



**Title IX**  
**And Other Sexual Misconduct**  
**Functional Procedures**

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# TITLE IX & OTHER SEXUAL MISCONDUCT: University Procedures

## A. Introduction

On May 19, 2020, the U.S. Department of Education published a new Final Rule amending the Title IX process for managing complaints of discrimination based on sex<sup>1</sup> that have the effect of preventing victims from pursuing or achieving the full benefits of their educational opportunities. This rule, which becomes effective on August 14, 2020, applies to both students and employees of the University.

This new final rule has enlarged the footprint of the existing Title IX grievance process in several important ways:

- It formalizes the role of the Title IX Coordinator and makes that role central to the oversight of the entire process, while at the same time having the Coordinator step back from their former role of acting as the decision-maker in any individual Title IX matter.
- It separates the role of investigator and decision-maker in each individual matter.
- It strengthens the equity of the process for all parties by starting from the presumption that none of the allegations or counter-allegations is considered true until proven by a preponderance of the evidence.
- It increases the level of formality of the grievance hearing itself by allowing the parties to make use of personal advisors and affording the parties the opportunity to cross-examine witnesses, while at the same time providing that the proceedings can be conducted virtually from separate Complainant and Respondent locations. These rule changes are generally consistent with recent case law in California requiring greater protection of the rights of respondents where the potential disciplinary outcome could be severe.
- Finally, the Department of Education has provided clear guidance on the jurisdictional elements that must be met for the matter to proceed under Title IX, while allowing for the matter to proceed instead under other University disciplinary processes, as appropriate, if Title IX jurisdiction is not present.

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The University takes very seriously all allegations of discrimination. Under our Title IX policy, we encourage those who have experienced or witnessed any form of sex discrimination to report the incident promptly to the Title IX Coordinator, to access all available assistance, and to pursue all appropriate proceedings to seek a resolution of such matters. The University will work with all parties in these matters to ensure their safety, to treat all parties equitably, and to work toward a prompt resolution of each matter.

<sup>1</sup> 85 FR 30026 (amending 34 CFR Part 106).

## **Title IX: University Procedures (cont.)**

### **Grievance Process (34 CFR §106.45):**

APU is committed to providing a fair and equitable grievance process, whether handled formally or informally, concerning claims of sexual harassment as defined by Title IX. Once this process is started, the parties are provided access to “supportive measures” during the determination process. The purpose of these measures is to restore or preserve the parties’ equal access to the full benefits of their education opportunities and/or activities. These remedies are not disciplinary, and not intended to add an additional burden to any other party.

The grievance process moves from the filing of a complaint to an independent investigation characterized by an objective evaluation of all relevant evidence – including the gathering of both inculpatory and exculpatory evidence. Designated individuals or a panel of individuals receive this evidence in a live hearing at which all parties participate, evaluated under a “preponderance of the evidence” standard, with the goal of reaching well supported and just result for all parties.

All individuals implementing this grievance process, including the Title IX Coordinator, the investigator(s), and the decision-maker(s) are only involved if they can act without any conflict of interest or bias for or against any of the parties. All grievance personnel are required to receive training in these matters, including training on legal definitions, the jurisdictional requirements for Title IX grievance proceedings, how to conduct investigations and participate in hearings, and how to serve impartially.

After you have gone through the materials in this Procedures document, please reach out to the Title IX Coordinator if you have any questions:

Christine R. Guzman, Title IX Coordinator  
626-815-2065  
901 E. Alost Ave., Azusa CA, 91702  
Crguzman@apu.edu

## **B. Step by Step Procedures**

This section deals with the key elements comprising the University’s procedures for receiving and addressing complaints of “discrimination based on sex,” in the form of sexual harassment (as defined) under the provisions of the new Title IX Final Rule. Given that the new rule consists of 26 pages of amended regulations and over 2,000 pages of guidance discussion in its Preamble, any attempt to condense its content necessarily results in a substantial abridgement of information. These procedures are therefore intended to be interpreted in ways that are consistent with the Final Rule, and its accompanying preamble, to give full effect to them while relying on them to inform any gaps perceived to exist in the procedures set forth below.

As we begin this discussion of these University procedures there are a few basic concepts our community needs to keep in mind:

## Title IX: University Procedures (cont.)

**“Sexual Harassment”**<sup>2 2</sup> – “Discrimination on the basis of sex” was not originally understood to involve sexual misconduct until a series of court cases made the connection that the hostile environment created by sexual harassment prevented its victims from pursuing or achieving the full benefits of their educational opportunities. Title IX has become the regulatory vehicle for monitoring and combating this form of discrimination. So, as the reader progresses through this policy, keep in mind that Title IX’s definition of “Sexual Harassment” is what drives this important program of protection.

“Sexual Harassment” in this context is the conduct that results in “discrimination on the basis of sex.” It is present when one or more of the following criteria are met:

1. An employee conditions aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct (also defined as *quid pro quo by an employee*);
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the institution’s education program or activity (also defined as a hostile environment).
3. Sexual assault, dating violence, domestic violence, or stalking, as defined in the Clery Act and the Violence Against Women Act (20 USC 1092(f)).

You will see this term, “Sexual Harassment,” used throughout these materials.

**“Complainant”** – The Complainant is an individual - any student or employee of the University – who is alleged to be the victim of conduct that could constitute Sexual Harassment as defined and used under Title IX. The entire Title IX process is initiated by the Complainant’s account of what has occurred, and the Complainant has the most significant input into whether the matter advances as a formal complaint.

**“Respondent”** – Respondent means the individual(s) – whether students, employees, or other persons – who is alleged to be responsible for the conduct asserted to amount to Sexual Harassment” under Title IX. A respondent is any individual who is alleged to have discriminated on the basis of sex as defined in this policy. The status of the respondent will determine which office will be assigned to investigate and adjudicate the complaint.

**“Actual Knowledge”** – This is a new standard under Title IX for when the University is required to act on information about Sexual Harassment. This change has been made to make clear to both those complaining of Sexual Harassment and to the University what triggers the University’s duty to act. If, for example, the University were required to investigate every *rumor* of Sexual Harassment, resources would be wasted pursuing phantom claims and the actual victims of real misconduct would lose all autonomy over how their experience continues to unfold and is handled. Under the new Final Rule, victims know who to call when they want a formal complaint to move forward, and the University personnel receiving this information are clearly signaled that a responsibility has been triggered in them.

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<sup>2</sup> The terms that follow are defined in 34 CFR §106.30; all may be found in the Definitions section of this Functional Procedures document, in APPENDIX B.

## Title IX: University Procedures (cont.)

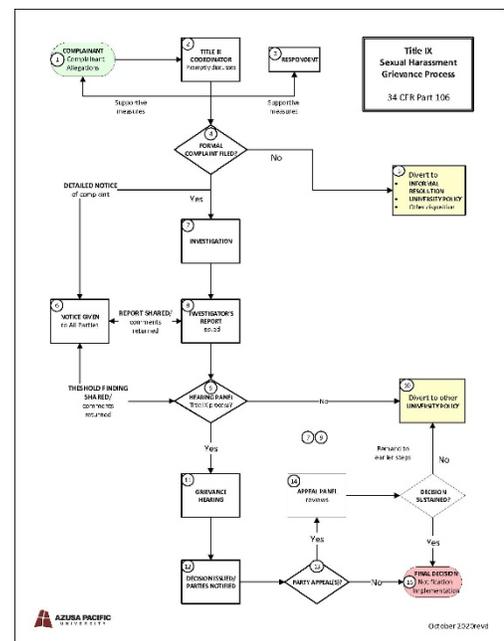
So, “Actual Knowledge” results when a Complainant makes or affirms a complaint about Sexual Harassment made to certain key University employees. These include the Title IX Coordinator, members of the Title IX Deputy Coordinators, or – under the new Final Rule - an “official with authority to institute corrective measures” has received a report of an incident of Sexual Harassment under this Procedure. These “Officials With Authority” (OWAs) are identified in the University’s new Title IX Policy by their position within the University, and include: The President’s Cabinet, Deans, HR Business Partners, and the Department of Campus Safety.

When information concerning possible Sexual Harassment is shared with the Title IX Coordinator or any Deputy Coordinator, or with an OWA, it signals that the Complainant is serious about considering a formal complaint. The Complainant can choose whether or not to participate in the formal proceeding, but if the Complainant chooses not to participate the University may still have an obligation to pursue the complaint in the best interest of the community. While working through this process with the Complainant, the University’s response cannot be so passive or insufficient as to be “clearly unreasonable in light of the known circumstances.” In the most significant cases, this could mean that these officials will need to pursue a formal complaint even over the objections of the original Complainant.

“**Supportive Measures**” – Title IX complaints can take many weeks – even months – to resolve, but there are measures that the Title IX office can take right away to restore the access to the full educational experience that all parties expect in our community. “Supportive Measures” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent. Think of these as a form of important, interim relief.

Armed with this background we move step by step through the Title IX process. The flowchart that follows illustrates the key procedural steps for addressing complaints of sexual misconduct in the University community, whether they ultimately are resolved by the Title IX grievance process or under another process created by University policy. This chart is keyed to the discussion that follows.

[Click on image to jump to the full-page flowchart in Appendix A.]



## **Title IX: University Procedures (cont.)**

### **1. Allegations of Sexual Harassment (34 CFR §106.44)**

This process begins with an allegation of some form of sexual misconduct within the University environment. APU encourages those who have experienced any form of sex discrimination or who have been subjected to any form of sexual misconduct to report the incident promptly, to seek all available assistance, to pursue University disciplinary proceedings, and, where applicable, to pursue other relief outside of the University. APU takes complaints very seriously and will work with complainants to ensure their safety as much as possible and to remedy the situation.

