

TITLE IX (SEXUAL HARASSMENT DISCRIMINATION) GRIEVANCE PROCEDURE

GRIEVANCE ISSUES

The Title IX (Sexual Harassment Discrimination) Grievance Procedure applies only to allegations of Sexual Harassment Discrimination occurring in the United States and in an educational program or activity of any campus within the Arkansas State University System, which is made by a person participating in or attempting to participate in an educational program or activity of the campus. Sexual Harassment Discrimination refers specifically to allegations of Sexual Harassment under Title IX, Sexual Assault, Stalking, Domestic Violence, and Dating Violence, as those terms are defined below (collectively, "Sexual Harassment Discrimination").

Sexual Harassment under Title IX is defined as unwelcome gender-based verbal or physical conduct 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; or
3. Such conduct is severe, pervasive, and objectively offensive such that it has the effect of unreasonably interfering with an individual's education or employment performance.

Sexual Assault occurs when a person is subjected to an unwanted sexual act without consent. Sexual acts occur without consent when they are performed by force, in response to a threat, 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.

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) 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 (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, and (iii) the frequency of interaction between the persons involved in the relationship.

REPORT OF SEXUAL HARASSMENT 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 Sexual Harassment 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 Sexual Harassment Discrimination either observed by them or reported to them to the Title IX Coordinator. In the event the Sexual Harassment Discrimination allegation is against the Title IX Coordinator, the report form should be submitted to the 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, a Sexual Harassment 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 Assault, Sexual Violence, Stalking, Domestic Violence, and Dating 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 a Title IX (Sexual Harassment Discrimination) grievance.

TITLE IX COORDINATOR'S RESPONSE

1. Upon receipt of a report of an allegation of Sexual Harassment Discrimination, the Title IX Coordinator will contact the person alleged to have been subjected to the Sexual Harassment 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. If the Complainant decides to file a formal complaint, the Complainant must submit a written and signed statement of the facts surrounding the allegations sufficient to allow the Title IX Coordinator to determine whether:
 - a. the actions alleged to have occurred meet the definition of Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, or Stalking;
 - b. the actions alleged to have occurred were perpetrated against someone who was engaged in or attempting to engage in an educational activity or program offered by the campus;
 - c. the actions alleged to have occurred were perpetrated by someone who is a student or employee of the campus, if the person's identity is known;
 - d. the acts alleged to have occurred took place against a person located in the United States; and,
 - e. the acts alleged to have occurred took place in a location or under circumstances over which the campus exercises substantial control, including but not limited to on campus buildings, buildings owned or operated by registered student organizations, or during off campus class events.

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 sexual 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 Title IX 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 Title IX 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 meets the definition of sexual harassment, sexual assault, domestic violence, dating violence, or stalking; that it occurred in the campus’s education program or activity; and, it occurred against a person in the United States. Following the verification of this information, the Title IX Coordinator will take one of the following actions:

- a. If the allegations in the formal complaint fails to meet any of these requirements, it must be dismissed under the Title IX Grievance Procedure, but can be pursued under the Other Sex-Based Discrimination Grievance Procedure, of which the Title IX Coordinator shall advise the parties. The parties will be notified simultaneously in writing of this action.
- b. If the formal complaint meets the requirements, but the Complainant requests in writing to withdraw the allegations or formal complaint; the Respondent is no longer enrolled or employed by the campus; or, specific circumstances prevent the Title IX Coordinator from gathering enough evidence to make a determination, the Title IX Coordinator may dismiss the Title IX investigation. In such an instance, the Title IX Coordinator shall notify both parties simultaneously in writing of the dismissal of the formal complaint, and the reason for the dismissal. Either party may appeal this dismissal to the Director of Human Resources (or the Director of Human Resource’s direct supervisor, if the Director of Human Resources is also the Title IX Coordinator for the campus). The appeal must be transmitted within five business (5) days of the issuance of the decision by the Title IX Coordinator. The Director of Human Resources (or their supervisor, as applicable) shall review the decision, the rationale for the decision, and the appeal, and shall make the final determination as to whether the Title IX Discrimination Grievance shall be permitted to proceed to investigation, and shall transmit that decision, simultaneously and in writing, to both parties within five (5) business days of the receipt of the appeal.
- c. If the formal complaint meets the requirements, and the investigation isn’t dismissed as permitted or required in Section C.3., the formal complaint shall proceed to the investigation. If the formal complaint meets the requirement set forth in Section A. herein, the allegations of the formal complaint may only be addressed under the Title IX (Sexual Harassment 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 Officer; 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 Officer.

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.

TITLE IX DISCRIMINATION HEARING OFFICER AND LIAISON

In the event of a formal hearing, the institution will select a neutral, external consultant who is specially trained in adjudicating Title IX complaints to serve as the Hearing Officer, who will conduct the formal hearing and decide on the merits of the formal complaint. The ASU System Vice President for Human Resources or their designee will serve as the Liaison to the Hearing Officer. The Liaison will provide the Hearing Officer with the investigative report and any responses to the investigative report submitted by the parties, ensure the Hearing Officer has access to all applicable policies and procedures, provide technical assistance as needed on procedural and policy matters, and facilitate communication between the institution and the Hearing Officer as necessary to carry out the hearing process.

TITLE IX DISCRIMINATION HEARING OFFICER FUNCTIONS

The Title IX Discrimination Hearing Officer shall review the investigative report of the Title IX Coordinator, the responses to the investigative report by the party(ies), the inculpatory and exculpatory evidence (that being both evidence which proves and evidence which disproves statements or allegations made by a witness or party) relevant to the allegations gathered by the Title IX Coordinator or investigator, any live testimony offered by the party(ies) and/or witnesses, and any evidence offered by the party(ies) to determine, based on the preponderance of the evidence, whether the Respondent is responsible for a violation of the Title IX policy, 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.

