

UADA 275.1
Title IX Policy for Complaints of Sexual Assault and
Other of Sexual Harassment

Purpose

The University of Arkansas System Division of Agriculture (hereafter “Division”) does not discriminate on the basis of sex in the education programs and activities that it operates and is prohibited from doing so by Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and the U.S. Department of Education’s implementing regulations, 34 CFR Part 106. The Division’s nondiscrimination policy extends to admission, employment, and other programs and activities. Inquiries regarding the application of Title IX and 34 C.F.R. Part 106 may be sent to the Division’s Title IX Coordinator, the U.S. Department of Education Assistant Secretary for Civil Rights, or both.

Jurisdiction and Scope

Sexual harassment as defined in this policy (including sexual assault) is a form of sex discrimination and is prohibited. Title IX requires the Division to promptly and reasonably respond to sexual harassment in the Division’s education programs and activities, provided that the harassment was perpetrated against a person in the United States. At the time that a formal complaint is filed, the complainant must be participating in (or attempting to participate in) an education program or activity of the Division. An education program or activity includes locations, events, or circumstances over which the Division exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

This policy applies to allegations and complaints of sexual harassment as defined herein. All other complaints of discrimination or misconduct that do not fall within the jurisdiction of Title IX may be made through other Division procedures.

This policy shall not be construed or applied to restrict academic freedom at the Division. Further, it shall not be construed to restrict any rights protected under the First Amendment, the Due Process Clause, or any other constitutional provisions. This policy also does not limit an employee’s rights under Title VII of the Civil Rights Act.

REPORTING

All complaints or reports about sex discrimination (including sexual harassment) should be submitted to the Title IX Coordinator:

Title IX Coordinator Barbara Batiste
University of Arkansas System Division of
Agriculture 2301 South University Avenue
Little Rock, Arkansas 72204
Barbara Batiste 501-671-2015
Email: bbatiste@uada.edu/bbatiste@uark.edu

In addition, the U.S. Department of Education, Office of Civil Rights, may be contacted by phone at 800-421-3481 or by email at ocr@ed.gov.

Any person may report sex discrimination, including sexual harassment (whether or not the person is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed above, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

AMNESTY

The Division encourages reporting of incidents of prohibited conduct and seeks to remove any barriers to reporting. The Division recognizes that an individual who has been drinking or using drugs at the time of an incident may be hesitant to make a report because of potential consequences for their own conduct. Individuals who report prohibited conduct or participate as witnesses will not be subject to disciplinary sanctions for personal consumption of alcohol and/or other substances.

The Division may initiate an educational discussion with individuals about their alcohol and/or drug use or may direct these individuals to services such as counseling for alcohol and/or drug use. Amnesty will not be extended for any violations of Division policy other than alcohol/drug use. The use of alcohol, drugs, and/or legally prescribed medication does not justify or excuse behavior that constitutes prohibited conduct under this policy.

FILING REPORT WITH LOCAL LAW ENFORCEMENT

In some instances, sexual harassment may constitute both a violation of this policy and criminal activity. The Division grievance process is not a substitute for instituting legal action. **The Division encourages individuals to report alleged sexual misconduct promptly to Division officials AND to law enforcement authorities, where appropriate.** Individuals may file a report directly with local law enforcement agencies by dialing 911.

PRESERVING EVIDENCE

It is important that evidence of sexual assault be preserved, because it may be needed for prosecuting a criminal case. Victims and others should not alter the scene of an attack. The victim should not change clothes, bathe or shower, drink or eat anything, or brush his or her teeth before reporting the assault.

Any items worn by the victim during the assault, but are not currently being worn, and any materials encountered during the assault (*i.e.*, bed sheets, blankets, etc.) should be placed in a paper bag and brought along with the victim to a local hospital emergency department that has kits to collect and preserve evidence of sexual assault.

EMPLOYEES' DUTY TO REPORT TO TITLE IX COORDINATOR

In order to enable the Division to respond effectively and to proactively stop instances of sexual harassment, employees must, within 24 hours of receiving information regarding a potential violation of this policy, report information to the Title IX Coordinator. Any employee who fails to promptly report a matter to the Title IX Coordinator may be subjected to disciplinary action for failing to do so. There are two categories of employees who are exempt from this requirement: (1) licensed health-care professionals and other employees who are statutorily prohibited from reporting such information and (2) persons designated by the Division as victim advocates.