APU encourages those who have experienced or witnessed sex discrimination to report these offenses to the Title IX Coordinator, the Title IX Deputy Coordinators, the Department of Campus Safety, or anyone else designated by the University to receive these complaints.

Any person may report sex discrimination, including Sexual Harassment (whether or not the person reporting was themselves the one who was targeted), in person, by mail, by telephone, or by email, or by any other written or verbal means that conveys the information to the Title IX Coordinator. Such a report can be made at any time, including during non-business hours, by using the contact information provided for the Title IX Coordinator in this Policy, on the University's website, in the University catalog, and a variety of other locations.

An Official with Authority ("OWA") who receives an allegation of Sexual Harassment is obligated to promptly report such allegations to the Title IX Coordinator. The OWA should describe their role to the Complainant, and then take all pertinent information about the alleged incident, including the name of the Complainant and Respondent, and the relevant facts (date, time, and location of the incident, and the known circumstances) to be reported to the Title IX Coordinator. The OWA should also explain that Title IX office is private not confidential. If information needs to be shared with related offices for the purposes of coordinating the process, this is done discretely, and on a need-to-know basis.

In cases where a report is made by a third party, the Complainant will be notified by the Title IX Coordinator that a report has been received. The Title IX Coordinator<sup>3</sup> will meet with the Complainant to discuss the Complainant's options and resources available inside and outside the University. Upon receiving a formal allegation of sexual harassment, the Title IX Coordinator will assess the situation for immediate health or safety concerns and to determine whether the alleged conduct could constitute a violation of University Policy. In cases of immediate concern, an Emergency Removal action may be appropriate (see Section 4 below).

### **2. Title IX Coordinator engages with Complainant (34 CFR §106.44(a))**

Claims of Sexual Harassment are considered matters of urgency. Once informed, the Title IX Coordinator must promptly contact the Complainant to begin exploring the matter. This includes exploring the allegations with the Complainant to make a preliminary assessment whether they fall within this Title IX process or under the University's broader Community Expectations/Accountability process. The Title IX Coordinator will explain the process for filing a formal complaint under the most appropriate process, given the content of the allegations.

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<sup>3</sup> In the procedures that follow, the term "Title IX Coordinator" means the Title IX Coordinator or any Deputy Coordinator under the direction of the Title IX Coordinator.

## **Title IX: University Procedures (cont.)**

Here, the Complainant has substantial autonomy to choose how the matter will proceed – by formal complaint or otherwise. As discussed above, the Complainant may express a desire not to proceed with a formal complaint but the Title IX Coordinator must also consider the overall safety of the community. In such circumstances, the Title IX Coordinator may overrule the Complainant’s preference if doing so is not clearly unreasonable in light of all the known circumstances.

In addition to discussing the grievance process, The Title IX Coordinator will discuss with the Complainant the potential mitigating or restorative “Supportive Measures,”<sup>4</sup> which are available whether or not Complainant wishes to file a formal complaint. A variety of Supportive Measures may be ordered by the Title IX Coordinator, throughout the grievance process.

Supportive Measures can include – but are not limited to – restrictions on contact between the Complainant and the Respondent, bans from areas of campus, and appropriate changes in campus housing, academic or employment schedule. Failure to adhere to the parameters of any Supportive Measures is a violation of policy and could lead to independent disciplinary action.

Supportive Measures may also include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

### **3. Respondent (34 CFR §106.30)**

A “Respondent” is an individual who is alleged to be responsible for the conduct asserted to amount to “sexual harassment” under Title IX (34 CFR §106.30(a)). A Respondent may be a single individual or multiple individuals named in a Complaint; if a counter-complaint is filed in a formal investigation, the original the Complainant is identified as a Respondent in that counter-complaint.

### **4. Filing a Title IX formal complaint (34 CFR §§ 106.30, 106.45)**

After a Complainant and the Title IX Coordinator have fully conferred about an alleged violation, the Title IX Coordinator will determine next steps, whether filing a Title IX formal Complaint (34 CFR §106.30(a)), moving the allegations into the University’s Accountability grievance process, diverting the matter to Informal Resolution, or some other disposition. If the matter remains in the Title IX grievance process the Title IX Coordinator will then file the signed, formal complaint describing the facts that make the claim. The claim should include all the jurisdictional requirements for a Title IX claim – that at the time of the alleged incident the Complainant was participating in or attempting to participate in an educational program or related activities of the University, that the Respondent’s alleged conduct, amounted to Sexual Harassment as defined under the Title IX regulations, and that the alleged incident occurred within the geographical jurisdiction of the University.

**Consolidation of Formal Complaints (§ 106.45(b)(4)).** When appropriate, APU may consolidate Formal Complaints as to allegations of sexual harassment against more than one

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<sup>4</sup> This term is formally defined in Section II, part D, and related services are described in Appendix C: Supportive Measures and Resources.”

## **Title IX: University Procedures (cont.)**

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

**Emergency removal (§ 106.44(b)).** Under appropriate circumstances, the Title IX regulation permit the University to remove a Respondent from campus, education program or activity on an emergency basis (34 CFR §106.44(c)). Prior to removing a student Respondent, the University must undertake an individualized safety and risk analysis, determine whether an immediate threat to the physical health or safety of any student or other individual arises from the allegations of Sexual Harassment justifies removal, and provide the student Respondent with notice and an opportunity to challenge the decision immediately following the removal. The Title IX emergency removal team consists of the Title IX Coordinator, Department of Campus Safety, and the Dean of Students or designee. If the team determines a removal is necessary, the Respondent will receive written notice and have the opportunity to challenge the decision immediately following the removal. Such challenges should be submitted in writing to the Vice President for Student Affairs or designee within three days of the student Respondent's receipt of notice.

**Administrative Leave (§106.44(d)).** Title IX does not alter APU's authority under its Employee Handbook or under California law to place a non-student employee respondent on administrative leave during the Title IX Grievance Process.

### **5. Informal Resolution Process (34 CFR §106.45(b)(9))**

Informal resolution is a voluntary process that parties can mutually agree to participate in rather than proceeding with an administrative hearing. Where informal resolution is appropriate, and properly invoked, it can further the biblical principle of pursuing reconciliation.

Informal resolutions under Title IX can only occur after a formal complaint is filed. Abuse of the informal resolution process, for example for the purposes of delay, can subject the offending party to the University Accountability process.

Subject to approval by the Title IX Coordinator, the informal resolution process is available in matters involving a student complainant and a student respondent, a faculty/staff complainant and a student respondent, and a faculty/staff complainant and a faculty/staff respondent; the informal resolution process is not available in matters involving a student complainant and a faculty/staff respondent. The purpose of the informal resolution process is to eliminate the conduct which has been reported by the complainant (and prevent its recurrence), and place both individuals in a position to pursue their academic, working, and non-academic interests in a safe, respectful, and productive educational and working environment.

Under this process, there will be no disciplinary action taken against a respondent. The informal resolution will be documented in each party's disciplinary file, as appropriate.

#### **Initiation of the Informal Resolution Process**

The informal resolution process (See Appendix E) may be initiated at any time prior to issuing a final determination regarding responsibility. The Title IX Coordinator will consider whether the informal resolution process is appropriate in the particular matter. In making this determination, the Title IX Coordinator will consider the following factors:

## **Title IX: University Procedures (cont.)**

- The disciplinary record (or past conduct) of the respondent relating to sexual misconduct, physical violence, failure to comply with a No Contact Order, and/or other relevant conduct;
- The nature of the alleged conduct, whether allegations involve multiple victims and/or a pattern of conduct, or other evidence-informed factors indicative of increased risk to campus safety;
- Whether proceeding with the informal resolution process is in accordance with the principles and objectives of the University's Title IX Sexual Harassment policy/University Policy, as determined by the Title IX Coordinator; and/or
- Whether proceeding with the informal resolution process in matters involving faculty and staff members is in accordance with University employment practices.

If the Title IX Coordinator determines that a case is not appropriate for the informal resolution process, the Title IX Coordinator will inform parties in writing that the informal resolution process is unavailable.

If the formal grievance process has already begun, either party may seek to initiate the informal resolution process up until five business days prior to the hearing. If both parties agree to participate in the informal resolution process and Title IX Coordinator approves of the informal resolution process, the formal grievance process will be adjourned while the informal resolution process is pending; if an agreement is not reached, the formal grievance process will be resumed.

Upon initiation of the informal resolution process, the Title IX Coordinator will refer the matter to a trained informal resolution facilitator ("facilitator"). The facilitator will consult (separately) with each party in an effort to reach a resolution that best meets the interests and needs of the parties. Unless they mutually choose to do so as part of an agreement, the parties will not meet together in person as part of the process.

At any time prior to agreeing to an Informal Resolution, any party has the right to withdraw from the Informal Resolution process and resume the process with respect to the Formal Complaint.

### **Potential Outcomes of the Informal Resolution Process**

Depending on the nature and circumstances of the particular situation, parties may agree to outcomes such as:

- A continued no-contact orders for remainder of time as APU community member,
- Apply a no contact order, placing the burden on the respondent to limit the respondent's physical proximity to the complainant;
- Restrictions on the respondent from participation in particular organizations or events;
- Participation in a broad-based educational programming or training
- Changes to on-campus housing, subject to availability;
- Participation by the respondent in the University-provided alcohol education program

## **Title IX: University Procedures (cont.)**

designed to reduce the harmful problems associated with alcohol misuse;

- Provision to the respondent of an “impact statement” written by the complainant (describing the impact(s) that the respondent’s conduct had on the complainant);
- Mediation through supported direct or indirect interaction with the parties through the Title IX Coordinator.
- Other measures deemed appropriate by the Title IX Coordinator.

