

Equal Opportunity, Harassment, and Nondiscrimination

Policy on Nondiscrimination

The University is committed to providing an educational environment that is free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting equity in all aspects of the educational program or activity, the University has developed policies and procedures that provide a prompt, equitable, and impartial process for allegations of discrimination or harassment on the basis of protected class status and for allegations of retaliation.

Resolution Services oversees implementation of the University's policy on Equal Opportunity, Harassment, and Nondiscrimination. The University's Title IX Coordinator has the primary responsibility for coordinating the University's efforts related to investigation, resolution, and implementation of sanctions to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The members of the Title IX Team are trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents.

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Bridget Beville, Vice President, Resolution Services & Title IX Coordinator
4025 S. Riverpoint Parkway
Mail Stop: CF-K303
Phoenix, AZ 85040
602-557-1823 office
480-273-0455 mobile
TIXC@phoenix.edu

The University's 504 Coordinator is responsible for overseeing efforts to comply with Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990 (ADA), and the ADA

Amendments Act of 2008, prohibiting discrimination on the basis of a disability and requiring the University to provide accommodations to otherwise qualified disabled students in all University programs and activities. Questions may be directed internally to:

Kelly Hermann, Vice President, Accessibility, Equity & Inclusion & 504 Coordinator
4025 S. Riverpoint Parkway
Mail Stop: CF-S907
Phoenix, AZ 85040
602.387.9936

Section.504Coordinator@phoenix.edu

Inquiries may be made externally to:

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

Scope

The core purpose of this policy is the prohibition of all forms of discrimination. When an alleged violation of this policy is reported, the allegations are subject to resolution using one of two processes outlined below as determined by the Title IX Coordinator. These procedures may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

Any person whose acts deny, deprive, or limit the educational access, benefits, and/or opportunities of any member of the University community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes defined below is in violation of this policy.

This policy is interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's education program and activities or use University networks, technology, or equipment.

Jurisdiction

This policy applies to the University's education program and activities, to conduct that takes place on campus or online or on property owned or controlled by the University or at University-sponsored events.

The University may also extend jurisdiction to off-campus and/or online conduct when the Title IX Coordinator determines that the conduct affects a substantial University interest, including any situation that is detrimental to the educational interests or mission of the University and/or has continuing effects on the University community.

Definitions

Advisor: The person chosen by a party or appointed by the University to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at a Formal Grievance Process hearing, if any.

Complainant: The individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class.

Education Program or Activity: Locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the harassment or discrimination occurs.

Formal Complaint: A document filed by a Complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment against a Respondent and requesting an investigation of the allegations.

Mandated Reporter: Any University employee obligated by policy to share knowledge, notice, and/or reports of actual or suspected harassment, discrimination, and/or retaliation with the Title IX Coordinator.

Preponderance of the Evidence: The standard of proof used to determine whether a Respondent is responsible for a violation of this policy, meaning whether a policy violation is more likely than not.

Protected Class: Race, color, religion, creed, sex, pregnancy (including lactation, childbirth, and related medical conditions), sexual orientation, gender, gender identity or expression, familial or marital status, age (40 or older), physical or mental disability, medical condition (any health impairment related to a diagnosis, record, or history of cancer), genetic information (including testing and characteristics), national origin, ancestry, ethnicity, citizenship, military or veteran status, or any other status or characteristic protected by applicable federal, state, or local law.

Respondent: The individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class.

Supportive Measures: Non-disciplinary, non-punitive individualized services offered to the Complainant or the Respondent designed to restore or preserve equal access to the education program or activity, including measures designed to protect the safety of all parties or the educational environment, or deter harassment, discrimination, and/or retaliation. Supportive measures may include, but are not limited to, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, security escorts, mutual restrictions on contact between the parties, changes in work location, leaves of absence, increased security and monitoring of certain areas, counseling referrals and other similar measures.

Title IX Coordinator: The official designated by the University to ensure compliance with Title IX and who has the primary responsibility for coordinating Recipient's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy. For the purposes of executing this policy, a designee may be assigned by the Title IX Coordinator.

Prohibited Conduct Harassment

Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law. The University does not tolerate discriminatory harassment of any employee, student, visitor, or guest and will act to remedy all forms of discriminatory harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. For purposes of this policy, harassment is any verbal or physical conduct designed to threaten, intimidate or coerce any individual covered by this policy.