OFF-CAMPUS CONDUCT

Conduct that occurs off campus that is the subject of a formal complaint or report will be evaluated to determine whether the matter falls within the Division's jurisdiction under Title IX or should be referred to a different department or official within the Division.

CONFIDENTIALITY

Except as compelled by law or as required to conduct a full and fair grievance proceeding in response to a formal complaint, the Division will treat the information obtained or produced as part of the Title IX procedures as confidential. The Division will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. § 1232g, or FERPA regulations, 34 CFR Part 99, or as required by law, or to carry out the purposes of 34 CFR Part 106, including the conduct of any investigation, hearing, or judicial proceedings arising thereunder.

AVAILABILITY OF COUNSELING AND ADVOCACY

Counseling and other mental health services for victims of sexual assault are available in the community. Employees of the Division may be able to seek help through the Employee Assistance Program.

Community mental health agencies, counselors, and psychotherapists in private practice in the area can provide individual and group therapy. Committee Against Spouse Abuse (CASA) Women's Shelter or Domestic Violence and Rape Crisis Programs may assist with making referrals for individual counseling and support groups and in identifying non-counseling campus and community resources that may be of additional help and serve as a victim advocate upon request.

EDUCATION AND AWARENESS PROGRAMS

The Division's Title IX Coordinator is responsible for planning and coordinating organization education and awareness programs about all forms of sexual harassment. Employee training and professional development will be provided by the Title IX Coordinator on all forms of harassment.

GRIEVANCE PROCEDURE

These procedures apply to all grievances regarding conduct that may constitute sexual harassment as defined in this policy (including sexual assault) and that falls within the Division's Title IX jurisdiction. All other grievances by students, employees, or third parties shall be addressed through other procedures. The Division's Title IX grievance process includes formal and informal procedures that encourage prompt resolution of complaints. In most cases, the complainant's submission of a formal, written complaint to the Title IX Coordinator will initiate the formal grievance process. However, the Title IX Coordinator may also submit a formal complaint under the circumstances described below. The Division will respond promptly to all formal complaints of sexual harassment.

BASIC REQUIREMENTS

The Division's grievance process shall adhere to the following principles:

- All relevant evidence—including both inculpatory and exculpatory evidence—will be evaluated.
- Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
- The Title IX Coordinator, investigator, hearing officers or panel members, decision-makers on appeal, persons involved with the informal resolution, and any other persons that play a significant role in the Title IX grievance process shall not have a conflict of interest or bias for or against complainants or respondents generally or for or against an individual complainant or respondent.
- The respondent is presumed to not be responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the grievance process.

- The time frames for concluding the grievance process shall be reasonably prompt, as set forth in more detail in the procedures below.
- The grievance process may be temporarily delayed, and limited extensions of time frames may be granted, for good cause. In such instances, written notice to the complainant and the respondent of the delay or extension and the reasons for the action will be provided. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurring law enforcement activity; or the need for language assistance or accommodations of disabilities.
- Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege will not be required, allowed, relied upon, or otherwise used. The Division shall not consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in the capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the Division obtains that person's voluntary, written consent to do so for a grievance under this section.
- No party shall be restricted from discussing the allegations under investigation or to gather and present relevant evidence.
- A party whose participation in a hearing, investigative interview, or other meeting shall be provided with a written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

INITIAL REPORT/INTAKE PROCESS

Initial Meeting with Complainant: Promptly upon receiving a report of conduct that could potentially be a violation of Title IX, the Title IX Coordinator (or designee) will contact the complainant to schedule an initial meeting to, as applicable:

- Provide a copy of this policy
- Explain the process for filing a formal complaint and provide a copy of the Sexual Harassment Complaint Form on which the complainant may, if he or she agrees to disclose the information, provide details regarding the allegation, including the name of the accused individual and the date, location, and general nature of the alleged violation of policy
- Explain avenues for resolution, including informal and formal
- Explain the steps involved in an investigation and hearing under this policy
- Discuss confidentiality standards and concerns
- Refer to law enforcement, counseling, medical, academic or other resources, as appropriate
- Discuss, as appropriate, possible supportive measures, which are available with or without the filing of a formal complaint

If the complainant requests that no further action be taken and/or that no formal complaint be pursued, the Title IX Coordinator (and/or his or her designee) will inform the complainant that retaliation is prohibited and that honoring the complainant's request may limit the Division's ability to fully respond to the incident. In the event the complainant stands firm on his or her request that no further action be taken, the Title IX Coordinator will evaluate whether to file a complaint under the criteria set forth below.

