

ALASKA PACIFIC UNIVERSITY TITLE IX GRIEVANCE PROCEDURE

Purpose.

The purpose of the following reporting and complaint procedures is to secure prompt and equitable resolution of complaints alleging discrimination prohibited by Title IX of the Education Amendments of 1972 (“Title IX”) (including sexual harassment and sexual violence).

Scope

The following Title IX Grievance Procedure applies to all Alaska Pacific University (“APU” or “University”) community members, including students, staff, faculty, visitors, vendors, contractors, applicants for employment, paid or unpaid interns, volunteers, and non-employee “invitees” conducting business with APU, who experience prohibited sexual harassment in APU’s educational programs or activities. This includes locations, events, or circumstances over which APU exercised substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by APU. APU has other policies and procedures that may be applicable if the conduct does not meet the definition of prohibited sexual harassment under this procedure or otherwise fall within the scope of this procedure.

This procedure applies to Title IX Sexual Harassment alleged to have occurred on or after August 14, 2020. Allegations of conduct occurring prior to this date will be subject to APU policy in place at the time of the alleged conduct.

Procedure

I. PROHIBITED SEXUAL HARASSMENT.

In accordance with its obligations under the Title IX Regulations of 2020, APU prohibits sexual harassment, which is conduct based on sex, including gender identity, gender expression, or sexual orientation, that satisfies one or more of the following definitions:

- A. Quid Pro Quo Conduct.** An employee conditions the provision of an aid, benefit, or service of APU on an individual’s participation in unwelcome sexual conduct;
- B. Unwelcome Conduct.** Unwelcome conduct that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to APU’s education program or activity; or
- C. Sexual assault.** This category of prohibited conduct includes the following:
 - 1. Sex Offenses.** Any sexual act directed against another person, without the affirmative consent of the victim including instances where the victim is incapable of giving affirmative consent. Sexual Act is defined as conduct between persons consisting of:

- a. Contact between the penis and the vulva.
 - b. Contact between the penis and the anus.
 - c. Contact between the mouth and the penis.
 - d. Contact between the mouth and the vulva.
2. **Non-Consensual Penetration.** Actual or attempted penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the affirmative consent of the victim. This includes penetration forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving affirmative consent because of their temporary or permanent mental or physical incapacity.
3. **Fondling.** The non-consensual touching of the private body parts of another person for the purpose of sexual gratification, without affirmative consent, whether forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving affirmative consent because of their youth or because of their temporary or permanent mental or physical incapacity.
4. **Other Lawfully Prohibited Sexual Intercourse.** This category includes conduct constituting sexual assault that does not meet the definition of Non-Consensual Penetration or Fondling:
- a. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law, regardless of affirmative consent.
 - b. Nonforcible sexual intercourse with a person who is under the statutory age of consent, regardless of affirmative consent.

D. Dating violence. Violence committed by a person

1. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - a. The length of the relationship.
 - b. The type of relationship.
 - c. The frequency of interaction between the persons involved in the relationship.

E. Domestic violence. A felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner 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 or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Alaska 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 Alaska.

F. Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to

1. fear for their safety or the safety of others; or
2. suffer substantial emotional distress.

G. Sexual Exploitation occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person, without that person's consent. Examples of behavior that could rise to the level of sexual exploitation include but are not limited to: prostituting another person; recording images (e.g., video, photograph) or audio of another person's sexual

activity, intimate body parts, or nakedness without that person's consent; distributing images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and, viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, re, and for the purpose of arousing or gratifying sexual desire. Sexual exploitation may occur regardless of whether sexual activity takes place.

II. DEFINITIONS.

These definitions should be read in concert with the defined terms in the Interim Nondiscrimination and Anti-Harassment Policy.

A. Affirmative consent.

1. means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time.
 - a. Lack of protest or resistance does not mean consent.
 - b. Silence does not mean consent.
 - c. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.
2. It shall not be a valid excuse that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances:
 - a. The Complainant was asleep or unconscious.
 - b. The Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity.
 - c. The Complainant was unable to communicate due to a mental or physical condition.
3. In addition, it shall not be a valid excuse to alleged lack of affirmative consent that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances:
 - a. The Respondent's belief in affirmative consent arose from the intoxication or recklessness of the Respondent.
 - b. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.

B. Complainant means an individual who is alleged to be the target of conduct that could constitute Title IX Sexual Harassment.

