

COMPLAINANT/GRIEVANCE PROCESS B PROCEDURES (Appendix B)

Complaint/Grievance Process B applies to employees of the University with qualifying allegations of only non-Title IX Prohibited Conduct.

Inclusion of Other NMU Offices

The Equal Opportunity Officer may invite other NMU units or offices to participate in an investigation if EOO determines that its investigation may lead to violations of other NMU policies.

The Equal Opportunity Officer/Title IX Coordinator works in the Equal Opportunity Office. Throughout the procedures, reference is made to the EOO, the physical office, as well as the Title IX Coordinator, the individual.

Conflict of Interest

If the Complainant or Respondent believes that the Investigator 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 member. This request must be made in writing to the EOO within five (5) 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 has a conflict of interest or impermissible bias. The Equal Opportunity Officer/Title IX Coordinator or designee 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 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 to recuse themselves must be made in writing to the Equal Opportunity Officer and state the basis for the request. The Equal Opportunity Officer will grant or deny this request in writing. It is within the Equal Opportunity Officer/Title IX Coordinator or designee's discretion to: appoint an alternative Investigator; direct the Investigator to fairly address the conflict of interest or impermissible bias during the investigation; or reject the request on the grounds that no conflict of interest or impermissible bias was demonstrated.

In the event that a complaint is filed against any EOO staff member, 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 Equal Opportunity Officer/Title IX Coordinator with respect to that specific investigation. The University's Vice President of Finance and Administration and General Counsel, or designee, will notify the Equal Opportunity Officer/Title IX Coordinator of the actions taken in the matter and any conclusions therein so that the Equal Opportunity Officer/Title IX Coordinator 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 Assessment

Following receipt of notice of a Complaint of an alleged violation of this Policy, the Equal Opportunity Officer/Title IX Coordinator (EOO/TIXC) engages in an initial assessment. The steps in an initial assessment may include:

- Assess the nature and circumstances of the notice of complaint.
- EOO/TIXC reaches out to the Complainant to provide resources and the opportunity to meet.
- EOO/TIXC works with the Complainant to ensure they are aware of Supportive Measures.
- EOO/TIXC determines if the Prohibited Conduct alleged falls within the scope of this Policy:
 - If it does, the Equal Opportunity Officer/Title IX Coordinator will seek to determine if the person impacted wished to initiate a Formal Complaint, and will assist them to do so.
 - If they wish to move forward, the Complaint/Grievance Process is initiated.
 - If they do not wish to do so, the EOO/TIXC determine(s) whether to initiate the Complaint/Grievance Process. NMU's ability to investigate may be limited without the Complainant's participation.
- The EOO/TIXC works with the Complainant to ensure they are aware of the right to have an Adviser.

NMU may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation, it is determined that:

- The conduct alleged in the Formal Complaint would not constitute Prohibited Conduct as defined in this Policy, even if proved; and/or
- Specific circumstances prevent NMU from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon any dismissal of a Formal Complaint, the EEO/TIXC or Designee, will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Parties.

This dismissal decision is appealable by the Complainant or Respondent under the procedures for appeal. The decision not to dismiss is also appealable by any Party claiming that a dismissal is required or appropriate.

Initiating an Investigation

The EOO will undertake a prompt and equitable investigation of an alleged violation of this Policy.

The University will use its best efforts to complete its Complaint/Grievance Process, including appeals and Notice of Outcome, within 120 business days of the initiation of the Formal Complaint, although this timeline may be extended for good cause. All deadlines may be extended for 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

EOO will request that the Complainant prepare a Complaint, if not already prepared. If the EOO is investigating an allegation of a violation of this Policy without a Complainant's active participation, EOO may draft the Complaint on behalf of a Complainant. NMU's ability to investigate may be limited without the Complainant's participation.