### **Failure to Comply with the Informal Resolution Agreement**

Failure to comply with the signed agreement may result in disciplinary action for either party, consistent with University Policy disciplinary procedures described in the Undergraduate Community Expectations, Graduate and Professional Students Community Expectations, or Employee Handbook sections 8.3 and 8.4 – as applicable.

During the informal resolution process, the parties may consult with their advisors.

The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution.

## **6. Notice of Allegations (34 CFR §106.45(b)(2))**

An important element of these revised Title IX procedures is an increased focus on providing all parties with regular notice about the course of the Title IX process. Following the filing of a formal complaint, the Title IX Coordinator provides all parties with written notice of the Complaint and the grievance process, including sufficient details of the sexual harassment allegation known at the time of the Complaint.

### **Content of Notice**

Upon the filing of a Formal Complaint, Parties will receive written notice. The notice will include the following information:

- The allegation and the conduct that is alleged to have occurred;
- The identity of the parties;
- The date and location (if known) of the conduct that is alleged to have occurred;
- A copy of the Title IX Policy and Procedures, with an explanation of the investigation and grievance process, including each party’s rights;
- A statement indicating that the decision to accept a Complaint does not presume that the conduct at issue has occurred, and that the respondent is presumed not responsible, unless and until, at the conclusion of the process, there is a determination of responsibility;
- A description of the range of possible disciplinary sanctions (see section 12, below);
- An explanation that each party may consult with and – where appropriate – be accompanied by an advisor of their choice throughout the Title IX process;

## **Title IX: University Procedures (cont.)**

- The date and time of the initial meeting with the Title IX Coordinator, with a minimum of three (3) business days' notice;
- APU's alcohol and drug amnesty policy (see section 4 under part C, "Other Matters, below);
- The University's prohibition against providing false information as part of an investigation or adjudication process (see section 3 under part C, "Other Matters");
- Information regarding Supportive Measures, which are available equally to the respondent and to the complainant;
- The potential availability of an Informal Resolution process; and
- The process for requesting any appropriate accommodations.

Should additional allegations be added to the investigation at a later time, the respondent will again be provided with full written notice.

### **7. Investigation (34 CFR §106.45(b)(5))**

The Title IX Coordinator has the authority to investigate allegations of discrimination prohibited by Title IX even absent the filing of a formal complaint, or in the event that a complaint is withdrawn. In addition, the Title IX Coordinator may proceed with investigating a formal or informal complaint even if a complainant specifically requests that the matter not be pursued, if it is determined that an investigation is necessary to comply with the University's regulatory obligations. In such a circumstance, the Title IX Coordinator will take all reasonable steps to investigate and respond to the matter in a manner that is informed by the complainant's articulated concern about pursuing the matter further.

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,<sup>5</sup> 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.

Individuals found to have engaged in Sexual Harassment, stalking, and/or sexual violence will be subject to disciplinary actions, which could include written warnings placed in the respondent's personnel or student file, participation in sexual assault prevention education, counseling, no contact order, termination of employment or non-renewal of an employment contract, suspension or dismissal from academic programs, exclusion from university activities, and suspension or expulsion from the university.

When a formal complaint is filed, the Title IX Coordinator will review the information and make a determination if the complaint falls under the institutional violation or the Title IX violation (based on federal regulation and its definition). If it does not align with the definition of federal Title IX violation, the Title IX Coordinator will inform both parties, and proceed with the institutional procedures outlined in this document.

### **Communication during the Investigation Process**

In incidents related to sexual violence, domestic or dating violence, or stalking, both complainant

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<sup>5</sup> See Appendix C, "Supportive Measures and Resources."

## **Title IX: University Procedures (cont.)**

and respondent will be given timely notification related to when investigators are meeting with the complainant or respondent, and timely access to the information used during any formal or informal disciplinary meetings (such information includes relevant university policies and procedures, and any documents that will be reviewed during the meetings).

The proceedings will ordinarily be completed within 60-120 days, as set forth in the university's current Sexual Harassment, Stalking, and Sexual Violence Policy. However, with good cause, reasonable extensions of the time for completion of the proceedings will be permitted. In such cases, the complainant and respondent will be provided with written notice, by the appropriate university official, of the extension and the reason for the extension.

Investigation, as used in this procedure, refers to the process the university uses to resolve sexual harassment, stalking, and sexual violence complaints. This includes the fact-finding investigation and any hearing and decision-making process the two assigned investigators use to determine: (1) whether or not the conduct occurred, and (2) if the conduct occurred, what actions the university will take, which includes imposing disciplinary consequences on the respondent and providing remedies to the complainant.

The proceedings will be conducted by officials who do not have a conflict of interest or bias for or against the complainant or the respondent. If the complainant or respondent believes any university official in the proceeding is not suited to perform their role because of bias or conflict of interest, he or she must notify the Title IX Coordinator within five calendar days of learning the identity of the official and his/her role.

APU will ensure that appropriate training for investigators, adjudicators/hearing panel, appeals committee officers are provided annually. Training will include a thorough understanding of the Title IX Sexual Harassment policy, how to conduct an investigation, how to conduct a hearing including asking questions of relevancy, and all processes under this policy. These training materials are publicly available on the University's Sexual Misconduct & Title IX website and will be made available for in-person review upon request.

### **Students**

Where the Respondent is a student, the Title IX Coordinator will assign two trained student affairs professionals to investigate the allegations within the context of the reach of Title IX. If a Title IX violation appears to have occurred, the investigators will issue a written report and the matter will continue down the Title IX process as described below. If the jurisdictional requirements for Title IX have not been met, the complaint may still be pursued through the University's non-Title IX University accountability process in accordance with the applicable Community Expectations.<sup>6</sup>

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<sup>6</sup> <https://www.apu.edu/student-handbook/standards/expectations/>;  
<https://www.apu.edu/graduateprofessionalcenter/student-engagement/expectations/>.

## **Title IX: University Procedures (cont.)**

### **Staff**

Where the Respondent is a staff member, the Title IX Coordinator will assign two individuals to investigate: one trained HR representative and one additional trained staff member.

Upon conclusion of the investigation, if a Title IX violation or other violation of APU's Employee Handbook appears to have occurred, the investigators will issue a written report and submit their findings to the Title IX Coordinator, the Vice President of Human Resources (VP-HR), and the Dean or Vice President over the Respondent. The VP-HR will render a decision as to any Title IX and/or Employee Handbook violations, and take such further action deemed appropriate by the VP-HR in accordance with the Employee Handbook.

### **Faculty**

Where the Respondent is a faculty member, the Title IX Coordinator, in consultation with the Provost, will assign one trained Human Resources representative and two trained faculty to investigate.

Upon conclusion of the investigation, if a Title IX violation or other violation of APU's Employee Handbook appears to have occurred, the investigators will issue a written report and submit their findings to the Title IX Coordinator, the VP-HR, and the dean of the Respondent's school. The VP-HR will render a decision as to any Title IX and/or Employee Handbook violations, and take such further action deemed appropriate by the VP-HR in accordance with the Employee Handbook.

### **Administrators**

For any incident involving administrators (i.e., members of the President's Cabinet (PC) or the Dean's Council (DC)) as respondent(s), the Title IX Coordinator, in consultation with the President, will assign one trained Human Resources representative to be joined by two investigators assigned by the President to conduct the investigation. In the alternative, on advice of University counsel, the President may authorize the Title IX Coordinator to hire an external investigator(s) to conduct the investigation.

In all cases, the investigation team will interview all parties and relevant witnesses to gather pertinent evidence provided by the parties and named witnesses. Interviews may be conducted in person or video conference. Following the investigation, the investigators will provide an interview summary to share with the interviewee. The interviewee will have three (3) business days to correct or comment on any statements made in the Interview Summary. The deadline may be extended for good cause, upon request to the Investigator. If the interviewee has no corrections to, or comments on, the Interview Summary, the interviewee will sign an acknowledgement that the interviewee has reviewed and agrees that the Interview Summary is accurate. If the interviewee has corrections or comments to the Interview Summary, the interviewee may submit a written response within three (3) business days reflecting any additions or changes which the interviewee believes are necessary to ensure the accuracy of the interviewee's statement. If no response is received from the interviewee by the deadline, their Interview Summary may be included in the Investigation Report and will be presumed to be accurate.

## **Title IX: University Procedures (cont.)**

In all cases in which the Respondent is a student, the procedures will continue as discussed below.

If the Respondent is a member of staff or faculty, or an administrator, the decision process, including the imposition of any discipline, follows the Human Resources process under the direction of the VP-HR, in accordance with the applicable Employee or Faculty Handbook requirements. The Title IX Coordinator, however, shall keep Complainant informed of each step in the post-Title IX process, and afford the Complainant a right of response to the investigators' report and shall be apprised of any decision by VP-HR.

### **8. Investigator's Report (34 CFR §106.45(b)(5)(vii))**

Following their review of the parties' responses, the investigators will create a written investigative report that summarizes all relevant evidence and a copy of this report will be provided to each part as part of a formal notice – at least 10 days prior to the hearing; the report will not contain irrelevant information.

The parties may choose to provide a written response to the investigative report, which must be submitted at least five (5) business days prior to the start of the hearing. The response may consist of a written statement not to exceed 1000 words. At least 48 hours prior to the hearing, the parties and their advisers will be provided with the other party's written response to the investigative report, if any, in electronic format.