FORMAL COMPLAINT PROCESS

Form and Filing of Complaint: The filing of a formal, written complaint initiates the formal grievance process and is available to any person who is participating in (or attempting to participate in) a Division educational program or activity. The Title IX Coordinator (or an investigator designated by the Title IX Coordinator) will investigate the allegations in the formal complaint. Formal complaints can be filed in several ways. The complainant may utilize the form provided or may submit the complainant's own document that contains the complainant's signature (either physical or digital) and is filed with the Division's Title IX Office by U.S. mail, in person, or by email. The formal complaint should set forth the allegations and request that the Title IX Office investigate the matter.

Filing by Title IX Coordinator: The Title IX Coordinator may initiate the grievance process, even where the complainant declines to file a formal complaint, if the Coordinator determines that the particular circumstances require the Division to formally respond to and address the allegations. Circumstances to be considered include, among others, a pattern of alleged misconduct by a respondent and whether the complaint has alleged use of violence, weapons, or other similar conduct. The Title IX Coordinator will also consider the complainant's wishes with respect to supportive measures and desired response by the Division. Where a report is made anonymously and the Title IX Coordinator files the complaint, both the complainant and respondent will receive notice of the allegations with written details and identities of the parties if known.

Consolidation of Formal Complaints: The Title IX Coordinator may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

Dismissal of Complaint Prior to Resolution: A formal complaint must be dismissed by the Title IX Coordinator if the alleged conduct (1) does not constitute sexual harassment, as defined in this policy, even if proved; (2) did not occur in the Division's education program or activity; or (3) did not occur against a person in the United States. In addition, a complaint may be dismissed if, at any time during the investigation or hearing, a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or

specific circumstances prevent the gathering of evidence sufficient to reach a determination as to the formal complaint or any allegations therein.

Upon dismissal of a formal complaint, for any reason, the Title IX Coordinator will send simultaneous, written notice of and reason(s) for the dismissal to the parties. The dismissal decision may be appealed pursuant to the procedure for appeals set forth in this policy. Dismissal of a complaint under this Title IX policy does not preclude a complainant from pursuing a grievance through other appropriate campus procedures.

Notice of Formal Complaint: Upon receipt of the formal complaint, the Title IX Coordinator will send simultaneous notifications of the filing of the complaint to the complainant and the respondent (if known). If, in the course of an investigation, the Title IX Coordinator decides to investigate allegations about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator will provide notice of the additional allegations to the parties whose identities are known. The initial notice will contain the following:

- The allegations of the complaint that potentially constitute sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview (including the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under this policy, and the date and location of the alleged incident, if known)
- A copy of the Title IX policy
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process
- A statement informing the parties that they have a right to have one advisor of their choice to assist them throughout the proceedings who may be (but is not required to be) an attorney
- A statement that the parties have the right to inspect and review all evidence collected during the complaint process
- A statement that any party who knowingly makes false statements or submits false information during the grievance process will be subject to disciplinary procedures

Initial Meeting with Respondent: If a formal complaint is filed, the Title IX Coordinator will promptly schedule an initial meeting with the respondent after the written notice of the formal complaint is sent as described above. Prior to the initial meeting, the Title IX Coordinator shall provide a written notice of the date, time, location, participants, and purpose of the meeting, with sufficient time for the party to prepare to participate. During the initial meeting with the respondent, the Title IX Coordinator (or designee) will, as applicable:

- Provide a copy of this policy (if not previously provided)
- Explain avenues for resolution, including informal and formal
- Explain the steps involved in an investigation and hearing under this policy
- Discuss confidentiality standards and concerns
- Discuss non-retaliation requirements

- Inform of any supportive measures already determined and being provided to the complainant that would directly affect the respondent
- Refer to law enforcement, counseling, medical, academic or other resources, as appropriate
- Discuss, as appropriate, possible supportive measures that can be provided to the respondent

Right to Advisor: Both parties will be advised that they may be accompanied by one advisor/support person to assist them throughout the Title IX process, which can be (but is not required to be) an attorney. The advisor is not allowed to speak or otherwise actively participate during the pre-hearing interviews or meetings. It is the party's responsibility to obtain the services of an advisor, except that the Division will make an advisor available to the parties during the hearing to determine responsibility upon request. A party who wants the Division to provide an advisor for the determination hearing should make a request within 15 days after the party's filing or receipt of the formal complaint. The advisor's role at the hearing is further explained below.