The following examples of harassment are intended to be guide-

lines and are not exclusive when determining whether there has been a violation of this policy:

- Verbal harassment includes epithets, slurs, and negative stereotyping, and comments that are offensive or unwelcome regarding any characteristic or status protected by this policy or applicable law.
- Non-verbal harassment includes distribution, display or discussion of any written or graphic material that ridicules, denigrates, insults, belittles or shows hostility, aversion or disrespect toward an individual or group because of any characteristic or status protected by this policy or applicable law.
- Physical harassment includes assault, unwanted touching, or blocking normal movement because of an individual's protected status.

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational access, benefits, or opportunities. This discriminatory effect results from harassing verbal, non-verbal, written, graphic, or physical conduct that is severe or pervasive, and objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, the University may impose sanctions through application of the appropriate grievance process below.

The University reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature not based on a protected status, under the applicable Code of Conduct.

Sexual Harassment

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that defines the meaning of "sexual harassment" (including forms of sex-based violence). Under the Final Rule, the University must narrow both the geographic scope of its authority to act under Title IX and the types of "sexual harassment" subject to its Title IX investigation and adjudication process.

Only incidents falling within the Title IX definition of sexual harassment will be subject to the Title IX Formal Grievance Process.

Title IX Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

- An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity;
- Sexual assault (as defined in the Clery Act);
- Dating Violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act);
- Domestic Violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act);
- Stalking (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act).

All other incidents, including those that meet the following definition of sexual harassment will be subject to the Standard Grievance Process.

Sexual Harassment is unwelcome, sex-based and/or gender-based verbal, non-verbal, written, online and/or physical conduct that satisfies one or more of the following:

- Takes the form of quid pro quo harassment;

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another when submission to such sexual conduct is made either explicitly or implicitly a term or condition of an individual's work or educational development or performance, or evaluation thereof.

- Creates a hostile environment;

A hostile environment is created when sexual harassment is severe, and/or persistent and/or pervasive and objectively offensive, such that it unreasonably interferes with, denies, or limits the ability to participate in or benefit from the University's education program and activities.

- is retaliatory.

Other Civil Rights Offenses

The following offenses are prohibited forms of discrimination when the act is based upon the Complainant's actual or perceived membership in a protected class.

- Sexual Exploitation, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy.
- Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
- Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally

Retaliation

Retaliation is defined as any materially adverse action taken because of a person's participation in a protected activity. Protected activity includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, or assisting in providing information relevant to an investigation.

The University or any member of the University community is prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Charges against an individual for Code of Conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Acts of alleged retaliation should be reported immediately to the

Title IX Coordinator for investigation.

Reporting Harassment, Discrimination and/or Retaliation

Reports of harassment, discrimination, and/or retaliation may be made at any time (including during non-business hours) using any of the following options:

- Directly to the Title IX Coordinator via phone, email, text or in-person;
- Directly to Resolution Services;
- By informing any mandated reporter, such as a faculty member, academic counselor, Campus Security Authority (CSA) or Human Resources Business Partner (HRBP).
- By calling the Ethics & Compliance Helpline at 888-310-9569 or filling out an online form at <http://www.UOPXhelpline.com>.

All University faculty and employees are mandated reporters and expected to report actual or suspected harassment or discrimination of which they become aware and must promptly share all known details of a report made to them in the course of their employment, including the identities of both parties, with the Title IX Coordinator.

All reports are acted upon promptly, and every effort is made by the University to preserve the privacy of reports, meaning information related to an allegation will be shared with a limited number of University employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report.

There is no time limitation on reporting. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be limited or impossible.

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the University community and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether to proceed when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information to make safety decisions in light of the potential danger.

Upon receipt of notice or a complaint of an alleged violation of this policy, the Title IX Coordinator engages in an initial assessment to determine jurisdiction and which process applies.

Anonymous Reports

Reports may also be made anonymously, without identification of the Complainant. However, anonymous reports typically limit the University's ability to investigate, respond, and provide remedies, depending on what information is shared. Anonymous reports will be preliminarily investigated to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures can be provided. The University cannot provide supportive measures to an unidentified Complainant.

False Allegations & Information

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action. Additionally, witnesses and parties providing knowingly false evidence or deliberately misleading an official conducting an investigation will be subject to discipline under the applicable Code of Conduct.

Amnesty

To encourage reporting and participation in the process, the University maintains a policy of offering parties and witnesses amnesty from minor policy violations related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

Standard Grievance Process for Allegations of Harassment, Discrimination and/or Retaliation

The procedures described below apply to allegations of harassment, discrimination and/or retaliation on the basis of protected class status and Sexual Harassment as defined by this policy.