C. Decisionmaker means an individual responsible for reaching a determination regarding responsibility in a formal complaint. The appellate decisionmaker means an individual responsible for reviewing an appeal of a decision to dismiss or a determination regarding responsibility. Neither the decisionmaker nor the appellate decisionmaker can be the Title IX Coordinator or the investigator(s) assigned to the same formal complaint.

- D. Education program or activity** means locations, events, or circumstances over which APU exercises substantial control over both the complainant and respondent and the context in which the Title IX Sexual Harassment occurs, such as but not limited to, any building owned or controlled by a student organization that is officially recognized by APU.
- E. Formal Complaint** means a document signed and filed with APU by a complainant or signed by the Title IX Coordinator on behalf of the complainant, alleging Title IX Sexual Harassment against a respondent and requesting that APU investigate the allegations of Title IX Sexual Harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of APU with which the Formal Complaint is filed.
- F. Grievance Process** means the fact-finding process from the time of the filing of the Formal Complaint through the final determination of an appeal (if any).
- G. Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sex-based discrimination or Title IX Sexual Harassment.
- H. Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to APU's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or APU's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive measures may also include written notification about available services both within the institution and the community and options for available assistance as required by the Clery Act. Supportive measures are not disciplinary measures.

III. REPORTING PROHIBITED SECUAL HARRASSMENT

- A. Notice of Allegations.** APU has notice of Title IX Sexual Harassment or allegations of Title IX Sexual Harassment when such conduct is reported to the Title IX Coordinator or any official of APU who has authority to institute corrective measures on behalf of APU. Employees designated as Responsible Employees are expected to report Title IX Sexual Harassment to the Title IX Coordinator and all other members of APU community (including students) are encouraged to report such incidents as well.
- B. Response to a Report.** With or without a Formal Complaint, upon a report of Title IX Sexual Harassment, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.

C. Information Packet.

1. Upon a receipt of a report of sexual assault, dating violence, domestic violence or stalking, APU shall provide an information packet that contains procedures to follow if a sex offense, domestic violence, dating violence, sexual assault, or stalking has occurred, including information in writing about:
 - a. The importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order and the identification and location of witnesses;
 - b. How and to whom the alleged offense should be reported;
 - c. Options regarding law enforcement and campus authorities, including notification of the option to:
 - i. notify proper law enforcement authorities, including on-campus and local police;
 - ii. be assisted by campus authorities in voluntarily notifying law enforcement authorities; and
 - iii. decline to notify such authorities;
 - d. Where applicable, their rights and the institution's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court;
 - e. Information about appropriate and available services both at the institution and in the community including information about the availability of, and contact information for, on- and off-campus resources and services, and coordination with law enforcement, as appropriate; and
 - f. Options for, available reasonably available assistance and accommodations and how to request them; and
 - g. Information about the participation of victim advocates and other supporting people.
2. APU's information packet for victims of sexual assault, dating violence, domestic violence and stalking is available from the Title IX Coordinator.

D. Implementation of Supportive Measures. APU shall treat parties equitably by offering Supportive Measures to the Complainant, and by following a grievance process that complies with this Title IX Procedure before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures as against the Respondent. APU will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of APU to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures. The Title IX Coordinator should record and retain records regarding requests and provision of Supportive Measure in accordance with the requirements set out in the Policy under "Record Keeping".

E. Emergency removal. Nothing in this part precludes APU from removing a Respondent from APU's education program or activity on an emergency basis, provided that APU undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

F. Administrative Leave. APU reserves the right to place a non-student employee Respondent on administrative leave during the pendency of a grievance process.

- G. Amnesty for Student Code of Conduct Violations.** Sometimes, individuals are reluctant to come forward to report perceived violations of this policy out of fear that they may be charged with violations of other policies. To ensure that all perceived violations of this policy are reported so that those affected can receive the support and resources needed APU may choose not to charge students who report violations of this policy with violations of other policies.

IV. PROCEDURES FOR RESOLVING COMPLAINTS OF PROHIBITED SEXUAL HARASSMENT.

A. Informal Resolution.

- 1.** Consistent with the requirements of this section, at any time prior to reaching a determination regarding responsibility, APU may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that APU:
 - a.** Provides to the parties a written notice disclosing:
 - i.** The allegations,
 - ii.** The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint, and
 - iii.** Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
 - b.** Obtains the parties' voluntary, written consent to the informal resolution process; and
 - c.** Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
 - d.** Completes the informal resolution process within 60 days of receiving the Formal Complaint, unless unusual or complex circumstances exist.
- 2.** APU does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints of sexual harassment under this policy. APU shall not require the parties to participate in an informal resolution process and will not offer an informal resolution process unless a Formal Complaint is filed.