Emergency Removal: If, after a safety and risk analysis is completed, the Senior Vice President determines that the respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment, it may remove the respondent from the Division's programs or activities. In such instances, the respondent will be provided with a written notice of the reasons for the removal. Within 5 days of receiving the notice, the respondent may challenge the decision by requesting a meeting with the Vice President of Agriculture.

Administrative leave: Nothing in this policy precludes the Division from placing a non-student employee respondent on administrative leave during the pendency of the grievance process.

Supportive Measures: Supportive measures, as defined in this policy, will be based on the facts and circumstances of each situation. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. They may include, but are not limited to, the following:

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Mutual restrictions on contact between the parties
- Changes in working or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the Division

The Division will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the Division to provide the supportive measures.

Informal Resolution: At any time after a formal written complaint is filed but prior to reaching a determination regarding responsibility, the Division may facilitate a resolution without a full investigation and adjudication. The complainant and respondent must give their voluntary, written consent to the informal resolution process. The informal resolution process will not be utilized to resolve allegations that an employee sexually harassed a student.

Prior to commencing the informal resolution process, the Title IX Coordinator or designee must provide the parties a written notice that includes the following information:

- Notice of the allegations contained in the formal complaint, including dates, location(s), and identities of the parties
- Any agreed upon resolution reached at the conclusion of the informal complaint process will preclude the parties from resuming a formal complaint arising from the same allegations
- At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared

COMPREHENSIVE INVESTIGATION

If resolution of the allegations does not proceed through the informal process, the matter will proceed with a comprehensive investigation and resolution through the formal complaint processes. The Title IX Coordinator will be responsible for overseeing the prompt, equitable, and impartial investigation during the formal complaint process. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility shall rest on the Division and not the parties.

Assignment of Investigator: If the Title IX Coordinator's designee is to conduct the investigation, the Title IX Coordinator will forward the complaint to the investigator and share the investigator's name and contact information with the complainant and the respondent.

Conflicts of Interest and Bias: Immediately after the identity of the person who will conduct the investigation is determined and communicated to the parties, the investigator, the complainant, or the respondent may identify to the Title IX Coordinator in writing any real or perceived conflicts of interest or bias that the person charged with conducting the investigation (including the Title IX coordinator, where applicable) may have. The Title IX Coordinator will carefully consider such statements and will assign a different individual as investigator if it is determined that a material conflict of interest or bias exists.

Overview of Investigation: Upon receipt of the formal complaint, the Title IX Coordinator/Investigator (hereinafter "Investigator") will promptly begin the investigation, which shall include but is not limited to the following:

- Conducting interviews with the complainant, the respondent, and any witnesses

(including expert witnesses, where applicable) and summarizing such interviews in written form

- Visiting, inspecting, and taking photographs at relevant sites
- Where applicable, collecting and preserving relevant evidence (in cases of corresponding criminal reports, this step may be coordinated with law enforcement agencies)
- Obtaining any relevant medical records pertaining to treatment of the complainant, provided that the complainant has voluntarily authorized release of the records in writing to the investigator

Inspection and Access to Evidence: The parties may identify to the Investigator any evidence or witnesses they wish to be included as part of the investigation. Both parties will also have equal opportunity to inspect and review any evidence obtained during the investigation. The Investigator will complete the gathering of evidence as soon as practicable, which will ordinarily occur within approximately 30 days after the filing of the formal complaint.

After the gathering of evidence has been completed but prior to completion of the investigative report, the Investigator will provide to each party and party's advisor, if any, any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the Division does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence (whether obtained from a party or other source), so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation. The evidence will be provided in an electronic format or a hard copy. The parties will have 10 calendar days to submit a written response to the evidence, which will be considered by the Investigator prior to completion of the investigative report.

Investigative Report: The investigative report shall fairly summarize the relevant evidence and must include the following items and information that is relevant to the allegations in the formal complaint:

- The dates of the Title IX Coordinator's initial receipt of a report of alleged sexual harassment against the complainant, intake meeting, and the filing of the formal complaint
- A statement of the allegation(s), a description of the incident(s), the date(s) and time(s) (if known), and location of the alleged incident(s)
- The names of all known witnesses to the alleged incident(s)
- The dates that the complainant, respondent, and other witnesses were interviewed, along with summaries of the interviews
- Descriptions or summaries of any physical or documentary evidence that was obtained (e.g., text messages, emails, surveillance video footage, photographs)
- Any written statements of the complainant, respondent, or other witnesses
- The response of Division personnel and, if applicable, Division-level officials, including any supportive measures taken with respect to the complainant and respondent

The Investigator shall provide a draft of the investigative report to the Title IX Coordinator for review before the report becomes final. An electronic or hard-copy version of the final investigative report will be provided to each party (and each party's advisor) concurrently. The parties may provide a written response to the investigative report within 5 calendar days after receiving it.

