

Arizona School of Integrative Studies

Title IX

Policies and Procedures

Effective August 14, 2020 Procedural Requirements

Complainants and Respondents will be treated equitably by:

Providing remedies to a complainant where a determination of sexual harassment has been made against the respondent and

Following a formal complaint process that complies with 106.45 before the imposition of any disciplinary sanctions or other actions that are not supported measures as defined in 106.30, against a respondent.

The Arizona School of Integrative Studies (ASIS) will ensure that remedies provided to the complainant are designed to restore or preserve equal access to the institution's education program or activity. Such remedies may include the same individualized services defined in 106.30 as "supportive measures"; however, remedies may be disciplinary or punitive and may burden the respondent, where supportive measures should not. Changing a class schedule, for example, may more often be an acceptable, reasonable burden than restricting a respondent from participating in a class.

An objective evaluation of all evidence is required, including both inculpatory and exculpatory evidence. ASIS will ensure the credibility determinations are not based on person's status as a complainant, respondent, or witness.

The Title IX Coordinator, Investigator, Decision-Maker, or any person designated to facilitate an informal resolution process are required to be free of bias and conflict of interest and have been trained on the following:

Title IX Coordinators, investigators, adjudicators, and any person who facilitates informal resolutions: The definition of sexual harassment and scope of the school's education program or activity; conducting an investigation and grievance process including hearings, appeals and informal resolutions; and serving impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Adjudicators: Using technology at live hearings; relevance of questions and evidence about complainant's sexual history are not relevant.

Investigators: Issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates and informal resolution process does not rely on sex stereotypes and promotes impartial investigation and adjudications of formal complaints of sexual harassment. Training materials are posted on the ASIS website, www.asismassage.edu.

ASIS notes that there is the 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.

ASIS strives to complete all investigations, hearings, and appeals within ninety to one hundred twenty (90 – 120) calendar days. ASIS' goals are to complete informal resolutions, investigations and hearings within ninety (90) calendar days after receipt of a complaint or report and to complete the appeals process within thirty (30) calendar days after receipt of the appeal. If an Informal Resolution Process is used, ASIS works to resolve the matter through that process within thirty (30) calendar days. These processes may be temporarily delayed or extended for a limited time frame for good cause. Good cause may include considerations such as the absence of a party, a party's Advisor or witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities. The Title IX Coordinator will provide written notice of any delays and/or extensions to the parties and describe the reason(s) for the delays and/or extension.

Following any determination of responsibility, ASIS may institute the following possible disciplinary sanctions and remedies:

- Verbal warning
- Training
- Mandatory Counseling/Training
- A Formal Written Warning Placed in the Responsible Party's File
- Exclusion from Participating in Certain Activities for a Specified Period
- Suspension (From Campus and/or Employment)
- Termination
- Revocation of Admission
- Other Appropriate Remedies or Corrective Actions

ASIS uses the "preponderance of evidence" as its standard of evidence. This standard is the same for formal complaints against students and formal complaints against employees, including faculty. The same standard of evidence is applied to all formal complaints of sexual harassment.

Appeals for Complainants and Respondents are strictly limited to:

- 1.) Procedural irregularity that affected the matter's outcome
- 2.) New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome
- 3.) The Title IX Coordinator, Title IX Investigator, or the Title IX Decision-Maker had a conflict of interest that affected the matter's outcome.

Appeals may be made by either the Respondent or the Complainant and must be made in writing and submitted to the Title IX Coordinator within ten (10) calendar days of the Decision-Maker's final written decision of responsibility or the Title IX Coordinator's dismissal (mandatory or discretionary) of a formal complaint.

Supportive measures available to complainants and respondents Include:

- Interim security measures
- Academic accommodations
- Mutual "no contact" orders between individuals
- Restrictions on access to ASIS or to specific ASIS area or activities
- Limitations on extracurricular activities
- Changes to class or work schedules or locations
- Leave of absence (including administrative leave)
- Transfer of supervisory or evaluative responsibility regarding grading or supervision
- Any other remedy that can be tailored to the individuals to achieve the goals of the policy

Initial Notice of Formal Complaint

Upon receipt of a formal complaint, ASIS will provide a written notice to the parties that includes:

- Discussion of the formal complaint process, including resolution option

- The allegations of sexual harassment, including sufficient details known at the time with sufficient time to prepare a response before any initial interview (sufficient detail includes the identities of the parties, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known)

- A statement that the respondent is presumed innocent and that a determination of responsibility is made at the conclusion of the process

A statement regarding right to an advisor and to review and inspect evidence

A statement informing the parties of any provision in the school's code of conduct that prohibits knowingly making false statements of knowingly submitting false information.

If in the course of an investigation, ASIS decides to investigate allegations about the complainant or respondent not included in the initial written notice, ASIS will provide an updated written notice to the parties detailing the new allegations.

Dismissal of a Formal Complaint

ASIS must investigate the allegations in a formal complaint. However, ASIS must dismiss a formal complaint of sexual harassment "for purposes of sexual harassment under Title IX if the alleged conduct:

- Would not constitute sexual harassment even if proved
- Did not occur in the school's education program or activity
- Did not occur against a person in the United States

Such a dismissal does not preclude action under another provision of ASIS' code of conduct.

ASIS may dismiss a formal complaint of sexual harassment under Title IX if, at any time:

A complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw the complaint

The respondent is no longer enrolled or employed by the school

Specific circumstances prevent the school from gathering sufficient evidence to reach a determination

Upon a required or dismissal, ASIS will promptly and simultaneously send written notice to the parties.