B. Formal Complaint and the Grievance Process.

- 1. Filing a Formal Complaint.** A Formal Complaint may be filed with the Title IX Coordinator in person, by telephone, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator above. A "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by APU) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party. A Formal Complaint shall trigger an investigation except as specified below. The Formal Complaint should include the date(s) of the alleged incident(s), the name of the Respondent, and should describe the circumstances of the incident(s), where known.

2. Dismissal of a Formal Complaint.

- a. APU shall investigate the allegations in a Formal Complaint, except as follows:
 - i. **Mandatory Dismissal.** APU shall dismiss the Formal Complaint if the conduct alleged in the Formal Complaint
 - would not constitute sexual harassment as defined by this policy, even if proved,
 - did not occur in APU's education program or activity,
 - or did not occur against a person in the United States.
 - This dismissal does not preclude action under another policy or procedure of APU.
 - ii. **Discretionary Dismissal.**
 - APU may dismiss the 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;
 - The Respondent is no longer enrolled in or employed by APU; or
 - Specific circumstances prevent APU from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
- b. APU may dismiss a Formal Complaint at any time in the process if it becomes known that one of the foregoing reasons for dismissal applies.
- c. Upon a dismissal required or permitted under this section, APU will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties. APU may also refer the matter for resolution under APU's Student Handbook, Faculty Handbook, Employee Handbook, or other applicable APU policies and/or procedures.

3. **Consolidation of Formal Complaints.** APU may consolidate Formal Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular "party," "Complainant," or "Respondent" include the plural, as applicable.

4. Notice of Charges.

- a. **Initial Notice of Charges.** Upon receipt of a Formal Complaint, prior to commencing the investigation, APU shall provide the following written notice to the parties who are known. This notice shall include:
 - i. APU's Interim Nondiscrimination and Anti-Harassment Policy and APU's Title IX Grievance Procedure (as a link or attachment).
 - ii. Notice of the allegations of sexual harassment potentially constituting Title IX Sexual Harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under this policy, and the date and location of the alleged incident, if known.
 - iii. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

- iv. Notification to the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney.
- v. Notification to the parties that they may inspect and review evidence, as set forth in this policy.
- vi. Any provision in APU's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- vii. APU will use the preponderance of the evidence standard – this means the factfinder will determine whether the evidence supports a finding it was more likely than not the allegations occurred—when making a determination whether a violation of the Policy occurred.
- viii. All possible sanctions the institution may impose are set forth below under “Remedies and Sanctions”.

5. Amended Notice of Charges. If, in the course of an investigation, APU decides to investigate allegations about the Complainant or Respondent that are not included in the initial notice of charge, APU must provide notice of the additional allegations to the parties whose identities are known.

6. Principles for the Grievance Process.

- a. Under this grievance process, APU shall:
 - i. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on APU and not on the parties, provided that APU cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless APU obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an “eligible student,” as defined in 34 CFR 99.3, then APU must obtain the voluntary, written consent of a “parent,” as defined in 34 CFR 99.3).
 - ii. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
 - iii. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
 - iv. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or grievance proceeding; however, APU may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties. For the purposes of this procedure, the role of the advisor is limited to the following: the advisor may attend any interview or meeting connected with the grievance process, but may not actively participate in interviews nor provide testimony or argument on behalf of the party. The advisor may attend the live hearing and may conduct cross-examination of the other party and any witness at the hearing; otherwise, the advisor may not actively participate in the hearing.

- v. Allow each party to be accompanied by a support person if they do not wish to have an advisor. Each party may be accompanied by only one other person unless there is good cause, such as a disability-related accommodation or union representative.
- vi. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- vii. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person’s status as a Complainant, Respondent, or witness.
- viii. Require that any individual designated as a Title IX Coordinator, investigator, decisionmaker, or any person to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. APU may use internal personnel or external parties in the informal resolution process or the grievance process, provided that they meet this requirement.
- ix. Include a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- x. Use the following standard of evidence to determine responsibility for allegations in a Formal Complaint of sexual harassment: the preponderance of the evidence standard. The standard of evidence shall be the same for Formal Complaints against students as for Formal Complaints against faculty and staff.
- xi. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