### **9. Hearing Panel (34 CFR §106.45(b)(7))**

The hearing will be conducted by a Hearing Panel, of qualified employees, selected by the Title IX Coordinator. Hearing Officers receive annual training regarding the policies and procedures, the handling of student sexual misconduct cases, and other relevant issues. Hearing Officers must be impartial and free from bias or conflict of interest. The Parties will be informed of the identity of the Hearing Panel and vice versa before the pre-hearing meeting. If a Hearing Officer has concerns that he or she cannot conduct a fair or unbiased review, the Hearing Officer must report those concerns in advance of the pre-hearing meeting to the Title IX Coordinator and a different Hearing Officer will be assigned. Similarly, the Parties will have three (3) business days to object to the Hearing Officer's selection on the basis of bias or conflict of interest. If either of the Parties objects, the Title IX Coordinator will evaluate whether the objection is substantiated.

The Title IX Coordinator will remove and replace any Hearing Officer the Title IX Coordinator finds to have a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent.

The conduct of the hearing is governed by the principle that all parties must have a reasonable opportunity to address their case. Where a student has requested that the University provide them with an advisor (see section 11(b) below), the Hearing Panel must assure that the student has at least three (3) business days prior to the Hearing to confer with their appointed advisor.

The Hearing Panel has broad discretion to determine the hearing format. However, in all instances the Hearing Panel must conduct a live hearing, at which they shall permit cross-examination of the Parties and witnesses by allowing the Parties' advisors to question the Parties and witnesses.

The Hearing Officers are responsible for maintaining an orderly, fair, and respectful hearing and

## **Title IX: University Procedures (cont.)**

has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending person. During cross-examination, the Hearing Panel is responsible for ruling on every question put to a party or witness, prior to the question being answered, and has the authority to disallow any question it deems to be harassing or one that seeks information that is not relevant under this Policy.

Parties may make requests to the Title IX Coordinator related to the format or the nature of their participation in the hearing. The Title IX Coordinator will work with the Hearing Officer to accommodate reasonable requests, including the option for the hearing to occur with the Parties located in separate rooms with technology enabling the decision-maker and the Parties to simultaneously see and hear the Party answering questions.

### **10. Dismissals or alternative grievance processes (34 CFR §106.45(b)(3))**

There are circumstances under which the Title IX Coordinator is permitted to dismiss a formal complaint after it has been filed, and there are circumstances under which the Title IX Coordinator is required to dismiss a formal complaint. Such dismissals can occur at any time during the formal investigation and hearing process. The formal complaint *must be* dismissed if conduct complained of does not constitute “Sexual Harassment” as defined under Title IX or if it does not meet the other jurisdictional requirements of the regulations. Please note that even if the Title IX aspects of the Complaint are dismissed, the University can continue with a grievance hearing under the applicable Community Expectations/Accountability process.

A formal complaint *may* be dismissed if a Complainant requests withdrawal of their complaint, if a Respondent is no longer enrolled or employed by the University, or when specific circumstances prevent gathering of evidence that is sufficient enough to reach a determination. In these permissive circumstances, however, the Title IX Coordinator has discretion nonetheless to continue the proceeding if it is in the interests of the overall safety of the community (see section 2, “Filing a Title IX formal complaint,” above).

If a complaint is dismissed on either of these grounds, the Coordinator will give written notice to both parties stating the reasons for the dismissal; the parties each have an opportunity to appeal the dismissal. As indicated above, the University retains the discretion to pursue University conduct policies in any case in which it remains in issue.

### **11. Title IX Grievance Live Hearing (34 CFR §106.45(b)(6))**

*The hearing is an opportunity for the Parties to address the Hearing Panel in person, to question the other Party and/or witnesses, and for the Hearing Panel to obtain information following the investigation that is necessary to make a determination of whether a Sexual Misconduct Policy violation occurred. The hearing will be conducted as follows:*

- a. **Conduct of the Live Hearing.** The University will audio or visual record the hearing. Other recordings are not permitted in the hearing. Both parties must be accompanied by their Advisor. The Hearing Officers are responsible for maintaining an orderly, fair, and respectful hearing and have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending person. During cross-examination, the Hearing Panel has the authority to direct any Party or advisor to refrain from asking questions that are harassing or that seek information that is not relevant under this Policy.

## **Title IX: University Procedures (cont.)**

Apart from cross-examination, advisors do not have a speaking role at the hearing though may confer with their party at the Hearing Panel's discretion.

Parties may make requests to the Title IX Coordinator related to the format or the nature of their participation in the hearing. The Title IX Coordinator will work with the Hearing Officers to accommodate reasonable requests, including the option for the hearing to occur with the parties located in separate rooms with technology enabling the Hearing Panel and the Parties to simultaneously see and hear the Party answering questions.

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 called witnesses (only while being questioned), and any individual providing authorized accommodations or assistive services.

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 hear each other. At the discretion of the hearing panel, short breaks may be provided during the hearing.

At University's discretion, the arranged virtual live hearing will 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. An audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. Any other record of the hearing or any other recording is prohibited and violations are subject to the applicable APU Accountability Process.

- b. **Expectations of Support Person/Advisor.** During the grievance process, both parties will have the opportunity to be accompanied to any meeting by a support person/advisor of their choice for incidents related to sexual violence, domestic or dating violence, or stalking. A support person/advisor means any individual who is not involved in the alleged incident (i.e., witness), who can provide the complainant or respondent support, guidance, or advice.

If a party has been unable to arrange for an advisor, the University will appoint one (without charge) if that party desires one. The only qualification for an appointed advisor is that they be someone familiar with the Title IX process; the essential function of an advisor not to "represent" a party but rather to relay the party's cross-examination questions that the party wishes to have asked of other parties or witnesses so that parties never personally question or confront each other during a live hearing. A party must request an appointed advisor no later than ten (10) days before the formal hearing, and the party is entitled to meet with that advisor at least 3 days before the hearing. A party requesting an advisor is responsible for making time to meet with their advisor prior to the hearing; failure to meet their advisor prior to the hearing is not a ground for delaying the hearing absent compelling circumstances. If a party appears without an advisor at the time of the pre-hearing the University will appoint one, but the party is not entitled to a delay of hearing process.

The advisor may advise privately before the pre-hearing and hearing process, but not during the cross-examination hearing. The support person/advisor may not question witnesses, make

## Title IX: University Procedures (cont.)

statements before the hearing panel, or otherwise participate in proceedings. The support person/advisor who acts contrary to agreement and procedural expectations, may jeopardize the hearing process and will be required to leave the meeting.

- c. **Scheduling.** The Title IX coordinator will forward a copy of the Summary of Evidence Report and the parties' responses thereto, if any, to the Hearing Panel. The Title IX coordinator will schedule a hearing date, time, and location and notify the Parties simultaneously.
- d. **Pre-Hearing Meeting.** On the day of the hearing, the Hearing Panel has the discretion to hold a pre-hearing meeting with the Parties for approximately thirty minutes before commencing the hearing. The pre-hearing meeting may occur with the Parties located in separate rooms with technology enabling the Parties to simultaneously see and hear the Hearing Officer. At this pre-hearing meeting, each Party will receive an explanation of the hearing process and have the opportunity to ask any questions. The advisor may accompany the Complainant/Respondent to this initial meeting. Each Party has the option to provide the written questions for the Panel to review during the pre-hearing.
- e. **Witnesses.** The Complainant, Respondent, *and the Hearing Officer* all have the right to call witnesses. Witnesses must have observed the conduct in question or have information relevant to the incident and cannot be called solely to speak about an individual's character.

When witnesses are approved, the Respondent and Complainant are provided with a list of witnesses and any relevant documents related to the witnesses' appearance at the hearing no later than three (3) business days before the Hearing.

Use of Witness Statements - The Hearing Panel will schedule critical witnesses to appear for a portion of the hearing. Critical witnesses must have been interviewed by the investigators. If a party or witness is not available for cross examination at the live hearing, the decision-maker **may consider** their prior statements, to the extent they are deemed credible, reliable, and relevant by the decision-maker, balancing the interests of all parties to a fair hearing.

The Hearing Panel 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.

- f. **Case Presentation.** The hearing is intended to provide a fair and ample opportunity for each side to present their account of the incident and for the Hearing Panel to determine the facts of the case and make a determination as to whether Title IX policy was violated. The hearing is not intended to be a repeat of the Investigation.

The Hearing Panel will be well-versed in the facts of the case based upon the Summary of Evidence Report and the Parties' responses to the Summary of Evidence Report, if any. The Hearing Panel will make a hard copy of the Summary of Evidence Report, the parties' responses to the Summary of Evidence Report, Interview Summaries, and any documentary evidence provided to the Investigator available to the Parties for their use during the hearing.

## Title IX: University Procedures (cont.)

The Hearing Panel has absolute discretion to decide upon a format for the hearing and to determine which witnesses are relevant to the outcome determination. A Hearing Panel may decline to hear from a witness where they conclude that the information is not necessary for their outcome determination.

The Hearing Panel also will afford either party an opportunity at the end of the hearing to offer closing remarks. A decision whether to offer closing remarks is completely voluntary; however, closing remarks may only be made by the parties, and not their advisors.

*Only Relevant Evidence Considered* – The Hearing Panel will only consider relevant evidence in making a determination of responsibility. Relevant evidence is factual material that is of consequence to determinations being made. The Panel will not consider Complainant's prior sexual behavior, or attempted evidence concerning specific prior incidents with respect to the Respondent, that consent was given. Any statement by a witness or party who does not submit to cross-examination at a hearing cannot be considered in the final determination of responsibility.

