



Sexual Misconduct Policy

Title IX and Violence Against Women (VAWA)

(Applies to Students, Faculty, and Staff)

Effective: June 2015 | Revised: October 5, 2017 | Revised: April 11, 2019 | Revised: October 20, 2019 | Revised January 27, 2020

Related documents: Title IX and VAWA Sexual Misconduct Incident Form, Sexual Misconduct Bill of Rights

Policy

National American University (NAU) is committed to maintaining an educational and working environment that is free from discrimination, harassment, and sexual violence. If a member of the university community feels that she/he has experienced such misconduct, the concerns should be brought to the attention of the Title IX coordinator and/or the director of human resources as soon as reasonably possible. NAU's policy requires prompt response to the complaint and provides for fair and equitable treatment for all parties involved.

Title IX of the Education Amendments of 1972 (20 USC § 1681 et seq.) and the Violence Against Women Reauthorization Act of 2013 (VAWA) (42 USC § 13701 et seq.) together prohibit sex discrimination, sexual harassment, sexual violence, domestic violence, dating violence, and stalking that take place on a campus, via other media, or at a university sponsored event. These acts are prohibited whether by a student, faculty member, staff member, or a third party.

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1. Sexual Misconduct

Sexual misconduct includes, gender discrimination, sexual harassment, sexual violence, hostile environment, dating violence, domestic violence, and stalking as more particularly defined in Section 4 below. Sexual misconduct of all types applies to all genders including incidents that occur between parties of the same sex.

2. How to Report Sexual Misconduct

- Any student who experiences or becomes aware of sexual misconduct should promptly report the incident to the Title IX coordinator.

Title IX Coordinator
5301 Mt. Rushmore Road
Rapid City, SD 57701
605-809-8511
TitleIX@national.edu

- b. Any university faculty or staff member who experiences or becomes aware of sexual misconduct should promptly report the incident to the director of human resources (HR).

Gordon Brooks
5301 Mt. Rushmore Road
Rapid City, SD 57701
605-394-4947
gbrooks@national.edu

- c. Responsible employees as defined by Title IX, are those employees designated by the university who are required to report or take action on any sexual misconduct incidents that they are aware of, receive reports of, or should have reasonably known about.
- Program Coordinators, Chairs, Deans
 - Human Resources Employee Relations
 - Director of Human Resources
- d. Incidents of sexual misconduct should be reported as soon as possible to avoid loss of evidence and critical information.
- e. The responsible employees listed above must report and act on, any incident of sexual misconduct within 48 hours or as soon as practical after a holiday weekend after becoming aware of any incident of sexual misconduct. Even if a person does not wish to file a police report, an investigation must be conducted.
- f. A designated responsible employee who fails to report an incident of sexual misconduct in a timely manner shall be subject to sanctions for failure to comply with university policy as set forth in the employee handbook.

3. Confidentiality

- a. The university will strive to ensure the confidentiality of the person who experienced sexual misconduct and the results of the investigation. Please note, the university's ability to investigate and respond appropriately may be limited if strict confidentiality is maintained. Also, the university may be required by law to report certain incidents.
- b. The Title IX coordinator or the director of human resources will review requests for confidentiality on a case-by-case basis.
- c. The specifics of the case will only be discussed with individuals of the university community that have a need to know.

While persons who experience sexual misconduct are encouraged to report claims to local law enforcement, the university will only report claims as required by law, including incidents or sexual violence against a minor.