7. Extensions of the Grievance Process.

- a. The Title IX Coordinator may grant or deny requests from either party to temporarily delay the grievance process or may issue the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action.
- b. Good cause may include considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

8. Investigation of Formal Complaints.

- a. If not serving as the Investigator, the Title IX Coordinator will appoint an Investigator, who may be an employee or official of APU or may be an external investigator with appropriate experience or expertise. The parties will be provided with notice of the identity of the appointed Investigator, and will be informed that any objections to the service of the appointed Investigator on grounds of conflict of interest or a lack of impartiality should be submitted in writing to the Title IX Coordinator within three days of notice of the appointment. The Title IX Coordinator will decide promptly whether the appointed Investigator will or will not continue to conduct the investigation. Any materials collected or notes prepared by the Investigator during the objection period will be turned over to any replacement Investigator. The replacement Investigator will decide whether to use such materials or not.

- b. When investigating a Formal Complaint APU shall, within thirty (30) days of receiving the Formal Complaint, unless unusual or complex circumstances exist:
 - i. Engage in fact-gathering of all relevant facts. Credibility resolutions and fact-finding shall be conducted in the live hearing phase of the grievance process.
 - ii. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which APU does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
 - iii. Prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report.
 - iv. Make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
 - v. Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to a hearing or other time of determination regarding responsibility, the Title IX Coordinator shall send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. Upon finalization of the investigative report, the Title IX Coordinator shall provide it to the decision-maker(s).

V. LIVE HEARINGS UNDER THE GRIEVANCE PROCESS.

A. Requirement of a Live Hearing for Fact-Finding and Determining Responsibility.

1. Following the investigation, within thirty (30) days of sending the final investigative report to the parties, unless unusual or complex circumstances exist, APU shall conduct a live hearing in front of the decision-maker(s), which may be an individual or a Review Panel, for the purposes of determining responsibility for allegations of sexual harassment in the Formal Complaint. The decision-maker(s) cannot be the same person(s) as the Title IX Coordinator or the investigator(s). A decision-maker may include internal employees or external third-parties contracted by APU. All potential individual members will receive annual training as specified by this policy.
2. The live hearing will be closed. The only individuals permitted to participate in the hearing are as follows: the Complainant and Respondent, the decision-maker(s), the advisor for each party, any witnesses (only while being questioned), and any individual providing authorized accommodations or assistive services.
3. If a party does not have an advisor present at the live hearing, APU shall provide without fee or charge to that party, an advisor of APU's choice, who may be, but is not required to be, an attorney, to conduct cross examination on behalf of that party. APU is obligated to ensure each party has an advisor, either of the party's or APU's choice regardless of whether or not the party is present at the hearing. To ensure timely proceedings, a party shall alert the Title IX Coordinator as soon as practicable if the party will need an advisor. If a party's selected advisor is unavailable for a hearing date, the live hearing date may be postponed for good cause.

4. Live hearings may be conducted with all parties physically present in the same geographic location or, at APU's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
5. At the request of either party, APU shall provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
6. APU shall create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. Any other recording is prohibited, and violations may result in discipline.
7. The parties shall separately participate in a pre-hearing meeting with the APU to go over the process and administration of the live hearing. Prior to or during this meeting, the APU will set the deadlines for submitting and exchanging names of witnesses, evidence, and pre-hearing questions. (The parties will also be permitted to submit questions during the live hearing.) Participation in this pre-hearing meeting is required in order to facilitate the efficient and fair administration of the live hearing process.

B. Questioning at the Live Hearing.

1. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
2. Only relevant cross examination and other questions may be asked of a party or witness.
3. Decision-maker(s) also have the right to question a party or witness.
4. Cross examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding APU's ability to otherwise restrict the extent to which advisors may participate in the proceedings.
5. Before the Complainant, Respondent, or witness answers a cross-examination or other question, the Chair must first determine whether the question is relevant. The Chair must explain to the party proposing the questions any decision to exclude a question as not relevant.
6. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, 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.

C. Use of Witness Statements.

1. If a party or witness does not submit to cross examination at the live hearing, the decision-maker(s) may still consider statements made by these individuals that would otherwise be permitted under this Policy, in reaching a final determination of responsibility.
2. The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.

D. Written Determination of the Decision-Maker.

1. The decision-maker(s) shall issue a written determination regarding responsibility.
2. To reach this determination, the decision-maker must apply the standard of evidence required by this policy.

