

# ASU-Beebe

## Sexual Discrimination Grievance Procedure

### COMPLAINTS CONCERNING DISCRIMINATION AND/OR HARASSMENT

Arkansas State University-Beebe does not discriminate on the basis of color, sex, sexual orientation, gender identity, race, age, national origin, religion, marital status, veteran status, genetic information or disability in any of its practices, policies or procedures. This includes, but is not limited to, employment, admissions, educational services, programs or activities which it operates or financial aid. Students, who believe they have been subjected to sexual discrimination or sexual harassment in violation of this procedure, should contact a Title IX Coordinator.

### TITLE IX OF EDUCATION AMENDMENTS

Title IX is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity. Title IX benefits both males and females and is at the heart of efforts to create gender equitable schools. The law requires educational institutions to maintain policies, practices, and programs that do not discriminate against anyone based upon sex. Under this law, males and females are expected to receive fair and equitable treatment in all areas of public schooling including recruitment, admissions, educational programs and activities, course offerings and access, counseling, financial aid, employment assistance, facilities and housing, health and insurance benefits, marital and parental status, scholarships, sexual discrimination and athletics. Any incidence of sexual discrimination, including sexual harassment or sexual violence, should be reported to the Title IX Coordinator, who will take prompt action to secure a full and equitable review.

### SEXUAL DISCRIMINATION

Arkansas State University-Beebe is committed to providing an educational and work environment for its students, faculty, and staff that is free from sexual discrimination including sexual harassment, sexual assault, sexual violence, stalking, domestic violence, and dating violence. No form of sexual discrimination will be tolerated.

***Sexual harassment*** is defined as unwelcome, gender-based verbal or physical conduct that is severe, persistent or pervasive and occurs when:

1. Submission to or toleration of such conduct is made a term or condition of instruction, employment or participation in other university activities.
2. Submission to or rejection of such conduct is used as a basis for employment or education decisions affecting the individual.

3. Such conduct has the effect of unreasonably interfering with an individual's education or employment performance or creating an intimidating, hostile or offensive university environment.

**Sexual assault** occurs when a person is subjected to an unwanted sexual act, by force or threat, without consent. Sexual acts occur without consent when they are perpetrated against a person's will or where a person is incapable of giving consent due to minority, intellectual impairment or use of mind altering substances such as drugs or alcohol.

**Sexual violence** includes sexual assault, but may also consist of an attempt to obtain a sexual act or sexual advances using coercion, which do not result in a completed sexual act.

**Stalking** is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

**Domestic violence** is defined as felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Arkansas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Arkansas.

**Dating violence** is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

It is important to preserve all evidence of sexual discrimination, especially if the discrimination is also a criminal offense, such as sexual assault, sexual violence, stalking, domestic violence or dating violence.

Supervisors and staff members must recognize that their positions necessarily embody unequal power relationships with their subordinates and students. Because of the inherent power differences in these relationships, the potential exists for the less powerful to perceive a coercive element in suggestions relative to activities outside those appropriate to the professional relationship. It is the responsibility of supervisors and staff members to behave in such a manner that their words or actions cannot reasonably be perceived as coercive.

Arkansas State University-Beebe has a Title IX Coordinator who is charged with investigating allegations of sexual discrimination including sexual harassment, sexual assault, sexual violence, stalking, domestic violence, and dating violence. Employees with supervisory

responsibilities and university police personnel must report incidents of sexual discrimination either observed by them or reported to them to the Title IX Coordinator, who will conduct an immediate, thorough, and objective investigation of all claims. If sexual discrimination has occurred, appropriate remedial action commensurate with the severity of the offense will be taken, up to and including termination. All reports, complaints, and investigations are treated with discretion and confidentiality is maintained to the extent allowed by law.

The Title IX Coordinator will notify the appropriate law enforcement agency of all reports of sexual assault, sexual violence, stalking, domestic violence or dating violence. The person who has allegedly been subject to sexual discrimination may also contact law enforcement and may seek an order of protection, no contact order or similar order. The Title IX Coordinator will assist the person alleging to have been subjected to sexual discrimination with locating resources for counseling, medical treatment, legal advice, victim advocacy or other services.

Each campus within the Arkansas State University System provides educational materials and programs on sexual discrimination. Contact the Human Resources Department or Title IX Coordinator for information on awareness and prevention of sexual discrimination.

The University reserves the right to take whatever measures it deems necessary in response to an allegation of sexual discrimination in order to protect individuals' rights and personal safety. Such measures include, but are not limited to, modification of campus living or employment arrangements, interim suspensions from campus, no contact or communications requirements, leave with or without pay, and reporting the matter to law enforcement. Persons reporting allegations of sexual discrimination must follow the Sexual Discrimination Grievance Procedure.