DETERMINATION REGARDING RESPONSIBILITY

After the Title IX Coordinator sends the investigative report to the parties and before the Decision Maker reaches a determination regarding responsibility, the Decision-Maker(s) must afford each party seven (7) calendar days for the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

The Decision-Maker(s), who cannot be the same person(s) as the Title IX Coordinator or the Investigator(s), must issue a written determination regarding responsibility. To reach this determination, the Decision-Maker(s) must apply the standard proof that it is more likely than not that the respondent committed a violation of this policy. In other words, the standard of proof will be the preponderance of the evidence. This standard applies to complaints against both students and employees.

Written Determination of Responsibility: The Decision-Maker(s) must a written determination regarding responsibility that will include the following information:

- Identification of the allegations potentially constituting sexual harassment under the policy;
- 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 the hearing held;
- Findings of fact that support the determination;
- Conclusions regarding the application of the Division's conduct standards to the facts;
- A statement and rationale for the result as to each allegation, including a determination as to responsibility using the preponderance of the evidence standard;
- Any disciplinary sanctions imposed on respondent;
- Whether any remedies designed to restore or preserve equal access to the Division's education program or activity will be provided to the complainant (description of remedies is not included) (Remove)
- Procedures and permissible bases for the parties to appeal.

Sanctions: If the Hearing Officer or Hearing Panel determines that more likely than not the respondent committed a violation of this policy, then the Hearing Officer or Hearing Panel will determine sanctions and give consideration to whether a given sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation.

Sanctions for a finding of responsibility will depend upon the nature and gravity of the misconduct, any record of prior discipline for a violation of this policy, or both. The range of potential sanctions is set forth in the definitions section of this policy.

Ordinarily, sanctions will not be imposed until the resolution of any timely appeal under this policy. However, if it is deemed necessary to protect the welfare of the victim or the Division community, the Hearing Officer or Hearing Panel may recommend to the decision-maker on appeal that any sanctions be imposed immediately and continue in effect until such time as the appeal process is exhausted.

Remedies: Where a determination is made that the respondent was responsible for sexual harassment, the Decision Maker will determine any final remedies to be provided to the complainant, if any, and the Title IX Coordinator will communicate such decision to the complainant and the respondent to the extent that it affects him/her. Remedies must be provided in all instances in which a determination of responsibility for sexual harassment has been made against the respondent. Remedies must be designed to restore or preserve equal access to the Division. Such remedies may include the same individualized services described above as “supportive measures”; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

No Retaliation: The Title IX Coordinator will take steps to prevent any harassment of or retaliation against the complainant, the respondent, or third parties, such as informing them about how to report subsequent problems, following up with them to ensure that there are no subsequent problems, and providing training for the Division.

APPEALS

Procedure for Appeals: Both the complainant and the respondent may appeal from (1) the Title IX Coordinator’s dismissal of a formal complaint or any allegations therein or (2) the Decision Maker’s determination. The appeal should be submitted in writing to the Title IX Coordinator within five (5) days of receipt of the written determination regarding responsibility. The Title IX Coordinator will forward the appeal to the Vice President for Agriculture. The appeal will be decided based on the written record.

If the respondent is an employee, the Vice President for Agriculture or his/her designee will decide the appeal. If the respondent is a student, the appeal will be decided by the Vice President for Agriculture or his/her designee or, in the alternative, the Vice President for Agriculture will designate an Appeal Panel comprised of at least two faculty and/or staff members. One of the members of the Appeal Panel can be (but need not be) an outside person who is not an employee. If an Appeal Panel is utilized, the Vice President for Agriculture shall designate one of the panelists as the Chair of the Appeal Panel. The Chair of the Appeal Panel (in cases where the respondent is a student and a panel is utilized) or the Vice President for Agriculture or designee (in other cases) shall make any decisions concerning appellate

jurisdiction under the permissible grounds for appeal described below.

