

ASU System Title IX Coordinators and Investigators



Grievance Procedures Training
August 27, 2024

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ASU System Title IX (Sexual Harassment Discrimination) Grievance Procedure

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Step 1: Report

- Policy Requirements:
 1. Contact – 2 business days
 2. Notify – Supportive Measures
 3. Inform – Formal Complaint Process
 4. Warn – Code of Conduct/False Reports
- Other Actions: Analyze and discuss jurisdictional issues and other procedures, as appropriate, with Complainant

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Step 1: Report (cont'd)

- Question 1: Does the report involve an alleged victim who was participating or attempting to participate in our education program or activity?
 - If Yes: Go to Question 2
 - If No:
 - Explain to Complainant allegations are outside of our Title IX jurisdiction
 - Offer any support or resources you can, which can include assistance with referring the matter to student conduct or assisting with reporting to local police

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Step 1: Report (cont'd)

- Question 2: Does the report allege sex-based discrimination?
 - Use the broadest definition at this point
 - If Yes: Go to Question 3
 - Need to identify which grievance procedure applies – Sexual Harassment Discrimination (SHD) or Other Sex-Based Discrimination (OSBD)
 - If No:
 - Explain to Complainant neither sex discrimination procedure applies
 - Offer any support or resources you can, which can include assistance with referring the matter to student conduct or assisting with reporting to local police

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Step 1: Report (cont'd)

- Question 3: Did the activity allegedly occur in the U.S.?
 - If Yes: Go to Question 4
 - If No: Use the OSBD

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Step 1: Report (cont'd)

- Question 4: Did the activity allegedly occur in a location or under circumstances over which the campus exercises substantial control?
 - If Yes: Go to Question 5
 - If No: Use the OSBD

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Step 1: Report (cont'd)

- Question 5: Does the alleged conduct meet the definition of “Sexual Harassment Discrimination” under SHD?
 - If Yes: Must use the SHD
 - If No: Must use the OSBD
 - If Close Call:
 - Use SHD, but explain to Complainant that you might have to dismiss their complaint after Notice of Allegations, but OSBD would then be available

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Step 2: Formal Complaint

- If Complainant files a Formal Complaint: Continue to Step 3
- If Complainant decides not to file a Formal Complaint:
 - Assist the Complainant with continued supportive measures
 - Determine whether you will sign a Formal Complaint
 - Only sign if, based on the facts then available, failure to sign would be *clearly unreasonable* and would amount to *deliberate indifference*

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Step 3: Notice of Allegations

- Prepare the Notice of Allegations
 - Double-check all required elements of notice from policy
- Submit Notice of Allegations to both parties simultaneously

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Step 4: Screening

- Screen Formal Complaint for SHD Jurisdiction
 1. Allegations meet definition of Sexual Harassment Discrimination
 2. Allegedly occurred in school's education program or activity
 3. Allegedly occurred in U.S.
 4. Allegedly occurred in a location or under circumstances over which the campus exercises substantial control

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Step 4: Screening (cont'd)

- Possible Outcomes:
 1. Mandatory Dismissal
 2. Discretionary Dismissal (and appeal rights)
 3. Investigation

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Step 4: Screening (cont'd)

Mandatory Dismissal

- If any SHD jurisdictional element is absent, then:
 - Dismiss Formal Complaint under SHD
 - Offer Complainant option to proceed under OSBD

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Step 4: Screening (cont'd)

Discretionary Dismissal

- If all SHD elements are present,
 - But:
 - Complainant requests in writing to withdraw allegation for Formal Complaint; or
 - Circumstances prevent gathering enough evidence to make a determination;
 - Then:
 - Title IX Coordinator *may* dismiss Formal Complaint
 - Both parties have right to appeal discretionary dismissal
 - May not initiate other procedure after discretionary dismissal

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Step 5: Investigation

- Investigation basics:
 - 45 business days
 - Impartial
 - Consider all inculpatory and exculpatory evidence
 - Interview: Complainant, Respondent, all identified witnesses
 - Review: All documentary evidence

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Step 5: Investigation (cont'd)

- Investigation guardrails:
 - No privileged info unless privilege waived
 - No sexual history or predisposition info unless offered to prove:
 - Someone else committed alleged act; or
 - Sexual history between C and R to prove consent
 - No credibility assessments based on status as C or R
 - Written notice of 2 business days before any meeting or interview where party's presence is requested
 - Continue to assess and reassess supportive measures

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Step 6: End of Investigation