Each party shall be represented by an advisor, who may but does not have to be an attorney. The advisor will directly participate in the hearing, and question witnesses on the respective party's behalf. If either party is unable to obtain an advisor, the campus will provide a pool of advisors who have been trained on Title IX from which the party may select an advisor. A party who needs the campus to provide them with an advisor shall give notice to the campus no less than five (5) business days prior to the hearing so availability may be determined and the selected advisor can have an opportunity to review all relevant materials. If a party appears at the hearing without an advisor, and without having given notice of his or her need for an advisor, the campus will assign an advisor who is trained on Title IX, and who is selected by the campus based on availability. In the event that either party's advisor hinders the ability to conduct the hearing in an orderly fashion, that advisor may be removed from the hearing by the Hearing Officer, and shall be replaced by an advisor to be provided by the campus.

The entirety of the hearing will be recorded by the Liaison to the Hearing Officer and conducted in closed session. At the request of either party, or in the discretion of the Hearing Officer, the parties may be located in separate physical locations, but by use of appropriate technology shall be able to simultaneously see and hear each other and the Hearing Officer, and be seen and heard by the Hearing Officer.

During the course of the hearing, the Hearing Officer will call the witnesses interviewed during the investigation for testimony, and each party's advisor shall be permitted to question those witnesses. Both parties shall be permitted to offer an opening statement, and to testify and offer witnesses, including expert witnesses, to testify. In the event that either party wishes to call witnesses, they will disclose the identity of the witnesses to the Liaison no less than two (2) business days prior to the hearing. The Liaison to the Hearing Committee will notify each party of the witnesses the

other party intends to call. Testimony shall be elicited through direct and cross-examination by both parties, acting by and through their respective advisors, and the Hearing Officer. The Hearing Officer shall draw no inferences based on a party's or witness's refusal to testify. Each party shall be permitted to present evidence for the Hearing Officer's consideration. All evidence collected by the Title IX Coordinator or investigator throughout the investigation will be presented to the Hearing Officer, and both parties shall have the right to utilize the evidence as part of their presentation to the Hearing Officer. Both parties shall have the opportunity to offer a closing statement.

TITLE IX DISCRIMINATION HEARING OFFICER'S FINDINGS

Within twenty (20) business days of the conclusion of the hearing, the Hearing Officer shall issue a written decision which will be simultaneously sent to both parties and their advisors by the Liaison to the Hearing Officer. The written decision shall include:

1. the timeline of the investigation, beginning with the formal complaint and including all notices, interviews, communications, and the hearing date;
2. the finding of facts from the evidence and testimony presented at the hearing in support of the determination regarding responsibility;
3. the Hearing Officer's determination regarding responsibility based on the preponderance of the evidence;
4. the rationale for the determination regarding responsibility, including the application and analysis of the testimony and evidence presented to the Hearing Officer to Title IX policy to the allegations contained in the formal complaint for each alleged violation contained in the formal complaint;
5. any disciplinary or remedial sanctions to be imposed, which may be up to and including suspension or expulsion, as appropriate;
6. a statement that each party has the right to appeal the decision of the Hearing Officer within five (5) business days on the bases of: procedural irregularity that affected the outcome; new evidence not reasonably available at the time of the Hearing Officer's determination that could affect the outcome; and/or, bias or conflict of interest on the part of the Title IX Coordinator, investigators, or Hearing Officer; and,
7. a statement that the standard of evidence used in the appeal shall be the preponderance of the evidence.

TITLE IX DISCRIMINATION APPEAL PROCEDURE

1. Either party shall have five (5) business days following the issuance of the Hearing Officer's written decision to submit an appeal. Either party may appeal on the basis of:
 - a. procedural irregularity that affected the outcome;
 - b. new evidence not reasonably available at the time of the Hearing Officer's determination that could affect the outcome; and/or,
 - c. bias or conflict of interest on the part of the Title IX Coordinator, investigator, or Hearing Officer.
2. The letter of appeal shall be submitted to the Liaison to the Hearing Officer and shall set forth the specific basis or bases for the appeal, and all facts, evidence, and a statement in support of the basis or bases of appeal.
3. Any letter of appeal shall be transmitted to the other party by the Liaison, and that party shall have two (2) business days to respond, in writing, to the contents of the letter of appeal. Any response shall be presented by the Liaison to the appealing party, who shall have two (2) business days to respond. Any response by the appealing party shall be presented by the Liaison to the other party, who shall have two (2) business days to respond. The letter of appeal, all responses to the same, the Hearing Officer's written decision, the Title IX investigative report, and the recording of the hearing (hereinafter referred to as the "Appeal Packet") will be presented by the Liaison to the ASU System President for consideration.
4. The ASU System President shall use the preponderance of the evidence basis in making their determination on

the basis for appeal.

Within ten (10) business days of the receipt of the Appeal Packet, the ASU System President shall issue a written determination. The President can determine either that:

- a. the bases of appeal are not supported by the Appeal Packet and confirm the decision of the Hearing Committee; or,
- b. the bases of appeal are supported by the Appeal Packet, and:
 - i. overturn the decision of the Hearing Committee, or
 - ii. confirm the finding of the Hearing Committee but modify the sanctions or remedial measures ordered by the Hearing Committee.

5. The written determination shall state the rationale for the determination. The ASU System President's decision is final.

DOCUMENT COLLECTION

When a Title IX 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. Title IX 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 a Title IX (Sexual Harassment Discrimination) grievance should contact their campus Title IX Coordinator.