Complainant and Respondent's Rights

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

- have a Support Person and Adviser of their choosing accompany the Party during any stage of the process.
- discuss resources, interim measures, and the investigatory process available.
- participate or decline to participate in the process. However, even if a Party declines to participate, NMU may, with instances involving employees, continue to investigate the matter and issue a Determination based on available information in accordance with this Policy and its Procedures.
- consult with any of the resources available at any time.
- be treated with sensitivity, dignity, and respect.
- request Supportive Measures.
- be kept up-to-date regarding the status of the Complaint.
- not have the Party's irrelevant past sexual history discussed during this process.

Notice to Respondent

The EOO will provide written notice of the investigation and allegations (the "NOIA") to the Respondent upon commencement of the Formal Complaint/Grievance Process. The NOIA to the Respondent will provide:

- the general nature of the allegations, including sufficient details so that the Respondent will be able to prepare a response, including if known: identities of the Parties; conduct allegedly constituting the policy violations; and the date and location of incident(s) giving rise to the complaint;
- 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 of their choice, who may or may not be an attorney, for the duration of the Complaint/Grievance Process;
- notice that the Respondent will be requested to meet with the investigator(s); and
- notice that if the Respondent does not elect to participate in the investigation, EOO will carry out its investigation based on available information and that 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.

Educational Resolutions

Educational Resolutions can include, but are not limited to:

- education and/or training for a Respondent and/or department;
- messaging to the campus community;
- events and/or trainings offered to the campus community or particular departments; and/or
- referral and/or collaboration with another University department in order to address the allegations and eliminate any potential Prohibited Conduct;
- and Educational Resolution is not subject to appeal by any Party.

Investigation and Investigative Report

NMU is permitted to independently, and on its own volition, to 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 typically take(s) the following steps, if not already completed (not necessarily in this order):

- Inform the Parties of their right to have the assistance of an Adviser, who could be an attorney at their own cost.
- 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.
- Gather information and evidence, writes an investigation report, provides a draft review of the report to both Parties, finalizes the report, engages in policy analysis, and renders a decision.

Upon the conclusion of the investigation into an allegation of a violation of this Policy, EOO will produce an investigative report to the Parties for a review containing the following: an overview of

the investigation undertaken; and a summary of all the evidence and statements reviewed and considered.

EOO will provide simultaneous written notice to the Parties that the Draft Investigative Report is available for review. EOO will make the Draft Investigative Report available for ten (10) business days. The Complainant and Respondent may submit any additional comment or evidence to the investigator within the ten (10) business days of the opportunity to review the draft investigative report. The Investigator will incorporate any relevant feedback and finalize the report. The Parties may elect to waive the full ten (10) days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent).

The Investigator will consider all of the evidence and the Parties' comments (if any) and make a finding, by a preponderance of the evidence, whether the Respondent has violated this policy.

Notice of Outcome

The Investigator will prepare a Notice of Outcome. The Notice of Outcome will then be shared with the Parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official NMU records, or emailed (preferred) to the Parties' NMU-issued email or otherwise approved account. Once mailed, emailed, 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 and conclusions regarding the application of the relevant policy to the facts at issue.

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 significantly altered the outcome of the matter;
- bias or conflict of interest that significantly altered the outcome; or
- new evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that significantly altered the outcome of the matter.
 - Evidence that was known to a Complainant or Respondent prior to the Notice of Outcome but withheld by that individual during the investigation, and was not raised does not constitute new information.

- A Party's claim that they did not know about specific evidence contained within the Notice of Outcome or that they did not have an opportunity to respond to certain information within the Determination, including the analysis of the evidence or any statements does not constitute the discovery of new information or evidence.

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) 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 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 a violation, 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 a policy was not violated, it shall recommend to the Vice President for Finance and Administration or designee that the case be dismissed.

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.

Appeal for Leniency of the Sanction

If the Respondent is an Employee:

- Appeal of a sanction may be appealed to the Vice President of Finance and Administration. A written appeal must be submitted to the Vice President or designee within 48 hours 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;
 - 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 or designee in writing as to the decisions within ten (10) business days.