IX Coordinator/Title IX Administrator grants an extension. If an extension is granted, the Title IX Coordinator/Title IX Administrator will notify the Parties.

If a Party or witness does not submit to cross examination or is unavailable to submit to cross examination at Hearing:

- If a Complainant, Respondent, or witness declines to participate in the cross examination during the hearing, the Hearing Officer/Decision Maker may still proceed, so that a credibility finding may be made based on information available at the time of the hearing.
- The Hearing Officer/Decision Maker may rely on any previous statement of that Party or witness in reaching a determination as to responsibility.
- The Hearing Officer/Decision Maker cannot draw an inference about the responsibility determination based solely on a Party's or witness's absence from the hearing or refusal to submit to cross examination or other questions.

## **Notice of Outcome/Sanction**

### Sanction Process for Student Respondents (Remedy)

Sanctions may be imposed upon any student found to be responsible for violation of this Policy.

Sanctions may be used independently or in combination depending on the particular circumstance of the violation. Severe and/or multiple violations will increase the severity of sanctions applied.

Continued violations will result in more severe disciplinary sanctions. Failure of a Respondent to comply with any disciplinary sanction imposed upon them will result in further disciplinary action.

- Warning Probation: a sanction imposed for a specified period of time. Further violations of the Student Code will result in more severe disciplinary sanctions.
- Disciplinary Probation: a sanction imposed for a specific period of time. Further violations of the Student Code may result in suspension or expulsion.
- Special Conditions: Financial restitution, service to the University, service to the community, attendance at educational seminars, classes, or workshops, written assignments, or other activities deemed appropriate. Some seminars, classes, and workshops may require a registration fee to be paid by the student.
- Parental/Guardian Notification for Alcohol and/or Other Drugs: Parental or guardian notification for serious first offenses, second offenses and any subsequent offenses for students under 21 years of age.
- Loss of Privileges: Denial of specified privileges for a designated period of time. Privileges that

can be denied include, but are not limited to, contact with another person, campus registration of a vehicle, on-campus employment, access to a building or portion of a building, access to a program, access to the University network, participation in extracurricular activities, and any other privilege deemed appropriate.

- **Revocation of degree:** A degree awarded from NMU may be revoked for fraud, misrepresentation or other violation of University standards in obtaining the degree, or for other serious violations committed by a student prior to graduation. Being a degree holding alumna is sufficient association with the University and basis for application of this sanction.
- **Withholding degree:** The University may withhold awarding a degree otherwise earned until the completion of the process set forth in this Student Code, including the completion of all sanctions imposed, if any.
- **Suspension:** A decision of suspension terminates the student's status as an enrolled student for a specific period of time and prohibits the student from attending classes. A suspended student may not enter onto any part of the campus without specific authorization from the Chief of the NMU Police Department or designee and the Dean of Students or designee. Students who reside on campus must remove their belongings from their place of residence within 48 hours of notice of suspension.
  - The terms of suspension may also include other conditions which may apply following the student's reinstatement.
  - At the discretion of the conduct board or conduct administrator who hears the case, the suspension may be held in abeyance.
  - A violation of the terms of suspension or suspension in abeyance may result in an extension of the period of suspension, which may be imposed by the Dean of Students or designee.
- **Temporary Suspension:** In certain circumstances, the Dean of Students or designee may impose a temporary suspension until the student conduct process is completed.
  - Temporary suspension may be imposed only to promote the safety and well-being of members of the University community or preservation of property; or if the Respondent poses an ongoing threat of disruption of, or interference with, the normal operations of the University.
  - During the temporary suspension, a student shall be denied access to University housing, to the campus (including classes), and/or all other university activities or privileges for which the student might otherwise be eligible, as the Dean of Students or designee may determine appropriate.
  - The temporary suspension does not replace the regular student conduct process, up to and through a conduct board hearing, if required.
- **Expulsion:** A decision of expulsion permanently terminates the student's status as an enrolled student. An expelled student may not enter onto any part of the campus without specific authorization from the Chief of the NMU Police Department or designee and the Dean of Students or designee. Students who reside on campus must remove their belongings from their place of residence within 48 hours of notice of expulsion.

#### Sanction Process for Employee Respondents (Remedy)

Sanctions for employees will be determined by Academic Affairs and/or Human Resources, with input from other offices as appropriate. For union employees, sanctions and any appeal of sanctions will be imposed in accordance with the applicable collective bargaining agreement and

NMU Policy and procedures. For nonunion employees, sanctions or any appeal of sanctions shall be determined in accordance with NMU policies and procedures, individual contracts, and/or appointment letters. Sanctions for student employees will be coordinated between applicable departments.

The potential sanctions for an employee may include, but are not limited to:

- Training
- Referral to counseling
- No contact order
- No trespass (in coordination with the NMU Police Department)
- Loss of privileges (access to NMU ground, a building or portion of a building, access to a program, access to NMU Network, participation in programs/activities, and any other privilege deemed appropriate)
- Warning (verbal or written)
- Withholding of a promotion, reassignment
- Temporary suspension with or without pay
- Other discipline up to and including termination from NMU

Student employees may also be subject to discipline pursuant to the Student Code of Conduct.

