

# **Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures [Based on the ATIXA 2023 One Policy, Two Procedures Model. ©2023 ATIXA. Used with Permission]**

The following Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures (herein after “Policy”) were adopted by Arkansas Tech University (herein after “ATU”) following the release of new Title IX regulations by the U.S. Department of Education. Officially published on May 19, 2020, the new Title IX regulations are effective and enforceable on August 14, 2020. This Policy was reviewed and updated in August 2024.

This Policy will be effective on August 14, 2020, and it replaces the existing Sexual Harassment Policy, the Sexual Misconduct Policy and Procedures, and the Non-Discrimination Policy.

Complaints received prior to August 14, 2020, will follow the appropriate ATU policy published for the 2019-2020 academic year. All complaints received on or after August 14, 2020, will follow the policy and procedures outlined in this document.

## **1. Glossary**

A complete glossary defining key terms used throughout this Policy is located in Appendix A. Definitions from Article I of the ATU Student Code of Conduct are also used throughout this Policy. To ensure accurate interpretation of this Policy, please refer to Appendix A and Article I: Definitions and review the meaning of key terms.

## **2. Rationale for Policy**

ATU is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from discrimination and harassment based on a protected characteristic, and retaliation for engaging in a protected activity. ATU values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all involved. To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, ATU has developed policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of a protected characteristic, and for allegations of retaliation.

The Title IX Office supports the Arkansas Tech University mission of student success, access, and excellence by cultivating a responsive campus community through education of federal laws and approaches to identify, prevent, and report discrimination, sexual misconduct, and retaliation. Title IX staff strive to conduct fair and equitable inquiries and investigations and implement stop, prevent, and remedy measures, including connecting those affected with campus and community resources. Arkansas Tech University is committed to fostering a safe and caring environment free from sexual and gender-based discrimination where students, faculty, and staff have the opportunity to succeed in their educational and professional pursuits.

## **3. Applicable Scope**

The purpose of this Policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. At other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, it can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence, or domestic violence. When an alleged policy violation is reported, the allegations are subject to resolution using ATU’s “Process A” or “Process B” as determined by the Title IX Coordinator or the AA/EEO Officer as described below.

When the Respondent is a member of the ATU community, a Formal Complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the ATU community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, vendors, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this Policy.

ATU recognizes that reports and/or Formal Complaints under this Policy may include multiple forms of

discrimination and harassment as well as violations of other ATU policies; may involve various combinations of students, employees, and other members of the ATU community; and may require the simultaneous attention of multiple ATU departments. Accordingly, all ATU departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable ATU policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination and harassment or retaliation.

#### **4. Title IX Coordinator, ADA/504 Coordinator, and Affirmative Action/Equal Opportunity Officer**

Multiple individuals work together to coordinate ATU's efforts related to intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent discrimination, harassment, and retaliation prohibited under this Policy. All parties will be provided with access to a comprehensive electronic brochure detailing options and resources, which the Title IX Coordinator, the ADA/504 Coordinator, or the AA/EEO Officer may also review with the parties in person. These staff persons work together to resolve issues related to discrimination, harassment, and/or retaliation. Throughout the Policy, the Title IX Coordinator and AA/EEO Officer positions may be used interchangeably or their duties may be assumed by a designee.

- Amy Pennington serves as the Title IX Coordinator and oversees gender-based discrimination compliance.
- Kristy Davis serves as the ADA/504 Coordinator and oversees disability compliance for students.
- Melissa Riffle serves as the Affirmative Action/Equal Employment Opportunity Officer (AA/EEO) and oversees protected class discrimination, disability compliance for employees, and ATU's Affirmative Action and Equal Employment Opportunity plan.

#### **5. Independence and Conflict-of-Interest**

Amy Pennington, AVP/Dean of Students and Title IX Coordinator, manages the Title IX team and acts with independence and authority free from bias and conflicts of interest. As the Title IX Coordinator, Amy Pennington oversees gender-based discrimination resolutions under this Policy. The members of the Title IX staff are vetted and trained to ensure they are not biased for or against any party in a specific complaint, or for or against Complainants and/or Respondents, generally.

Melissa Riffle, Director of Human Resources and AA/EEO Officer/Deputy Title IX Coordinator, acts with independence and authority free from bias and conflicts of interest. As the AA/EEO Officer, Melissa Riffle oversees protected class discrimination resolutions under this Policy, specifically those in Process B.

In cases involving an alleged serious violation by a student respondent, no individual will carry out more than one (1) of the following roles with respect to the disciplinary proceeding: advisor, investigator, adjudicator, or appellate adjudicator.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, Amy Pennington, or the AA/EEO Officer, Melissa Riffle, contact Dr. Russell Jones, ATU President, or designee. Concerns of bias, conflict of interest, misconduct, or discrimination committed by any other Title IX Team member should be reported to Amy Pennington, Title IX Coordinator.

#### **6. Administrative Contact Information**

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this Policy and procedures, may be made to the following employees, which triggers the obligation for ATU to respond:

**Amy Pennington**

AVP/Dean of Students and Title IX Coordinator

Student Affairs

[Focus-Gender discrimination, including sexual misconduct]

Doc Bryan Student Service Center, Suite 233

Russellville, AR 72801

479-968-0407

[apennington@atu.edu](mailto:apennington@atu.edu)

**Melissa Riffle**

Director of Human Resources and AA/EEO Officer/Deputy Title IX Coordinator  
Human Resources  
[Focus-All types of protected class discrimination]  
Brown Building, Suite 420  
Russellville, AR 72801  
479-968-0396  
[mriffle@atu.edu](mailto:mriffle@atu.edu)

**Mitzi Reano**

Project/Program Specialist and Deputy Title IX Coordinator/Investigator  
Human Resources  
[Focus-All types of protected class discrimination]  
Technology and Academic Support Building, Room 154  
Ozark, AR 72949  
479-667-2117 ext. 6532  
[mreano@atu.edu](mailto:mreano@atu.edu)

**Ashlee Leavell**

Assistant Dean for Student Wellness and Deputy Title IX Coordinator  
[Focus-Discrimination based upon pregnancy]  
Disability and Testing Services  
Doc Bryan Student Services Center, Suite 141  
Russellville, AR 72801  
479-968-0302  
[sleavell8@atu.edu](mailto:sleavell8@atu.edu)

In addition to the Title IX Team members listed above, the following Officials with Authority listed below may also accept notice or complaints on behalf of ATU:

**Kristy Davis**

Associate Dean for Student Wellness and ADA/504 Coordinator  
[Focus-Discrimination and/or harassment based upon disability]  
Health and Wellness Center  
Doc Bryan Student Services Center, Suite 119  
Russellville, AR 72801  
479-968-0329  
[kdavis51@atu.edu](mailto:kdavis51@atu.edu)

**Will Cooper**

Associate Dean for Student Conduct  
Student Conduct  
Doc Bryan Student Services Center, Suite 233  
Russellville, AR 72801  
479-968-0334  
[wcooper@atu.edu](mailto:wcooper@atu.edu)

**William Titsworth**

Assistant Dean for Student Conduct/Lead Investigator  
Student Conduct and Title IX Office  
Doc Bryan Student Services Center, Suite 233  
Russellville, AR 72801  
479-498-6083  
[wtitsworth@atu.edu](mailto:wtitsworth@atu.edu)

**Josh McMillian**

Associate Dean for Public Safety/Chief of Public Safety  
Public Safety  
716 North El Paso Avenue  
Russellville, AR 72801  
479-968-0222  
[jmcmillian1@atu.edu](mailto:jmcmillian1@atu.edu)

ATU has also classified many employees as Responsible Employees. These employees are mandated to share any report or knowledge they have that a member of the ATU community is experiencing harassment, discrimination, and/or retaliation with the Title IX Coordinator and/or the AA/EEO Officer. The section titled “Responsible Employees” details which employees have this responsibility and their duties.

Inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 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>

For discrimination complaints by employees:  
Equal Employment Opportunity Commission (EEOC)  
1-800-669-4000  
<https://www.eeoc.gov/>

Little Rock Area Office  
820 Louisiana Street, Suite 200  
Little Rock, AR 72201 Phone: 1-800-669-4000  
Facsimile: 501-324-5991  
TDD#: 1-800-669-6820

**7. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

1. File a report or Formal Complaint with, or give verbal notice to, the Title IX Coordinator, the AA/EEO Officer, or any of the ATU administrators listed directly above. Such a report or Formal Complaint may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail, to the office listed for the Title IX Coordinator, or the AA/EEO Officer, or any other official listed above.
2. Report online, using the reporting form posted at [https://cm.maxient.com/reportingform.php?ArkansasTechUniv&layout\\_id=2](https://cm.maxient.com/reportingform.php?ArkansasTechUniv&layout_id=2). Anonymous reports are accepted but can give rise to a need to investigate to determine if the parties can be identified. If not, no further formal action is taken, though measures intended to protect the community may be enacted. ATU tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report that does not identify the Complainant.

Because reporting carries no obligation to initiate a formal response, and because ATU respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of confidentiality by making a report that allows ATU to discuss and/or

provide supportive measures.

As used in this Policy, the term “Formal Complaint” means a document or electronic submission (such as by electronic mail or through an online portal provided by ATU for this purpose) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that ATU investigate the allegations. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator or the AA/EEO Officer will contact the Complainant to ensure that it is filed correctly.

## **8. Supportive Measures**

ATU will offer and implement appropriate and reasonable supportive measures to the parties upon receiving notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, and as reasonably available. They are offered, without fee or charge to the parties, to restore or preserve access to ATU’s education program or activity, including measures designed to protect the safety of all parties and/or ATU’s educational environment and/or to deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator or the AA/EEO Officer promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, ATU will inform the Complainant, in writing, that they may file a Formal Complaint with ATU either at that time or in the future, if they have not done so already. The Title IX Coordinator or the AA/EEO Officer works with the Complainant to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

ATU will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair ATU’s ability to provide these supportive measures.

ATU will strive for as minimal an academic/occupational impact on the parties as possible. ATU will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact directives) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Campus ban letters
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator or the AA/EEO Officer

Violations of no contact directives or other restrictions may be referred to appropriate student or employee conduct processes for enforcement.

## **9. Emergency Removal**

ATU can act to remove a Respondent entirely or partially from its education program or activities-partially or entirely-on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk

analysis is performed by the Title IX Coordinator and/or the AA/EEO Officer in conjunction with the CARE Team, the campus behavioral intervention team, using its standard objective violence risk assessment procedures.

When an emergency removal is imposed, the student, employee, or two (2) representatives from a student organization will be given notice of the action and the option to request to meet with Amy Pennington, AVP/Dean of Students and Title IX Coordinator, or Melissa Riffle, Director of Human Resources and AA/EEO Officer/Deputy Title IX Coordinator, prior to such action/removal being imposed, or as soon as reasonably possible thereafter, to show cause why the action/removal should not be implemented or should be modified. In cases involving an alleged serious violation by a student Respondent, they will be notified in writing within twenty-four (24) hours of the emergency removal and the notice will explain the University's reasons for the removal. Within three (3) business days of the written notice noted above, unless waived by the student Respondent, an interim hearing will be convened to determine whether there is substantial evidence that the student respondent poses a risk to the health or safety of any student or other individual and that the emergency removal is appropriate to mitigate that risk.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within 24-hours of the issuance of the notice, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator or the AA/EEO Officer determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator or the AA/EEO Officer for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator or the AA/EEO Officer has sole discretion under this Policy to implement or modify an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this Policy will be grounds for discipline within the student or employee conduct process, which may include expulsion or termination.

ATU will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator or the AA/EEO Officer, these actions could include, but are not limited to:

- removing a student from a residence hall,
- temporarily reassigning an employee,
- restricting a student's or employee's access to or use of facilities or equipment,
- allowing a student to withdraw or take grades of incomplete without financial penalty,
- authorizing an administrative leave, or;
- suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator or the AA/EEO Officer, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

When the Respondent is an employee, or a student employee, accused of misconduct in the course of their employment, existing provisions for interim action are applicable instead of the above emergency removal process.

## **10. Promptness**

All allegations are acted upon promptly by ATU once it has received notice or a Formal Complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but ATU will avoid undue delays within its control.

Any time the general timeframes for resolution outlined in ATU procedures will be delayed, ATU will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## 11. Confidentiality/Privacy

Every effort is made by ATU to preserve the confidentiality of reports<sup>1</sup>. Unless required by law or this Policy, ATU will not share the identity of any individual who has made a report or Formal Complaint of harassment, discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of harassment, discrimination, or retaliation; any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act or its implementing regulations (FERPA), (20 U.S.C. 1232g and FERPA regulations, 34 C.F.R. § 99); or as required by law; or to carry out the purposes of 34 C.F.R. Part 106, including any investigation, hearing, or grievance proceeding arising under these policies and procedures.