### g. Questioning at the Live Hearing

- At the live hearing, the Panel will allow each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including questions about credibility.
- Only relevant cross examination and other questions may be asked of a party or witness.
- Panel member(s) also have the right to question a party or witness.
- Before any witness responds to a question posed by either party, the Hearing Panel must be given the opportunity to rule on the relevance of the question and to rule on whether the witness is required to answer the question. The Hearing Panel may rephrase objectionable questions themselves or may direct the asking party to modify, clarify, or rephrase their question, or to omit the question entirely. The Panel will explain to the parties any decision to exclude a question as not relevant.
- Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior generally are not relevant. Such questions and evidence, however, may be allowed if offered to prove that someone other than the respondent committed the conduct alleged by the Complainant, or if offered to establish a pre-existing relationship that bears on the issue of consent.

h. **Expectations of the Complainant, Respondent, and Witnesses at a Hearing.** Each Party has equal access to allegations and evidence. Students, staff, and faculty have a responsibility to participate fully and truthfully in any proceeding under this Policy the consequence of a party's refusal to participate will limit APU's ability to fully respond to the complaint.

i. **Record of Hearing.** The hearing and any pre-hearing meetings or conferences are closed to the public. The Complainant and the Respondent are each allowed to have one advisor of their choice present throughout the hearing process. The hearing will be recorded either by audio or audiovisual which will be made available to recipients for inspection and review after the hearing. The University will *keep record* of the hearing; any other recording is prohibited. No camera, TV, or other equipment, including cell phones, will be permitted in

## Title IX: University Procedures (cont.)

the hearing room, except as arranged by the University.

- j. **Standard of Evidence.** The Hearing Panel will determine a Respondent's responsibility by a preponderance of the evidence. This means that the Hearing Panel will decide whether it is "more likely than not," based upon all of the evidence, that the Respondent is responsible for the alleged violation(s).
- k. **Notice of Hearing Outcome.** Following the hearing, the Hearing Officer will consider all of the evidence and make a determination, by a preponderance of the evidence, whether the Respondent has violated the Title IX/Sexual Misconduct Policy. If the Respondent is found responsible for a violation of Sexual Misconduct Policy, the Formal Resolution process concludes with sanctions, described in Section B. (12), below. If the Respondent is found not to have violated The Sexual Misconduct Policy, the Formal Resolution has concluded.

The decision-maker(s) will issue a written determination regarding responsibility. The majority of the Review Panel members must find that a policy violation occurred for a finding of responsibility and a majority of the Panel members must assent to the sanction(s) imposed, if any. To reach this determination, the decision-maker must apply the standard of evidence required by this policy. The written determination must include:

- i. Identification of the allegations potentially constituting sexual harassment as defined by this policy;
  - ii. 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;
  - iii. Findings of fact supporting the determination;
  - iv. Conclusions regarding the application of the Policy to the facts;
  - v. 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
  - vi. The procedures and permissible bases for the Complainant and Respondent to appeal, as set forth in this policy.
  - vii. APU will provide the written determination to the parties simultaneously.
  - viii. The determination regarding responsibility becomes final either on the date that parties are provided 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.
- l. **Conclusion of the Adjudication Process.** At the conclusion of the hearing process, both Complainant and Respondent will be concurrently notified in writing of the determination and appeal procedures within fourteen (14) business days from the date of completion of the investigation process. If the determination is that the Respondent has engaged in the alleged sexual violence and/or other violations of university policy, the disciplinary consequences shall also be included in the written notice of the determination.

## 12. Decision issued (34 CFR §106.45(b)(7))

## Title IX: University Procedures (cont.)

Following the hearing, the Hearing Panel will consider all of the relevant evidence and deliberate regarding responsibility. The Panel will issue a written notice of hearing outcome (the Final Report), which will include findings of fact, their decision concerning all allegations, and a summary of the Panel's rationale in support of the hearing outcome. The Hearing Panel will make a determination, by a preponderance of the evidence, whether the allegations have been proved to be violations the University's policy, "Sexual Harassment' under Title IX, and other Instances of Sexual Misconduct." The Hearing Panel will write a written determination, which will contain:

- (1) ultimate findings (responsible or not responsible of violating Title IX Policy);
- (2) a summary of procedural steps taken in the matter;
- (3) findings of fact supporting the determination;
- (4) conclusions regarding the application of this policy to the facts;
- (5) a statement of, and rationale for, the result as to each allegation, including
  - a. a determination regarding responsibility (i.e., whether a policy violation occurred)
  - b. disciplinary sanctions imposed by the adjudicators if there has been a finding of responsibility and
  - c. whether any remedies designed to restore or preserve equal access to the University's education program or activity or working environment will be implemented; and
- (6) relevant appeal information for the parties.

Disciplinary sanctions and remedies will be determined consistent with Employee Handbook, Graduate and Professional Code of Conduct, Community Expectations. The parties and their advisers will simultaneously be provided with the written determination via electronic format.

### Range of Imposing of Sanctions on Student Respondents (34 CFR §106.45(b)(1)(vi))

At the end of the information gathering and hearing process, the adjudicating officer will communicate their decision in writing to the Respondent(s). The written decision will include, where appropriate, a summation of findings. Sanctions are imposed when there is information indicating that the Respondent(s) violated the Title IX/Sexual Misconduct Policy. This determination is made by an APU official responsible for the administration of the disciplinary process. The following are sanctions that may be imposed by a university official upon any student for violating the applicable Community Expectations:

- **Admonition:** An oral statement to the student that s/he is violating or may be violating university policies. The university official will review the policy and rationale and explore resources/supports for the student.
- **Warning:** Verbal or written warnings may be given for unacceptable behavior and the student is advised to change the behavior. (Disclaimer: This sanction may be given without a hearing.)
- **Restitution/reimbursement or fine:** Damage or misuse of university property or failure to follow university policy or procedure may require a student to make restitution or pay a fine.
- **Discretionary sanctions:** A student may be required to perform community service, write a paper, or perform any other activity deemed appropriate for the violation of the

## Title IX: University Procedures (cont.)

Community Expectations or any other university policies.

- **Loss of privileges:** A student may lose privileges such as visitation, leadership opportunities, living on campus, campus employment, noncurricular activities, parking, etc., appropriate to the violation of the Community Expectations or any other university policies.
- **Community Expectations probation:** A student may be placed on Community Expectations probation for a specified period. During this time, further violations of university policy may result in the student's suspension or expulsion from the university. Any student upon whom sanctions are imposed and/or is placed on probation may become immediately ineligible for service as an athlete, student leader, and/or student representative. Students who fail to comply with the terms and conditions of a sanction are subject to additional judicial action.
- **Interim suspension:** Imposed immediately when the seriousness of the offense is such that the members of the community, including the accused student, may be threatened by his/her continued presence. (This suspension will be for a stated period of time and followed by a student hearing.)
- **University suspension:** Separation of the student from the university for a specified period. A student may not be on campus or at university events while suspended without written permission from the Chief Judicial Officer or designee. (Conditions for readmission may be required.)
- **University expulsion:** Permanent separation of the student from the university. A person may not be on campus or at university events if expelled without written permission from the Chief Judicial Officer or designee.

### Sanctions Applicable to Faculty and Staff Members

For violations of this policy by faculty or staff members, disciplinary sanctions may include (in accordance with the employment policies contained in the appropriate Employee and/or Faculty Handbooks governing the employee in question) counseling or training, a documented verbal warning, a written warning, a final written warning, financial penalty, suspension, demotion, and termination of employment, in accordance with applicable policies. The University may place a faculty or staff member on administrative leave during the pendency of a grievance process, provided that such action shall not modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

### **13. Appeals Process (34 CFR §106.45(b)(8))**

Within five (5) business days of receiving written determination, both Parties are entitled to appeal to the Title IX Coordinator a determination regarding responsibility or from a dismissal of a Formal Complaint.

The appeal must consist of one or more of the following exclusive grounds for appeal:

1. *New Information* – There is new evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could

## **Title IX: University Procedures (cont.)**

affect the outcome of the matter.

2. *Procedural Irregularity* – A party asserts that the matter was not handled in accordance with these Procedures, and that these irregularities affected the outcome of the matter;
3. *Conflict of Interest or Bias* – A party asserts that the Title IX Coordinator, investigator(s), or Hearing Panel member(s) had a conflict of interest or bias for or against complainants or respondents generally, or toward the individual complainant or respondent, that affected the outcome of the matter.

Complainants and Respondents will have only one opportunity to appeal. All appeal meetings are closed and the proceeding may be kept confidential at the discretion of the university. Appeal meetings may be recorded at the discretion of the university with notice to those involved.

### **Content of the Appeal**

The appealing Complainant or Respondent must submit a written appeal within five (5) business days of the date of the written decision. In no more than 1000 words a written appeal must be submitted to the Title IX Coordinator.

The Title IX Coordinator will notify the other party in writing when an appeal is filed and that appeal procedures will be implemented. The Coordinator will submit the written appeal to the Appeals Committee for review.

Give the non-appealing party an opportunity to submit a written statement to the Title IX Coordinator in response to the appeal within five (5) business days of receiving the appeal, which the Coordinator shall transmit within two (2) business days to the Appeal Officer.

## **14. Appeal Panel**

The Appeal Panel consists of the Chief Judicial Officer and two trained appeal members in each appeal case. The Appeal Panel is an objective panel separate from the Title IX Office, investigators, and Hearing Panel.