3. The written determination must include:
 - a. Identification of the allegations potentially constituting sexual harassment as defined by this policy;
 - b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of APU's policy to the facts;
 - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to APU's education program or activity will be provided to the complainant; and
 - f. The procedures and permissible bases for the Complainant and Respondent to appeal, as set forth in this policy.
4. APU shall provide the written determination to the parties simultaneously.
5. The determination regarding responsibility becomes final either on the date that APU provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

VI. APPEALS.

A. Grounds.

1. Within ten (10) days of receiving the written determination, either party may appeal from a determination regarding responsibility, and from APU's dismissal of a Formal Complaint or any allegations therein, on the following grounds:
 - a. **Ground 1:** Procedural irregularity that affected the outcome of the matter;
 - b. **Ground 2:** 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
 - c. **Ground 3:** 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 individual complainant or respondent that affected the outcome of the matter.
2. Appeals must be sent to the Title IX Coordinator in writing.

B. Response to Appeals. As to all appeals, the Title IX Coordinator (or designee) shall:

1. Notify the other party in writing immediately when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
3. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this policy;
4. Give the non-appealing party an opportunity to submit a written statement in response to the appeal within ten (10) days of receiving the appeal, which shall be transmitted within two (2) business days to the Appeal decision-maker(s).

- C. Decision on Appeal.** Within twenty (20) days of receiving the appeal and the response, the Appeal decision-maker(s) shall issue a written decision describing the result of the appeal and the rationale for the result; and provide the written decision simultaneously to both parties. The Appeal decision-maker(s) may deny the appeal or, if the appeal ground(s) has or have been met, may return the case to the initial decision-maker(s) for reconsideration, or convene a new hearing. If a case is returned to the initial decision-maker(s), the Appeal decision-maker(s) shall identify which aspects merit further review.

VII. REMEDIES AND SANCTIONS.

- A.** Remedies must be designed to restore or preserve equal access to APU's education program or activity.
- B.** Any sanction(s)/responsive action(s) will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal. Supportive measures may remain/be reinstated.
- C.** The sanctions/responsive action described in this procedure are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.
- D.** The Title IX Coordinator is responsible for effective implementation of any sanctions and/or remedies.

E. Examples of Sanctions/Responsive Actions.

- 1. Student Sanctions:** The following are the usual sanctions that may be imposed upon students or organizations, singly or in combination, upon a finding of violation of APU policy:
- a.** Educational Sanctions: includes, but is not limited to, written research and reflective activities;
 - b.** Conduct Reprimand: A formal statement that the conduct was unacceptable and a warning that further violation of any APU policy, procedure, or directive will result in more severe sanctions/responsive actions;
 - c.** Probation: A written reprimand for violation of APU policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any APU policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate;
 - d.** Suspension: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at APU;
 - e.** Expulsion: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend university-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript, [subject to any applicable expungement policies];
 - f.** Withholding Diploma: The Recipient may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation;

- g. Organizational Sanctions: Conduct reprimand, loss of some or all privileges (including university registration) for a specified period of time, probation (conduct or social), loss of recognition, or removal from campus;
- h. Other Actions: In addition to or in place of the above sanctions, APU may assign any other sanctions as deemed appropriate.

2. Faculty/Staff Responsive Actions: Responsive actions for a faculty or staff member include:

- a. Warning – Verbal or Written;
- b. Performance Improvement Plan/Management Process;
- c. Enhanced supervision, observation, or review;
- d. Required Counseling;
- e. Required Training or Education;
- f. Probation;
- g. Denial of Pay Increase/Pay Grade;
- h. Loss of Oversight or Supervisory Responsibility;
- i. Demotion;
- j. Transfer;
- k. Reassignment;
- l. Delay of tenure track progress;
- m. Assignment to new supervisor;
- n. Restriction of stipends, research, and/or professional development resources;
- o. Administrative Leave with/without pay;
- p. Termination;
- q. Other Actions: In addition to or in place of the above sanctions/responsive actions, APU may assign any other responsive actions as deemed appropriate.

3. Third-party and Alumni Responsive Actions. APU is limited in its actions, but could impose temporary or permanent trespass from campus and all APU-sponsored events.