ATU reserves the right to determine which ATU officials have a legitimate educational interest in being informed about incidents that fall under this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but is not limited to: Human Resources, Division of Student Affairs, ATU Department of Public Safety, and the CARE Team. Information will be shared as necessary with Investigators, Decision-Makers, witnesses, and the parties. The circle of people with this knowledge will be limited as much as possible to preserve the parties' rights and privacy.

ATU may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically later in this Policy.

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<sup>1</sup> For the purpose of this Policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of ATU employees who "need to know" in order to assist in the assessment, investigation, and resolution of the complaint. All employees who are involved in ATU's response to notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in ATU's FERPA policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. ATU has designated individuals who have the ability to have privileged communications as Confidential Resources. More information about Confidential Resources, can be found in this Policy. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (1) the individual gives written consent for its disclosure; (2) there is a concern that the individual will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

## **12. Jurisdiction of ATU**

This Policy, and the procedures in Process A, apply to the education program and activities of ATU. Specifically, they apply to conduct that takes place on the campus or on property owned or controlled by ATU, at ATU-sponsored events, or in buildings owned or controlled by ATU's recognized student organizations. The Respondent must be a member of ATU's community in order for ATU's policies to apply.

This Policy, and the procedures in Process A and Process B, can also be applicable to the effects of off-campus misconduct that effectively deprives a person of access to ATU's education program or activities. ATU may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator or AA/AEEO Officer determines that the conduct affects a substantial ATU interest.

Regardless of where the conduct occurred, ATU will address notice/complaints to determine whether the conduct occurred in the context of its employment or education program or activity and/or has continuing effects on campus (including virtual learning and employment environments) or in an off campus sponsored program or activity. A substantial ATU interest includes:

1. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.
2. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.
3. Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
4. Any situation that substantially interferes with the educational interests or mission of ATU.

If the Respondent is unknown or is not a member of the ATU community, the Title IX Coordinator or the AA/EEO Officer will assist the Complainant in identifying appropriate campus and local resources and supportive options. If criminal conduct is alleged, ATU can assist in contacting local or campus law enforcement if the individual would like to file a police report. Further, even when the Respondent is not a member of ATU's community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the Title IX Coordinator or the AA/EEO Officer.

In addition, ATU may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from ATU property and/or events.

All vendors serving ATU through third-party contracts are subject to the policies and procedures of their employers and to these Policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator or the AA/EEO Officer can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to pursue action through that institution's policies.

Similarly, the Title IX Coordinator or the AA/EEO Officer may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to ATU where harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

## **13. Time Limits on Reporting**

There is no time limitation on providing notice or submitting a Formal Complaint to the Title IX Coordinator or the AA/EEO Officer. However, if the Respondent is no longer subject to ATU's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator or the AA/EEO Officer, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When a notice/complaint is affected by significant time delay, ATU will typically apply the policy and



procedures in place at the time the complaint is made.

#### **14. Online Harassment and Misconduct**

The policies of ATU cover online manifestations of any of the behaviors prohibited by this Policy, when those behaviors occur in, or have an effect on, ATU's education program or activities or when they involve ATU networks, technology, or equipment.

Although ATU may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to ATU, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites; sharing inappropriate content via social media; unwelcome sexual or sex-based messaging; distributing, or threatening to distribute, nude or semi-nude photos or recordings; breaches of privacy; or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the ATU community.

Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of ATU's control (e.g., not on ATU networks, websites, or between ATU email accounts) will only be subject to this Policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but legally protected speech cannot be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by ATU only when such speech is made in an employee's official or work-related capacity.

#### **15. Policy on Nondiscrimination**

ATU adheres to all federal, state, and local civil rights laws and regulations prohibiting discrimination in public institutions of higher education.

##### **A. Protected Characteristics**

ATU does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of:

- Color
- Sex
- Sexual orientation
- Gender identity
- Race
- Age
- National origin
- Religion
- Veteran status
- Genetic information
- Disability
- or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus or with the Equal Employment Opportunity Commission.

This Policy covers nondiscrimination in both employment and access to educational opportunities. Any member of the ATU community whose acts deny, deprive, or limit the educational or employment opportunities of any member of the ATU community, guest, or visitor on the basis of that person's actual or perceived protected characteristics listed above is in violation of ATU's policy on nondiscrimination.

When brought to the attention of ATU, any such discrimination will be promptly and fairly addressed and remedied by ATU according to the grievance process described in either Process A or Process B.

## **16. Policy on Disability Discrimination and Accommodation**

ATU is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal, state, and local laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by ATU, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

Kristy Davis, Associate Dean for Student Wellness, has been designated as ATU's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability. Any complaints submitted electronically or reported to other individuals alleging discrimination based upon disability will be forwarded to Kristy Davis.

Grievances related to disability status and/or accommodations will be addressed using Process B in this Policy. ATU will maintain these records in the Health and Wellness Center for a period of at least seven (7) years.

### **A. Students with Disabilities**

ATU is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to ATU academic programs, facilities, and activities.

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact Ashlee Leavell, Assistant Dean for Student Wellness and Deputy Title IX Coordinator, who coordinates services for students with disabilities at [sleavell8@atu.edu](mailto:sleavell8@atu.edu). Students may also submit a request electronically at <https://denali.accessiblelearning.com/ATU/ApplicationStudent.aspx>.

The staff in the Disability Services Office reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s) in accordance with ATU's applicable policies.

### **B. Employees with Disabilities**

Pursuant to the ADA, ATU will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to ATU.

An employee with a disability is responsible for submitting a request for an accommodation to Melissa Riffle, Director of Human Resources and AA/EEO Officer/Deputy Title IX Coordinator, and providing necessary documentation at [mriffle@atu.edu](mailto:mriffle@atu.edu). The Director of Human Resources will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties in accordance with ATU's applicable policies.

## **17. Policy on Discriminatory Harassment**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial, or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under ATU policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of ATU policy. All offense definitions encompass actual and/or attempted offenses.

## **A. Discriminatory Harassment**

Discriminatory harassment constitutes a form of discrimination that is prohibited by ATU policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived characteristics in a class protected by policy or law.

ATU does not tolerate discriminatory harassment of any employee, student, visitor, or third party. ATU will investigate harassment when reported.

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities<sup>2</sup>. This discriminatory effect results from harassing verbal, written, graphic, and/or physical conduct that is severe or pervasive and objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, ATU may also impose sanctions on the Respondent through application of either Process A or Process B in this Policy.

ATU reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected characteristic. Addressing such conduct may not result in the imposition of discipline under the Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures, but may be addressed through respectful conversation, remedial actions, education, and/or other ATU policies or procedures. For assistance with informal resolution mechanisms, employees should contact the Director of Human Resources, and students should contact the Associate Dean for Student Conduct.

## **B. Sexual Harassment**

The U.S. Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Arkansas regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

ATU has adopted the following definition of sexual harassment in order to address the unique environment of an academic community. Two definitions are required by federal law. While they overlap, they are not identical, and they each apply as noted.

**Title VII/FHA Sexual Harassment** applies to situations where an employee is subjected to workplace sexual harassment or where a situation involves a residential Complainant in ATU-provided housing.

- a. Unwelcome verbal, written, graphic, and/or physical conduct;
- b. that is severe or pervasive and objectively offensive;
- c. on the basis of sex/gender, that
- d. unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.

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<sup>2</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students at Educational Recipients Investigative Guidance. <http://www.ed.gov/about/offices/list/ocr/docs/race394.html>.

**Title IX Sexual Harassment**, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. This definition applies to all Formal Complaints that fall within Title IX jurisdiction as determined by the Title IX Coordinator. Sexual harassment includes:

Conduct on the basis of sex/gender, or that is sexual in nature, that satisfies one or more of the following:

**1. Quid Pro Quo:**

- a. an employee of ATU,
- b. conditions the provision of an aid, benefit, or service of ATU,
- c. on an individual's participation in unwelcome sexual conduct.

**2. Sexual Harassment (Hostile Environment):**

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and
- e. objectively offensive,
- f. that it effectively denies a Complainant equal access to ATU's education program or activity<sup>3</sup>.

**3. Sexual assault, any sexual act directed against a Complainant, defined as:**

**A. Rape:**

- 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 their consent,
- including instances where they are incapable of giving consent because of age<sup>4</sup>, or because of temporary or permanent mental or physical incapacity.

**B. Sodomy:**

- Oral or anal sexual intercourse with a Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**C. Sexual Assault with an Object:**

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of the Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

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<sup>3</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

<sup>4</sup> Per state law.

**D. Fondling:**

- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly, and/or
- against that person's will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**E. Sex Offenses, Non-forcible:**

**i. Incest:**

- Non-forcible sexual intercourse,
- between persons who are related to each other,
- within the degrees wherein marriage is prohibited by Arkansas law.

**ii. Statutory Rape:**

- Non-forcible sexual intercourse,
- with a person who is under the statutory age of consent of 14.

**4. Dating Violence, defined as:**

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
    - a) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuses
    - b) Dating violence does not include acts covered under the definition of domestic violence.

**5. Domestic Violence, defined as<sup>5</sup>:**

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant under family or domestic violence laws of Arkansas, and
- d. includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a Complainant, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who-
- e. is a current or former spouse or intimate partner of the Complainant, or person similarly situated to a spouse of the Complainant;
- f. is cohabitating, or has cohabitated, with the Complainant as a spouse or intimate partner;
- g. shares a child in common with the Complainant;
- h. commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of the jurisdiction.

To categorize an incident as Domestic Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

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<sup>5</sup> Per VAWA Reauthorization 2022, 34 U.S.C. 12291.

*Economic abuse*, in the context of domestic violence, dating violence, and abuse in later life, means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to—

- a. Restrict a person's access to money, assets, credit, or financial information;
  - b. Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage;
- or
- c. Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

*Technological abuse* means an act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology, including but not limited to: internet-enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.

*Abuse later in life* means neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim or domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual. This definition does not include self-neglect.

**6. Stalking, defined as:**

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at the Complainant, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others, or
  - iii. suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

ATU reserves the right to impose any level of sanction, ranging from a warning up to and including suspension or expulsion/termination, for any offense under this Policy. The most serious offenses are likely to result in suspension/expulsion/termination.

### C. Force, Coercion, Consent, and Incapacitation<sup>6</sup>

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you” which elicits the response “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, 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.

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<sup>6</sup> The State of Arkansas defines consent as follows: There is a lack of consent if a person engages in a sexual act with another person by forcible compulsion or with a person who is incapable of consent because he or she is physically helpless, mentally defective or mentally incapacitated, or because of a victim’s age. Arkansas Code §§ 5-14- 103; 5-14-125.

- **“Mentally defective”** means that a person suffers from a mental disease or defect that renders the person:
  - incapable of understanding the nature and consequences of a sexual act; or
  - is unaware a sexual act is occurring.
  - Note: a determination that a person is mentally defective shall not be based solely on the person’s IQ. Arkansas Code §§ 5-14-101(4).
- **“Mentally incapacitated”** means that a person is temporarily incapable of appreciating or controlling the person’s conduct as a result of the influence of a controlled or intoxicating substance:
  - administered to the person without the person’s consent; or
  - that renders the person unaware a sexual act is occurring. Arkansas Code §§ 5-14-101(5).
- **“Physically helpless”** means that a person is:
  - unconscious;
  - physically unable to communicate a lack of consent; or
  - rendered unaware that a sexual act is occurring. Arkansas Code §§ 5-14-101(7)
  - A nursing home patient was unable to communicate lack of consent and, thus, was “physically helpless” within meaning of statute for attempted rape purposes; victim was blind, unable to speak, and confined to bed or wheelchair, and victim could only grunt, raise her hand, and shake her head from side to side to communicate. *Dabney v. State*, 1996, 930 S.W.2d 360, 326 Ark. 382.
- Note: When criminality of conduct depends on a victim's being incapable of consent because he or she is mentally defective or mentally incapacitated, it is an affirmative defense that the actor reasonably believed that the victim was capable of consent. Arkansas Code §§ 5-14-102(e).

The existence of forcible compulsion in a rape case does not depend on the quantum of force that is applied but rather on whether the act is consummated against the victim's will. *Hillman v. State*, 569 S.W.3d 372 (Arkansas 2019), which is applicable to criminal prosecutions for sex offenses in Arkansas but may differ from the definition used on campus to address policy violations.



**Consent is:**

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable immediate time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.

The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drug consumption. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising good judgement. Intoxication of the Respondent does not excuse the knew or should have known standard.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, and/or being drunk.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

**D. Other Civil Rights Offenses**

In addition to the forms of sexual harassment described above, which are covered by Title IX, ATU additionally prohibits the following offenses as forms of discrimination that may be within or outside of Title IX when the act is based upon the Complainant's actual or perceived protected characteristics.

