

# NASFAA Code of Conduct Enforcement Procedures

Through its Statement of Ethical Principles and Standards (the “Statement of Ethical Principles”) and its *Code of Conduct*, the National Association of Student Financial Aid Administrators (NASFAA) promotes ethical behavior by its member institutions engaged in the administration of student financial aid. The Statement of Ethical Principles provides aspirational standards of ethics and represents the ideals and behavior of how financial aid administrators should function. The *Code of Conduct* provides mandatory enforced standards for the field and the profession. These *Code of Conduct* Enforcement Procedures detail a process for addressing NASFAA members’ policies, programs, activities, behavior, or conduct in relation to NASFAA’s *Code of Conduct* and will be examined and enforced by the association as outlined in these procedures.

For purposes of these *Code of Conduct* Enforcement Procedures, the term “member” refers to senior or executive personnel, i.e., professionals, engaged in student financial aid endeavors at a NASFAA member institution of higher education, as well as to that institution itself. The Procedures therefore apply not only to each NASFAA member institution but also to each senior-level professional at the institution who oversees and administers student aid programs. It is within the prerogative of NASFAA to determine, in each proceeding, whether to focus an inquiry or complaint on a member institution, on its relevant financial aid professionals, or both.

NASFAA operates under the assumption that all NASFAA members are trying to comply with the *Code of Conduct*. And it views promulgation and interpretation of the Code as, first and foremost, educational. But when necessary and in appropriate circumstances, the *Code of Conduct Enforcement Procedures* are designed to provide appropriate notice, an opportunity to respond and be heard, and objective decision-making, for all NASFAA members and member personnel who may be the subject of a complaint, regardless of whether they have legal counsel. Sanctions are imposed as a last resort based on willful noncompliance or severe breaches of the code. Members are encouraged to contact the NASFAA headquarters if they have any questions regarding the Statement of Ethical Principles, the *Code of Conduct*, or these *Code of Conduct Enforcement Procedures*.

NASFAA will take reasonable measures to ensure that any proceedings, hearings, deliberations and/or files resulting from implementation of these *Code of Conduct* Enforcement Procedures will be, and will remain, confidential except as required by law or as otherwise provided in these Procedures.

## I. COMPLAINT

### A. ETHICS INQUIRIES

1. Any entity or individual may contact the NASFAA headquarters with an ethics inquiry regarding interpretation or application of the Statement of Ethical Principles and Standards, the *Code of Conduct* (the “Code”) or the *Code of Conduct Enforcement Procedures* (“Procedures”), regardless of whether the entity or individual is a member of NASFAA. An ethics-related inquiry is a means for determining whether a policy, program, activity, behavior, or conduct warrants filing a complaint alleging a violation of the Code, for requesting guidance regarding a proposed endeavor, or for requesting assistance from

the NASFAA Ethics Commission (the “Commission”), without resorting to enforcement proceedings. Ethics-related inquiries will be handled jointly by the chair of the commission and the appointed NASFAA staff member.

## **B. LODGING A COMPLAINT**

1. Any entity or individual may lodge a complaint concerning possible violation of the Code, regardless of whether the entity or individual is a member of NASFAA. A complaint must be in writing, preferably using the form made available by NASFAA, and submitted to NASFAA headquarters. At a minimum, the complaint must include the name, employer, position, address, e-mail address, telephone number, and signature (digital or written) of the author of the complaint (the “Complainant”), a specific reference to the Code sections alleged to have been violated, and a description of the alleged violation itself based on facts that have occurred within the previous year (12 months). If these elements are not present, the complaint may be dismissed.
2. The Ethics Commission itself may lodge a complaint based upon press reports or other credible information.
3. The NASFAA Ethics Commission is not a substitute for a court of law. NASFAA may, in its discretion, defer any action on a complaint if a legal proceeding has commenced or is pending with regard to the subject matter of a complaint, or for other pressing circumstances. NASFAA may also, in its discretion, refer matters to federal, state, or local government agencies in appropriate situations.
4. By submitting a complaint, the Complainant agrees that (s)he will cooperate in the Code enforcement process and, upon request, will give personal testimony in the presence of the member against whom the complaint is lodged (the “Respondent”); failure of the Complainant to cooperate in the investigation or hearing may be considered by the Ethics Commission or the hearing panel as grounds to dismiss the complaint.
5. A complaint may be resolved and immediately closed by NASFAA after contacting the member institution in question and the institution taking prompt action to resolve the complaint.
6. If a complaint is withdrawn before a hearing is held or the Commission takes any other action, NASFAA may nevertheless proceed with a hearing or take other steps necessary to resolve the matter. In such a case, NASFAA will become the Complainant. All material related to the complaint (including material previously submitted by the parties) may be used in the proceedings.
7. The current status of the Respondent’s NASFAA membership at the time of the complaint does not control Commission jurisdiction. If the institution involved was or is a member of NASFAA at the time of the alleged violation of the Code, the Commission has jurisdiction to proceed, regardless of whether the member voluntarily resigns or terminates membership by failure to renew.
8. Failure of the Respondent to respond to, or otherwise cooperate with, an investigation by the NASFAA Ethics Commission will be considered grounds for disciplinary action.