If a factual nexus exists between the allegation of harassment, discrimination and/or retaliation and the alleged actions, the Title IX Coordinator initiates one of two responses:

- Informal Resolution - typically used for less serious offenses and only when all parties agree, or when the Respondent is willing to accept responsibility for violating policy. This can also include a remedies-only response.
- Administrative Resolution - investigation of policy violation(s) and recommended finding, subject to a determination by the Title IX Coordinator and the opportunity to appeal to an Appeal Panel.

Resolution proceedings are private. All persons are expected to maintain the privacy of the proceedings in accordance with University policy.

The investigation and subsequent Administrative Resolution determine whether this policy has been violated.

At any point during the initial assessment or investigation, if the Title IX Coordinator determines that reasonable cause does not support the conclusion that policy has been violated, the process will end, and the parties will be notified.

Informal Resolution

Informal Resolution is applicable when the parties voluntarily agree to resolve the matter or when the Respondent accepts responsibility for violating this policy or when the Title IX Coordinator can resolve the matter informally by providing remedies to resolve the situation.

It is not necessary to pursue Informal Resolution first in order to pursue Administrative Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Administrative Resolution process.

Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator makes a determination that the individual is in violation of this policy and then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the University community.

If the Respondent accepts responsibility for all of the alleged policy

violations and the Title IX Coordinator has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome. If Respondent accepts responsibility for some of the alleged policy violations, the remaining allegations will continue to be investigated and resolved.

Administrative Resolution

Administrative Resolution can be pursued for any behavior for which the Respondent has not accepted responsibility that constitutes conduct covered by this policy.

Administrative Resolution starts with a thorough, reliable, and impartial investigation. If Administrative Resolution is initiated, the Title IX Coordinator will promptly provide written notification of the investigation to the parties. Notification will include a meaningful summary of the allegations and the policies allegedly violated.

Investigation

The Title IX Coordinator assigns an Investigator(s) free from bias and conflicts of interest who will make a good faith effort to complete the investigation as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

The University aims to complete all investigations within a sixty (60) day period, which can be extended as necessary for appropriate cause by the Title IX Coordinator, with notice to the parties as appropriate.

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to evidence.

Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct. The process should exclude irrelevant or immaterial evidence and may disregard or provide little weight to evidence lacking in credibility or that is improperly prejudicial.

The Investigator(s) will provide an investigation report summarizing the investigation and evidence and provide parties with a copy of the draft investigation report when it is completed, including relevant evidence, analysis, credibility assessments, and recommended finding(s). Each party has a full and fair opportunity to respond to the report in writing within ten (10) days of receipt. The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, and make any necessary revisions.

The Investigator(s) will share the report with the Title IX Coordinator for review and feedback and then provide a final report to the Title IX Coordinator. The report will include recommended finding(s) based on a preponderance of the evidence.

Determination

Within a reasonable time of receiving the Investigator's recommendation, the Title IX Coordinator reviews the report and all responses, and then makes the final determination on the basis of the preponderance of the evidence.

The recommendation of the investigation should be strongly considered but is not binding on the Title IX Coordinator. The Title IX Coordinator may invite and consider impact statements from the

parties if and when determining appropriate sanction(s), if any. If the Respondent admits to the violation(s), or is found in violation, the Title IX Coordinator, in consultation with other administrators as appropriate, determines sanction(s) and/or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the discriminatory conduct, both on the Complainant and the University community.

Notice of Outcome

The Title IX Coordinator will timely provide the parties with a written Notice of Outcome to include findings, any sanction(s), and a detailed rationale, delivered simultaneously to the parties. Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party.

The Notification of Outcome also includes the grounds on which the parties may appeal and the steps the parties may take to request an appeal of the findings.

Sanctions

Factors considered when determining a sanction may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need to bring an end to the discrimination, harassment, and/or retaliation
- The need to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the University community
- The impact on the parties
- Any other information deemed relevant by the Title IX Coordinator

Range of Sanctions - Students

The following sanctions may be imposed upon students singly or in combination:

- **Warning:** A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **Suspension:** Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met.
- **Expulsion:** Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Recipient-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.
- **Withholding Diploma:** The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities.
- **Revocation of Degree:** The University reserves the right to revoke a degree previously awarded for violations committed by a student prior to graduation.
- **Other Actions:** In addition to or in place of the above sanctions, the Title IX Coordinator may assign any other sanctions as deemed appropriate.