- 1) **Sexual Exploitation**, defined as:
  - a. an individual taking non-consensual or abusive sexual advantage of another,
  - b. for their own benefit or for the benefit of anyone other than the person being exploited, and

c. that conduct does not otherwise constitute sexual harassment under this Policy.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Indecent exposure
- Invasion of sexual privacy (e.g. doxing)
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity; or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Creation, possession, or dissemination of child pornography
- Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person; and,
- Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities.

Violation of any other ATU policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived protected characteristics, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from warning up to and including suspension or expulsion/termination.

### **ATU Consensual Relations Policy**

Sexual relations between employees and those with whom they also have an academic evaluative or supervisory relationship are fraught with the potential for exploitation. The respect and trust accorded a professor or staff member by a student, as well as the power exercised by the professor, or other staff member, in an academic or evaluative role, make voluntary consent by the subordinate suspect. Even when both parties have previously consented, circumstances could change and conduct that was once welcome could become unwelcome and the development of a sexual relationship renders both the employee and the institution vulnerable to possible later allegations of sexual harassment in light of the significant power differential that exists between individuals in unequal positions.

In their relationships with students, members of the faculty, as well as employees whose position may be perceived as one of authority, are expected to be aware of their professional responsibilities and to avoid apparent or actual conflicts of interest, favoritism, or bias. When a sexual relationship exists, effective steps should be taken to ensure unbiased evaluation or supervision takes place.

An employee, whether faculty or staff, should not develop a dating or sexual relationship with a student whenever the employee is in a "position of authority", real or perceived, over that student. An employee is in a "position of

authority” whenever he or she is that student’s teacher, or when the employee is either evaluating or supervising the student. This includes resident assistants and students over whom they have direct responsibility. The “position of authority” may also include formally advising the student or when that student is a major in the employee’s department or college.

A supervisor, whether faculty or staff, should also not develop a dating or sexual relationship with an employee when the supervisor has a “position of authority”, real or perceived, with respect to the employee.

Should a dating or sexual relationship develop or exist, the person with the greater position of authority must consult with an appropriate supervisor immediately. Failure to self-report such relationships may result in disciplinary action. The supervisor, with advice from University Counsel, shall develop a mechanism to ensure that objective evaluation is achieved, that conflicts of interest are avoided, and that the interest of the other individual and University are fully protected. This will likely result in the removal of the employee from the supervisory or evaluative responsibility, or shift the individual out of being supervised or evaluated by someone with whom they have a consensual relationship.

ATU reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this Policy.

### **18. Retaliation**

Protected activity under this Policy includes reporting alleged misconduct that may implicate this Policy, participating in the resolution process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator or the AA/EEO Officer and will be promptly investigated. ATU will take all appropriate steps to protect individuals who fear that they may be subjected to retaliation.

ATU and any member of ATU’s community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Pursuing a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy and procedure does not constitute retaliation, provided that the determination regarding responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

### **19. Responsible Employees**

Many ATU employees are mandated to report actual or suspected discrimination, harassment, and/or retaliation to the Title IX Coordinator immediately, though there are some limited exceptions. The employees are called Responsible Employees and include the following:

- President
- Chancellor
- Vice Presidents
- Chief Officers
- Associate Vice Presidents
- Assistant Vice Presidents
- Academic Dean
- Academic Department Heads and Program Chairs
- Dean of Students
- Associate Deans
- Assistant Deans

- Area Coordinators
- Athletic Director
- Head Coaches
- Assistant Coaches
- Faculty Advisors for Student Groups
- Employees in the Department of Public Safety
- Resident Directors
- Resident Assistants

Specific names associated with each of these positions can be located on the Title IX website.

To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination, harassment, and/or retaliation in a way that identifies the parties. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to an Official with Authority (the names of the Officials with Authority are provided in this Policy) can connect them with resources to report alleged crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator or the AA/EEO Officer (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following sections describe the reporting options at ATU for a Complainant or third-party:

#### **A. Confidential Resources**

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed professional counselors
- On-campus health service providers
- Off-campus (non-employees):
  - Licensed professional counselors and other medical providers
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/chaplains
  - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, professional credentials, or designation, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

ATU employees who have confidentiality as described above, and who receive reports within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client or patient.

Licensed professional counselors at ATU are available to help students free of charge and may be consulted on an emergency basis during normal business hours.

At ATU confidential reports can be made to these employees, the licensed counselors and health care professionals staffed in the Health and Wellness Center. For more information on the Health and Wellness Center please visit <https://www.atu.edu/hwc/>.

You may also contact a licensed counselor or health care provider directly. A contact list is provided below:

**Counseling Services:**

Kristy Davis, LPC-S, Associate Dean for Student Wellness, [kdavis51@atu.edu](mailto:kdavis51@atu.edu)

Janis Taylor, LPC, Counselor, [jtaylor78@atu.edu](mailto:jtaylor78@atu.edu)

Hunter Bramlitt, LPC, Counselor, [jbramlitt@atu.edu](mailto:jbramlitt@atu.edu)

Leann Watson, LPC, Counselor, [lwatson12@atu.edu](mailto:lwatson12@atu.edu)

Dillon Webster, LAC, Counselor, [dwebster@atu.edu](mailto:dwebster@atu.edu)

**Health Services:**

Robin Joslin, APRN, Nurse Practitioner, [rkoontz@atu.edu](mailto:rkoontz@atu.edu)

Kyle Wewers, APRN, Nurse Practitioner, [kwewers@atu.edu](mailto:kwewers@atu.edu)

Heather Stout, RN, Registered Nurse, [hstout1@atu.edu](mailto:hstout1@atu.edu)

Cori Hinson, RN, Registered Nurse, [cpoore1@atu.edu](mailto:cpoore1@atu.edu)

**B. Responsible Employees and Formal Notice/Complaints**

Responsible employees (including student employees), with the exception of those who are designated as Confidential Resources, must promptly share with the Title IX Coordinator or the AA/EEO Officer all known details of a report made to them in the course of their employment.

Responsible employees must also promptly share all details of behaviors under this Policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Responsible Employees, as those details must be shared with the Title IX Coordinator or the AA/EEO Officer.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speakouts do not provide notice that must be reported to the Title IX Coordinator or AA/EEO Officer by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from ATU.

Supportive measures may be offered as the result of such disclosures without formal ATU action.

Failure of a Responsible Employee, as described above in this section, to report an incident of harassment, discrimination, and/or retaliation of which they become aware is a violation of ATU policy, can be subject to disciplinary action for failure to comply/failure to report.

Though this may seem obvious, when a Responsible Employee is engaged in harassment or other violations of this Policy, they still have a duty to report their own misconduct, though ATU is technically not on notice when a harasser is also a Responsible Employee unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Responsible Employee who is a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

**20. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, and/or does not want a Formal Complaint to be pursued, they may make such a request to the Title IX Coordinator and/or the AA/EEO Officer, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator and/or the AA/EEO Officer has ultimate discretion over whether ATU proceeds when the Complainant does not wish to do so, and, in the case of alleged sex discrimination, the Title IX Coordinator may sign a Formal Complaint to initiate a grievance process usually upon completion of an appropriate violence risk assessment. The Title IX Coordinator’s decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires ATU to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. ATU may be compelled to act on

alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and ATU's ability to pursue a formal grievance process fairly and effectively. When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When ATU proceeds, the Complainant (and/or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence and testimony.

Note that ATU's ability to remedy and respond to notice may be limited if the Complainant does not want ATU to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing ATU's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow ATU to honor that request, ATU will offer informal resolution options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, the complaint will be investigated and resolved through these procedures. Delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

## **21. Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, ATU must issue timely warnings for Clery crimes, occurring within the Clery geography, reported to them that pose a serious or on-going threat to the campus community.

ATU will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **22. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation, hearing, or informal resolution can be subject to discipline under applicable ATU policies.

## **23. Amnesty for Students**

The ATU community encourages the reporting of misconduct and crimes by Complainants and witnesses.

Sometimes, Complainants or witnesses are hesitant to report to ATU officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the ATU community that Complainants choose to report misconduct to ATU officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, ATU maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty

– the incentive to report serious misconduct – is rarely applicable to a Respondent with respect to a Complainant. Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves. For example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to the Department of Public Safety.

ATU maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, ATU may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

#### **24. Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a. All “primary crimes,” which include criminal homicide, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b. Hate crimes, which include any bias motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c. VAWA<sup>7</sup>-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- d. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug law violations.

All personally identifiable information is kept private, but statistical information must be shared with the Department of Public Safety regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily crime log.

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<sup>7</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

## 25. Preservation of Evidence

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining orders/protective orders, and is particularly time-sensitive. Complainants should consider preserving evidence by taking the following actions:

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
  - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
  - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of e-mail and social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence including notes, gifts, etc. in place when possible.
- Save copies of any messages, to include those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

In cases of sexual assault, these additional actions should be considered:

- Seek forensic medical assistance at a local hospital, ideally within 96 hours of the incident (sooner is better), and this exam is paid for by the State of Arkansas. In Russellville, Saint Mary's Regional Medical Center is located at 1808 West Main Street. In Ozark, Mercy Hospital is located at 801 West River.
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence).
- Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.



## PROCESS A

### RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON EQUAL OPPORTUNITY, HARASSMENT (SEXUAL MISCONDUCT), AND NONDISCRIMINATION (KNOWN AS PROCESS A)

#### 1. Overview

ATU will act on any formal notice/complaint of violation of the Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures (“the Policy”) that is received by the Title IX Coordinator<sup>8</sup>, the AA/ EEO Officer, or any other Official with Authority by applying these procedures, known as Process A.

Process A applies only to qualifying allegations of Title IX sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined in this Policy) involving students, staff, administrators, or faculty members.

If other policies are invoked, such as policies on protected characteristic harassment or discrimination, please see Appendix C for a description of the procedures applicable to the resolution of such offenses, known as Process B.

Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined in this Policy) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

The procedures below may be used to address collateral misconduct by the Respondent arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another), when alleged violations of the Policy are being addressed at the same time. All other allegations of misconduct unrelated to incidents covered by this Policy will be addressed through procedures described in the student, staff, and faculty handbooks.

#### 2. Notice/Complaint

Upon receipt of a Formal Complaint or notice of an alleged policy violation by the Title IX Coordinator, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps ATU needs to take. The Title IX Coordinator will contact the Complainant to offer supportive measures and determine whether the Complainant wishes to file a Formal Complaint.

The Title IX Coordinator will initiate at least one of three responses:

1. Offer supportive measures because the Complainant does not want to file a Formal Complaint
2. An informal resolution (upon submission of a Formal Complaint)
3. A Formal Grievance Process including an investigation and a hearing (upon submission of a Formal Complaint)

ATU uses the Formal Grievance Process to determine whether or not this Policy has been violated. If so, ATU will promptly implement effective remedies designed to ensure that ATU is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

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<sup>8</sup> Anywhere this procedure indicates “Title IX Coordinator”, the AA/EEO Officer may take action or ATU may substitute a trained designee.

### 3. Initial Assessment

Following receipt of a Formal Complaint or notice of an alleged violation of this Policy, the Title IX Coordinator<sup>9</sup> engages in an initial assessment, typically within one (1) to five (5) business days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint themselves because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a Formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator attempts to meet with the Complainant to discuss and offer supportive measures, ensure the Complainant is aware of the right to have an Advisor, and to review the ATU First Conversation Checklist.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an Informal Resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their needs, determines appropriate supports, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
  - If a Formal Grievance Process is preferred by the Complainant, the Title IX Coordinator determines if the alleged misconduct falls within the scope of the 2020 Title IX regulations:
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address, based on the nature of the complaint:
      - an incident, and/or
      - a pattern of alleged misconduct, and/or
      - a culture/climate issue.
    - If the alleged misconduct does not fall within the scope of the Title IX regulations, the Title IX Coordinator determines that the regulations do not apply and will “dismiss” that aspect of the complaint, if any. The Title IX Coordinator will then assess which policies may apply, if any, and may refer the matter for resolution under Process B or applicable University policy. Please note that dismissing a complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX, and does not limit ATU’s authority to address a complaint with another appropriate process and remedies.

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<sup>9</sup> If circumstances require, the ATU President or designee, or the Title IX Coordinator will designate another person to oversee the resolution process should an allegation be made about the Title IX Coordinator or the Title IX Coordinator be otherwise unavailable or unable to fulfill their duties.

- If the Complainant prefers an Informal Resolution option or a Formal Grievance Process and the Title IX Coordinator initially determines that the alleged misconduct falls within the scope of the 2020 Title IX regulations, the Title IX Coordinator will attempt to meet with the Respondent to provide them with a copy of the Formal Complaint, discuss and offer supportive measures, ensure the Respondent is aware of the right to have an Advisor, and to review the ATU First Conversation Checklist. After the Title IX Coordinator provides the Respondent with a copy of the Formal Complaint, the Respondent has five (5) business days to respond, in writing, to the Formal Complaint submitted by the Complainant. This information is used as part of the Title IX Coordinator's initial assessment of the alleged misconduct.

