Student Nondiscrimination and Anti-Harassment and Sexual Misconduct Complaint Procedure (Effective September 4, 2026)

PREAMBLE

This procedure accompanies the Nondiscrimination and Anti-Harassment Policy and the Sexual Misconduct Policy ("Policies"). The university may use this Procedure to resolve matters that involve students.

A. Initial Assessment, Interim Action, and Investigation

1. Upon becoming aware of a potential act of Prohibited Conduct,[1] the appropriate office[2] will conduct an initial assessment, consider the potential risk to the community and ensure the provision of educational and support resources. After review by the appropriate office, the assigned investigator will conduct a preliminary review, explain a Complainant's options to seek interim protective measures and for initiating or not initiating the formal investigation or non-investigative resolution process. The Title IX Coordinator or designee will determine the need for any immediate response, such as interim protective measures or interim suspension. The Complainant will be informed of any initial actions taken. The Respondent will be informed of any initial actions that directly impact the Respondent. A Complainant or Respondent may challenge a decision to impose or not to impose interim protective measures as either insufficient or unreasonable by contacting the Office of Civil Rights Compliance in writing (ocrc@nau.edu) to express concerns and request a reversal or alteration of the decision.

2. Following the initial assessment, and based in part on the Complainant's wishes, the Office of Civil Rights Compliance will notify the Complainant and Respondent in writing whether a formal investigation will be initiated. Both the Complainant and Respondent are encouraged to contact the Office of Civil Rights Compliance with any questions or concerns related to interim protective measures or a decision to commence or not to commence a formal investigation.

3. The Dean of Students, in consultation with the Office of Civil Rights Compliance and/or Title IX Coordinator or designee, may restrict or suspend a student for an interim period prior to the resolution of a disciplinary proceeding if the University becomes aware of reliable information that supports an allegation of Prohibited Conduct and determines that the continued presence of the student on campus or at University sponsored events poses a threat of harm or substantial disruption. A decision to restrict or suspend a student for an interim period, and the information on which the decision is based, will be communicated in writing to the student to the student's NAU email account and will become effective immediately as of the date of the written decision. A student who is restricted or suspended for an interim period may, within five (5) business days from the effective date of the interim action, provide information contesting the restriction or suspension. Based on all the information available, the Dean of Students, in consultation with the Office of Civil Rights Compliance and/or Title IX Coordinator or designee, will determine whether the restriction or suspension should remain in place. The interim action will remain in effect until a final decision has been made on pending allegations of a University policy violation(s) or until the Dean of Students, in consultation with the Office of Civil Rights Compliance and/or Title IX Coordinator or designee, determines that the interim action is no longer necessary.

4. In cases where i) risk to the University community may exist and/or the Complainant wishes to pursue

[1] The term "Prohibited Conduct" refers to conduct defined in and prohibited by the University's *Sexual Misconduct Policy* and the University's *Nondiscrimination and Anti-Harassment Policy*. This procedure should be read in conjunction with either or both of those policies.

[2] For the purposes of this procedure, "the appropriate office" means Office of Civil Rights Compliance and/or Office of Title IX Compliance and Services.

formal resolution, ii) sufficient information including specific name(s), date(s), location(s) and a credible description(s) of the alleged act(s) of misconduct is available, and iii) the matter falls within the University's jurisdiction, the appropriate office may decide to conduct a formal investigation, and if so, promptly will notify the Complainant and the Respondent in writing of the commencement of a formal investigation. This "Notice of Allegations and Investigation" will identify the Complainant and the Respondent, will specify the date, time, location, and nature of the alleged misconduct and policy violation in sufficient detail to enable the Respondent to effectively respond, will explain the prohibition against retaliation, will instruct the parties to preserve potentially relevant evidence, will identify the Investigator, will inform the parties of their right to challenge the participation of the Investigator on the basis of bias or conflict of interest, will outline the rights, protections and expectations of the parties of these procedures and will include copies of the applicable University policy and procedure documents.

5. The Investigator will conduct a fair, impartial and thorough investigation. The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible for a violation of University policy. This presumption only may be overcome if a preponderance of the evidence[3] supports a finding of responsibility for the alleged violation. The parties will have an equal opportunity to submit information, to identify witnesses who may have relevant evidence, and to submit questions they believe should be directed by the Investigator to each other or any witness. The Investigator will seek to meet separately with each party and any witnesses and will make a deliberate and good faith effort to gather and assess all relevant and credible information and evidence that may be available.