Range of Sanctions - Faculty

The following sanctions may be imposed upon faculty singly or in

combination:

- **Warning:** A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure or directive will result in more severe sanctions, including the rescission of active faculty status.
- Implementation of a remediation plan as appropriate
- Removal from assigned course(s)
- Restrictions on future teaching assignments
- Loss of teaching privileges altogether
- **Other Actions:** In addition to or in place of the above sanctions, the Title IX Coordinator may assign any other sanctions as deemed appropriate.

All Respondents are expected to comply with the assigned sanctions within the timeframe specified by the Title IX Coordinator. Failure to abide by the sanction(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s), including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

Appeals

All requests for appeal must be submitted in writing to the Title IX Coordinator within ten (10) business days of the delivery of the Notice of Outcome. Either party may appeal, but appeals are limited to the following grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g., substantiated bias, material deviation from established procedures.)
- To consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The sanction(s) are disproportionate to the violation and the cumulative record of the Respondent.

When any party requests an appeal, the Title IX Coordinator will share the appeal request with the other party or other appropriate persons such as the Investigator(s), who may file a response within three (3) business days.

A three-member Appeals Panel will be designated by the Title IX Coordinator from those who have not been involved in the process previously and include a manager, director, and College Dean or Vice President. The Appeals Panel will review the appeal request(s) and if grounds are not sufficient for an appeal, or the appeal is not timely, the Appeals Panel dismisses the appeal.

If the Appeals Panel finds that at least one of the grounds is met by at least one party, additional principles governing the review of appeals include the following:

- Decisions are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s) only if there is compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation and pertinent documentation regarding the grounds for appeal.
- An appeal is not an opportunity for the Appeals Panel to substitute their judgment for that of the original Investigator(s) or Title IX Coordinator merely because they disagree with the finding and/or sanction(s).

- Appeals granted based on new evidence should normally be remanded to the Investigator(s) for reconsideration.
- Sanctions imposed as the result of Administrative Resolution are implemented immediately unless the Title IX Coordinator stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- All parties will be informed in writing within three (3) business days of the outcome of the appeal.
- Once an appeal is decided, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand.
- In rare cases when a procedural error cannot be cured by the original Investigator(s) and/or Title IX Coordinator (as in cases of substantiated bias), the Appeals Panel may recommend a new investigation and/or Administrative Resolution process.
- In cases in which the appeal results in Respondent's reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

Grievance Process for Allegations of Title IX Sexual Harassment

Response to Allegations

Upon receipt of a complaint or notice to the Title IX Coordinator of an allegation of Title IX Sexual Harassment, the Title IX Coordinator will promptly contact the Complainant to:

- discuss the availability of supportive measures and consider the Complainant's wishes with respect to supportive measures;
- inform the Complainant of the availability of supportive measures with or without filing a Formal Complaint; and
- explain the process of filing a Formal Complaint.

If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. The Title IX Formal Grievance Process is not initiated, though the Complainant can elect to initiate it at a later time.

If the Title IX Formal Grievance Process is preferred, the Title IX Coordinator determines if the alleged misconduct falls within the scope of Title IX.

- If it does, the Title IX Coordinator will initiate the appropriate process.
- If it does not, the Title IX Coordinator assesses which policies and/or procedures may apply and refers the matter accordingly. Dismissing a complaint under Title IX is just procedural and does not limit the University's authority to address a complaint through another applicable process.

Emergency Removal

Respondents may be removed from the University's education program or activity on an emergency basis. The University will undertake an individualized safety and risk analysis to determine if there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations that justifies removal. The Respondent will be provided with notice of Emergency Removal and the opportunity to challenge the decision immediately following the removal.

Dismissal (Mandatory and Discretionary)

The University must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined in this policy, even if proved; and/or
- The conduct did not occur in an educational program or activity controlled by the University and/or the University does not have control over the Respondent; and/or
- The conduct did not occur against a person in the United States; and/or
- At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the University's education program or activity.

The University may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or
- The Respondent is no longer enrolled in or employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. A dismissal decision is appealable by any party under the procedures for appeal below.

Resolution Processes

The processes described below apply only to allegations of Title IX Sexual Harassment involving students, employees, or faculty members that meet the Title IX Sexual Harassment definition in this policy.

Upon receipt of a complaint or notice to the Title IX Coordinator of an allegation of Title IX Sexual Harassment, the University will initiate at least one of three responses:

- Offer supportive measures because the Complainant does not want to proceed formally; and/or
- Facilitate an Informal Resolution; and/or
- Initiate the Title IX Formal Grievance Process including an investigation and a live hearing.