### **A. Violence Risk Assessment**

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the CARE Team as part of the initial assessment. A VRA can aid in nine (9) critical and/or required determinations, including:

1. Emergency removal of a Respondent on the basis of immediate threat to an individual or community's physical health/safety;
2. Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant;
3. Whether the scope of the investigation should include an incident, and/or pattern of misconduct, and/or climate of hostility/harassment;
4. To help identify potential predatory conduct;
5. To help assess/identify grooming behaviors;
6. Whether it is reasonable to try to resolve a complaint through Informal Resolution, and, if so, what approach may be most successful;
7. Whether to permit a voluntary withdrawal by the Respondent;
8. Assessment of appropriate sanctions/remedies (to be applied post-hearing);
9. Whether a Clery Act Timely Warning or campus ban is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other CARE Team (ATU's behavioral intervention team) members. A VRA authorized by the Title IX Coordinator will occur in collaboration with the CARE Team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

More about ATU's process for VRA can be found in Appendix B.

### **B. Dismissal (Mandatory and Discretionary)<sup>10</sup>**

ATU must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- The conduct alleged in the Formal Complaint would not constitute Title IX sexual harassment as defined above, even if proved

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<sup>10</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 C.F.R. Part 106.45.

- The conduct did not occur in an educational program or activity controlled by ATU (including buildings or property controlled by recognized student organizations), and/or ATU does not have jurisdiction over the Respondent
- The conduct did not occur against a person in the United States
- At the time of filing a Formal Complaint, the Complainant is not participating in or attempting to participate in the education program or activity of ATU, and based on the information available, the Title IX Coordinator has determined that they do not need to sign a Formal Complaint on behalf of ATU.

ATU may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein
2. The Respondent is no longer enrolled in or employed by ATU
3. Specific circumstances prevent ATU from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein

Upon any dismissal, ATU will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

A complaint dismissed under Process A may be reviewed under an alternate ATU policy or process including Process B.

#### **4. Counterclaims**

ATU is obligated to ensure that the grievance process is not abused for retaliatory purposes, thus counterclaims made with retaliatory intent will not be permitted. ATU permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith.

Counterclaims determined to have been reported in good faith will be processed using the resolution process below. Investigation of such claims may take place after resolution of the underlying initial complaint, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying complaint, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this Policy.

#### **5. Right to an Advisor**

The parties may each have one (1) Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available<sup>11</sup>.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-Maker(s).

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<sup>11</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

### **A. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the ATU community. The Title IX Coordinator will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from ATU, the Advisor will be trained by ATU and be familiar with ATU's resolution process. If the parties choose an Advisor from outside the pool of those identified by ATU, the Advisor may not have been trained by ATU and may not be familiar with ATU policies and procedures. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing. A student Respondent alleged of a serious violation and the Complainant alleging a serious violation has the right to be represented by an advisor they choose and the advisor may fully participate during any disciplinary proceedings through the conclusion of any appellate process.

### **B. Advisor's Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

ATU cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, ATU is not obligated to provide an attorney.

### **C. Advisors in Hearings/ATU-Appointed Advisor**

Under the Title IX regulations, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, ATU will appoint a trained Advisor for the limited purpose of conducting any questioning of the parties or witnesses.

### **D. Pre-Interview Meetings**

Advisors and their advisees may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and ATU's policies and procedures.

### **E. Advisor Violations of ATU Policy**

All Advisors are subject to the same ATU policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by ATU. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address ATU officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-Maker(s) except during a hearing proceeding during questioning.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee<sup>12</sup>, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

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<sup>12</sup> Subject to the state law provisions or ATU policy above.

Any Advisor who oversteps their role as defined by this Policy, or who refuses to comply with ATU's established rules of decorum for the hearing, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including ATU requiring the party to use a different Advisor or providing a different ATU-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### **F. Sharing Information with the Advisor**

ATU expects that the parties may wish to have ATU share documentation and evidence related to the allegations with their Advisors. ATU provides a consent form that authorizes ATU to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before ATU is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, ATU may comply with that request at the discretion of the Title IX Coordinator.

#### **G. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by ATU. ATU may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by ATU's privacy expectations.

#### **H. Expectations of an Advisor**

ATU generally expects an Advisor to adjust their schedule to allow them to attend ATU meetings/interviews/hearings when planned, but ATU may change scheduled meetings/interviews/hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay. This process will not be delayed by the unavailability of an Advisor.

ATU may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

#### **I. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing, if the Advisor has changed after initial selection/assignment.

### **6. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with ATU policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose. ATU encourages parties to discuss any sharing of information with their Advisors before doing so.

The formal grievance process is ATU's primary resolution approach unless Informal Resolution is elected by all parties and ATU.

### **A. Informal Resolution**

Three options for Informal Resolution are detailed in this section:

- **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures only to remedy the situation.
- **Alternative Resolution.** When the parties agree to resolve the matter through an alternate resolution mechanism including mediation, restorative practices, facilitated dialogue, etc. as described below, often before a formal investigation takes place.
- **Accepted Responsibility.** When the Respondent accepts responsibility for violating policy, and desires to accept the recommended sanction(s) and end the resolution process.

To initiate Informal Resolution, a Complainant must submit a Formal Complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process. The parties may not enter into an agreement that requires ATU to impose specific sanctions, though the parties can agree to certain restrictions/measures/terms or other courses of action. For example, the parties cannot require a student be suspended, but the parties can agree that the Respondent will temporarily or permanently withdraw. The only Informal Resolution process that can result in sanctions levied by ATU is "Accepted Responsibility."

Prior to implementing Informal Resolution, ATU will provide the parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures/terms that may result from participating in such a process, including information regarding any records that will be maintained or shared by ATU.

ATU will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution. Results of complaints resolved by Informal Resolution are not appealable.

### **B. Alternate Resolution Approaches**

Alternate Resolution is an informal approach, including mediation, restorative practices facilitated dialogue, etc. by which parties reach a mutually agreed upon resolution of a complaint. All parties must consent to the use of an Alternate Resolution approach.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution
- Likelihood of potential resolution, taking into account any power dynamics between the parties
- The nature and severity of the alleged misconduct
- The parties' motivation to participate
- Civility of the parties
- Results of a violence risk assessment/ongoing risk analysis
- Disciplinary history of the Respondent
- Whether an emergency removal is needed
- Skill of the Alternate Resolution facilitator with this type of complaint
- Complaint complexity
- Emotional investment/capability of the parties
- Rationality of the parties
- Goals of the parties

- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The parties may not enter into an agreement that requires ATU to impose specific sanctions, though the parties can agree to certain restrictions or other courses of action. The only Informal Resolution Process that can result in sanctions levied by ATU is “Accepted Responsibility.” The Title IX Coordinator has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process. The Title IX Coordinator is authorized to facilitate a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties, usually through their Advisors, including terms of confidentiality, release, and non-disparagement.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., referral for formal resolution, referral to the conduct process for failure to comply). Results of complaints resolved by Alternate Resolution are not appealable.

### **C. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and ATU are able to agree on responsibility, sanctions/restrictions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of ATU policy and implements agreed-upon sanctions/restrictions and/or remedies in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon resolution terms. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction(s) or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

## **7. Formal Grievance Process Pool**

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. The list of Pool members and a description of the Pool can be found at <https://www.atu.edu/titleix/pool.php>.

### **A. Pool Member Roles**

Members of the Pool are trained annually, and can serve in in the following roles, at the direction of the Title IX Coordinator:

- To act as an Advisor to the parties
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-Maker regarding the complaint



## **B. Pool Member Appointment**

The Title IX Coordinator, in consultation with the President, appoints the Pool, which acts with independence and impartiality. Although members of the Pool<sup>13</sup> are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different complaints, ATU can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

## **C. Pool Member Training**

Pool members receive annual training jointly. This training includes, but is not limited to:

- The scope of ATU's Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures
- How investigation and hearings are conducted that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- Trauma-informed practices pertaining to investigations and resolutions processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by ATU with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How grievance processes are conducted including hearings, appeals, and Informal Resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping

Specific training is also provided for other members of the Title IX staff, including Appeal Decision-Makers, intake personnel, Investigators, and Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted at <https://www.atu.edu/titleix/pool.php>.

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<sup>13</sup> External, trained third-party neutral professionals may also be used to serve in Pool roles. This does not preclude ATU from having all members of the Pool go through an application and/or interview/selection process.

#### **D. Pool Membership**

The Hearing Panel will have three (3) members. The composition of the Hearing Panel will be two (2) faculty or staff members and will be chaired by a representative from Student Affairs or Human Resources.

The Pool includes representatives who can rotate, upon appointment to serve in either the Advisor or Decision-Maker role.

Pool members are appointed for one-year terms which are renewable. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

#### **8. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written Notice of the Investigation and Allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all allegations
- The identity of the involved parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies implicated
- A description of the applicable procedures
- A statement of the potential sanctions/responsive actions that could result
- A statement that ATU presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity during the review and comment period to inspect and review all directly related and/or relevant evidence obtained
- A statement about ATU’s policy on retaliation
- Information about the confidentiality of the process
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor
- A statement informing the parties that ATU’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process
- Detail on how the party may request disability accommodations during the resolution process
- A link to ATU’s VAWA brochure
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have
- An instruction to preserve any evidence that is directly related to the allegations

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official ATU records, or emailed to the parties’ ATU-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

#### **9. Resolution Timeline**

ATU will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business-day time period, including appeal (if any), which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

## **10. Appointment of Investigator(s)**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints an Investigator(s) to conduct the investigation.

## **11. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, Investigator(s), and Decision-Maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with Dr. Keegan Nichols, Vice President for Student Affairs, at [knichols@atu.edu](mailto:knichols@atu.edu).

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

ATU operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent acknowledges responsibility or is determined to be responsible for a policy violation by the preponderance of the evidence standard.

## **12. Investigation Timeline**

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, law enforcement involvement, etc.

ATU will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

A student Respondent alleged of a serious violation will be provided a copy of Act 470, the Arkansas Student Due Process and Protection Act, at the inception of the disciplinary matter and will not be questioned by the University until at least twenty-four (24) hours after the receipt of Act 470 provided that campus law enforcement's ability to investigate a possible criminal violation is not impeded.

## **13. Delays in the Investigation Process and Interactions with Law Enforcement**

ATU may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or health conditions.

ATU will communicate in writing the anticipated duration of the delay and reason to the parties in writing and provide the parties with status updates if necessary. ATU will promptly resume its investigation and resolution process as soon as feasible. During such a delay, ATU will implement supportive measures as deemed appropriate.

ATU action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

## **14. Steps in the Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all available relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

Recordings of interviews are not provided to the parties, but the parties will have the ability to review their interview summary once the investigator(s) has completed the summary document. All other interview summaries will be available for review when the draft investigation report is released.

At the discretion of the Title IX Coordinator, investigations can be combined when complaints implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Assist the Title IX Coordinator, if needed, with identifying all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator, if needed, with conducting an initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all parties and the witnesses
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and/or witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information may be used to render a finding within the draft investigation report
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- Gather, assess, and synthesize evidence, but make no conclusions, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which ATU does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) business days.
- May elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- Incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- Share the draft report with the Title IX Coordinator for their review and feedback
- Incorporate any relevant feedback and share the final report with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing

## **15. Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of ATU are expected to cooperate with and participate in ATU's investigation and resolution process. Student witnesses and witnesses from outside the ATU

community are encouraged to cooperate with ATU investigations and to share what they know about a complaint. Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. ATU will take steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

#### **16. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during the resolution process. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware audio and/or video recording. Recordings of interviews are not provided to the parties or witnesses, but the parties and/or witnesses will have the ability to review the summary of their interview once the investigator(s) has completed the summary document.

#### **17. Evidentiary Considerations in the Investigation**

Neither the investigation nor the hearing consider: 1) incidents not relevant or not directly related to the possible violation(s), unless they evidence a pattern; or 2) questions and evidence about the Complainant's sexual predisposition; or (3) questions and evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation and the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

#### **18. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation when the final investigation report is transmitted to the parties and the Decision-Makers—unless all parties and the Decision-Makers agree to an expedited timeline.

The Title IX Coordinator or designee will select appropriate Decision-Makers from the Pool and provide a copy of the investigation report.

#### **19. Hearing Decision-Makers Composition**

ATU will designate a three (3) member panel from the Pool, at the discretion of the Title IX Coordinator. One of the three (3) members will be appointed as Chair by the Title IX Coordinator.

The Decision-Maker(s) will not have had any previous involvement with the complaint. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-Makers. Those who are serving as Advisors for any party may not serve as Decision-Makers in that matter.

The Title IX Coordinator may not serve as a Decision-Maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill the facilitator role. The hearing will convene at a time and venue determined by the Chair.