### **RETALIATORY ACTIONS PROHIBITED**

Retaliation against a person who files a charge of discrimination, participates in an investigation, or opposes an unlawful employment practice is prohibited by law and Arkansas State University-Beebe. Any person who needs further explanation or who believes he or she has been retaliated against should contact the Title IX Coordinator.

### **SEXUAL DISCRIMINATION GRIEVANCE ISSUES**

The Sexual Discrimination Grievance Procedure applies to all allegations of sexual discrimination including sexual harassment, sexual assault, sexual violence, stalking, domestic violence, and dating violence.

### **REPORT OF SEXUAL DISCRIMINATION**

Any student, employee, or visitor who believes he or she has been subjected to sexual discrimination should report the incident to the Title IX Coordinator or a Deputy Title IX

Coordinator. Employees with supervisory responsibilities and university police personnel must report incidents of sexual discrimination either observed by them or reported to them to the Title IX Coordinator. In the event the sexual discrimination allegation is against the Title IX Coordinator, the report form should be submitted to the Office of University Counsel. In order to ensure timely investigation and remedy, a sexual discrimination grievance should be activated within sixty (60) days from the time the events leading to the complaint occurred.

All complaints are investigated; however, delay in reporting impedes the ability to achieve prompt resolution. All efforts will be made to honor a request for confidentiality, but confidentiality cannot be ensured. Reports of sexual assault, sexual violence, stalking, domestic violence and dating violence will be reported to law enforcement authorities.

Criminal investigations by any law enforcement agency or investigation conducted under the Faculty, Staff, or Student Handbooks may occur simultaneously with a sexual discrimination grievance and do not affect the grievance process.

#### **TITLE IX COORDINATOR'S RESPONSE**

Within forty-five (45) working days after receipt of a complaint, the Title IX Coordinator, or designee, will conduct a full and impartial investigation including interviewing the complainant, the accused, and any witnesses identified as well as reviewing any documentary evidence submitted by either party. As early as possible in the investigation, the Title IX Coordinator should determine whether temporary remedial measures are warranted, such as suspension from employment with or without pay, suspension from classes, issuance of a no contact directive, reassignment of job duties, or changing class or classroom assignments. If immediate action is required to protect the complainant, the Title IX Coordinator shall work with the appropriate administrator to implement temporary remedial measures.

The past sexual history or sexual character of a party will not be admissible by the other party in the investigation or any subsequent hearing unless the party was found to be responsible, the previous incident was substantially similar to the present allegation, and the past actions indicate a pattern of behavior consistent with the current allegations.

After studying all the pertinent facts and documents, carefully examining any policies involved, and discussing the issue with the parties and witnesses, the Title IX Coordinator shall either propose an informal resolution to the parties which, if accepted, shall be documented in writing and shall conclude the investigation or prepare a formal written report making a finding, based on the preponderance of the evidence, as to whether sexual discrimination occurred and if so, recommending a remedy which will end the discrimination, prevent its recurrence, and remove its effects on the complainant and the university community. The report shall be transmitted simultaneously to the complainant and the accused and implemented immediately. If both parties agree with the report, the

grievance shall be closed and the remedies continued.

If either party does not agree with the finding of the Title IX Coordinator and desires to appeal, that party must submit, within five (5) working days of the date of the report, a written request to the office of the Provost (students) or Associate Vice Chancellor for Human Resources (employees) to request a hearing before the Sexual Discrimination Hearing Committee. The written request will detail the alleged error of the Title IX Coordinator and the requested remedy. The office of the Provost (students) or Associate Vice Chancellor for Human Resources (employees) will provide the party not appealing with a copy of the request. Within five (5) working days of the date of the letter, the party not appealing may submit a written response to the request for hearing, countering any allegations in that document. Copies will be provided to the Title IX Coordinator for placement in the case file.

Timelines may be extended by the Title IX Coordinator in extenuating circumstances.

### **SEXUAL DISCRIMINATION HEARING COMMITTEE COMPOSITION**

The Sexual Discrimination Hearing Committee is composed of members selected by the Chancellor from the Academic Hearing Committee, the Student Conduct Hearing Committee, and the Staff Hearing Committee for that campus. The Sexual Discrimination Hearing Committee is composed of seven (7) members. When a student is the complainant, three (3) members of the committee shall be students, two (2) members faculty, and two (2) members staff; when the complainant is a staff member the committee shall be composed of three (3) staff members, two (2) faculty members, and two (2) students; when the complainant is a faculty member the committee shall be composed of three (3) faculty members, two (2) students, and two (2) staff. The Sexual Discrimination Hearing Committee shall have specific training on sexual discrimination.