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with University policy. While there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose.

The University will make a good faith effort to complete the resolution process within a sixty (60)-to-ninety (90) business day time period, including appeal, which may be extended as necessary for appropriate cause at the sole discretion of the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, Investigator(s), and Decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another individual will be assigned and the impact

of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the University's Ethics & Compliance Department via email at office.complianceuopx@phoenix.edu or the Ethics Helpline at www.uopxhelpline.com.

Right to an Advisor

The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The Advisor is not an advocate and does not represent the parties in the process.

The Advisor is entitled to inspect and review evidence prior to completion of the Investigative Report, receive a copy of the final Investigative Report, and is permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

The parties are not permitted to directly cross-examine each other or any witnesses during the hearing. Cross-examination must be conducted by the parties' Advisors. Restrictions regarding the extent to which an Advisor may participate in the Formal Grievance process are further outlined in the Hearing Procedures section of this policy.

The University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney. The Title IX Coordinator will offer to assign a trained Advisor for any party if the party so chooses.

The University is obligated to investigate and adjudicate in a prompt timeframe under Title IX and may refuse to grant extension requests to accommodate the schedule of an Advisor. The determination of what is reasonable shall be made by the Title IX Coordinator.

Informal Resolution

Parties are not required to participate in an Informal Resolution process and Informal Resolution may only be used if a Formal Complaint is filed. Any party participating in Informal Resolution can stop the process at any time and begin or resume the Title IX Formal Grievance Process.

Informal Resolution may be used with the voluntary, written consent of both parties:

- When the Respondent accepts responsibility for violating policy and wants to accept a sanction and end the resolution process; or
- When the Title IX Coordinator can resolve the matter by providing supportive measures to remedy the situation.

Prior to implementing Informal Resolution, both parties will be provided with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the University are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator accepts the Respondent's admission of responsibility and implements agreed-upon sanctions and or remedies, in coordination with other appropriate administrator(s), as necessary. The result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution.

Informal Resolution is not available to resolve allegations that an

employee sexually harassed a student.

Formal Grievance Process

The Formal Grievance Process includes an objective evaluation of all relevant evidence obtained, including both inculpatory and exculpatory evidence. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

Relevant evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true and do not include the following types of evidence and questions, which are deemed irrelevant at all stages of the Formal Grievance Process:

- Evidence and questions about the complainant's sexual predisposition or prior sexual behavior unless they are offered to prove that someone other than the respondent committed the conduct alleged by the complainant or they concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

There is a presumption that the Respondent is not responsible for alleged misconduct unless and until a determination of responsibility is made at the conclusion of the Formal Grievance Process. The standard of proof used to determine responsibility is preponderance of the evidence.

Notice of Allegations

The Title IX Coordinator will provide a Notice of Allegations to both parties as soon as practicable after receiving a Formal Complaint.

The Notice of Allegations will include:

- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period, and
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.

The institution will provide sufficient time for the parties to review the Notice of Allegations before any initial interview.

Investigations

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

Through the investigation process, all parties have a full and fair opportunity to suggest witnesses and questions, to provide evidence and expert witnesses, and to review and respond to all evidence on the record.

The Title IX Coordinator appoints an Investigator who will make a good faith effort to complete the investigation as promptly as cir-

cumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation. Investigator(s) will complete the following steps (not necessarily in this order):

- Provide each interviewed party and witness an opportunity to verify the Investigator's summary of the relevant evidence/ testimony from their respective interviews and meetings.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding.
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the Recipient does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence.
 - The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/ or to share the responses between the parties for additional responses.
- Incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report.
- Share the report with the Title IX Coordinator for their review and feedback.
- Incorporate any relevant feedback, and share the final report and a file of any directly related evidence that was not included in the report with all parties and their Advisors at least ten (10) business days prior to a hearing.

Once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing and select an appropriate Decision-maker. The Title IX Coordinator may not serve as a Decision-maker but may serve as an administrative facilitator of the hearing if their previous role in the matter does not create a conflict of interest.

Hearings

No less than ten (10) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties. The hearing body will consist of a single Decision-maker.

The Title IX Coordinator will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

If any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker. No inference may be

drawn about responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions.

The parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the University will appoint one. Each party must have an Advisor present. There are no exceptions.