- Possible Outcomes
 1. Informal Resolution
 2. Evidence Review by Parties

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Step 6: End of Investigation (cont'd)

Informal Resolution

- If proposed, describe the procedure
- May not use when:
 - C is a student; and
 - R is a staff or faculty member
- If successful: Close case
- If unsuccessful:
 - Proceed to parties' review of evidence
 - Documents from informal resolution process provided to Hearing Committee

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Step 6: End of Investigation (cont'd)

Evidence Review by Parties

- Provide all evidence from investigation to parties and their advisors simultaneously.
- Parties have 10 business days to review and provide any written response
- Title IX Coordinator/investigator reviews any responses
- Responses included in Investigative Report

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Step 7: Investigative Report

- **Required elements:**
 - Timeline of investigation, beginning with Formal Complaint
 - Allegations from Formal Complaint
 - All relevant evidence gathered in investigation
 - Specific form of sex discrimination alleged
 - Parties' responses to the evidence
- **Review and Response:**
 - Parties permitted 10 business days after receiving Investigative Report before hearing and may submit a written response to report

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Step 8: Hearing

- Title IX Coordinator/Investigator's Role:
 - Provide Investigative Report and responses to Hearing Committee Chair (HR rep)
 - Appear as witness at hearing, if called
 - Continue to provide supportive measures

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Step 9: Hearing Committee's Determination

- Title IX Coordinator/Investigator's Role:
 - Note: Title IX Hearing Committee will issue Written Determination to parties and Hearing Committee Chair within 20 business days of hearing
 - Continue to provide supportive measures
 - Refer process questions to Hearing Committee Chair
 - Do not consult with Hearing Committee members

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Step 10: Appeal

- Title IX Coordinator/Investigator's Role:
 - Note: Parties have 5 business days to submit appeal to Hearing Committee Chair
 - Continue to provide supportive measures
 - Refer process questions to Hearing Committee Chair
 - Do not consult with parties concerning their appeal or with Appeal Committee members

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Step 11: Appeal Committee's Written Recommendation

- Title IX Coordinator/Investigator's Role:
 - Note: Appeal Committee has 10 business days to after receipt of Appeal Packet from Hearing Committee Chair to submit Written Recommendation to Chancellor:
 - Appeal not supported by evidence, and affirm Hearing Committee; or
 - Appeal is supported by evidence, and
 - Overturn Hearing Committee; or
 - Confirm Hearing Committee finding, but modify sanctions or remedial measures
 - Continue to provide supportive measures.
 - Refer process questions to Hearing Committee Chair
 - Do not consult with parties concerning their appeal or with Appeal Committee members

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Step 12: Chancellor's Final Decision

- Title IX Coordinator/Investigator's Role:
 - Note: Chancellor has 10 business days to review Appeal Packet and Written Recommendation and issue Final Decision
 - Continue to provide supportive measures
 - Refer process questions to Hearing Committee Chair
 - Do not consult with parties concerning their appeal or with Chancellor

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Step 13: Aftermath

- Title IX Coordinator/Investigator's Role:
 - Coordinate enforcement with campus administrators
 - Continue to provide supportive measures
 - Collect all documents and ensure retention for 7 years

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ASU System Title IX Other Sex-Based Discrimination Grievance Procedure

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Grievance Issues

- Catchall when SHD does not apply:
 - Allegations of sex-based discrimination other than “Sexual Harassment Discrimination”
 - Allegations of “Sexual Harassment Discrimination” occurring outside of SHD jurisdiction
 - Allegations of retaliation reporting or participating in a claim of sex-based discrimination
 - Allegations of any activity prohibited by 34 CFR § 106.31(b)

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(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

- (1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
- (2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
- (3) Deny any person any such aid, benefit, or service;
- (4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

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(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

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Grievance Issues (cont'd)

- Limitations:
 - Allegations subject to SDH
 - Alleged C was not participating or attempting to participate in an education program or activity of the institution
 - Allegations of actions permitted by 34 CFR § 106.14
 - Fraternities/Sororities
 - YMCA, YWCA, Girl Scouts, Boy Scouts, Camp Fire Girls
 - Voluntary youth service organizations (non-profits for members under 19)

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Screening

- The only other significant difference from the SHD is that the Title IX Coordinator's screening function (immediately following the Notice of Allegations) is limited to determining whether the Formal Complaint is grievable under the OSBD

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Investigation Through Appeal

- All remaining aspects of the OSBD (investigation, informal resolution, hearing, appeal) follow the same procedures as the SHD