The Appeal Panel has the authority to deny the appeal on its face if the appeal grounds have not been met. If accepted, the Appeal Panel will review the petition for appeal, and any new evidence submitted by the appealing party in support of the appeal.

The Appeal Panel fills a review role, neither gathering new evidence nor re-deciding the matters decided by the Hearing Panel. The Appeal Panel, however, has broad discretion in serving its role and may, for example, seek clarification from the Hearing Panel on specific matters, pose questions to the Hearing Panel about their decision, or may return the case to the Hearing Panel for further proceedings.

There is no specific timetable during which the Appeals Panel must reach its decision, but its actions must be consistent with this Procedure's overall goal of resolving Title IX complaints promptly and fairly, generally within 60-120 days. Upon concluding its review of the appeal, the Appeal Panel will issue a written ruling describing each element of its decision, together with the

## **Title IX: University Procedures (cont.)**

basis for each element.

In general, the enforcement of sanctions imposed by the Hearing Panel that are the subject of the Appeal will be suspended (“stayed”) while the Appeal is pending. If, however, the Complaint(s) or subsequent behavior of any party involves violent or dangerous behavior, related interim measures or sanctions imposed by the Hearing Panel to protect the parties or the broader APU community will remain in effect during the pendency of the Appeal.

### **15. Final Decision**

Based on its review of all proper information relevant to the Appeal, and following their due deliberation, the Appeal Panel (by majority vote) will issue a written decision describing their resolution of the Appeal and the rationale for their result. This decision will be forwarded as their recommendation for the disposition of the Appeal to the Vice President for Student Affairs, or their designee, to either accept, reject, or modify the recommendation.

After a decision has been reached, both the Complainant and the Respondent will be notified in writing by the Title IX Coordinator, who will simultaneously notify the parties in writing within seven (7) business days. Decisions made in the appeal process are final and may not be addressed through any other “Grievance Process.”

## **C. Other Matters**

### **1. Timing (34 CFR §106.45(b)(1)(v))**

The University is committed to providing a prompt, thorough, and unbiased process to all complaints. While each investigation is unique, the investigation will be concluded, including reporting to the parties, within a reasonable amount of time, following the initial complaint. The Investigation and adjudication process generally takes between 60-120 business days. Delays may arise from complexity and scope of allegations, when witnesses and/or relevant evidence is unavailable, University holidays, and semester breaks. In the event of a delay, the Title IX Coordinator will notify the Complainant and Respondent of the reasons for the delay and the anticipated time adjustments. The University will make best efforts to complete the process in a timely manner while maintaining a balance between thoroughness and with promptness. When the confidential investigation has been completed, the Complainant and Respondent will be concurrently notified by a letter of findings and notification via email or in person.

### **2. Retaliation prohibited (34 CFR §106.71)**

Any employee or student who feels they have experienced Sexual Harassment has the legal right to raise the issue to the Title IX Coordinator. The University has the responsibility to investigate and to report to the appropriate parties any allegations of the suspected improper activities, and to protect those employees who, in good faith, exercise their right to report these activities to the appropriate authority.

Retaliation is absolutely prohibited. No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX 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,

## **Title IX: University Procedures (cont.)**

or hearing. 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 or privilege secured by Title IX, constitutes retaliation. Any person engaging in any retaliatory action(s) will be subject to a separate complaint under the Community Expectations or Employee Handbook, as applicable. If found responsible, the party will be subject to appropriate sanctions or disciplinary action up to and including dismissal from the university or termination of employment.

### **3. False Statements (34 CFR §§106.45(b)(2)(i)(B), 106.71(b)(2))**

APU takes reports of Title IX violations seriously. When a complaint is made in good-faith and the findings result is that the Respondent is found not responsible, it is not considered a false report. Any Complainant who knowingly makes false charges alleging violations of this policy will be subject to disciplinary action up to and including termination of employment or dismissal from the University

### **4. Immunity/Response to other violations**

The University understands that reporting parties (including witnesses) sometimes are hesitant to report because they fear that they themselves may be charged with other University policy violations, such as personal consumption of alcohol or drugs at the time of the incident. To encourage reporting, in appropriate cases, the university pursues a policy of offering reporting parties limited immunity from being charged with conduct violations related to the particular incident. While violations to policy cannot be completely overlooked in some cases, the university will provide educational opportunities to encourage the holistic development of parties involved.

### **5. Disability Accommodations**

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations not specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

### **6. Reports involving minors or suspected child abuse under California law**

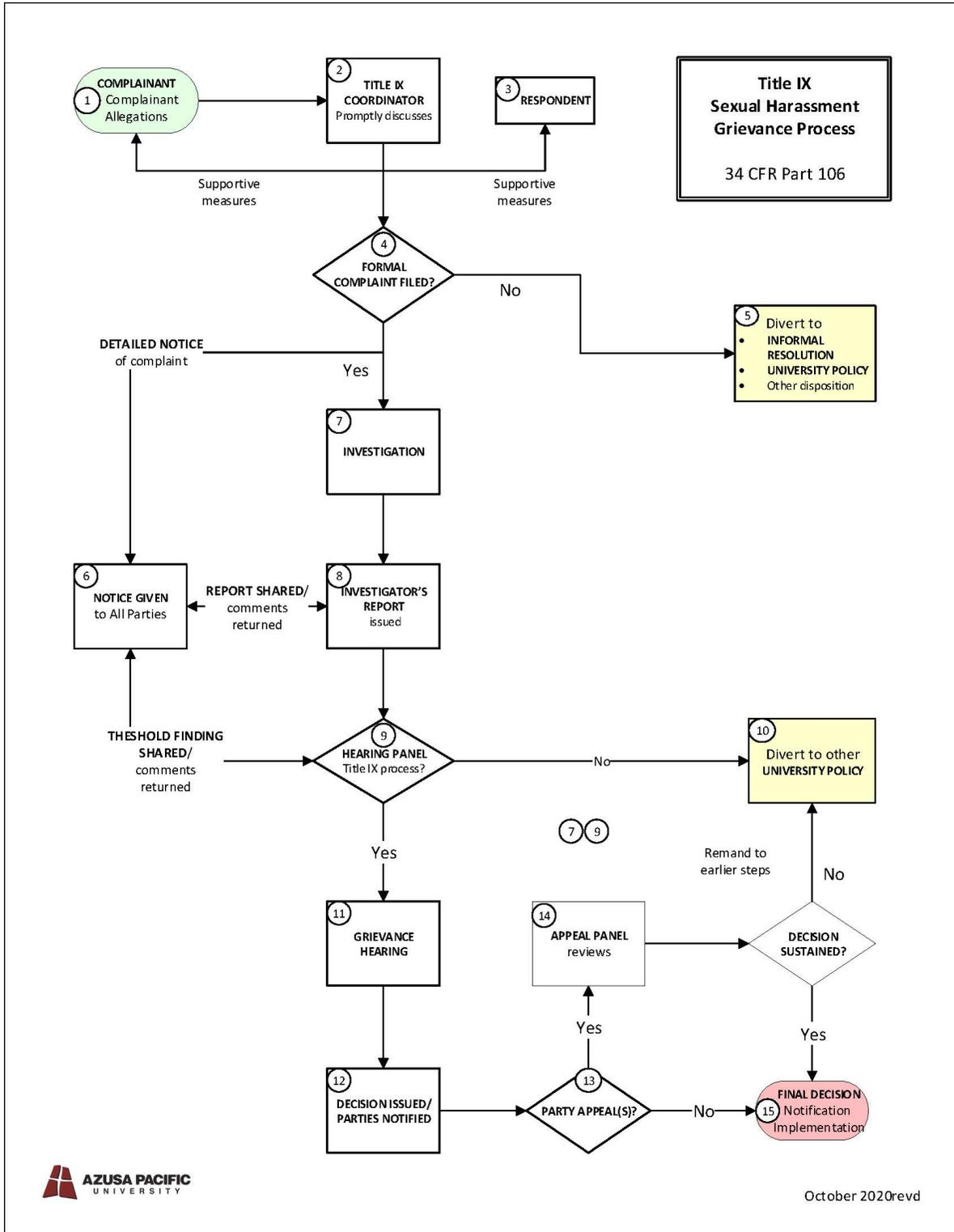
Under the University's policy on Child Abuse Prevention and Reporting, a University employee may have mandatory reporting obligations in cases involving minors.

### **7. Modification and Review of Policy**

APU reserves the right to modify these procedures to take into account applicable legal requirements or extraordinary circumstances, and will review them at regular intervals to determine whether modifications should be made.

# APPENDIX A

## Azusa Pacific University Title IX Process Flowchart



# APPENDIX B

## Definitions

### Prohibited “Sexual Harassment” under Title IX

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

1. **Quid Pro Quo Conduct.** An employee conditions the provision of an aid, benefit, or service of Marymount on an individual’s participation in unwelcome sexual conduct;
2. **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 Marymount’s education program or activity; or
3. **Sexual assault.** This category of prohibited conduct includes the following:
  - i. Sex Offenses*—Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving 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.
  - ii. Nonconsensual Penetration*- 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 consent of the victim. This includes 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 consent because of their temporary or permanent mental or physical incapacity.
  - iii. Fondling*—The touching of the private body parts of another person for the purpose of sexual gratification, 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 consent because of their youth or because of their temporary or permanent mental or physical incapacity.
  - iv. Other Lawfully Prohibited Sexual Intercourse*  
This category includes conduct 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.
    - b. Nonforcible sexual intercourse with a person who is under the statutory age of consent.
4. **Dating violence.** Violence committed by a person— (A) who is or has

## APPENDIX B (cont.)

been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

5. **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 California 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 California.
6. **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

### **“Actual Knowledge” under Title IX**

The University has the actual knowledge of the complaint, when the Title IX Coordinator, Department of Campus Safety, Title IX Deputy Coordinator, or Officials with Authority receives the official complaint and has the authority to institute corrective measures. The mere ability or obligation to report Sexual Harassment or to inform a student about how to report a Sexual Harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the university.