Any evidence that the Decision-maker determine(s) is relevant and credible may be considered. The Decision-maker does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

At the hearing, the Decision-maker has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within this policy.

Hearing Procedures

The Decision-maker will answer all questions of procedure.

The Decision-maker will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker and the parties and will then be excused.

The Investigator(s) will present a summary of the final investigation report and will be subject to questioning by the Decision-maker and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker may ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Decision-maker will direct that it be disregarded.

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Decision-maker. The parties/witnesses will submit to questioning by the Decision-maker and then by the parties through their Advisors ("cross-examination").

All cross-examination questions are subject to a relevance determination by the Decision-maker. The Advisor will pose the proposed question, allow the Decision-maker to consider it, and the Decision-maker will determine whether the question will be permitted, disallowed, or rephrased. Only questions that are permitted may be answered.

If a party's Advisor refuses to comply with the Recipient's established rules of decorum for the hearing, the University may require the party to use a different Advisor. If a University-provided Advisor refuses to comply with the rules of decorum, the University may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

The Decision-maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Decision-maker has final say on all questions and determinations of relevance, subject to any appeal. The Decision-maker will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

Hearings (but not deliberations) are recorded for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. The recording of the hearing will not be provided to parties or advisors.

The Decision-maker will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question using the preponderance of the evidence standard.

If the Respondent is found responsible, the Decision-maker will review any pertinent conduct history provided and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Decision-maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions.

This report must be submitted to the Title IX Coordinator within three (3) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will prepare a Notice of Outcome within five (5) business days of receiving the Decision-maker's deliberation statement, which will be shared with the parties simultaneously.

The Notice of Outcome will identify the specific policy reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, methods used to obtain evidence, and hearings held.

The Notice of Outcome will also specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law. The Notice of Outcome will also include information on the rele-

vant procedures and bases for any available appeal.

Sanctions

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered after a finding or admission of responsibility.

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need to bring an end to the discrimination, harassment, and/or retaliation
- The need to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the University community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker

Range of Sanctions - Students

The following sanctions may be imposed upon students singly or in combination:

- Warning: A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions.
- Suspension: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met.
- Expulsion: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Recipient-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.
- Withholding Diploma: The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities.
- Revocation of Degree: The University reserves the right to revoke a degree previously awarded for violations committed by a student prior to graduation.
- Other Actions: In addition to or in place of the above sanctions, the Decision-maker may assign any other sanctions as deemed appropriate.

Range of Sanctions - Part-Time Faculty

The following sanctions may be imposed upon part-time faculty singly or in combination:

- Warning: A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure or directive will result in more severe sanctions, including the rescission of active faculty status.
- Implementation of a remediation plan as appropriate
- Removal from assigned course(s)
- Restrictions on future teaching assignments
- Loss of teaching privileges altogether
- Other Actions: In addition to or in place of the above sanctions, the Decision-maker may assign any other sanctions as deemed appropriate.

Range of Sanctions - Employees (including Full-Time Faculty)

The following sanctions may be imposed upon employees singly or in combination:

- Warning - Verbal or Written
- Performance Improvement/Management Process
- Required Training or Education
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination
- Other Actions: In addition to or in place of the above sanctions, the Decision-maker may assign any other sanctions as deemed appropriate.

All Respondents are expected to comply with the assigned sanctions within the timeframe specified by the final Decision-maker. Failure to abide by the sanction(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s), including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

Appeals

Either party may file a Request for Appeal, but it must be submitted in writing to the Title IX Coordinator within ten (10) days of the delivery of the Notice of Outcome.

A three-member Appeal Panel comprised of a manager, director, and College Dean or Vice President will be designated by the Title IX Coordinator, one of whom will serve as the Appeal Chair. No appeal panelists will have been involved in the process previously. The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds, the request will be denied by the Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds, then the Appeal Chair will notify the parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker.

The parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be provided a copy of the request with the approved grounds and then be given ten (10) business days to submit a response to the portion of the appeal that was approved and involves them.

The Chair will collect any additional information needed and all documentation regarding the approved grounds. The Appeal

Panel will render a decision in no more than three (3) business days, barring exigent circumstances. All decisions are by majority vote and apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.

Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. The University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal if the original sanctions included suspension or expulsion.

Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (*de novo*) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for the Appeal Panel to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s).
- The Appeal Panel may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural error cannot be cured by the original Decision-maker (as in cases of bias), the appeal may order a new hearing with a new Decision-maker.
- The results of a remand to a Decision-maker cannot be appealed.
- In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.