6. At the conclusion of the investigation, the Investigator will prepare a "Draft Investigation Report" that will include all relevant information and evidence gathered and that will outline the uncontested and contested information. The Draft Investigation Report will not include any findings. Upon completing the Draft Investigation Report, the Investigator will inform the parties in writing of their opportunity to review the report and to take notes, but not to copy or otherwise duplicate or distribute the report. The Investigator will provide the report in a secure electronic manner. Given the sensitive nature of the information, neither party (nor their advisors or family members, if applicable) may disseminate or publish contents of the Draft Investigation Report to non-involved parties. A student, advisor, or family member who violates this prohibition may be subject to discipline or may be excluded from further participation in the investigative process. After reviewing the Draft Investigation Report, the Complainant and Respondent will each have a period of five (5) business days to submit to the Investigator any additional comments, questions, information, evidence or to identify any other party or witness who may have information relevant to the investigation.

7. In the absence of extraordinary circumstances, information discoverable through reasonably diligent, persistent effort by a Complainant or Respondent that is not provided to the Investigator by the conclusion of the investigation response period of these procedures will not be considered in the determination of responsibility for an alleged violation of University policy.

8. The Investigator will conduct any additional investigation that may be warranted considering additional input from the Complainant and/or Respondent. If the Investigator conducts significant additional investigation, the Investigator will revise the Draft Investigation Report accordingly to include any additional information and will again arrange for the parties to have the opportunity to review and comment on the newly finalized Draft Investigation Report. After the investigative and Complainant and Respondent review and response period concludes, the Investigator will prepare a "Final Investigation Report" for consideration by the Dean of Students by adding to the Draft Investigation Report the Investigator's recommendation as to whether a preponderance of the evidence does or does not support a finding of responsibility for the alleged University policy violation(s).

B. Informal Resolution

In some cases, taking into consideration the wishes of the Complainant, the appropriate office may decide to address the concerns using a non-investigative or informal resolution method. If so, the appropriate office will notify the Complainant of the decision and notify the Complainant when the non-investigative or informal resolution process completes.

[3] "Preponderance of the evidence" means that based upon all the available convincing evidence and its probable truth or accuracy, it is more likely than not that the alleged violation occurred. Alternatively stated, preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

C. Determination and Appeal

1. A three-person panel (Panel) will review the Final Investigation Report, any written submissions by the parties, and all other case materials to i) ensure that the Investigator conducted a fair, reliable, and impartial investigation, and ii) to determine whether the Panel concurs with the Investigator's recommended finding that a preponderance of the evidence renders it more likely than not that the student is responsible for the alleged violation(s). The Panel may agree with, modify, or overrule the Investigator's finding(s) or request additional investigation. When the Panel determines that the Respondent is responsible for an alleged violation, the panel will determine the appropriate remedial response that may include administrative actions, educational interventions, and/or disciplinary sanctions.[4] The Panel chair will document these decisions in a decision letter that will be transmitted concurrently to the parties. The Panel will decide the matter by simple majority.
2. The Panel's decision letter i) will restate the alleged policy violation(s); ii) will state the finding(s) of responsible or not responsible; iii) will provide the Panel's rationale in support of the decision; iv) will state whether information from the student's prior conduct record was used and the purpose of its use and whether sexual history was deemed relevant; v) in cases of a finding of responsibility, will provide the Panel's rationale supporting the remedial response; vi) will explain the parties' rights of appeal and the deadline for doing so; and vii) will include instructions for accessing a copy of the Final Investigation Report, which will be redacted as necessary to protect the privacy interests of all persons involved. The effective date of a suspension or expulsion may be no sooner than five (5) business days following the date of the Panel's decision letter.

3. The Complainant and/or Respondent may appeal a finding of responsible or not responsible Appeal requests must be based on one or more of the following grounds:

    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 that could affect the outcome of the matter;
    c. Insufficiency or excessive severity of the sanction;
    d. The decision is not reasonably justified by the evidence or is contrary to law; or
    e. the Title IX Coordinator(s), investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

4. Appeals should be submitted in writing to ocrc@nau.edu within the stated time frame. Following a request for appeal, the Office of Civil Rights Compliance and/or Title IX Coordinator or designee first will determine whether the request sets forth proper grounds for appeal. If the appeal states a proper ground, the Office of Civil Rights Compliance and/or Title IX Coordinator or designee will forward the materials to the appeal decision-maker who will undertake or direct whatever additional action is deemed necessary to resolve the issue(s).