### **Other Title IX terminology and University Policy definitions**

*The following definitions are integrated in University's statements of policies and expectations found in the Undergraduate Community Expectations, Graduate and Professional Student Standards of Conduct, the Faculty Handbook, and Employee Handbook.*

**Affirmative Consent** - Affirmative consent 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 he or she has the affirmative consent of the other or others to engage in sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. 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.

## APPENDIX B (cont.)

Affirmative consent may be given by words or actions unmistakable in meaning. In order to be effective, affirmative consent cannot be procured by the use of physical force, compelling threats, intimidating behavior, or coercion. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to another person that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. In order to give affirmative consent for purposes of this policy, one must be of legal age.

In the evaluation of complaints of sexual violence under this policy, it is not 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:

- The respondent's belief in affirmative consent arose from the intoxication or recklessness of the respondent, or
- The respondent *did not* take reasonable steps, in the circumstances known to the respondent at the time, to ascertain whether the complainant affirmatively consented.

Affirmative consent will not be found to have been given when it is determined by a preponderance of the evidence that the respondent knew or reasonably should have known that the complainant was unable to consent to the sexual activity because the complainant was either:

- Asleep;
- Unconscious;
- Incapacitated due to the influence of drugs, alcohol, or medication such that the complainant could not understand the fact, nature or extent of the sexual activity; and/or
- Unable to communicate due to a mental or physical condition.

If an individual has sexual activity with someone known to be or should be known to be mentally or physically incapacitated (alcohol or other drug use, unconsciousness, or blackout), he or she is in violation of this Sexual Harassment, stalking, and sexual violence policy and may be in violation of the law. Any time sexual activity takes place between individuals; those individuals must be capable of controlling their physical actions and be capable of making rational, reasonable decisions about their sexual behavior.

**Complainant** - A complainant is any student, employee, or third party who is alleged to be the victim of conduct that could constitute as Sexual Harassment. A complainant must be participating in, or attempting to participate in, the institution's education program or activity at the time of filing a formal complaint.

## **APPENDIX B (cont.)**

**Confidentiality** - Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. These campus professionals include Campus Pastors, University Chaplains, counselors from the University Counseling Center and Community Counseling Center, and health providers from the Student Health Center, all of whom are legally mandated to maintain confidentiality. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others. When a report involves suspected abuse of a minor under the age of 18, these confidential resources are required by state law and University Policy to notify child protective services and/or local law enforcement, and the University Office of General Counsel.

**Confidentiality and Privacy** - Those who have reported Sexual Harassment, stalking, and sexual violence violation should know that Officials with Authority, university employees (Residence staff, Campus Safety Officers, staff members, faculty, etc.), are not confidential, but private and will report sexual misconduct to the Title IX Coordinator. University Counseling Center staff, Community Counseling Center staff, Student Health Center staff, Campus Pastors, and the University Chaplain are bound by confidentiality standards and do not have the obligation to report adult sexual misconduct to the Title IX Coordinator.

**Discrimination on the basis of sex** - A recipient's treatment of a complainant or a respondent in response to a formal complaint of Sexual Harassment may constitute discrimination on the basis of sex under Title IX.

**Domestic and Dating Violence** - Domestic and dating violence is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse of the complainant, or by a person with whom the complainant shares a child in common, or by a person who is cohabiting with or has cohabited with the complainant as a spouse, or by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of California, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Such a relationship will be determined based on, among other factors, the Complainant's and Respondent's statements, and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the Parties involved in the relationship.

**Formal Complaint** - Means a document filed by a complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a respondent and requesting that the recipient investigate the allegation of 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 the recipient with which the formal complaint is filed. A complaint can be made in

## **APPENDIX B (cont.)**

person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator.

**Investigation** - this procedure refers to the process the university uses to resolve sexual harassment, stalking, and sexual violence complaints. This includes the fact-finding investigation and any hearing and decision-making process the two assigned investigators use to determine: (1) whether or not the conduct occurred, and (2) if the conduct occurred, what actions the university will take, which includes imposing disciplinary consequences on the respondent and providing remedies to the complainant.

**Nonconsensual Sexual Contact** – Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a man or a woman upon a man or a woman, without affirmative consent.

**Nonconsensual Sexual Intercourse** – Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a man or woman upon a man or a woman, without affirmative consent.

**Privacy:** Privacy generally means that information related to a report of Prohibited Conduct will only be shared with a limited circle of individuals who “need to know” in order to assist in the assessment, investigation, or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in the College’s FERPA policy. The privacy of an individual’s medical and mental health records may be protected by the Health Insurance Portability and Accountability Act (“HIPAA”), excepting health records protected by FERPA. Access to an employee’s personnel records may be restricted by applicable California and federal law.

All inquiries, complaints, and investigations are treated with discretion. Identity of the Complainant may be revealed to the respondent(s) of such conduct.

**Respondent** – A respondent is any individual who is alleged to have discriminated on the basis of sex as defined in this policy.

**Sex Discrimination** – Sex discrimination is any behaviors and/or actions that deny or limit a person’s ability to benefit from, and/or fully participate in the educational programs or activities or employment opportunities based on an individual’s sex. Examples of sex discrimination include Sexual Harassment, sexual violence, and failure to provide equal opportunity in employment, education programs, and co-curricular programs including athletics, discrimination based on pregnancy, and employment discrimination.

## APPENDIX B (cont.)

**Sexual Assault** – Sexual assault is a general term that covers a broad range of inappropriate and/or unlawful conduct, including rape, sexual battery, and sexual coercion. As defined under California law, rape is nonconsensual sexual intercourse that involves the use or threat of force, violence, or immediate and unlawful bodily injury or threat of future retaliation and duress. Sexual battery includes the nonconsensual touching of a person’s intimate parts, or the clothing covering the immediate area of those parts, or forcing a person to touch another’s intimate parts.

**Sexual Coercion** – Sexual coercion is the act of using pressure (including physical, verbal, or emotional pressure), alcohol, medications, drugs or force\* to have sexual contact against someone’s will or with someone who has already refused. When an individual communicates verbally and/or physically that they do not want to go beyond a certain point of sexual interaction, any continued activity or pressure can be coercive

(\***Force:** Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent.)

**Sexual Exploitation** – Sexual exploitation occurs when an individual takes or attempts to take nonconsensual or abusive sexual advantage of another for his/her own advantage or benefit, or to the benefit or advantage of anyone other than the one being exploited, and without the consent from the person being exploited. Examples include, but are not limited to, indecent exposure and invasions of privacy including voyeurism (e.g., non-consensual video or audio-taping of sexual activity).

**Sexual Harassment Grievance Process** - The purpose of addressing formal complaints of Sexual Harassment. The grievance process must be equitable for both Complainants and Respondents by providing each party with a fair grievance process. This process provides remedies to a complainant where a determination of responsibility for Sexual Harassment has been made against the respondent, and by following a grievance process as defined by Title IX Regulations. Remedies are designed to preserve or restore equal access to education at the University.

**Stalking** – Stalking is harassing or threatening another person to the point where that individual fears for his/her safety or the safety of his/her family. Stalking can occur in various forms including, but not limited to, in person and via electronic means (cyberstalking/cyberbullying). Stalking means to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; and to place under surveillance with the intent to kill, injure, harass or intimidate another person; and in the course of, or as a result of, such following, pursuit, surveillance or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to—that person; a member of the immediate family of that person; or the spouse or intimate partner of that person.

## APPENDIX B (cont.)

*Cyber-stalking* is a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

Examples of Stalking include, but are not limited to:

- Non-consensual communication including in-person communication, telephone calls, voice messages, text messages, email messages, social networking site postings, instant messages, postings of pictures or information on websites, written letters, gifts, or any other communications that are undesired and/or place another person in fear;
- Following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a person;
- Surveillance and other types of observation, whether by physical proximity or electronic means; and
- Gathering of information about a person from family, friends, co-workers, and/or classmates.

The following definitions consist of prohibited conduct as defined by the University policy. All prohibited conduct is applicable to faculty, staff, and students.

**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 will be arranged through the Title IX Office.

The following definitions consist of prohibited conduct as defined by Title IX. All prohibited conduct is applicable to faculty, staff, and students.

Title IX is defined as unwelcome conduct on the basis of sex, determined by a reasonable person to be unwelcomed, severe, pervasive, and objectively offensive that it effectively denies a person equal access to University's education program or activity while on American soil.

**University Sexual Misconduct** – is unwelcome conduct on the basis of sex, determined by a reasonable person to be unwelcomed, severe, pervasive, and/or objectively offensive that it effectively denies a person equal access to University's education program regardless of the location of the incident.