4. Definitions

- a. **Sex Discrimination** – Discrimination or harassment based on a person’s gender. Sex discrimination also includes discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.
- b. **Sexual Harassment** – Any unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, verbal or physical conduct or communication of a sexual nature.
- c. **Sexual Violence** – Rape, sexual assault, sexual battery, sexual coercion.
- d. **Hostile Environment** – A hostile environment is one in which the unwelcome behaviors are repeated and severe. The behaviors impede the student or staff member’s ability to function in the workplace or academic setting. A hostile environment is looked at from a “reasonable person” perspective. In cases of sexual violence and severe harassment, one incident can create a hostile environment.
- e. **Dating Violence** – Abuse committed by someone who has been in an intimate relationship with the victim.
- f. **Domestic Violence** – Abuse committed against someone who is a cohabitant in an intimate relationship, a spouse, or someone who has a child with the accused. This also includes former relationships.
- g. **Discrimination based on Pregnancy** – Discrimination or harassment based upon a person’s pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions.
- h. **Stalking** – Conduct that involves excessive attention directed at a specific person that intends to harass or intimidate causing a reasonable person to fear for their safety or the safety of others.
- i. **Consent** – Consent is voluntary and is revocable. Just because consent was given at one time does not mean that consent is ongoing. Consent cannot be given if the person is incapacitated or unconscious from drugs or alcohol impairment. Consent can also not be given if the person has a mental or physical impairment.

5. Process for Addressing Claims

- a. **Initial Actions**
 - 1) The person reporting an incident of sexual misconduct shall promptly complete and submit a written statement to the responsible employee listed in Section 2.c. above.
 - 2) The responsible employee communicates with, and provides the written statements, to the Title IX coordinator and/or the director of human Resources within 48 hours of receiving the complaint. Statements should be emailed to the Title IX [coordinator at](#)

TitleIX@national.edu and the director of human resources at hremployeerelations@national.edu.

- 3) The person initially receiving the report of sexual misconduct promptly provides a written list of community resources to the victim and the accused. The responsible employee or Title IX coordinator ensures the victim understands she/he can report the crime to local law enforcement. If requested, a Minnesota campus staff member is also required to accompany the victim to report the crime or to the hospital for tests.
- 4) If the incident involves a faculty or staff member, the Title IX coordinator will promptly notify the university's human resources department and office of general counsel.
- 5) The incident will be reported to state authorities, if required by law.
- 6) The Title IX coordinator and/or the director of human resources will promptly communicate with appropriate persons to implement measures to immediately end any sexual misconduct and prevent future misconduct, including reasonable interim measures while the incident is investigated. Interim measures may include:
 - a) Changing a class schedule or campus to keep the parties separated.
 - b) Offering counseling for both parties. Counseling information for students is available at mycampus.national.edu. Counseling information for employees is available on the human resources webpage at mynau.national.edu.
 - c) Allowing the accused to continue participating in classes through other delivery methods, including online courses, if practical as determined by the Title IX coordinator.

b.

c. Investigation

The Title IX coordinator and/or the director of human resources will conduct an investigation and strive to complete the investigation within 30 days after receipt of the complaint. During the investigation, the Title IX coordinator and/or the director of human resources will: create a file; determine the persons to be involved in the investigation; formulate a plan; log evidence; conduct preliminary interviews; revise plan, as appropriate; conduct follow-up interviews, as appropriate; assess credibility of interviewees; prepare final report, including findings and conclusions.

d. Informal Resolution

The Title IX coordinator and/or the director of human resources may determine that informal resolution is appropriate, including mediation, separation of the parties, counseling, and other appropriate measures. (Some cases may not be appropriate for informal resolution, such as sexual violence.)

e. Formal Proceeding

- 1) The Title IX coordinator and/or the director of human resources may determine that a formal proceeding is appropriate, including incidents involving claims of violence, injury, or use of weapons; prior or multiple complaints against the accused; or other serious circumstances.