5. The appeal decision-maker may uphold or modify the sanction or grant a rehearing on responsibility by a new hearing panel. The decision of the appeal decision-maker is final and constitutes the University's final administrative action on the matter.

6. The appeal decision-maker will issue a written decision simultaneously to both parties, describing the result of the appeal and the rationale for the result within sixty (60) business days from the date no further appeal can be filed, absent an unanticipated or reasonable delay. If a delay arises, the university will notify both parties simultaneously of this.

7. The appeal process generally takes up to sixty (60) business days. If the appeal decision-maker grants a rehearing by a new panel, the timelines generally applicable to the hearing and appeal process shall apply.

8. The filing of a timely notice of appeal by the Respondent will suspend the imposition of the remedial response (but will not impact the application or effectiveness of interim protective measures or interim suspension) pending the outcome of the appeal process. If the remedial response includes suspension or expulsion, the Respondent will not be permitted to graduate until the appeal proceeding has concluded.

[4] The University's conduct-related administrative actions, educational interventions, and disciplinary sanctions are described in Appendix B of the Sexual Misconduct Policy and in Appendix A of the Nondiscrimination and Anti-Harassment Policy.

9. An Appellant may withdraw the appeal at any time prior to the appeal hearing by notifying the Office of Civil Rights Compliance (at OCRC@nau.edu) and/or Title IX Coordinator (at titleix@nau.edu) in writing of the decision to withdraw the appeal. The decision to withdraw an appeal is final and may not be reversed once written notice is given.

D. Review by the Civil Rights Hearing Panel

1. The Civil Rights Appeal Hearing Panel ("Appeal Panel") reviews appeals of protected category discrimination, including sex-based discrimination or misconduct under this procedure. For purposes of this procedure, the Appeal Panel serves an advisory role to the Vice President for Student Affairs who will make the final decision.

2. The Appeal Panel's recommendation may have two parts depending on the nature of the appeal. First, the Appeal Panel may make a recommendation as to whether, based upon a preponderance of the evidence, it is more likely than not that the Respondent violated University policy as alleged. Second, the Appeal Panel may make a recommendation as to whether the sanction imposed by the Panel should be affirmed, modified, or removed.

3. The Appeal Panel will be comprised of three (3) trained members, who will be current or retired faculty or professional staff members or other trained individuals. The Office of Civil Rights Compliance and/or Title IX Coordinator or designee shall appoint the Appeal Panel members and will designate the Chair from the Appeal Panel Chair pool, who will serve as the hearing's presiding officer. Only appropriately trained individuals will be selected to serve on panels hearing cases involving allegations of protected category discrimination and sexual misconduct.

4. Each party will have an equal right to participate in the appeal hearing. While in-person participation (which includes by Zoom, Teams, or other technology) by the Appellant is mandatory, the absence of the opposite party will not prevent the hearing process from proceeding. Each party may submit a written statement to the Appeal Panel Chair to be distributed to and reviewed by the Appeal Panel members prior to the hearing and/or may make brief opening and closing statements at the hearing. The University shall make alternative arrangements for Complainants or Respondents who do wish to participate but who do not wish to be present in the same room with the opposite party during the hearing.

E. Prehearing Procedures

1. The Office of Civil Rights Compliance and/or Title IX Coordinator or designee will notify the Appeal Panel members and the Appeal Panel Chair of their selection in writing.

2. The Appeal Panel Chair shall set a hearing date no later than twenty (20) business days after receipt of the student’s request for hearing (except in cases that must carry over from the spring to the fall semester to accommodate Appeal Panel member availability or in where an unanticipated factor makes delay necessary).