The party appealing may use the Appeal Form or the party may submit his/her own written and signed document. Acceptable means of notification include email, facsimile, hand-delivered notification, or postal delivery. The Title IX Coordinator will promptly inform the other party of the appeal.

Grounds for Appeal: The appeal from the written determination regarding responsibility must be for one of the following reasons: (1) a procedural irregularity that affected the outcome of the decision; (2) there is new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made and that could affect the outcome of the matter; or (3) the Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against complainants or respondents in general or against an individual complainant or respondent that affected the outcome.

Responses: Within five (5) days of receipt of the appeal, the other party may submit a written statement in response to the appeal and which supports or challenges the dismissal or determination. The response should be submitted to the Title IX Coordinator, who shall provide a copy to the decision-maker and the appealing party.

Decision on Appeal: As soon as practicable after receiving the parties' written submissions (and ordinarily within approximately 10 days), the Vice President for Agriculture (or designee) or Appeal Panel will issue a written decision describing the result of the appeal and the rationale for the result. The decision on appeal may uphold the decision, modify it, or remand for further factual development. The complainant and the respondent will be notified concurrently of the written decision, with a written copy provided to the Title IX Coordinator.

Employees: All faculty and staff members of the Division are at-will employees who may be terminated at any time, with or without cause. With regard to such faculty and staff, nothing in this Policy shall create an expectation of continued employment with the Division or be construed to prevent or delay the Division from taking any disciplinary action deemed appropriate (including suspension and immediate termination of employment) for any violation of state law, federal law or Division policy.

TIME PERIODS

The Division/Division will make every reasonable effort to ensure that the investigation and resolution of a complaint occurs in as timely and efficient a manner as possible.

Any party may request an extension of any deadline by providing the Title IX Coordinator or his or her respective deputies with a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request.

The Title IX Coordinator may also modify timelines in cases where information is not clear,

judged to be incomplete, relevant parties are not available for interview, absence of an advisor, concurrent law enforcement activity, the need for language assistance or disability accommodation and/or other circumstances that may arise.

RETALIATION PROHIBITED

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, 34 C.F.R. Part 106, or this policy, or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including changes 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 sex discrimination or harassment, for the purpose of interfering with any right or privilege secured by Title IX, 34 C.F.R. Part 106, or this policy, constitutes retaliation. However, the exercise of rights protected under the First Amendment does not constitute retaliation.

FALSE REPORTS

Willfully making a false report of sexual harassment or submitting false information during these proceedings is a violation of Division/Division policy and is a serious offense. However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith. Any person who willfully makes or participates in making a false or frivolous report of discrimination, harassment, retaliation or sexual misconduct will be subject to disciplinary action. False reporting may also violate state criminal statutes and civil defamation laws.

EXTERNAL REPORTING AGENCIES

Although complainants are encouraged to resolve their grievances related to discrimination by utilizing this Complaint/Grievance Procedure, they may have the right to file a complaint directly with the following agencies. Individuals who wish to file complaints with these external agencies should make contact as soon as possible and verify any applicable time limits and deadlines.

Office of Civil Rights (OCR)

U.S. Department of Education
1999 Bryan St., Suite 1620
Dallas, TX 75201-6810
Toll Free: 1-800-421-3481
Telephone: 214-661-9600
Fax: 214-661-9587
Email: OCR.Dallas@ed.gov

NSF Grantees Only

National Science Foundation
Office of Diversity and Inclusion
2415 Eisenhower Ave.
Alexandria, VA 22314
Telephone: 703-292-8020
Fax: 703-292-9072
Email: programcomplaints@nsf.gov

EFFECTIVE DATE

The Division reserves the right to make changes and amendments to this Policy as needed, with appropriate notice to the campus community. However, the Policy in force at the time that a Complaint is filed will be the Policy used throughout the investigation, hearing, and any appeals.

RETENTION OF RECORDS

For a period of at least seven years, the Division will maintain the records of:

- Each sexual harassment investigation, including any determination regarding responsibility, any recordings or transcripts, disciplinary sanctions, and remedies provided to the complainant
- Any appeal and the result therefrom
- Any informal resolution and the result therefrom
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. These materials will be made publicly available on the Division's/Division's website.
- Records of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, along with documentation of the Division's bases for its conclusion that its response was not deliberately indifferent.

Documentation pertaining to terminations expulsions or educational sanctions may be retained indefinitely.