# APPENDIX C

## Supportive Measures & Resources

At the Title IX Coordinator's discretion, interim/supportive measures may be made available to both the complainant and/or the respondent during a Title IX matter, including but not limited to:

- access to counseling services and assistance in setting up an initial appointment, on and off-campus
- University No Contact Orders
- rescheduling of exams and assignments
- providing alternative course completion options
- changing class schedules, including the ability to transfer course sections or withdrawal from a course without penalty
- adjusting work schedules or job assignments
- changing a student's on-campus housing assignments
- limiting access to certain University facilities or activities, pending resolution of the matter
- voluntary leave of absence
- providing an escort to ensure safe movement between classes and activities
- providing academic support services, such as tutoring

Azusa Pacific University is also committed to providing supportive resources for all of our students. Any student (Complainant, Respondent, or Third-Party) who is affected by violations under the Title IX or related policy has equal access to counseling and support from the following on-campus services:

### **On-campus private offices:**

- Student Affairs
- Dean of Wellness
- Department of Campus Safety
- Graduate and Professional Services
- Residence Life

### **Office of Human Resources**

- Employee Assistance Program, <https://www.apu.edu/humanresources/additionalresources/>
- APU Community Counseling Center, (626) 815-5421, <https://www.apu.edu/ccs/>

### **On-campus confidential offices:**

- University Counseling Center
- Health Center
- Campus Ministry (undergraduate students)
- Chaplain (graduate & professional students)

### **Appendix C (cont.)**

**Off-campus resources:**

- Project Sister, (909) 626-HELP, projectsister.org
- National Sexual Assault, (800) 656-HOPE, rainn.org

**External Resources for Title IX**

- Project Sister, (909) 626-HELP, projectsister.org
- YWCA - SGV WINGS 24-hour domestic violence hotline (626)967.0658, ywca.org
- National Sexual Assault, (800) 656-HOPE, rainn.org
- Office for Civil Rights (OCR) U.S. Department of Education 400 Maryland Avenue, SW Washington, DC 20202-1100

**Customer Service Hotline #:** (800) 421-3481 Facsimile: (202) 453-6012 TDD#: (877) 521-2172 Email: [OCR@ed.gov](mailto:OCR@ed.gov) Web: <http://www.ed.gov/ocr>

# APPENDIX D

## Sexual Assault Prevention Training and Education

In support of APU's Sexual Harassment, stalking, and sexual violence policies, APU provides the following sexual assault educational resources and prevention education for all students and employees.

- [RAD \(Rape Aggression Defense\) Classes](#)
- Annual Title IX and sexual assault prevention education for athletes and coaches
- Annual Title IX and sexual assault prevention education for resident advisors, orientation leaders, graduate assistants, student leaders, Office of Women's Development staff, and undergraduate student government officers
- All entering first-year and transfer students are required to complete an online prevention and education module on Sexual Harassment, sexual assault, dating violence, and stalking during the student's first semester.
- Training for all new employees through the Office of Human Resources new employee orientation program All employees are responsible for complying with state law requiring training on equal opportunity and nondiscrimination within 30 days of hire and every two (2) years thereafter.

Advisor Training: A complainant and a respondent at a hearing must have an advisor with them. In cases in which a party does not have an advisor, the university will provide a trained advisor to assist them in the hearing process. Training requirements for university advisors are outlined in the Training requirements

Additionally, Campus Safety provides safety whistles, safety escorts, [safety videos](#), safety and prevention presentations (upon request), and an after-hours shuttle free of charge.

### **Training for Those with Title IX Responsibilities**

APU will ensure that the Title IX Coordinator and Deputy Coordinators, Department of Campus Safety, Officials with Authority, Responsible Employees, and designated student leaders, respond to Sexual Harassment on behalf of the Complainant, are trained how to respond promptly, effectively, and appropriately to reports of sexual violence. Responsible Employees are trained how to report Sexual Harassment and sexual misconduct to the Title IX Coordinator and to help all other employees understand how to respond to reports of Sexual Harassment.

Title IX investigators, adjudicators, and members of the hearing panel are trained annually. As a part of the training of employees, APU will ensure that professional counselors, pastoral counselors, and non-professional counselors also understand the extent to which they may keep a report confidential.

## **Appendix D (cont.)**

### **Bystander Intervention**

We can all play a role in changing the culture on our campuses. By stepping in both directly or indirectly we can make our campuses safer places to be and increase trust within our community.

If acts of violence against other individuals are observed, members of the APU community have the option to intervene to help stop the act, only if it is safe and positive to do so without risking further harm. Suggested options include:

- Dial 911 or
- Department of Campus Safety 626.815.3898
- Cause a distraction - if you witness a potentially at-risk situation occurring, causing the aggressor to focus on something else even for a small amount of time, can help the person at risk find an opportunity to exit the situation (It's On Us, 2019).
- When appropriate, remain in the area to provide witness information to the authorities.
- Get other people involved - sometimes it can be difficult to intervene alone. If you feel uncomfortable intervening alone, find another person who can intervene with you (It's On Us, 2019).
- Show support - if you witness someone who seems uncomfortable by another person's words or actions, go up to that individual and support them with your presence and reiterate what they said.

# **APPENDIX E**

## **Informal Resolution Process**

### **What is the purpose of this process?**

On May 19, 2020, the U.S. Department of Education issued a Final Rule governing the Title IX grievance process, effective August 14, 2020. The Final Rule requires that all colleges and universities hold a live hearing before making any determination regarding responsibility for covered reports of Title IX sexual harassment, including sexual violence. This hearing must provide for live cross-examination by the parties' advisors.

However, under § 106.45(b)(9) of the Final Rule, colleges and universities may offer and facilitate informal resolution processes, as long as each party voluntarily agrees to the process through an informed, written consent. This option is a change from long-standing Departmental guidance discouraging the use of informal procedures to address sexual harassment and prohibiting the use of mediation to address sexual assault. In the Preamble to the Final Rule, the Department states that it views informal resolutions as a way to resolve sexual harassment allegations in a less adversarial manner than the investigation and adjudication procedures that comprise the § 106.45 grievance process.

No college or university is required to adopt an informal procedure for addressing Title IX-covered sexual assault, nor is there any obligation to create or put in place such a policy by the August 14, 2020 implementation date. Institutions should use caution in pursuing an informal resolution process to ensure that facilitators have significant training in the chosen methodology.

This Policy, in turn, provides guidance regarding the contents of a Title IX-compliant process and the types of informal resolution procedures you may consider adopting.

### **Elements of an Informal Resolution Process**

#### **Procedures for Entering and Exiting Informal Resolution Process**

Parties who do not wish to proceed with an investigation and live hearing, and instead seek the APU assistance to resolve allegations of Title IX-covered misconduct, may elect to enter the informal resolution process. Generally speaking, these resolution options are less time intensive than an investigation and live hearing, while still affording students an opportunity to actively participate in a process led by the APU's for resolution of their complaints.

## **Appendix E (cont.)**

The Parties may elect to enter Azusa Pacific University's informal resolution process at any time after the filing of the Formal Complaint through an informed written consent. This informed written consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.

No Party may be required to participate in informal resolution, and APU may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the formal resolution process recommences. In participating in the informal resolution process, the Parties understand that the timeframes governing the formal process temporarily cease, and only recommence upon reentry into the formal process.

### **Determination to Approve Entry into Informal Resolution Process**

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator **must** approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Title IX Coordinator may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the respondent is a repeat offender, and whether the Parties are participating in good faith. This determination is not subject to appeal.

Informal resolution is only permitted to address allegations of student-on-student sexual harassment, and is never allowed as an option to resolve allegations that an employee sexually harassed a student. See, 85 Fed. Reg. 30026, 30054 (May 19, 2020).

At any time after the commencement of the informal resolution process, the Title IX Coordinator may determine that the informal resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the formal process. This determination is not subject to appeal.

### **Role of the Facilitator**

Informal resolution processes are managed by facilitators, who may not have a conflict of interest or bias in favor of or against complainants or respondents generally or regarding the

## **Appendix E (cont.)**

specific Parties in the matter. The Title IX Coordinator may never serve as the facilitator, subject to these restrictions.

All facilitators must have training in the definition of sexual harassment under 34 C.F.R. § 106.30(a), the scope of the institution's education program or activity, how to conduct informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias.

### **Confidentiality:**

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Formal Complaint is confidential. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization., As a condition of entering the informal resolution process, any evidence shared or received during the informal resolution process may not be used in any subsequent formal resolution process or institutional appeal.

### **Informal Resolution Option**

APU offers the following informal resolution procedures for addressing Formal Complaints of sexual harassment covered under this Policy:

#### Mediation

The purpose of mediation is for the parties who are in conflict to identify the implications of a student's actions and, with the assistance of a trained facilitator, identify points of agreement and appropriate remedies to address them. Either party can request mediation to seek resolution; mediation will be used only with the consent of both parties, who will be asked not to contact one another during the process. The Title IX Coordinator will also review any request for mediation, and may decline to mediate based on the facts and circumstances of the particular case. Either party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within 10 days after the Title IX Coordinator receives consent to mediate from both parties, and will continue until concluded or terminated by either party or the Title IX Coordinator. During mediation, any potential investigation will halt, and calculations for time frames will be stayed. If the mediation results in a resolution, the

## **Appendix E (cont.)**

disciplinary process will be concluded and the matter will be closed. If a resolution cannot be reached, the matter will be referred back to the Title IX process for further proceedings. If the Complainants choose not to cooperate further with the Title IX process and the Title IX Coordinator agrees, the matter would be referred to the University's non-Title IX Accountability Process under the Title IX permissive dismissal standard.

During mediation, a facilitator will guide a discussion between the parties. In circumstances where the parties do not wish to meet face to face, either party can request "caucus" mediation, and the facilitator will conduct separate meetings. Whether or not the parties agree to meet face to face, each party will be permitted to bring an advisor of their choice to any meetings who may be, but is not required to be, an attorney.

At the conclusion of the mediation, the facilitator will memorialize the agreement that was reached between the parties. The Title IX Office will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.