3. The Appeal Panel Chair or designee will prepare and transmit a written “Notice of Hearing” to the parties no less than ten (10) business days before the hearing date. The notice will include:

    a. A statement of the date, time, location, and nature of the hearing and a statement of the Appeal Panel's legal authority and jurisdiction;

    b. A copy of the Appeal Panel’s decision letter that outlines the alleged policy violation, investigative findings, and any remedial response;

    c. Notice of the party’s right to be assisted by an advisor, who may be, but is not required to be, an attorney at the hearing, which explains that the exercise of this right is at the student’s option and sole expense;

    d. A copy of or hyperlink to the applicable policy and these procedures;

e. The names of the Appeal Panel members, and the Appeal Panel Chair's University contact information;

f. An explanation of the pre-hearing information exchange requirement and notice that the Appeal Panel will not accept or consider evidence not previously disclosed in accordance with these procedures;

g. Notice of the procedure for questioning the opposite party and, if applicable, the restrictions regarding a party's sexual history as stated in this procedure;

h. The length of time set for the hearing and the time limitation for the presentation of evidence and witness testimony; and

i. Notice the of the parties' rights to challenge the participation of any Appeal Panel member based on actual or perceived personal bias or conflict of interest, and the deadline and procedure for doing so.

4. A party who cannot attend the hearing on the date scheduled due to extraordinary circumstances must notify the Appeal Panel Chair in writing of the reasons why their attendance cannot occur on the date scheduled. The Chair will determine whether to approve or deny the request to reschedule the hearing.

5. No later than five (5) business days prior to the hearing, the Complainant and the Respondent will provide the Appeal Panel Chair (who will provide copies to all parties) with the following:

   a. A list of the names of the witnesses who may be called to testify at the hearing;

   b. A concise summary of the anticipated statements of each witness;

   c. Copies of all documents and descriptions of other evidence to be presented at the hearing; and

   d. The name of any advisor for the Complainant or Respondent who may be present to support or participate in the hearing.

6. To object to the introduction of a document or information at the hearing, the Complainant or Respondent must submit a written objection to the Appeal Panel Chair no later than two (2) business days before the hearing. After providing the other party an opportunity to respond, the Appeal Panel Chair shall rule on any objections. Absent a timely objection, the document or information received by the Panel shall become part of the record and shall be considered.

7. A Complainant or Respondent who wishes to challenge the participation of any member of any Appeal Panel on the grounds of bias or conflict of interest must submit a written statement to the Appeal Panel Chair setting forth the basis for the challenge no later than two (2) business days prior to the hearing. The Chair will determine whether to sustain or deny the challenge. If the challenge is sustained, the Office of Civil Rights Compliance and/or Title IX Coordinator or designee will appoint a replacement to serve on the panel. If a challenge is filed against the Appeal Panel Chair, the Office of Civil Rights Compliance and/or Title IX Coordinator or designee will rule on the challenge.

8. Members of the University community are expected to comply with any request or directive issued by the Appeal Panel Chair in connection with a *Sexual Misconduct* or *Nondiscrimination and Anti-Harassment* proceeding. Upon specific request from the student, the Chair will send a communication to a member of the University community requesting their presence at the hearing and providing notice of the University's expectation that they appear.

9. The Appeal Panel Chair may choose to conduct a pre-hearing conference with the parties to clarify the hearing procedures, to prepare, and to facilitate the process. A party who cannot attend the pre-hearing conference on the date scheduled due to extraordinary circumstances must notify the Chair in writing, who will determine whether to approve or deny the request to reschedule the pre-hearing conference.

10. For good cause shown, the Appeal Panel Chair may extend the Appeal Panel appeal process timeframes and deadlines by notifying all parties in writing.

F. Conduct of the Hearing

1. The Appeal Panel Chair will preside at the hearing and will rule on all procedural matters. Formal rules of evidence will not apply, although the Chair may consider objections to the introduction of specific statements or evidence. The Chair will maintain proper order and decorum and will exclude irrelevant, immaterial, privileged, or unduly repetitious information or testimony. The Chair may establish reasonable time limits for oral presentation and examination of witnesses and other evidence.

2. To preserve the confidential nature of the process and to protect the privacy interests of the Complainant and Respondent and the witnesses, the hearing will be closed to non-participants. However, any Complainant, as defined by and provided the right to attend such hearings by law, will be permitted to attend the hearing in its entirety. The Appeal Panel Chair will exclude from the hearing any witnesses other than the Complainant and the Respondent except during their own testimony.

3. The Appeal Panel may be supported by its own legal counsel at any time.

4. In an appeal of a decision by the Panel to find the Respondent not responsible for the alleged violation, or an appeal of a sanction as insufficient, the Complainant/Appellant will have the burden of showing why the Panel's decision should be modified.