## **20. Additional Evidentiary Considerations in the Hearing**

Any evidence that the Decision-Maker(s) determine(s) is relevant and credible may be considered.

Previous disciplinary action of any kind involving the Respondent may not be used unless there is an allegation of a pattern of misconduct but may be considered in determining an appropriate sanction upon a determination of responsibility because ATU uses a progressive discipline system. In this case, the information is only considered at the sanction stage of the process, and is not shared until then.

The parties may each submit a written impact statement and/or mitigation statement prior to the hearing for the consideration of the Decision-Maker(s) at the sanction stage of the process when a determination of responsibility is reached. Any such statement should be submitted to the Title IX Coordinator.

After post-hearing deliberation, the Decision-Makers render a determination based on the preponderance of the evidence standard, whether it is more likely than not that the Respondent violated the Policy as alleged.

## **21. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-Makers and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-Maker on the basis of demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- Information on how the hearing will be recorded and how the parties can access the recording after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they wish to conduct cross-examination and do not have an Advisor, and ATU will appoint one. Each party must have an Advisor present if they intend to cross-examine others. There are no exceptions.
- A copy of all the materials provided to the Decision-Makers about the complaint, unless they have already been provided.
- An invitation to each party to submit to the Title IX Coordinator an impact and/or mitigation statement pre-hearing that the Decision-Makers will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by ATU and remain within the 60-90 business day goal for resolution. In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). Employees who do not have 12-month contracts are still expected to participate in resolution proceedings that occur during months between contracts.

## **22. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing.

The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

## **23. Pre-Hearing Preparation**

After any necessary consultation with the parties, the Chair will provide the names of persons who have been asked to participate in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. For any evidence, excluding testimony, that is first offered at the hearing, the Chair may allow the new evidence to be introduced, delay the hearing, or may instruct that the investigation needs to be re-opened to consider that evidence. The Chair may also determine that the new information is not relevant, was not submitted in a timely manner, and may not be introduced. In which case, the hearing will continue. The Chair may invite explanations or persuasive statements regarding the introduction of new evidence from the parties.

The parties will be given a list of the names of the Decision-Makers at least five (5) business days in advance of the hearing. All objections to any Decision-Maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) days prior to the hearing. Decision-Makers will only be removed if the Title IX Coordinator concludes that their actual or perceived bias or conflict of interest precludes an impartial hearing of the complaint.

The Title IX Coordinator or Chair will give the Decision-Makers a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-Maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-Maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

## **24. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors and invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a pre-hearing ruling by the Chair based on any new information or testimony offered at the hearing.

The Chair, only with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these

arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask them to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded. The pre-hearing meetings may be conducted as separate meetings with each party/Advisor, with all parties/Advisors present at the same time, remotely, or as a written-only exchange. The Chair will work with the parties to establish the format.

## **25. Hearing Procedures**

At the hearing, the Decision-Makers have the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator (if needed), the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent), Advisors to the parties, any called witnesses, and anyone providing authorized accommodations, interpretation, and/or assistive services.

The Chair will answer all questions of procedure.

Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing to respond to specific questions from the Decision-Makers and the parties, and the witnesses will then be excused. The Investigator(s) may remain present for the duration of the hearing.

## **26. Joint Hearings**

In hearings involving more than one Respondent and/or involving more than one Complainant who has accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent or complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each complaint with respect to each alleged policy violation.

## **27. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. The Chair then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator, if needed. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

## **28. Investigator(s) Presentation of Final Investigation Report**

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-Makers and the parties (through their Advisors). The Investigator(s) may be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-Makers should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and Advisors and parties will refrain from discussion of or questions for Investigator(s) about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

## **29. Testimony and Questioning**

Once the Investigator(s) presents the report and responds to questions, the parties and witnesses may provide



relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-Makers and then by the parties through their Advisors. Parties will have the opportunity to make an opening and a closing statement.

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider the question, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors if the Chair so chooses. The Chair may decide to call a recess to review relevancy and other arguments. During a recess, the Chair may choose to confer with the Title IX Coordinator. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with the Title IX Coordinator and/or legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-Maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

### **30. Refusal to Submit to Cross-Examination and Inferences**

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-Maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-Maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

### **31. Hearing Recordings**

Hearings (but not deliberations) are recorded by ATU for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-Makers, the parties, their Advisors, and appropriate administrators of ATU will be permitted to review the recording in a controlled environment as determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **32. Deliberation, Decision-Making, and Standard of Proof**

The Decision-Makers will deliberate in closed session to determine whether the Respondent is responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-Makers may then consider the previously submitted party impact and/or mitigation statement(s) in determining appropriate sanction(s). Each of the parties may request to review any impact and/or mitigation statement (s) upon receipt of the Notice of Outcome letter. The Decision-Makers will also review any pertinent conduct history provided by the Title IX Coordinator and will determine the appropriate sanction(s).

The Chair will, in collaboration with the other Decision-Makers, then prepare a written statement detailing all findings and final determinations, the rationale(s) explaining the decision(s), the evidence used in support of the

determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) and will deliver the statement to the Title IX Coordinator.

This statement must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **33. Notice of Outcome**

Using the deliberation statement, the Chair will work with the Title IX Coordinator to prepare a Notice of Outcome letter. The Chair will then share the letter, which includes the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within three (3) business days of finalizing the Decision-Makers' deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official ATU records, or emailed to the parties' ATU-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific alleged policy violation(s), including the relevant policy section(s), and will contain a description of the procedural steps taken by the ATU from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent ATU is permitted to share such information under state or federal law; any sanction(s) issued which ATU is permitted to share according to state or federal law; and whether remedies will be provided to the Complainant to ensure access to ATU's educational or employment program or activity.

The Notice of Outcome will also include information on when the results are considered to be final by ATU, will note any changes to the outcome and/or sanctions(s) that occur prior to finalization, and the relevant procedures and bases for appeal.

### **34. Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-Makers

The sanction(s) will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a grievance process at any time, and/or referring that information to another process for resolution.

#### **A. Student Sanctions**

The following are the common sanctions that may be imposed upon students or registered student

organizations singly or in combination<sup>14</sup>:

- Warning: A formal statement that the conduct was unacceptable and a warning that further violation of any ATU policy, procedure, or directive will result in more severe sanctions/responsive actions.
- Probation: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or registered student organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated.
- Loss of Privileges: Suspension or denial of rights and privileges for a designated period of time, and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact directives, and/or other measures deemed appropriate.

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<sup>14</sup> Subject to ATU's Organizational Code of Conduct

- Monetary Fines: A penalty imposed involving the collection of fees from the student.
- Restitution: Compensation for loss, injury, damage to or misappropriation of ATU property. This may take the form of appropriate service and/or monetary or material replacement.
- Educational Sanctions: Educational sanctions may be assigned that promote learning and understanding. These sanctions may be developed as necessary by a conduct body including, but not limited to:
  - Sponsorship of an education program;
  - Attendance at educational programs;
  - Requirement of members to complete educational training programs;
  - Attendance in conflict management training;
  - Educational service hours;
  - Attendance in ethics workshop/training;
  - Reflective exercises.
  - Research exercises.
- Discretionary Sanctions: Work assignments, service to ATU, or other related sanctions.
- Holds: Withholding of grades, the right to register for classes, official transcript, and/or degree.
- Housing Suspension: Separation of the student from ATU housing for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.
- Housing Expulsion: Permanent separation of the student from ATU housing.
- University Suspension: Termination of student status for a definite period of time and revocation of rights to be on campus for any reason or to attend ATU-sponsored events. Conditions for readmission may be specified. Students who return from suspension are automatically placed on probation for a definite period of time.
- University Expulsion: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend ATU-sponsored events.
- Loss of Scholarship: Scholarships awarded by ATU or ATU-related programs may be partially or fully revoked.
- Withholding Diploma: ATU may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- Revocation of Admission or Degree: ATU reserves the right to revoke admission or a degree previously awarded from ATU for fraud, misrepresentation, and/or other violation of ATU policies, procedures, or directives in obtaining admission or the degree, or for other serious violations committed by a student prior to graduation.
- Organizational Sanctions: Censure, Disciplinary Probation, Deferred Suspension, Disciplinary Suspension, Indefinite Dismissal, Restrictions, Educational Sanctions, Restitution, and Monetary Fines.
- Other Actions: In addition to or in place of the above sanctions, ATU may assign any other sanctions as deemed appropriate.

## **B. Employee Sanctions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- Warning – Verbal or Written
- Performance Improvement Plan/Management Process
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade

- Loss of Oversight or Supervisory Responsibility
- Demotion
- Transfer/Reassignment/Assignment to a New Supervisor
- Suspension/Administrative Leave with Pay
- Suspension/Administrative Leave without Pay
- Termination
- Other Actions: In addition to or in place of the above sanctions, ATU may assign any other sanctions as deemed appropriate.

### 35. Withdrawal or Resignation Before Complaint Resolution

- A. Students:** Should a student Respondent decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from ATU, the resolution process typically ends with a dismissal, as ATU no longer has disciplinary jurisdiction over the withdrawn student.

Regardless of whether the complaint is dismissed or pursued to completion of the resolution process, ATU will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to ATU in any capacity. Admissions and Human Resources will be notified accordingly. Such exclusion applies to all campuses of ATU. A hold will be placed on their ability to be readmitted. They may also be barred from ATU property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and, if found in violation, that student is not permitted to return to ATU unless and until all sanctions, if any, have been satisfied.

- B. Employees:** Should an employee Respondent resign with unresolved allegations pending, the resolution process typically ends with dismissal, as ATU no longer has disciplinary jurisdiction over the resigned employee. However, ATU may continue the resolution process when, at the discretion of the Title IX Coordinator and/or AA/EEO Officer, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the complaint is dismissed or pursued to completion of the resolution process, ATU will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for academic admission or rehire at ATU or any campus of ATU, and the records retained by the Title IX Coordinator and/or the Director of Human Resources and AA/EEO Officer will reflect that status.

All ATU responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

### 36. Appeals

Any party may submit a written request for appeal (“Request for Appeal”) to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome letter. A student Respondent found responsible for a serious violation has twenty-five (25) days to submit an appeal.

The Request for Appeal will be forwarded to the appropriate Appeal Decision-Maker(s) for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

**Respondent is a student or non-faculty employee:**

Student appeals will be decided by the Vice President for Student Affairs. Employee appeals will be decided by the appropriate Vice President or Athletic Director.

**Respondent is a faculty member:**

If the Respondent is a faculty member with tenure or with a special or probationary appointment, the procedures

set forth in the Academic Termination Policies and Procedures section of the Faculty Handbook shall govern the Respondent's appeal.

### **A. Grounds for Appeal**

Appeals are limited to the following grounds:

1. A procedural irregularity that affected the outcome of the matter
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
3. The Title IX Coordinator, Investigator(s), or Decision-Makers had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Decision-Maker(s), and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Decision-Maker(s) will notify all parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-Makers.

All other parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-Makers will be mailed, emailed, and/or provided a hard copy of the Request for Appeal with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Appeal Decision-Maker(s) to all parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that will be reviewed to determine if it meets the grounds of this Policy by the Appeal Decision-Maker(s) and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, the Investigator(s), and/or original Decision-Makers, as necessary, who will submit their responses, if any, in three (3) business days. Any such responses will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

Neither party may submit any new requests for appeal after this time period. The Appeal Decision-Maker(s) will collect any additional information needed and all documentation regarding the approved grounds for appeal and the subsequent responses and will render a decision in no more than five (5) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which ATU is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent ATU is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official ATU records, or emailed to the parties' ATU-issued email or otherwise approved account. Once mailed, emailed and/ or received in-person, notice will be presumptively delivered.

### **B. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed (i.e., not implemented) during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within 48 hours of implementation.

ATU may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

### **C. Appeal Considerations**

- Appeals are not intended to provide for a full re-hearing of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- Decisions on appeal are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- An appeal is not an opportunity for the Appeal Decision-Maker to substitute their judgment for that of the original Decision-Makers merely because they disagree with the finding and/or sanction(s).
- The Appeal Decision-Maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-Makers for reconsideration.
- Once an appeal is decided, the outcome is final. Further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where error cannot be cured by the original Investigator(s) and/or the Decision-Makers (as in cases of bias), the Appeal Decision-Maker(s) may order a new investigation and/or a new hearing with new Investigator(s) and/or Decision-Makers.
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to ATU or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **D. Vice President for Student Affairs Certification**

At the conclusion of a disciplinary proceeding or an appeal that involves an alleged serious violation by a student Respondent, the Vice President for Student Affairs will certify that the substantial rights of student complainants and respondents established by Act 470, the Arkansas Student Due Process and Protection Act, have been followed. The certification will be maintained in the administrative file.

