NOMMA Title IX Formal Grievance Procedure

A. Basic Elements of Grievance Procedure

The following are all components of NOMMA's grievance process:

1. Treat complainants and respondents[1] equitably by providing remedies to a complainant after a determination of responsibility for sexual harassment has been made against a respondent, and by following this grievance process before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to NOMMA's education program or activity. Remedies may include supportive measures but may also include punishing respondent.
2. Provide an objective evaluation of all available evidence without making credibility determinations based on a party's status as complainant, respondent, or witness.
3. The Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal process must not have a conflict of interest or bias for or against complainant or respondent. Training is provided for these individuals on definition of sexual harassment, scope of NOMMA's program or activity, how to conduct an investigation and grievance process, hearings, appeals and informal processes. Investigators are trained on how to prepare an investigation report. Decision-makers are trained on issues of evidence and questioning.
4. There is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the grievance process.
5. Reasonably prompt time frames for completing the grievance process, including a process for delays such as law enforcement involvement, absence of a witness, party, etc. with written notice to both parties explaining the reasons for the delay. NOMMA strives to complete every Title IX formal process within 45 business days of receiving a formal complaint.
6. Identify possible disciplinary sanctions and remedies that may be implemented. Remedies may include disciplinary action up to and including suspension or termination of employment (if an employee) and suspension or expulsion (if a student).
7. NOMMA has adopted the preponderance of the evidence standard to determine responsibility.
8. Provide procedures and permissible reasons for appeal by a respondent or a complainant.

[1] A "Complainant" is the individual alleged to be the victim of conduct which could constitute sexual harassment under Title IX. A "Respondent" is the alleged perpetrator of conduct which could constitute sexual harassment under Title IX.

9. Provide a description of the range of supportive measures available to complainants and respondents.
10. Disallow evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.

B. Written Notice

NOMMA provides a written notice to all known parties upon receipt of a formal complaint. The Notice includes all of the following:

1. Notice of the grievance process, including any informal resolution process;
2. Notice of the allegations potentially constituting sexual harassment as defined in Title IX with sufficient details (names, dates, conduct, location, etc.) to allow the respondent to prepare a response before any initial interview;
3. A statement that the respondent is presumed not responsible for the conduct and responsibility will be determined at conclusion of grievance process;
4. Notice of the parties' right to have an advisor (may be an attorney) and to inspect and review evidence, and that
5. The code of conduct prohibits knowingly making false statements or providing false information in the grievance process.

C. Dismissal

1. A formal complaint must be dismissed if the allegations do not constitute sexual harassment as defined, did not occur in NOMMA's program or activity, or did not occur against a person in the United States.
2. A formal complaint may be dismissed if complainant notifies the Title IX Coordinator at any time that he/she wishes to withdraw the complaint or an allegation, if the respondent's enrollment or employment ends, or if specific circumstances prevent NOMMA from gathering evidence (e.g. passage of several years between complaint and alleged conduct, non-cooperation of complainant, etc.).
3. Notice of dismissal must be provided to both parties, including the reasons for dismissal.

D. Consolidation

Where allegations arise out of the same facts or circumstances, formal complaints can be consolidated against more than one respondent, by more than one complainant against one of more respondents, or by one party against another party.

E. Investigation

NOMMA's investigative process:

1. Ensures that the burden of proof and gathering evidence rests on NOMMA rather than the parties (note: certain treatment records cannot be obtained without voluntary, written consent; also parent consent may be sought under FERPA if applicable);
2. Provides an equal opportunity for the party to present witnesses and evidence;
3. Does not restrict either party's ability to discuss the allegations or gather and present evidence;
4. Provides the same opportunity to have others present during interviews or other proceedings, including an advisor (who may be an attorney) and ensures that any restrictions on advisor participation apply equally to both parties;
5. Provides written notice to a party who is invited or expected to attend and includes, the date, time, participants, purpose, and location of any investigative interview or other meeting with enough time to allow the party to prepare to participate
6. Provides both parties and their advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which NOMMA does not intend to rely and any exculpatory or inculpatory evidence from any source; must be provided prior to the completion of the final investigative report and in time to give the parties at least 10 days to submit a written response, which investigator must consider before completing the investigation report; and
7. Includes preparation of a written investigation report that fairly summarizes the relevant evidence; report will be provided to the parties and their advisors at least 10 days before a determination of responsibility for review and written response.

F. Hearings and written questions

No hearing is required in K-12 educational institutions. NOMMA does not provide a hearing as part of its Title IX process. After NOMMA has sent the investigative report to the parties and before reaching a determination regarding responsibility the decision-maker will provide each party the opportunity to submit written, relevant questions that the party wants asked of another party or witness, provide each party with the answers, and provide for limited follow-up questions. The amendments provide restrictions, with limited exceptions, on certain types of questions related to the complainant.

G. Determination of Responsibility

The decision-maker cannot be the investigator or the Title IX Coordinator. The decision–maker issues a written determination of responsibility that:

1. Identifies the allegations that potentially constitute sexual harassment as defined in the amendments;
2. Describes NOMMA's procedural steps taken from the receipt of the complaint to the determination;
3. Includes findings of fact supporting the determination;

4. Includes conclusions regarding application of the code of conduct to the facts;
5. Includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions imposed upon the respondent, and whether remedies to restore or preserve equal access to NOMMA's education program or activity will be provided to the complainant; and
6. Includes procedures for appeals.

H. Appeals

1. Both parties have the right to appeal a determination of responsibility and NOMMA's dismissal of a complaint or any allegations for the following:

    a. A procedural irregularity that affected the outcome;
    b. New evidence that was not reasonably available at the time of the determination regarding responsibility and could affect the outcome; or
    c. Conflict of interest on the part of the Title IX Coordinator, investigator, or decision-maker that affected the outcome

2. Both parties have 10 days from the day of the receipt of the decision from the decision maker to appeal. Appeals related to a Title IX Investigation shall be sent in writing to the NOMMA Commandant at the following address: 425 O'Bannon St, New Orleans, LA 70114 and emailed to: cschlafer@nomma.net.
3. NOMMA will ensure that written notice is provided to both parties of the appeal and provide both parties an equal opportunity to submit a written statement in support of, or challenging, the determination.
4. A written decision of the appeal will be provided to both parties simultaneously.
5. The decision-maker for the appeal (the appeal decision-maker) cannot be the Title IX Coordinator, the investigator or the initial decision-maker.
6. In reviewing the decision, the NOMMA Commandant may uphold, modify, or reverse the decision of the Title IX Coordinator; however, the NOMMA Commandant's review of the Title IX Investigative findings is final.