DEFINITIONS

Complainant: Any individual who is alleged to be the victim of conduct that could constitute sexual harassment. At the time of the filing of 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. Any person may report sex discrimination, including harassment, whether or not the person reporting is the person alleged to be the victim of discrimination or harassment.

Consent: Consent is clear, knowing, and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, if those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. If coercion, intimidation, threats, or physical

force are used, there is no consent.

If a person is mentally or physically incapacitated so that the person cannot understand the fact, nature, or extent of the sexual situation, there is no consent. Incapacitation can be due to alcohol or drugs or being asleep or unconscious. This policy also covers incapacity due to mental disability, involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Brundage, etc. is prohibited, and administering one of these drugs to another person is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>

Use of alcohol or other drugs will never function as a defense to a violation of this policy. An individual violates this policy if the individual initiates and engages in sexual activity with someone who is incapacitated, and (1) the individual knew the other person was incapacitated, or (2) a sober reasonable person under similar circumstances as the person initiating the sexual activity would have known the other person was incapacitated.

There is also no consent when there is force, expressed or implied, or use of duress or deception upon the victim. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent.

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

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you 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.

Under Arkansas law, the age of consent varies with the degrees of assault, the age of the actor, and the relationship of the actor to the other party. For specific information, please refer to Arkansas statutes (e.g., Arkansas Code Annotated § 5-14-125, Sexual Assault in the Second Degree).

Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. In addition, previous relationships or prior consent cannot imply consent to future sexual acts.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such relationship is determined based on consideration of the following factors: (1) the length of the relationship;

(2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

Days: Refers to working days, rather than calendar days, unless otherwise specified.

Decision Maker: Is the Assistant Vice-President & Chief Human Resources Officer or designee. The Decision-Maker issues a written determination regarding responsibility based on the complaint investigative report.

Domestic Violence: The term includes felony or misdemeanor crimes of violence committed by a current 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 Arkansas, or by any other person against an adult or youth victim who is protected from that person's acts under the laws of Arkansas. Under the Arkansas law on domestic abuse, "family or household members" means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, in-laws, any children residing in the household, persons who presently or in the past have resided or cohabitated together, persons who have or have had a child in common, and persons who are presently or in the past have been in a dating relationship together.

Education Program or Activity: Includes locations, events, or circumstances over which the Division exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by an officially recognized student organization.

Formal Complaint: 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. The phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the Division) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

Party: The complainant or respondent.

Preponderance of the Evidence: A standard of proof where the conclusion is based on facts that are more likely true than not.

Respondent: An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sanctions: The determination of sanctions to be imposed against a respondent who is found to have been responsible for violating this policy will depend upon the nature and gravity of the

misconduct, any record of prior discipline for a violation of this Policy, or both. Sanctions against students may include, without limitation, expulsion or suspension from the Division's educational programs or activities, disciplinary probation,, mandated counseling, and/or educational sanctions. Sanctions against employees and other non-students may include, without limitation, a written reprimand, disciplinary probation, suspension, termination, demotion, reassignment, revision of job duties, reduction in pay, exclusion from Division property or particular activities, and/or educational sanctions deemed appropriate.

Sexual Assault: The term "sexual assault" means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. A nonforcible sex offense includes incest (*i.e.*, the nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law) and statutory rape (*i.e.*, nonforcible sexual intercourse with a person who is under the statutory age of consent). A forcible sex offense is any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent. A forcible sex offense includes:

- **Forcible rape:** the penetration, no matter how slight, of the vagina or anus with any part of the body or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Forcible sodomy:** Oral or sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against that person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity;
- **Sexual assault with an object:** Using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against that person's will in instances where the victim is incapable of giving consent because of his/her youth or because his/her temporary or permanent or physical incapacity.
- **Forcible 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 that person's will in instances where the victim is incapable of giving consent because of his/her youth or because his/her temporary or permanent or physical incapacity.

Sexual Harassment: Sexual harassment is conduct on the basis of sex constituting one of the following:

- (1) An employee of the Division/Division conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct;
- (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 Division's educational programs or activities; or
- (3) Any of the following:
 - "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v) and this policy

- “Dating violence” as defined in 34 U.S.C. 12291(a)(10) and this policy
- “Domestic violence” as defined in 34 U.S.C. 12291(a)(8) and this policy
- “Stalking” as defined in 34 U.S.C. 12291(a)(30) and this policy

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

Supportive Measures: Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without a fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Division’s educational environment or deter sexual harassment.