## II. COMPLAINT EVALUATION

**A. Evaluation:** Upon receipt of a complaint the NASFAA President and Ethics Commission Chair (or other disinterested member of the Commission as appointed by the commission chair), determines as soon as feasible whether the complaint: (1) alleges a violation of the Code, (2) contains sufficient and reliable information and is not patently frivolous or inconsequential, and (3) falls under NASFAA jurisdiction in that the institution in question was a NASFAA member at the time the alleged infraction took place.

**B.** The NASFAA President or the Commission member may request additional information, consult with Commission members, conduct independent research, and take other actions consistent with the obligation to determine if a complaint meets these basic criteria; absent extraordinary circumstances the Respondent will not be contacted at this stage.

1. If the NASFAA President or the Commission member designee determines that a complaint satisfies the criteria, the matter will be referred to the full Commission for a full investigation.
2. If the NASFAA President or the Commission designee determines that a complaint does not satisfy the criteria, the complaint will be rejected, with notification to the Complainant and the Commission.

**C.** Within thirty (30) calendar days of receiving a complaint from the NASFAA President and the Commission member designee, the Commission will determine whether the complaint warrants: (a) Commission investigation/no investigation, or (b) Commission summary finding of violation.

**1. Commission Investigation:** If the Commission determines that a complaint warrants Commission investigation, the Commission will promptly:

- a. Direct the NASFAA President and/or one or more Commission members designated by the Commission Chair to further investigate the complaint, including sharing the complaint with the Respondent and obtaining the Respondent's reaction to the allegations of the complaint;
- b. Under exceptional circumstances, the Commission reserves the right in its sole discretion to keep the Complainant's identity confidential throughout the entire process, including the hearing process (if one is commenced), upon a clear showing of risk to the Complainant if the Complainant's identity were revealed to the Respondent;
- c. Determine, in the discretion of the Commission, whether a NASFAA member institution, or financial aid professionals at that institution, or both, shall be considered by NASFAA to be the Respondent(s); and
- d. Notify, in writing, the Complainant that the complaint has been received and indicate the status of the complaint.

**2. No Investigation:** If the Commission determines that a complaint does not warrant Commission investigation, the matter will be closed and notice of this decision will be promptly communicated to the Respondent and to the Complainant. The Commission has authority at this stage to close an investigation even if there has been a possible or likely violation of the *Code of Conduct* where the Commission determines that the violation was relatively minor and likely not recurring and/or that the Commission has received acceptable assurance that suitable corrective action has been taken or is being taken.

**D. Summary Finding of Violation:** The Commission may determine that a complaint warrants Commission summary finding of violation of the Code in the case of either:

1. The complaint includes clear documented evidence that the Respondent has been found guilty, or has pled guilty, or has pled no contest and has been sentenced by a court with appropriate jurisdiction, and all appeals have been waived or exhausted, in a criminal law matter in which the Respondent was accused of fraud, embezzlement, theft, or other similar violations; or
2. The complaint includes clear documented evidence that the Respondent has had an adverse judgment entered against the Respondent by a court with appropriate jurisdiction and all appeals have been waived or exhausted, in a civil law matter in which the member was accused of fraud, embezzlement, theft, or other similar violations.

If there is a Commission summary finding of violation of the Code, the Commission will proceed directly to impose the disciplinary action of Revocation of Membership.

**E. Failure to Respond:** If the Respondent fails to respond to the Commission, a hearing is not warranted; the Commission will instead proceed directly to consider disciplinary action.

**F. Determination of Hearing:** The NASFAA President and/or the Commission member(s) designated to investigate the complaint will examine all relevant matters, including the Complaint, any oral or written response submitted by the Respondent, and information from any other credible sources available to NASFAA. The investigators will advise the Commission when adequate information has been obtained to warrant proceeding with the hearing.

**G. Conflict of Interest:** If any member of the NASFAA Ethics Commission has or has had a business, financial, personal or familial relationship with any party to the matter, that Commission member shall disclose this relationship to the Commission and shall recuse based on actual or potential conflict of interest. If a Commission member does not voluntarily recuse, recusal may be mandated by a majority vote of the balance of the full Commission. Prior to a hearing, the identification and a brief biography of each Commission member will be provided to the Complainant and the Respondent so they will have the opportunity to raise possible conflicts.

**H. Hearing Panel Composition:** The Ethics Commission Chair will appoint the hearing panel and a chair of that panel (which may be the Ethics Commission Chair) and may determine that fewer than all members of the Ethics Commission will comprise the hearing panel. The panel will have at least one non-conflicted

member who works in the same sector (e.g., public, private, community college, or proprietary) as the Respondent, even if that representation requires the appointment of a nonmember of the Ethics Commission to serve on the panel.