#### Notice of Outcome

Using the deliberation statement, the Title IX Coordinator/Title IX Administrator will work with the Hearing Officer/Decision Maker to prepare a Notice of Outcome. The Title IX Coordinator/Title IX Administrator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the Parties and their Advisers within five (5) business days of receiving the Hearing Officer/Decision Makers' deliberation statement. The Notice of Outcome will then be shared with the Parties simultaneously. Notification will be made in writing to Parties' NMU-issued email (NMU's preferred means of communication), and/or received in person/via mail (mailed to the local or permanent address of the Parties as indicated in official NMU records). Once emailed, mailed and/or received in person, notice will be presumptively delivered.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent NMU is permitted to share such information under state or federal law; any sanctions issued which NMU is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to NMU's educational or employment program or activity, to the extent NMU is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by NMU to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

#### **Appeals**

##### Appeal of the Notice of Outcome

Either Party may file an appeal. Appeals are limited to the following:

- procedural irregularity that would change the outcome,
- new evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility or dismissal was made,
- the Title IX Coordinator/Administrator, Investigator(s), or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome

#### Appeals - Employee Respondent Matters

Employees appealing must provide the reason(s) for the appeal and sufficient and detailed information that support the reason for appeal.

Appeals must be submitted to the Vice President for Finance and Administration or designee within seven (7) business days of receiving the Notice of Outcome. The Vice President for Finance and Administration Office or designee will convene an Appeal Review Committee of one (1) or three (3) people. The chair of the committee will be determined by the Vice President for Finance and Administration.

The committee shall be empowered to review the case file, and interview witnesses, including the Parties, if the committee deems necessary, within twenty-one (21) business days from the convening of the Appeal Review Committee. The timeline may be extended for cause; all Parties will be notified if an extension occurs. If it is determined that there are material new facts that could have significantly altered the outcome, the case will be sent back to the Title IX Coordinator/Title IX Administrator to determine the appropriate next steps, which may include further investigation. The chair of the Appeal Review Committee will issue a determination to the Vice President for Finance and Administration or designee. If the Appeal Review Committee determines the appeal warrants additional review or reconsideration, it shall submit a written report supporting these findings, along with the recommendation for further action, to the Vice President for Finance and Administration or designee. If the Appeal Review Committee finds that the Decision Maker's determinations should be upheld, it shall so recommend to the Vice President for Finance and Administration or designee.

The Vice President for Finance and Administration or designee will review the recommendation of the Appeal Review Committee and make a determination. The Notice of Outcome will be sent concurrently, using email if possible, or other reliable methods if email is not available. The decision of the Vice President for Finance and Administration or designee is final.

#### Appeals - Student Respondent Matters

Students appealing must provide the reason(s) for the appeal and sufficient and detailed information that supports the reason for appeal. Appeals must be submitted to the Title IX Coordinator/Title IX Administrator within seven (7) business days of receiving the Notice of Outcome. The Provost for Academic Affairs or designee serves as the appeal officer and has twenty-one (21) business days from receipt from the Title IX Coordinator/Title IX Administrator to make and communicate a determination. The timeline may be extended for cause; all Parties will be notified if extension occurs. If it is determined that there are material new facts that could have significantly altered the outcome, the case will be sent back to the Title IX Coordinator/Title

IX Administrator or designee to determine the appropriate next steps, which may include further investigation.

All decisions made by the Provost for Academic Affairs or designee are final.

#### Appeal for Leniency of the Sanction

If the Respondent is a Student:

- Appeals for leniency of the sanction may be submitted to the Provost or designee. A written appeal letter must be submitted to the Title IX Coordinator/Title IX Administrator or designee within seven (7) business days of receiving Notice of Outcome. An appeal letter must meet two conditions: it must cite the basis for the appeal; and it must provide sufficient detailed information to support the appeal. The appeal will not be considered if both these conditions are not met. The Provost or designee for Academic Affairs shall determine if the appeal meets both conditions.
- The grounds for an appeal of the sanction are to determine whether the sanction imposed was appropriate for the violation that the student was found to have committed, considering any previous violations. The person appealing must specify why the sanction imposed is too harsh.
  - Once an appeal is submitted and determined that it meets the appeal conditions, the Provost or designee may:
    - modify the sanction (enhance or lessen);
    - Uphold the sanction; or
    - In extenuating circumstances (conflict of interest, absence of appeal officer, etc.) request the President to appoint an appeal officer designee who shall consider the sanction and render a decision.
  - The Provost or designee shall inform the Respondent, Complainant, Title IX Coordinator/Title IX Administrator, and the Dean of Students or designee in writing as to the decisions within ten (10) business days.

All decisions made by the Provost for Academic Affairs or designee are final.

If the Respondent is an Employee:

- Appeal of a sanction may be appealed to the Vice President of Finance and Administration or designee. A written appeal must be submitted to the Vice President or designee within seven (7) business days of receiving the Notice of Outcome. An appeal letter must meet two conditions: it must cite the basis for the appeal, and it must provide sufficient detailed information to support the appeal. The appeal will not be considered if both these conditions are not met. The Vice President of Finance and Administration shall determine if the appeal meets both conditions.
- The grounds for an appeal of the sanction are to determine whether the sanction imposed was appropriate for the violation that the employee was found to have committed, considering any previous violations. The person appealing must specify why the sanction imposed is too harsh.



- Once an appeal is submitted and determined that it meets the appeal conditions, the Vice President of Finance and Administration or designee may:
  - modify the sanction (enhance or lessen);
  - uphold the sanction; or
- in extenuating circumstances (conflict of interest, absence of appeal officer, etc.) request the President to appoint an appeal officer designee who shall consider the sanction and render a decision. The Vice President shall inform the Respondent, Complainant and the Title IX Coordinator/Title IX Administrator in writing as to the decisions within ten (10) business days.

All decisions made by the Vice President of Finance and Administration are final.