A member of Human Resources or designee sits as an ex-officio, non-voting member of the Sexual Discrimination Hearing Committee, offering technical assistance on procedural and policy matters.

### **SEXUAL DISCRIMINATION HEARING COMMITTEE FUNCTIONS**

The Sexual Discrimination Hearing Committee reviews the findings of the Title IX Coordinator to determine, based upon the preponderance of the evidence, whether institutional error has occurred and, if so, to recommend an appropriate corrective action. Institutional error occurs when no legitimate reason exists for the action taken. Decisions, which require the exercise of judgment or discretion, cannot constitute institutional error.

The committee has twenty (20) working days to prepare a written response after it has received a complaint. All proceedings shall be in closed session. Because the committee will have received the entire file from the Title IX Coordinator, including all witness statements, the hearing will not include the grievant, the party complained against, or other witnesses

unless either the Committee requests their oral testimony or either party requests to testify and/or present witnesses.

In the event that oral testimony is requested, the grievant and the party complained against may be present and question the witnesses. If the grievance is one alleging sexual assault, sexual violence, stalking, domestic violence or dating violence, the parties will not question the other. Instead, the party testifying before the committee shall be screened so that they may be heard by the other party but not seen. The non-testifying party shall have the opportunity to provide written questions to the committee to be asked of the testifying witness based on his or her testimony. The committee may also question any person testifying.

Each party may have an advisor present during the testimony that may provide personal consultation, but may not actively participate in the hearing. The parties must disclose to the Chair of the Sexual Discrimination Hearing Committee, Title IX Coordinator or Title IX Deputy Coordinator the identity of any testifying witness or any advisor at least two (2) working days before any hearing.

The Chair shall provide the list of witnesses to each party upon receipt. No audio or video recording is permitted.

In reviewing a case, two options are open to the Committee:

1. It may find no institutional error has occurred and recommend that no further action be taken.
2. It may find that institutional error has occurred and recommend a remedy different than that proposed by the Title IX Coordinator.

### **SEXUAL DISCRIMINATION HEARING COMMITTEE FINDINGS**

In all instances the committee shall make a record of its findings, a statement of its conclusion, including the reason or policy criteria used in reaching a decision, and its recommendations for resolution of the grievance. The Committee decision shall be forwarded to the Chancellor of the university for action. Copies will be filed with the Title IX Coordinator as a part of the complaint record and sent to the grievant and the accused.

Within ten (10) working days of receipt of the Committee recommendation, the Chancellor will accept or reject the Committee recommendation in writing after review of all file materials. The Chancellor's decision is final. A copy of the decision shall be provided to the Title IX Coordinator for distribution to both the complainant and the accused. The Department of Human Resources or Student Services (as appropriate) will coordinate the implementation of any remedies resulting from the grievance.

## DOCUMENT COLLECTION

When a sexual discrimination grievance proceeding has been closed, all material relating to that case shall be retained on file by the Title IX Coordinator for seven years. Care will be taken to ensure that no incomplete or inaccurate information pertaining to the grievance is retained in the file. Sexual discrimination grievance proceedings are considered confidential and no person involved with the grievance may make the documents public except as required by law.

## COMPLAINTS CONCERNING SEXUAL DISCRIMINATION AND/OR SEXUAL HARASSMENT

Students or employees who wish to report a concern or complaint relating to sexual discrimination or sexual harassment may do so by reporting the concern to the University Title IX Coordinator or a Deputy Title IX Coordinator:

### **Title IX Coordinator**

Arch Jones  
Associate Vice Chancellor for Student Services  
P. O. Box 1000; State Hall 101  
Beebe, AR 72012-1000  
[ahjones@asub.edu](mailto:ahjones@asub.edu)  
501-882-8986

### **Deputy Title IX Coordinator for Students**

David Mayes  
Associate Vice Chancellor/Dean of Students  
P. O. Box 1000; Student Center 202  
Beebe, AR 72012-1000  
[dmmayes@asub.edu](mailto:dmmayes@asub.edu)  
501-882-8879

### **Deputy Title IX Coordinator for Employees**

Susan Collie  
Associate Vice Chancellor for Human Resources  
P. O. Box 1000, 106 Orange Street  
Beebe, AR 72012-1000  
[sacollie@asub.edu](mailto:sacollie@asub.edu)  
501-882-8967

Individuals with complaints of this nature also have the right to file a formal complaint with the United States Department Education:

Office for Civil Rights (OCR)  
400 Maryland Avenue  
SW Washington, DC 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012 TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>