

# **OTHER SEX-BASED DISCRIMINATION**

## **GRIEVANCE PROCEDURE**

### **GRIEVANCE ISSUES**

The Other Sex-Based Discrimination Grievance Procedure applies to all allegations of sex-based discrimination that are not covered by the Title IX (Sexual Harassment Discrimination) Grievance Procedure. "Other Sex-Based Discrimination" includes, but is not limited to:

1. Allegations of discrimination on the basis of sex that do not involve allegations of sexual harassment or sexual violence;
2. Allegations of sexual harassment or sexual violence that cannot proceed under the Title IX (Sexual Harassment Discrimination) Grievance Procedure because:
  - a. The allegations do not meet the specific definitions of Sexual Harassment under Title IX, Sexual Assault, Stalking, Domestic Violence, or Dating Violence applicable to the Title IX (Sexual Harassment Discrimination) Grievance Procedure;
  - b. The acts alleged to have occurred took place against a person located outside of the United States; or
  - c. The acts alleged to have occurred took place outside of a location over which the campus exercises substantial control or under circumstances over which the campus lacked substantial control;
3. Allegations of retaliation for reporting or participating in the investigation of any claim of sex-based discrimination; and
4. Allegations of any activity prohibited by 34 C.F.R. § 106.31(b).

The following types of allegations are not grievable under this Other Sex-Based Discrimination Grievance Procedure:

1. Allegations that are subject to the Title IX (Sexual Harassment Discrimination) Grievance Procedure; and
2. Allegations of actions permitted by 34 C.F.R. § 106.14.

### **REPORT OF OTHER SEX-BASED DISCRIMINATION**

Any employee, student, or visitor participating in or attempting to participate in an educational program or activity offered by a campus in the Arkansas State University System who believes he or she has been subjected to Other Sex-Based Discrimination should report the incident to the applicable campus's Title IX Coordinator utilizing the reporting form available on the Title IX web site for the campus. Employees with supervisory responsibilities including deans, vice chancellors, department chairs, faculty, student conduct personnel, human resources personnel, athletic administrators, coaches, and university police personnel must report incidents of Other Sex-Based Discrimination either observed by them or reported to them to the Title IX Coordinator. In the event the Other Sex-Based Discrimination allegation is against the Title IX Coordinator, the report form should be submitted to the ASU System Office of General Counsel. Reporting may be done by telephone, fax, email, or a hard copy communication, and may be submitted during or

outside of business hours. In order to ensure timely investigation and remedy, an Other Sex-Based Discrimination grievance should be activated within sixty (60) days from the time the events leading to the complaint occurred, as delay in reporting impedes the ability to achieve prompt resolution. Reports of sexual violence will be reported to law enforcement authorities, if such a report is not prohibited by law.

Criminal investigations by any law enforcement agencies or investigations conducted under the Faculty, Staff, or Student Handbooks may occur simultaneously with an Other Sex-Based Discrimination grievance.

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

1. Upon receipt of a report of an allegation of Other Sex-Based Discrimination, the Title IX Coordinator will contact the person alleged to have been subjected to the Other Sex-Based Discrimination (hereinafter referred to as a "Complainant") within two (2) business days. During the initial contact, the Title IX Coordinator shall notify the Complainant of available supportive measures with or without the filing of a formal complaint, the process for filing a formal complaint, and the potential code of conduct violations for knowingly providing false information.

The formal complaint may be submitted electronically or in hard copy format. If the Complainant determines that he or she does not wish to pursue a formal complaint, the Title IX Coordinator shall assist the Complainant with appropriate continued supportive measures, and shall make a determination as to whether or not, based on the information that the Title IX Coordinator has at that time, the Title IX Coordinator will sign a formal complaint. The Title IX Coordinator shall only sign a formal complaint over the objection of a Complainant in the event that, based on the available facts at the time, failure to do so would be clearly unreasonable and would amount to deliberate indifference.

2. Following the receipt of the formal complaint, the Title IX Coordinator will send a Notice of Allegations to both the Complainant, and the person alleged to have perpetrated the Other Sex-Based Discrimination (hereinafter referred to as the "Respondent"). The Notice of Allegations will:
  - a. set forth the allegations outlined in the formal complaint;
  - b. advise the parties on the Other Sex-Based Discrimination Grievance Procedure, including their right to not participate;
  - c. set forth the available supportive measures for the parties, which will be equitably available to each;
  - d. outline the availability of and describe the informal resolution procedure;
  - e. notify the parties that they have the right to have an advisor of their choice, who may but does not have to be an attorney, and that the advisor may attend but not directly participate in any meetings or interviews throughout the investigation;
  - f. notify the parties that they are required to have an advisor for the purposes of the hearing, and the availability of an advisor to be provided by the campus in the event that either party cannot obtain one;
  - g. state the standard of evidence used in the Other Sex-Based Discrimination Grievance Procedure is preponderance of the evidence;

- h. state that the parties each have the right to inspect, review, and respond to all information and evidence gathered, which will be presented to the parties promptly after its receipt by the Title IX Coordinator or investigator;
    - i. inform the parties of the potential code of conduct violations that can be pursued in the event that a party knowingly gives false statements or evidence; and,
    - j. state clearly that the Respondent is presumed “not responsible” unless and until there is a finding of responsibility at the conclusion of the hearing.
3. Immediately following the issuance of the Notice of Allegations, the Title IX Coordinator will review the formal complaint to verify that the conduct complained of is grievable under this Other Sex-Based Discrimination Grievance Procedure.
4. Within forty-five (45) business days after receipt of a formal complaint, the Title IX Coordinator, or investigator, will conduct a full and impartial investigation, considering all available inculpatory and exculpatory evidence, by: interviewing the Complainant, the Respondent, and any witnesses identified throughout the investigation; considering any expert testimony offered by either party; and, by reviewing any documentary evidence submitted by either party or obtained by the Title IX Coordinator or investigator.