### **37. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator and/or the AA/EEO Officer may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator and/or the AA/EEO Officer, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator and/or the AA/EEO Officer will address any remedies

to be provided by ATU to the Respondent to ensure no effective denial of educational access.

ATU will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair ATU's ability to provide these services.

### **38. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-Makers, including the Appeal Decision-Maker(s).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from ATU. A hold will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator or the AA/EEO Officer.

### **39. Recordkeeping**

ATU will maintain for a period of at least seven (7) years following the conclusion of the resolution process, records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation
2. Any disciplinary sanctions imposed on the Respondent
3. Any remedies provided to the Complainant designed to restore or preserve equal access to ATU's education program or activity
4. Any appeal and the result therefrom
5. Any Informal Resolution and the result therefrom
6. All materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an informal resolution process. ATU will make these training materials publicly available on ATU's website
7. Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent
  - b. Any measures designed to restore or preserve equal access to ATU's education program or activity
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances

ATU will also maintain any and all records in accordance with state and federal laws.

### **40. Disabilities Accommodations in the Resolution Process**

ATU is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to ATU's resolution process.

Anyone needing such accommodations or support should contact either Ashlee Leavell, Assistant Dean for Student Wellness and Deputy Title IX Coordinator, who coordinates services for students at [sleavell8@atu.edu](mailto:sleavell8@atu.edu) or Melissa Riffle, Director of Human Resources and AA/EEO Officer and Deputy Title IX Coordinator, who coordinates services for employees at [mriffle@atu.edu](mailto:mriffle@atu.edu). These individuals will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

### **41. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policies addressing harassment, sexual misconduct, discrimination, and/or retaliation for incidents occurring on or after August 14, 2020, under Title IX and will be reviewed and updated annually by the Title IX Coordinator and the AA/EEO Officer. ATU reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator or the AA/EEO Officer may make minor modifications to procedures that do not materially jeopardize the fairness to be provided to any party, such as to accommodate summer schedules. The Title IX Coordinator and AA/EEO Officer may also vary procedures materially with notice



(on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require Policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws, regulations, or court holdings. This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally. This policy and procedures are effective August 14, 2020.

## APPENDIX A: GLOSSARY

- Advisor means a person chosen by a party or appointed by ATU to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct questioning for the party at the hearing, if any.
- Appeal Decision-Maker means the person or panel who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs corrective action, accordingly.
- Arkansas Tech University herein referenced as “ATU”.
- Complainant means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected characteristic or retaliation for engaging in a protected activity.
- Confidential Resource means an employee who is not mandated to report notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority Status).
- Day means a business day when the ATU is in normal operation.
- Decision-Maker means the person or panel who hears evidence, determines relevance, and makes the final determination of whether this Policy has been violated and/or assigns sanctions.
- Directly Related Evidence is evidence connected to the complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the Decision-Maker(s). Compare to Relevant Evidence, below.
- Education program or activity means locations, events, or circumstances where ATU exercises substantial control over both the Respondent and the context in which the harassment, discrimination, and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by ATU.
- Final Determination is a conclusion by preponderance of the evidence of whether or not the alleged conduct did or did not violate policy.
- Finding is a conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- Formal Complaint means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging a Respondent engaged in harassment or discrimination based on a protected characteristic or retaliation for engaging in a protected activity and requesting that ATU investigate the allegation(s).
- Formal Grievance Process means a method of formal resolution designated by ATU to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45) and the Violence Against Women Act § 304.
- Grievance Process Pool includes any Investigator(s), hearing Decision-Makers, Appeal Decision-Makers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same complaint).
- Hearing Decision-Maker Panel refers to those who have decision-making and sanctioning authority within the ATU’s Formal Grievance process.
- Informal Resolution means a complaint resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a formal Final Determination being reached.
- Investigator means the person(s) authorized by ATU to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report of relevant evidence and file of directly related evidence.
- Notice means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- Official with Authority (OWA) means an employee of ATU explicitly vested with the authority to institute corrective measures for harassment, discrimination, and/or retaliation on behalf of ATU.

- Parties include the Complainant(s) and Respondent(s), collectively.
- Process A means the Formal Grievance Process used to address qualifying allegations of sexual harassment, sexual assault, dating violence, domestic violence, and stalking involving students, staff, administrator, or faculty members.
- Process B means the administrative resolution procedures detailed in Appendix C that apply only when Process A does not, as determined by the Title IX Coordinator.
- Recipient means a postsecondary education program that is a recipient of federal funding.
- Relevant Evidence is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.
- Remedies are post-final determination actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to ATU's educational program.
- Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected characteristic or retaliation for engaging in a protected activity under this Policy.
- Resolution means the result of an Informal Resolution or Formal Grievance Process.
- Responsible Employee means an employee of ATU who is mandated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator<sup>15</sup>.
- Sanction means a consequence imposed by ATU on a Respondent who is found to have violated this Policy.
- Sexual Harassment is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence.
- Student refers to each person who is currently enrolled, full-time or part-time, in any non-credit or credit courses pursuing undergraduate, graduate, or post-graduate/professional studies. For the purposes of this Policy and under the ATU Student Code of Conduct, a student may also be defined as any individual who is a concurrently enrolled high school student.
- Title IX Coordinator is at least one official designated by ATU to ensure compliance with Title IX and ATU's Title IX program. References to the Coordinator throughout this Policy may also encompass a designee of the Coordinator for specific tasks.
- Title IX Team refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

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<sup>15</sup> Not to be confused with a Mandated Reporter who is obligated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy. The ATU administrator designated to receive information from Responsible Employees may vary depending upon the type of alleged discrimination, harassment, or retaliation (e.g., on the basis of sex, on the basis of race, on the basis of disability).

## APPENDIX B: VIOLENCE RISK ASSESSMENT (VRA)

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A Violence Risk Assessment (VRA) is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other Behavioral Intervention Team (BIT) (sometimes also known as CARE teams) members.

A VRA occurs in collaboration with the BIT, CARE, and/or threat assessment team and must be understood as an on-going process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

1. An appraisal of risk factors that escalate the potential for violence
2. A determination of stabilizing influences that reduce the risk of violence
3. A contextual analysis of violence risk by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence
4. The application of intervention and management approaches to reduce the risk of violence

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the CARE Team. The CARE Team will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case.

The assessor(s) will follow the process for conducting a violence risk assessment as outlined in the CARE Team Policy and Procedures and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels.

Some examples of formalized approaches to the VRA process include: The NaBITA Risk Rubric<sup>16</sup>, The Structured Interview for Violence Risk Assessment (SIVRA-35)<sup>17</sup>, Violence Risk Assessment of the Written Word (VRAWW)<sup>18</sup>, Workplace Assessment of Violence Risk (WAVR-21)<sup>19</sup>, Historical Clinical Risk Management (HCR-20)<sup>20</sup>, and MOSAIC<sup>21</sup>.

The VRA is conducted independently from the Title IX process, informed by it, but free from outcome pressure. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The CARE Team member(s) conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to health and/or safety of an individual or the community.

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<sup>16</sup> [www.nabita.org](http://www.nabita.org)

<sup>17</sup> [www.nabita.org/resources/assessment-tools/sivra-35/](http://www.nabita.org/resources/assessment-tools/sivra-35/)

<sup>18</sup> <https://www.nabita.org/training/vraww/>

<sup>19</sup> [www.wavr21.com](http://www.wavr21.com)

<sup>20</sup> <http://hcr-20.com/>

<sup>21</sup> <https://www.mosaicmethod.com/>

## APPENDIX C: PROCESS B

It is the policy of ATU to maintain a University community as a place of study and work for students, staff, and faculty, free of harassment and discrimination. All students, staff, and faculty should be aware both that ATU is concerned and prepared to act to prevent and correct such behavior.

ATU may use Process B of this Policy for all protected-characteristic discrimination complaints, except for gender discrimination complaints that meet the qualifications to be heard under Process A in compliance with Title IX regulations published by the U. S. Department of Education in May 2020.

Please note the following:

- Process B is applicable for gender discrimination complaints when the Title IX Coordinator determines Process A is inapplicable, or offenses subject to Process A have been dismissed.
- If Process A is applicable, Process A must be applied in lieu of Process B.
- ATU can substitute any alternative process instead of Process B, if desired.
- In compliance with federal law, VAWA Section 304 requirements apply to Process B or any alternative process for reports that fall under VAWA.
- Title IX requirements outside of Section 106.30 (based on the original 1975 regulations, etc.) may also be applicable to Process B.

### PROCESS B: RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE EQUAL OPPORTUNITY, HARASSMENT (SEXUAL MISCONDUCT), AND NONDISCRIMINATION

ATU will act on complaints of alleged violation(s) of the Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures that is received by the Title IX Coordinator and/or the AA/EEO Officer, as articulated in the process outlined in this document.

The procedures described below apply to all allegations of harassment, discrimination, and/or retaliation on the basis of protected characteristic status involving students, staff, faculty members, or third parties.

These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing, discriminatory, and/or retaliatory conduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this Policy will be addressed through the procedures elaborated in the respective student, faculty, and staff handbooks.

#### 1. Filing a Complaint

Formal Complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- A. File a written Formal Complaint with the Title IX Coordinator and/or the AA/EEO Officer<sup>22</sup>
- B. Report online, using the reporting form posted at [https://cm.maxient.com/reportingform.php?ArkansasTechUniv&layout\\_id=2](https://cm.maxient.com/reportingform.php?ArkansasTechUniv&layout_id=2). Anonymous reports are accepted but can give rise to a need to investigate to determine if the parties can be identified. If not, no further formal action is taken, though measures intended to protect the community may be enacted. ATU tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report that does not identify the Complainant.

Because reporting carries no obligation to initiate a formal response, and because ATU respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of confidentiality by making a report that allows ATU to discuss and/or provide supportive measures. As used in this Policy, the term “Formal Complaint” means a document or electronic submission (such as by electronic mail or through an online portal provided by ATU for this purpose) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that ATU investigate the allegations. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator and/or the AA/EEO Officer will contact the Complainant to ensure that it is filed correctly.

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<sup>22</sup> If circumstances require, the President will designate another person to oversee the process below should an allegation be made about the Title IX Coordinator and/or AA/EEO Officer or should they be otherwise unavailable or unable to fulfill their duties.

An individual who believes that he or she has been subjected to discrimination, harassment, and/or retaliation should contact the Title IX Coordinator and/or the AA/EEO Officer who will review the facts presented.

The individual, if they are a faculty member, may additionally contact the Faculty Welfare Committee representative. No person shall be subject to restraints, interference, or reprisal for action taken in good faith to report or to seek advice in matters of discrimination, harassment, and/or retaliation.

## **2. Initial Assessment**

Following receipt of a Formal Complaint, the Title IX Coordinator and/or the AA/EEO Officer engages in an initial assessment, typically within one to five (1-5) business days. The steps in an initial assessment can include those listed below.

### **A. Complainant's Initial Meeting with the Title IX Coordinator or AA/EEO Officer**

The Title IX Coordinator or AA/EEO Officer will contact the Complainant to schedule an initial meeting. If the Complainant is not the alleged victim, the Title IX Coordinator or AA/EEO Officer also will contact the alleged victim as soon as possible to schedule an initial meeting. All mentions of the "Complainant" in items 1-7 of this subsection also apply to the alleged victim if the Complainant is not the alleged victim. At this initial meeting (or these initial meetings, in the case of a Complainant who is not the alleged victim), the Title IX Coordinator or AA/EEO Officer will, as applicable:

1. Provide the Complainant a copy of this Policy;
2. If not already submitted, request that the Complainant submit a written Formal Complaint which the Complainant may, if they agree 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;
3. Review the ATU First Conversation Checklist;
4. Ensure the Complainant is aware of the right to have an Advisor
5. Explain processes for Informal Resolution and Formal Complaint Resolution of the Complaint;
6. Explain the steps involved in an investigation;
7. Discuss confidentiality standards and concerns with the Complainant;
8. Determine whether the Complainant wishes to pursue a resolution (informal or formal) through ATU, or no resolution of any kind;
9. Discuss non-retaliation policy;
10. Discuss with the Complainant, as appropriate, possible supportive measures that can be provided to the Complainant, at no cost, during the pendency of the investigative and resolution processes. ATU may implement such measures if requested, appropriate, and reasonably available, whether a complaint has been filed or not. Supportive measures may include, but are not limited to:
  - Referral to counseling, medical, and/or other healthcare services
  - Referral to the Employee Assistance Program
  - Referral to community-based service providers
  - Visa and immigration assistance
  - Student financial aid counseling
  - Education to the institutional community or community subgroup(s)
  - Altering campus housing assignment(s)
  - Altering work arrangements for employees or student-employees
  - Safety planning
  - Providing campus safety escorts
  - Providing transportation accommodations
  - Implementing contact limitations (no contact directives) between the parties
  - Academic support, extensions of deadlines, or other course/program-related adjustments
  - Campus ban letters
  - Timely warnings
  - Class schedule modifications, withdrawals, or leaves of absence
  - Increased security and monitoring of certain areas of the campus
  - Any other actions deemed appropriate by the Title IX Coordinator or the AA/EEO Officer