Consolidation of Formal Complaints

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Provided the allegations of sexual harassment arise out of the same facts or circumstances, ASIS is permitted to consolidate formal complaints that are:

- Against more than one respondent
- By more than one complaint against one or more respondents; or
- By one party against the other party

Investigation of a Formal Complaint

ASIS will:

Ensure that the burden of proof and burden to gathering evidence rests on the school and not the parties.

Avoid the use of legally privileged documentation. ASIS 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 ASIS obtains the party's voluntary written consent to do so for a grievance process under this section.

Provide equal opportunity for the parties to present fact and expert witnesses, and other inculpatory and exculpatory evidence.

Refrain from restricting the parties' ability to discuss the allegations to gather and present relevant evidence.

Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to accompanied to ay 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, ASIS 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.

Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearing, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation the is directly related to the allegations raised in a formal complaint, including the evidence upon which ASIS 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 or the investigation.

Prior to completion of the investigation report, ASIS must send to each party and the party's advisor, if any, the evidence subject to inspection and review in electronic format or a hard copy, and the parties must have 10 days to submit a written response, which the investigator will consider prior to completion of the investigation.

ASIS must 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.

Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing; 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.

Hearings

ASIS hearing procedures must:

Require a live hearing in the formal adjudication process, which may be conducted with all parties physically present or, at ASIS' discretion, participants may appear virtually, with technology enabling them to see and hear each other;

Permit each party's advisor to cross-examine the other party and any witnesses in the live hearing directly, orally, and in real time;

Require that cross-examination be conducted by the party's advisor and never by the party personally;

At the request of either party, require that the live hearing to occur with the parties located in separate rooms, with technology enabling the adjudicator and parties to simultaneously see and hear the party of the witness answering questions;

Describe that questions and evidence about the complainant's sexual predisposition or prior sexual history are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the alleged conduct, or concern specific incidents of the complainant's prior sexual behavior with respect to the respondent are used to prove consent.

Require that only relevant cross-examination and other questions may be asked of a party or witness, and require the adjudicator to determine whether a question is relevant, and explain any decision to exclude a question as not relevant, before a party or witness answers a cross-examination or other questions.

Explain that if a party or witness does not submit to cross-examination at the live hearing, the adjudicator must not rely on any statement of that party or witness in reaching a determination regarding responsibility (however, the adjudicator cannot draw an inference about determination regarding the responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions); and

Require an audio or audiovisual recording or transcript, of any live hearing and make it available to the parties for inspection and review.

Determination Regarding Responsibility

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s) must issue a written determination regarding responsibility. To reach this determination, ASIS must apply the standard of evidence specified as ASIS' policy, which is the "preponderance of evidence".

Require that the written determination, provided to the parties, include:

An identification of the allegations of sexual harassment;

A recitation 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;

Findings of fact supporting the determination;

Conclusion regarding the application of ASIS' sexual misconduct policy to the facts;

A statement of, and rationale for, the result as to each allegation, including determination regarding responsibility, any disciplinary sanctions that ASIS imposes on the respondent, and whether remedies designed to restore or preserve equal access to the ASIS' education program or activity will be provided by ASIS to the complainant; and

Procedures and permissible bases for appeal.

Appeals

At a minimum, appeals may be made on the following bases:

A procedural irregularity that affected the outcome;

New evidence that was not reasonably available at the time the determination or dismissal was made and could affect the outcome; or

The Title IX Coordinator, investigator, or adjudicator had a conflict of interest or bias that affected the outcome of the matter.

The appeal process must:

Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

Ensure the decision-maker for the appeal is not the same person as the hearing officer, the investigator, or the Title IX Coordinator;
Ensure that the decision-maker of the appeal is free of bias and conflict of interest and meets the training requirements in 106.45(b)(1)(iii);

Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome;

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.

Informal Resolution

After a formal complaint is filed and at any time prior to reaching a determination regarding responsibility, ASIS may facilitate (but never required) an informal resolution process that does not require a full investigation and adjudication. ASIS must provide the parties a written notice disclosing the allegations; the requirements of the informal resolution process; the circumstances under which it precludes parties from resuming a formal complaint arising from the same facts; any other consequences of participating in the informal resolution process; and the records that will be maintained or could be shared. ASIS must also obtain the parties' voluntary, written consent to an informal resolution. Informal resolution

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may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, or restorative justice.

ASIS must explain that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to resume the formal complaint process. ASIS also must explain that informal resolution is not available to resolve allegations that an employee sexually harassed a student.

Recordkeeping

For each sexual harassment complaint, ASIS must maintain records for 7 years that include:

Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment;

The basis for ASIS' conclusion that its response was not deliberately indifferent;

Documentation that ASIS took measures designed to restore and preserve equal access; and

If ASIS did not provide supportive measures, the reasons why such a response was not clearly unreasonable in light of the known circumstances.

If there was adjudication, the records must also contain any determination regarding responsibility, audio or audiovisual recording or transcript; disciplinary sanctions imposed on the respondent; remedies provided to the complainant; appeal and the result; and informal resolution and the result.

Apart from any specific proceeding, ASIS must also keep for 7 years, all materials used to train the Title IX Coordinators, investigators, adjudicators, and any person who facilitates an informal resolution process. ASIS must make these training materials publicly available on their website.