4. Long-Term Remedies/Other Actions. Following the conclusion of the resolution process, and in addition to any individual sanctions/responsive actions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the prohibited behavior and/or retaliation, remedy the effects, and prevent reoccurrence. These remedies/actions may include, but are not limited to:

- a. Referral to counseling and health services;
- b. Referral to the Employee Assistance Program;
- c. Education to the individual and/or the community;
- d. Permanent alteration of housing assignments;
- e. Permanent alteration of work arrangements for employees;
- f. Provision of campus safety escorts;
- g. Climate surveys;
- h. Policy modification and/or training;
- i. Provision of transportation accommodations;
- j. Implementation of long-term contact limitations between the parties;
- k. Implementation of adjustments to academic deadlines, course schedules, etc.
- l. At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

- m. When no policy violation is found, the Title IX Coordinator will address any remedies owed by APU to Respondent to ensure there is no effective denial of access to educational programs and activities.
- n. APU will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair APU's ability to provide these services.

5. Failure to Comply.

- a. All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Hearing Officer(s) (including the Appeal Hearing Officer(s)).
- b. Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from APU and may be noted on a student's official transcript or a faculty/staff member's personnel file.

VIII. RETALIATION PROHIBITED.

- A. No student, faculty or staff member may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right established by this 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.
- B. Intimidation, threats, coercion, or discrimination, including 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 Formal Complaint of sexual harassment, for the purpose of interfering with any right under this Policy constitutes retaliation.
- C. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this section.
- D. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation prohibited under of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

IX. CONFIDENTIALITY.

- A. Consistent with the requirements of this policy, APU shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. This means that APU will protect the party's privacy consistent with this Policy but may disclose information to those who have a legitimate need to know and in order to process complaints under this policy.

- B.** Confidentiality is not absolute, however. Where criminal conduct has occurred, or where the health and/or safety of others in the community may be in danger, it may be necessary for APU to take appropriate steps to protect the safety of its students and employees, including the person who has reported the misconduct.
- C.** Counselors working at or on behalf of APU are Confidential Resources. In most cases, Confidential Resources at APU will not share the substance of any such communications or that such communications occurred without consent. Individuals who wish to talk about issues related to sexual harassment or sexual misconduct confidentially, with the understanding that APU will not take any action based on such confidential communications, are encouraged to contact one of these Confidential Resources.
- D.** Confidential resources may, however, have an obligation to disclose otherwise-privileged information where they perceive an immediate and/or serious threat to a person and/or property. This is a limited exception to the privileged nature of communications with Confidential Resources. Reports or records maintained by APU (including Counseling Service records), and other confidential, non-privileged records may, however, be subject to a subpoena if civil or criminal charges are filed in court.
- E.** In accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Confidential Resources will not report Clery crimes they learn about through confidential communications for purposes of APU's compilation of campus crime statistics. In addition, when appropriate and legally permissible, APU shall conduct record-keeping on reports of dating violence, domestic violence, stalking and sexual assault, such as that collected for legally required disclosures, that excludes personally-identifiable information of any complainants.

X. REQUIRED TRAININGS.

- A.** The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process (whether internal or external) shall receive training on the definition of sexual harassment under this policy, the scope of APU's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. These individuals shall receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.
- B.** Decision-makers shall receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators shall receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- C.** Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of sexual harassment.

XI. RECORDKEEPING.

- A. APU shall maintain for a period of seven years records of:
1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under this policy, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to APU's education programs or activities;
 2. Any appeal and the result therefrom;
 3. Any informal resolution and the result therefrom; and
 4. All materials used to train Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process. APU shall make these training materials publicly available on its website OR APU shall make these materials available upon request for inspection by members of the public.
 5. Records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of sexual harassment. In each instance, APU will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to APU's education program or activity. If APU does not provide a complainant with Supportive Measures, then APU must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit APU in the future from providing additional explanations or detailing additional measures taken.

Related Policies and Additional Resources. Interim Nondiscrimination and Anti-Harassment Policy; APU Students Rights and Code of Conduct; APU Student Handbook; APU Staff Handbook; APU Faculty Handbook; Conflict of Interest Policy; Corrective Actions Policy; Nepotism Policy, Whistleblower Policy; Title IX Procedures; 42 U.S.C. § 2000d (Title VI of the Civil Rights Act of 1964, as amended in 1972); 42 U.S.C. § 2000e (Title VII of the Civil Rights Act of 1964); 20 U.S.C. § 1681, et seq. (Title IX of the Education Amendments of 1972, 34 CFR § 106.01, et seq. (Nondiscrimination on the basis of Sex in Education Programs or Activities Receiving Federal Financial