5. The Complainant and Respondent will not be allowed to question each other directly but may present questions to be directed to the opposite party by the Chair after the Chair has screened the questions for appropriateness and relevance. The Chair shall read into the record any questions the Chair deems inappropriate or irrelevant and the parties shall have the opportunity to respond on the record to the Chair's decision to exclude a question.

6. Information regarding prior misconduct may not be used as proof of a current violation but may be admitted at any time during the hearing to show prior experience relevant to the alleged policy violation or that the student had previously been informed that the conduct was not acceptable. Information regarding a student's prior misconduct also may be considered in determining an appropriate remedial response. Prior to the presentation of such information, the Panel Chair shall provide an appropriate limiting instruction regarding how the information is to be used.

7. The sexual history of the Complainant or Respondent will not be used to prove character or reputation. Questioning or evidence about a Complainant's prior sexual conduct with anyone other than the Respondent shall not be permitted. Evidence related to the sexual history of the parties is generally not relevant to the determination of a sexual misconduct violation and will be considered only in limited circumstances. For example, if the existence of consent is at issue, the sexual history of the parties with each other may be relevant. Even in the context of an intimate relationship, however, consent to one sexual act does not constitute consent to another sexual act.

8. An Appellant student who requests a hearing and fails to appear or refuses to participate will be deemed to have abandoned the request for an appeal, unless the student can demonstrate that extraordinary circumstances prevented the ability to appear or participate.

9. The appropriate office is responsible for administering the appeal process and ensuring that the hearing is recorded by electronic device or by court reporter. The recording will be available for transcription in whole or in part upon request. Absent financial hardship, the requestor will pay the cost of the transcript.

10. Following an introductory statement by the Appeal Panel Chair stating the nature and scope of the hearing, the basic procedures to be followed, and the appropriate decorum to be maintained, the parties will present opening statements. The Appellant will speak last. Thereafter:

    a. Each party may call witnesses to provide statements under oath.

    b. At the conclusion of each witness statement, the other party may question the witness.

    c. The Appeal Panel members may ask further questions of each witness.

d. Rebuttal witnesses may be called to refute statements or other evidence offered by any party.

G. Civil Rights Hearing Appeal Panel Deliberations and Recommendation

1. Following the closing statements and before reaching a decision, the Appeal Hearing Panel members will discuss the information that has been presented and the reasonable inferences to be drawn from it. Only the Appeal Hearing Panel and its legal counsel, if any, may be present during the Appeal Hearing Panel's private deliberations, which will not be recorded or transcribed.

2. Based solely on the preponderance of the evidence presented during the hearing and its probable truth or accuracy, the Appeal Panel will formulate its recommendation as to whether the student more likely than not committed the alleged violation, and if so, the sanction that should apply. The recommendation must be supported by a simple majority of the Appeal Panel members.

3. The Appeal Panel will not deliberate on the appropriate sanction unless and until it determines that the Respondent is responsible for the violation or the Respondent has accepted responsibility for the violation. In determining any sanction to recommend, the Appeal Panel may consider any relevant mitigating or aggravating circumstances, including but not limited to, prior conduct records.

4. The Appeal Panel Chair will provide the Appeal Panel's recommendation in writing to the Appellant and the Vice President for Student Affairs within five (5) business days following the hearing, absent unforeseen circumstances. The recommendation will include findings of fact, a statement of the reasons for the recommendation, and will be signed by the Chair. If the recommendation is not unanimous, an explanation of any minority opinions should be included.

H. Review and Decision by the Vice President for Student Affairs

1. Following a review of the Appeal Panel's recommendation and the related case materials, the Vice President for Student Affairs will render a written decision that either affirms, denies, or modifies the Appeal Panel's recommendation.

2. If the Vice President does not accept or modifies the Appeal Panel's recommendation, the Vice President will explain the reasons for any variance in the decision letter.

3. The Vice President will issue the final outcome letter no later than ten (10) business days following receipt of the Appeal Panel's recommendation, except when it becomes necessary for the University to conduct further investigation or to remand the matter back to the Appeal Panel, in which case the written decision will be transmitted no later than ten (10) business days following completion of any subsequent investigation or recommendation by the Appeal Panel.

4. Copies of the decision letter will be transmitted concurrently to the Appellant and the Office of Civil Rights Compliance and/or Title IX Coordinator. The university will notify the Complainant of relevant factors of the appeal only when the disposition might influence a remedy previously made available to the Complaint.