- 2) When a formal proceeding is appropriate, the Title IX coordinator and/or director of human resources will coordinate a formal hearing, generally within seven business days after completion of the investigation.
- a) The hearing will be conducted before a committee comprised of three university staff members from Central Administration who are trained in Title IX procedure.
 - b) Written notice of the date, time, and location of the hearing will be provided to the parties at least 5 days prior to the hearing. The Title IX coordinator or the director of human resources may grant an extension for good cause.
 - c) Prior to the hearing, the committee will be provided with a copy of the original complaint, any response from the accused, any evidence, and any witness statements.
 - d) The hearing will be conducted in a fair and impartial manner. The parties will have the opportunity to attend the hearing, present their cases, present witnesses, present evidence, but may not question each other. Each party may be accompanied by an advisor; however, the advisor may not speak during the proceedings. A member of the committee shall take general notes of the proceeding, which will be retained in the student's file.
 - e) The decision of the committee will be based upon clear and convincing evidence standard (substantially more likely than not to be true).
 - f) The committee will strive to render a final decision, with appropriate sanction, within three business days after the hearing and will promptly provide a copy of the decision to the Title IX coordinator and/or the director of human resources. The Title IX coordinator and/or the director of human resources will provide a copy of the final decision to each party within three business days after the decision.

3) Sanctions.

The following sanctions may be imposed upon a person determined to have committed sexual misconduct:

Student Sanctions	Employee Sanctions**
<ul style="list-style-type: none"> • Warning • Probation • Suspension • Permanent Suspension * • Other measures as determined appropriate 	<ul style="list-style-type: none"> • Informal Discussion with the Employee • Suspension Pending Investigation (with or without pay) • Termination of Employment • Other measures as determined appropriate

* Permanent suspension may only be imposed by the provost upon recommendation from the Title IX hearing committee.

** Employee sanctions must be approved by the director of human resources.

4) Appeal

- a) Either party will have the right to appeal the final decision of the committee by providing the Title IX coordinator or the director of human resources with written notice of appeal within three business days after receiving a copy of the final decision.

- b) A decision on the appeal will be rendered by the provost (students) or the director of human resources (employees) after reviewing all documentation and tangible evidence, including hearing notes, from the initial proceeding.
- c) The provost or director of human resources may affirm, reverse, remand the decision and may modify or vacate the sanction imposed by the committee.
- d) Unless the matter is remanded to the Title IX hearing committee, the decision of the provost or director of human resources is final, without further appeal.

5) Record Retention

All documentation and reports will be kept for a period of seven years in accordance with the university's Record Retention and Destruction Policy.

6. Non-Retaliation

- a. NAU has a strict Harassment and Non-discriminatory Policy. Retaliation against any individual for making a complaint under this policy, for opposing sexual misconduct, or for participating in an investigation of any claim related to sexual misconduct is strictly prohibited.
- b. Any person who engages in retaliatory conduct will be subject to appropriate corrective action, including discipline up to and including termination of an employee or permanent suspension of a student.
- c. If a student or employee has experienced retaliation, the retaliation should be immediately reported to the Title IX coordinator, the director of human resources, or a responsible university employee listed in Section 2.c above.

7. Training

Training that addresses Title IX, VAWA, sexual misconduct awareness, prevention, bystander actions, and this policy and procedure will be provided to all students, faculty, staff, and parents of minor students when they join the university community. Such information shall also be provided in multiple formats to all students, faculty, staff, and parents of minor students at least annually.

8. False Claims

Any student who files a fraudulent claim or otherwise misrepresents facts in a sexual misconduct complaint may be subject to the university's student conduct policy. Employees who file a fraudulent claim or otherwise misrepresents facts in a sexual misconduct claim may be subject to the university's employee conduct policy.

Related Policies:

- Harassment and Non-discriminatory Policy Student Conduct Policy
- Employee Conduct Policy
- Record Retention and Destruction Policy

References:

- Title IX of the Education Amendments of 1972 (20 USC § 1681 et seq.)
- Violence Against Women Reauthorization Act of 2013 (VAWA) (42 USC § 13701 et seq.)

The foregoing policy and procedure were adopted or revised by the university's CEO, effective on the date indicated above. If you have questions, comments, or suggestions about this policy or procedures, please contact the university's Title IX coordinator.