## **B. Respondent's Initial Meeting with the Title IX Coordinator or AA/EEO Officer**

If the Complainant wishes to pursue an informal or formal resolution through ATU or if the ATU otherwise deems that a further investigation is warranted, as soon as is reasonably practicable after the Title IX Coordinators or the AA/EEO Officer's initial meeting with the Complainant (and if applicable, the alleged victim), the Title IX Coordinator or AA/EEO Officer will schedule an initial meeting with the Respondent. During the initial meeting with the Respondent, the Title IX Coordinator or the AA/EEO Officer will, as applicable:

1. Provide Respondent with a copy of the Formal Complaint;
2. Provide Respondent with a copy of this Policy;
3. Review the ATU First Conversation Checklist;
4. Ensure the Respondent is aware of the right to have an Advisor;
5. Explain the ATU's procedures for Informal Resolution Process and Formal Complaint Resolution Process of the Complaint(Share option being pursued by Complainant);
6. Explain the steps involved in an investigation;
7. Discuss confidentiality standards and concerns with the Respondent;
8. Discuss non-retaliation policy;
9. Discuss with the Respondent, as appropriate, possible supportive measures that can be provided, at no cost, during the pendency of the investigative and resolution processes. ATU may implement such measures if requested, appropriate, and reasonably available, whether a complaint has been filed or not. Supportive measures may include, but are not limited to:
  - Referral to counseling, medical, and/or other healthcare services
  - Referral to the Employee Assistance Program
  - Referral to community-based service providers
  - Visa and immigration assistance
  - Student financial aid counseling
  - Education to the institutional community or community subgroup(s)
  - Altering campus housing assignment(s)
  - Altering work arrangements for employees or student-employees
  - Safety planning
  - Providing campus safety escorts
  - Providing transportation accommodations
  - Implementing contact limitations (no contact directives) between the parties
  - Academic support, extensions of deadlines, or other course/program-related adjustments
  - Campus ban letters
  - Timely warnings
  - Class schedule modifications, withdrawals, or leaves of absence
  - Increased security and monitoring of certain areas of the campus
  - Any other actions deemed appropriate by the Title IX Coordinator or the AA/EEO Officer
10. After the Title IX Coordinator or AA/EEO Officer provides the Respondent with a copy of the Formal Complaint, the Respondent has five (5) business days to respond, in writing, to the Formal Complaint submitted by the Complainant. This information is used as part of the Title IX Coordinator's or AA/EEO Officer's initial assessment of the alleged misconduct.

## **C. Violence Risk Assessment**

In some cases, the Title IX Coordinator and/or the AA/EEO Officer may determine that a Violence Risk Assessment (VRA) should be conducted by the CARE Team as part of the initial assessment. A VRA can aid in nine (9) critical and/or required determinations, including:

1. Interim suspension of a Respondent who is a threat to an individual or the community's physical health/safety;
2. Whether the Title IX Coordinator and/or the AA/EEO Officer should pursue a Complaint absent a willing/able Complainant;
3. Whether the scope of the investigation should include an incident, and/or pattern of misconduct, and/or climate of hostility/harassment;
4. To help identify potentially predatory conduct;

5. To help assess/identify grooming behaviors;
6. Whether it is reasonable to try to resolve a complaint through Informal Resolution, and, if so, what approach may be most successful;
7. Whether to permit a voluntary withdrawal by the Respondent;
8. Assessment of appropriate sanctions/remedies (to be applied post-hearing);
9. Whether a Clery Act Timely Warning or campus ban is needed.

More about the ATU's process for VRA can be found in Appendix B.

### 3. Resolution Options

Based on the initial assessment, ATU will initiate one of three responses:

- **Supportive Response** – measures to help restore the Complainant's education/work access, as described in the Policy.
- **Informal Resolution Process** – may be used for less serious offenses and only when all parties agree to Informal Resolution, or when the Respondent is willing to accept responsibility for violating policy.
- **Formal Complaint Resolution Process** – investigation of alleged policy violation(s) and recommended finding, subject to a determination by the Decision-Makers and the opportunity to appeal.

The process followed considers the preference of the parties but is ultimately determined at the discretion of the Title IX Coordinator or the AA/EEO Officer. At any point during the initial assessment or formal investigation, if the Title IX Coordinator or the AA/EEO Officer determines that reasonable cause does not support the conclusion that this Policy has been violated, the process will end, and the parties will be notified. The Complainant may request that the Title IX Coordinator or the AA/EEO Officer review the reasonable cause determination and/or re-open the formal investigation. This decision lies in the sole discretion of the Title IX Coordinator or the AA/EEO Officer, but the request is usually only granted in extraordinary circumstances.

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with ATU Policy. While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose but are encouraged to discuss with their Advisors first before doing so.

#### Informal Resolution Process

Informal Resolution is applicable when the parties voluntarily agree to resolve the matter through Informal Resolution, when the Respondent accepts responsibility for violating Policy, or when the Title IX Coordinator and/or the AA/EEO Officer can resolve the matter informally by providing remedies to resolve the situation. The Title IX Coordinator and/or the AA/EEO Officer has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

It is not necessary to pursue Informal Resolution first in order to pursue Formal Complaint Resolution Process, and any party participating in Informal Resolution can stop the process at any time and request the Formal Complaint Resolution Process. Further, if an Informal Resolution fails after the resolution is finalized, Formal Complaint Resolution Process may be pursued.

#### A. Informal Resolution Remedies

ATU methods for resolving complaints informally include, but are not limited to:

- Mediating between the Complainant and the Respondent
- Aiding in the modification of the situation in which the alleged misconduct occurred
- Assisting a department or division with the resolution of a situation
- Arranging for a documented meeting between the Respondent and an ATU official that involves, at a minimum, a discussion of the requirements of the Policy

Institutionally imposed sanctions are not possible as the result of this process, though the parties may agree to accept terms and/or appropriate remedies.



## **B. Respondent Accepts Responsibility for Alleged Violations**

At any time prior to the date of the hearing, the Respondent may elect to acknowledge their actions and take responsibility for the alleged conduct. In such a situation, the Title IX Coordinator or the AA/EEO Officer will propose sanction(s). If the Complainant and the Respondent agree to such proposed sanction(s), then the complaint will be resolved without a hearing and without any further rights of appeal by any party. If either the Complainant or the Respondent objects to such proposed sanction(s), then the Hearing Board will convene for the exclusive purpose of determining a sanction(s), which determination may be subject to appeal as outlined in this Policy.

### **Formal Complaint Resolution Process**

The Formal Complaint Resolution Process can be pursued at any time during the process for any behavior for which the Respondent has not accepted responsibility that would constitute conduct covered by the Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy if proven. The Formal Complaint Resolution Process starts with a thorough, reliable, and impartial investigation and concludes with a hearing.

The Title IX Coordinator or the AA/EEO Officer will provide notice of the allegations and investigation to the Respondent upon commencement of the Formal Complaint Resolution Process. This notice is also copied to the Complainant. Notification will be made in writing, include a meaningful summary of the allegations, policies allegedly violated, if known at the time, and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official ATU records, or emailed to the parties' ATU-issued or designated email account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become clearer.

Once the decision is made to commence an investigation, the Title IX Coordinator appoints Investigator(s) to conduct the investigation. The Title IX Coordinator or the AA/EEO Officer will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator and/or the AA/EEO Officer will determine whether the concern is reasonable and supportable. If so, another Investigator(s) will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the Title IX Coordinator or the AA/EEO Officer, concerns should be raised with Dr. Keegan Nichols, Vice President for Student Affairs, or the Vice President for Administration and Finance respectively.

ATU aims to complete all investigations within a sixty (60) business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator or the AA/EEO Officer, with notice to the parties as appropriate. Investigations can take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. ATU will make a good faith effort to complete the investigation as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation. ATU may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke ATU's resolution process are being investigated by law enforcement. ATU will promptly resume its investigation and resolution process once notified by law enforcement that the initial evidence collection process is complete. ATU action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence on the record.

## **4. Resolution Process Pool**

The Formal Complaint Resolution Process relies on a pool of officials ("Pool") to carry out the process.

The list of members and a description of the Pool can be found at <https://www.atu.edu/titleix/pool.php>. Members of the Pool are trained annually in all aspects of the resolution process and can serve in any of the following roles, at the direction of the Title IX Coordinator and the AA/EEO Officer:

- To act as an Advisor to the parties

- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-Maker regarding the complaint

The Title IX Coordinator and the AA/EEO Officer, in consultation with the President, appoints the Pool, which acts with independence and impartiality.

The Pool members receive annual training jointly. This training includes, but is not limited to:

- The scope of ATU's Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures
- How investigation and hearings are conducted that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- Trauma-informed practices pertaining to investigations and resolution processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by ATU with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How grievance processes are conducted including hearings, appeals, and Informal Resolution processes
- How to serve impartially, by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Any technology to be use
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and discrimination allegations
- Recordkeeping

Specific training is also provided for other members of the Title IX staff, including Appeal Decision-Makers, intake personnel, Investigators, and Chairs. All Pool members are required to attend this annual training.

The Hearing Panel will have three (3) members. The composition of the Hearing Panel will be two (2) faculty or staff members and will be chaired by a representative from Student Affairs or Human Resources. The pool includes those representatives who can rotate, upon appointment to serve in either the Advisor or Decision-Maker role.

Pool members are usually appointed to one-year terms, which are renewable. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator or the AA/EEO Officer.

## 5. Counterclaims

ATU permits the filing of counterclaims, but uses the initial assessment, described above, to assess whether the allegations are made in good faith. If they are, the allegations will be processed using the resolution procedures in this Policy, typically after resolution of the underlying allegation.

A delay in the processing of counterclaims is permitted, accordingly. Occasionally, allegations and counterclaims can be resolved through the same investigation, at the discretion of the Title IX Coordinator or the AA/EEO Officer. When counterclaims are not made in good faith, they will be considered retaliatory, and may constitute a violation of this Policy.

## 6. Advisors

The parties may each have one (1) Advisor<sup>23</sup> of their choice present with them for all meetings and interviews within the resolution processes, if they so choose. The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available<sup>24</sup>.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-Maker(s).

### A. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the ATU community.

The Title IX Coordinator and/or the AA/EEO Officer will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from ATU, the Advisor will be trained by ATU and be familiar with ATU's resolution process. If the parties choose an Advisor from outside the pool of those identified by ATU, the Advisor may not have been trained by ATU and may not be familiar with ATU policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing. A student Respondent alleged of a serious violation and the Complainant alleging a serious violation has the right to be represented by an advisor they choose and the advisor may fully participate during any disciplinary proceedings through the conclusion of any appellate process.

### B. Advisors in Hearings/ATU-Appointed Advisor

A form of indirect questioning is allowed during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, ATU will appoint a trained Advisor for the limited purpose of conducting any questioning of the parties or witnesses.

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<sup>23</sup> This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally)

<sup>24</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

### **C. Advisor's Role**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

ATU cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, ATU is not obligated to provide an attorney.

### **D. Pre-Interview Meetings**

Advisors and their advisees may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and ATU's policies and procedures.

### **E. Advisor Violations of ATU Policy**

All Advisors are subject to the same ATU policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by ATU. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address ATU officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee<sup>25</sup> during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-Maker(s) except during a hearing proceeding, during questioning.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this Policy, or who refuses to comply with ATU's established rules of decorum for the hearing, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended or other appropriate measures implemented, including ATU requiring the party to use a different Advisor or providing a different ATU-appointed Advisor. Subsequently, the Title IX Coordinator and/or the AA/EEO Officer will determine how to address the Advisor's non-compliance and future role.

### **F. Sharing Information with the Advisor**

ATU expects that the parties may wish to have ATU share documentation and evidence related to the allegations with their Advisors.

ATU provides a consent form that authorizes ATU to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Title IX Coordinator and/or the AA/EEO Officer or provide similar documentation demonstrating consent to a release of information to the Advisor before ATU is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, ATU may comply with that request at the discretion of the Title IX Coordinator and/or the AA/EEO Officer.

### **G. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by ATU. ATU may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by ATU's privacy expectations.

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Subject to the state law provisions or ATU policy above.

## **H. Expectations of an Advisor**

ATU generally expects an Advisor to adjust their schedule to allow them to attend ATU meetings/interviews/hearings when planned, but ATU may change scheduled meetings/interviews/hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

ATU may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

## **I. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator and/or the AA/EEO Officer if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator and/or the AA/EEO Officer of the identity of their hearing Advisor at least two (2) business days before the hearing, if the Advisor has changed after initial selection/assignment

## **7. Investigation**

Both the Complainant and the Respondent will be individually interviewed as a part of the investigation as will any witnesses or persons who have information related to the Formal Complaint. Documents relevant to the Formal Complaint will also be examined. A student Respondent alleged of a serious violation will be provided a copy of Act 470, the Arkansas Student Due Process and Protection Act, at the inception of the disciplinary matter and will not be questioned by the University until at least twenty-four (24) hours after the receipt of Act 470 provided that campus law enforcement's ability to investigate a possible criminal violation is not impeded.