The Title IX Coordinator or investigator will:

- a. not seek or consider any evidence which is protected by a legally acknowledged privilege without the written consent of the party who holds the privilege;
  - b. not consider evidence of the Complainant’s sexual history or predisposition, unless offered to prove that someone else committed the acts the Respondent is accused of, or specific incident between the Complainant and Respondent are offered to prove consent;
  - c. make no credibility assessments based solely on a party’s status as a complainant or respondent;
  - d. provide any party requested to attend a meeting or interview with written notice of the day, time, location, invited participants, and purpose of the meeting or interview no less than two (2) business days in advance of the proposed meeting;
  - e. make ongoing determinations, throughout the investigation, regarding the appropriateness of available supportive measures, such as: suspension from employment with or without pay; suspension from classes following an individualized determination that based upon the allegations the Respondent poses an immediate threat to a faculty member, staff member, or student; issuance of a no contact directive to both parties; reassignment of job duties; counseling; campus escort services; increased security and monitoring certain areas on campus; or, changing class or classroom assignments. If immediate action is required, the Title IX Coordinator shall work with the appropriate administrator to implement supportive measures.
5. 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:
  - a. propose an informal resolution procedure be utilized to the parties which, if accepted, shall be documented in writing, and, if successful, shall conclude the investigation, or, if

unsuccessful, shall result in the investigation proceeding towards a formal hearing, with all informal resolution proceeding documents being maintained and submitted to the Hearing Committee; or

- b. gather all evidence collected throughout the investigation that is directly related to the allegations in the complaint and simultaneously submit, in electronic or hard copy, it to the parties and their advisors, if any. The parties shall have ten (10) business days to review and respond to all evidence provided. The Title IX Coordinator or investigator will review and consider the response(s) of the parties before completing its investigative report. The investigative report shall be a formal written report which sets forth:
    - i. the timeline of the investigation, beginning with the formal complaint, and includes all notices given, meetings or interview conducted, and communications received;
    - ii. the allegations contained in the formal complaint;
    - iii. the evidence relevant to the allegations gathered throughout the investigation; and,
    - iv. the specific form of sexual discrimination the Respondent is alleged to have engaged in.
6. Following the completion of the investigative report, the Title IX Coordinator will simultaneously submit, in electronic or hard copy, the investigative report to both parties and their advisors, if any. Both parties shall have a period of ten (10) business days to review the investigative report before the hearing date. Both parties have the option to submit a written response to the investigative report. The investigative report and any written responses by either party shall be submitted to the Title IX Hearing Committee.
  7. Timelines may be extended by the Title IX Coordinator in extenuating circumstances and for good cause shown.
  8. Allegations of sexual discrimination which meet the requirements of a Title IX offense and which are made by a student against a staff or faculty member shall not be resolved by the informal resolution procedure.

## **OTHER SEX-BASED DISCRIMINATION HEARING AND APPEALS PROCESS**

Once the Other Sex-Based Discrimination grievance is ripe for a hearing, the grievance shall be heard by the Title IX Hearing Committee established under the Title IX (Sexual Harassment Discrimination) Grievance Procedure. In the case of a hearing under this Other Sex-Based Discrimination Grievance Procedure, the Title IX Hearing Committee shall be responsible for determining, based on the preponderance of the evidence, whether the Respondent is responsible for committing an Other Sex-Based Harassment violation, and, if so, to recommend an appropriate action to end the discrimination, prevent its recurrence, and remove its effects on the Complainant and the university community.

The hearing and appeals process shall follow the same processes outlined in the Title IX (Sexual Harassment Discrimination) Grievance Procedure.

## **DOCUMENT COLLECTION**

When an Other Sex-Based Discrimination grievance proceeding has been closed, all materials relating

to that case shall be retained on file by the Title IX Coordinator for seven (7) years. Care will be taken to ensure that no incomplete or inaccurate information pertaining to the grievance is retained in the file. Other Sex-Based Discrimination grievance proceedings are considered confidential and no person involved with the grievance may make the documents public except as required or permitted by law.

### **RETALIATORY ACTION PROHIBITED**

Retaliation against a person who files a charge of discrimination, participates in an investigation, refuses to participate in an investigation, or opposes an unlawful employment practice is prohibited by law and the ASU System. Any person who needs further explanation or who believes he or she has been retaliated against in connection with an Other Sex-Based Discrimination grievance should contact their campus Title IX Coordinator.