### **III. HEARING AND APPEAL**

**A. Hearing Notice:** NASFAA will provide thirty (30) days' written notice of the hearing by traceable delivery to the Respondent and the Complainant. The notice will:

1. Advise that the Ethics Commission has reviewed the complaint, conducted a preliminary investigation, and determined that the matter warrants a hearing;
2. State the time and place of the hearing;
3. Provide the names and brief professional backgrounds of the members of the Ethics Commission serving as the hearing panel;
4. Advise that a representative of the NASFAA member Respondent is invited to attend the hearing, with or without legal counsel, and that, if no representative of the Respondent attends the hearing, the hearing will nevertheless proceed on the NASFAA record; and
5. Enclose a copy of the complaint and the record of the investigation to date.
6. Advise that the respondent has the option to waive the hearing in writing where the respondent does not wish to contest a finding of violation of the Code of Ethics but wishes to respond by addressing the Ethics Commission regarding the appropriate sanction, if any.

**B. Hearing:** The hearing will be conducted by the hearing panel, with the chair of that panel presiding.

1. The hearing panel will have authority to set the agenda and impose the procedures for the hearing.
2. The hearing will be informal; legal rules of evidence will not be observed.
3. The hearing panel itself, or the Complainant or Respondent, may admit documents into the record of the hearing.
4. A transcript of the hearing will be maintained but not made public.
5. The Complainant and Respondent will each be heard in order, either in person or through counsel; the hearing panel may call other witnesses in its discretion; the hearing panel may impose time limits on the presentations; hearing panel members may ask questions of any presenters; the Complainant and Respondent may each pose questions of the other or the other's representatives at the hearing,

but only through written questions presented to the hearing panel and not through cross examination. Proposed questions may be submitted prior to the hearing or during the hearing.

6. The hearing panel will deliberate in confidence and determine whether a violation of the *Code of Conduct* has occurred and, if so, will impose a sanction; the panel may take up to fifteen (15) days after the close of the hearing to do so. Promptly after the hearing panel has reached its determination, the rest of the members of the Ethics Commission and the NASFAA Board of Directors will be provided a summary of that determination.

7. The Respondent and the Complainant will be provided copies of the hearing panel's decision by traceable delivery; if the decision is that a violation of the NASFAA *Code of Conduct* occurred and a sanction has been imposed, the Respondent will be advised of the right to appeal.

**C. Appeal:** A Respondent that has been found by the hearing panel to have violated the NASFAA *Code of Conduct* and had a sanction imposed has the right to appeal to the NASFAA Board of Directors.

1. A Respondent's notice of appeal must be filed with NASFAA no later than thirty (30) calendar days after the date of the notice of the hearing panel's decision and must state the grounds for the appeal.

2. The NASFAA National Chair will establish the time and place for the appeal, as well as the procedures for the appeal, and notice will be provided to the Respondent.

3. The NASFAA Board of Directors will not re-try the facts of the hearing but will limit its review to a determination whether NASFAA, the Ethics Commission, and the hearing panel followed appropriate procedures.

4. Written notice of the appeal determination of the NASFAA Board of Directors will be provided to the Respondent and the Complainant by traceable delivery.

## IV. SANCTIONS

**A.** These sanctions may be imposed upon a NASFAA member Respondent found to have violated the *Code of Conduct*:

1. *Statement of Concern.* A statement of concern is a formal written statement by NASFAA addressed to the member Respondent; there is no publication of a statement of concern. A statement of concern is appropriate where a complaint has not been closed earlier with no investigation, where NASFAA has found a likely violation of the *Code of Conduct*, but where the violation was relatively minor and likely not recurring and/or the Commission has received acceptable assurances that suitable corrective action has been taken or is being taken.

2. *Reprimand.* A reprimand is a formal written rebuke by NASFAA addressed to the member Respondent; there is no publication of a reprimand. The recommendation of a reprimand may include a recommendation for NASFAA or other education or training pertinent to the violation.

3. *Temporary Suspension.* Suspension excludes a NASFAA member Respondent from NASFAA membership for a stated period and may include a prohibition, including for any identified senior or executive professionals engaged in student financial aid endeavors, from attendance or participation in any activity at any level within NASFAA or any NASFAA affiliate for the stated period. The recommendation of a temporary suspension may include a requirement for NASFAA or other education or training pertinent to the violation. Upon expiration of the suspension period, the member shall be eligible to reapply for membership. Those temporarily suspended are posted, for the period of the suspension, on the NASFAA website without further comment.

4. *Permanent Suspension.* Permanent suspension excludes a NASFAA member Respondent from NASFAA membership and includes a prohibition, including for any identified senior or executive professionals engaged in student financial aid endeavors, from attendance or participation in any activity at any level within NASFAA or any NASFAA affiliate permanently. Those permanently suspended are posted on the NASFAA website without further comment. Those who are permanently suspended would be permitted to re-apply for membership—with appropriate documentation of improvement—after five years. The Ethics Commission would rule on this application at the time of reapplication.

**B.** The complaint, investigation, hearing and appeal record is maintained in NASFAA files for at least five years.

## **V. COSTS**

All parties shall bear their own costs and expenses with respect to any aspect of the proceedings, unless otherwise determined by the commission or the Board of Directors.