The Investigator(s) typically take the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Assist, if needed, in identifying all policies implicated by the alleged misconduct
- Assist the Title IX Coordinator or the AA/EEO Officer, if needed, with conducting an initial assessment to determine if there is reasonable cause to believe the Respondent has violated policy
- If there is insufficient evidence to support reasonable cause, the process is closed with no further action
- Commence a thorough, reliable, and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all parties and witnesses
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- Interview all relevant individuals and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, summarize for the parties the list of witnesses whose information will be used to render a finding within the draft investigation report
- Write a comprehensive investigation report fully summarizing the investigation and all evidence
- Provide parties with a copy of the draft investigation report when it is completed
- Provide each party with a full and fair opportunity to respond to the report in writing within ten (10) business days and incorporate that response into the report
- Investigator(s) may choose to respond in writing in the report to the responses of the parties, and/or to share

the responses between the parties for their responses, while also ensuring that they do not create a never-ending feedback loop

- Gather, assess, and synthesize evidence but make no conclusion and render no recommendations as part of their report
- Share the draft report with the Title IX Coordinator or the AA/EEO Officer for review and feedback
- Provide the final report to the Title IX Coordinator or the AA/EEO Officer

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

ATU will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

## **8. Resolution Timeline**

ATU will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal (if any), which can be extended as necessary for appropriate cause by the Title IX Coordinator or the AA/EEO Officer, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

## **9. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, the AA/EEO Officer, Investigator(s), and Decision-Maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator or the AA/EEO Officer will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator or the AA/EEO Officer, concerns should be raised with Dr. Keegan Nichols, Vice President for Student Affairs, at [knichols@atu.edu](mailto:knichols@atu.edu) or the Vice President for Administration and Finance respectively

The Formal Complaint Resolution Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

ATU operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent acknowledges responsibility or is determined to be responsible for a policy violation by the preponderance of the evidence standard.

## **10. Additional Details of the Investigation Process**

### **A. Witness responsibilities**

Witnesses (as distinguished from the parties) who are employees of ATU are expected to cooperate with and participate in ATU's investigation and resolution process. Student witnesses and witnesses from outside the ATU community are encouraged to cooperate with ATU investigations and to share what they know about a complaint. Failure to participate may hinder ATU's ability to stop, remedy, and prevent the described forms of discrimination and harassment.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. ATU will take appropriate steps to reasonably ensure the security/privacy of remote interviews. Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

## **B. Remote processes**

Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator(s) or Decision-Makers determine that timeliness or efficiency dictates a need for remote interviewing. Where remote technologies are used, ATU makes reasonable efforts to ensure privacy, and that any technology does not work to the detriment of any party or subject them to unfairness.

## **C. Recording**

No unauthorized audio or video recording of any kind is permitted during the resolution process. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

Recordings of interviews are not provided to the parties or witnesses, but the parties and/or witnesses will have the ability to review the summary of their interview once the investigator(s) has completed the summary document.

## **D. Evidence**

Neither the investigation nor the hearing will consider: (1) incidents not relevant or not directly related to the possible violation(s), unless they evidence a pattern; or (2) questions and evidence about the Complainant's sexual predisposition; or (3) questions and evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation and the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct. Investigator(s) and/or Decision-Makers may elect to decline hearing from witnesses solely classified as character witnesses.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction(s) upon a determination of responsibility because ATU uses a progressive discipline system. This information is only considered at the sanctioning stage of the process.

The parties may each submit a written impact and/or mitigation statements to the Title IX Coordinator or the AA/EEO Officer prior to the hearing for the consideration of the Decision-Maker(s) at the sanctioning stage of the process if a determination of responsibility is reached.

After post-hearing deliberation, the Decision-Makers render a determination based on the preponderance of the evidence standard, whether it is more likely than not that the Respondent violated the Policy as alleged.

## **11. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator or the AA/EEO Officer will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation, when the final investigation report is transmitted to the parties and the Decision-Makers, unless all parties and the Decision-Makers agree to an expedited timeline. The Title IX Coordinator or the AA/EEO Officer will select appropriate Decision-Makers from the Pool.

## **12. Hearing Panel Composition**

ATU will designate a three (3) member panel from the Pool, at the discretion of the Title IX Coordinator or AA/EEO Officer. One of the three (3) members will be appointed as Chair by the Title IX Coordinator or the AA/EEO Officer.

The Decision-Maker(s) will not have had any previous involvement with the complaint. The Title IX Coordinator or AA/EEO Officer may elect to have an alternate from the Pool sit in throughout the resolution process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-Makers. Those who are serving as Advisors for any party may not serve as Decision-Makers in that matter.

The Title IX Coordinator or AA/EEO Officer may not serve as a Decision-Maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this facilitator role. The hearing will convene at a time and venue determined by the Chair.

### **13. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator, AA/EEO Officer, or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice may contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-Makers and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator, AA/EEO Officer, or the Chair at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-Maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator or the AA/EEO Officer at least five (5) business days prior to the hearing.
- An invitation to each party to submit to the Chair the questions or topics (the parties and their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendation for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for a reconsideration based on any new information or testimony offered at the hearing. The Chair will document and share their rationale for any relevance determination.
- Notification in advance of the hearing of any witnesses that do not need to be present if the Chair has determined their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing and both parties are in full agreement.
- Information on how the hearing will be recorded and how the parties can access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator or the AA/EEO Officer if they wish to conduct cross-examination and do not have an Advisor, and ATU will appoint one. Each party must have an Advisor present if they intend to cross-examine others. There are no exceptions.
- A copy of all the materials provided to the Decision-Makers about the complaint, unless they have already been provided.
- An invitation to each party to submit to the Title IX Coordinator or the AA/EEO Officer an impact and/or mitigation statement pre-hearing that the Decision-Makers will review during any sanction determination.
- An invitation to contact the Title IX Coordinator or AA/EEO Officer to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by ATU and remain within the 60-90 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). Employees who do not have 12-month contracts are still expected to participate in resolution proceedings that occur during months between contracts.



#### **14. Hearing Procedures**

At the hearing, the Decision-Makers have the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, if needed, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent), Advisors to the parties, any called witnesses, and anyone providing authorized accommodations, interpretation, and/or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-Makers and the parties, and will then be excused. The Investigator(s) may remain present for the duration of the hearing.

#### **15. Joint Hearings**

In hearings involving more than one Respondent and/or involving more than one Complainant who has accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator or the AA/EEO Officer may permit the investigations and/or hearings pertinent to each Respondent or complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each complaint with respect to each alleged policy violation.

#### **16. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. The Chair then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator or the AA/EEO Officer. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

#### **17. Investigator(s) Presentation of Final Investigation Report**

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-Makers and the parties (through their Advisors). The Investigator(s) may be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-Makers should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and Advisors and parties will refrain from discussion of or questions for Investigator(s) about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

#### **18. Testimony and Questioning**

Once the Investigator(s) presents the report and responds to questions, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-Makers and then by the parties through their Advisors. Parties will have the opportunity to make an opening and a closing statement.

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider the question, and the Chair will determine whether the question will be

permitted, disallowed, or rephrased.

The Chair may invite explanation or persuasive statements regarding relevance with the Advisors if the Chair so chooses. The Chair may decide to call a recess to review relevancy and other arguments. During a recess, the Chair may choose to confer with the Title IX Coordinator. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with the Title IX Coordinator, the AA/EEO Officer, and/or legal counsel on any questions of admissibility. The Chair may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-Maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

## **19. Decision**

The Decision-Makers will deliberate in closed session to determine whether the Respondent is responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-Makers may then consider the previously submitted party impact and/or mitigation statements in determining appropriate sanction(s).

The Decision-Makers will review the statements and any conduct history provided by the Title IX Coordinator and/or the AA/EEO Officer and will determine the appropriate sanction(s).

The Chair will, in collaboration with the other Decision-Makers, then prepare a written deliberation statement and deliver it to the Title IX Coordinator or AA/ EEO Officer.

The statement must be submitted to the Title IX Coordinator or AA/EEO Officer within two (2) business days of the end of deliberations, unless the Title IX Coordinator or AA/EEO Officer grants an extension. If an extension is granted, the Title IX Coordinator or AA/EEO Officer will notify the parties.

## **20. Notice of Outcome**

Using the deliberation statement, the Chair will work with the Title IX Coordinator or the AA/EEO Officer to prepare a Notice of Outcome. The Chair will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within three (3) business days of receiving the Decision-Makers' deliberation statement as permitted to share under state or federal law.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official ATU records, or emailed to the parties' ATU-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will detail when the determination is considered final. Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party.

## **21. Sanctions**

Factors considered when determining any sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination,

harassment, and/or retaliation

- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-Makers

The sanction(s) will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by outside authorities.

If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a grievance process at any time, and/or referring that information to another process for resolution.

#### **A. Student Sanctions**

The following are the common sanctions that may be imposed upon students or registered student organizations singly or in combination<sup>26</sup>:

- Warning: A formal statement that the conduct was unacceptable and a warning that further violation of any ATU policy, procedure, or directive will result in more severe sanctions/responsive actions.
- Probation: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or registered student organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated.
- Loss of Privileges: Suspension or denial of rights and privileges for a designated period of time, and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact directives, and/or other measures deemed appropriate.
- Monetary Fines: A penalty imposed involving the collection of fees from the student.
- Restitution: Compensation for loss, injury, damage to or misappropriation of ATU property. This may take the form of appropriate service and/or monetary or material replacement.
- Educational Sanctions: Educational sanctions may be assigned that promote learning and understanding. These sanctions may be developed as necessary by a conduct body including, but not limited to:
  - Sponsorship of an education program;
  - Attendance at educational programs;
  - Requirement of members to complete educational training programs;
  - Attendance in conflict management training;
  - Educational service hours;
  - Attendance in ethics workshop/training;
  - Reflective exercises.
- Discretionary Sanctions: Work assignments, service to ATU, or other related sanctions.
- Holds: Withholding of grades, the right to register for classes, official transcript, and/or degree.
- Housing Suspension: Separation of the student from ATU housing for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.
- Housing Expulsion: Permanent separation of the student from ATU housing.

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<sup>26</sup> Subject to ATU's RSO Code of Conduct sanctions.

- University Suspension: Termination of student status for a definite period of time and revocation of rights to be on campus for any reason or to attend ATU-sponsored events. Conditions for readmission may be specified. Students who return from suspension are automatically placed on probation for a definite period of time.
- University Expulsion: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend ATU-sponsored events.
- Loss of Scholarship: Scholarships awarded by ATU or ATU-related programs may be partially or fully revoked.
- Withholding Diploma: ATU may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- Revocation of Admission or Degree: ATU reserves the right to revoke admission or a degree previously awarded from ATU for fraud, misrepresentation, and/or other violation of ATU policies, procedures, or directives in obtaining admission or the degree, or for other serious violations committed by a student prior to graduation.
- Organizational Sanctions: Censure, Disciplinary Probation, Deferred Suspension, Disciplinary Suspension, Indefinite Dismissal, Restrictions, Educational Sanctions, Restitution, and Monetary Fines.
- Other Actions: In addition to or in place of the above sanctions, ATU may assign any other sanctions as deemed appropriate.

## **B. Employee Sanctions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- Warning – Verbal or Written
- Performance Improvement Plan/Management Process
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Transfer/Reassignment/Assignment to a New Supervisor
- Administrative Leave/Suspension with Pay
- Administrative Leave/Suspension without Pay
- Termination
- Other Actions: In addition to or in place of the above sanctions, ATU may assign any other sanctions as deemed appropriate.

## **22. Withdrawal or Resignation While Charges are Pending**

**Students:** If a student has an allegation pending for violation of the Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures, ATU may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from ATU, the resolution process ends, as ATU no longer has disciplinary jurisdiction over the

withdrawn student.

However, ATU will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to ATU. Such exclusion applies to all campuses of ATU. A hold will be placed on their ability to be readmitted. They may also be barred from ATU property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to ATU unless and until all sanctions have been satisfied.

**Employees:** Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as ATU no longer has disciplinary jurisdiction over the resigned employee.

The employee who resigns with unresolved allegations pending is not eligible for rehire at ATU or any campus of ATU, and the records retained by the Title IX Coordinator and/or the Director of Human Resources and AA/EEO Officer will reflect that status.

All ATU responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## **23. Appeals**

Any party may submit a written request for appeal ("Request for Appeal") to the Title IX Coordinator or the AA/EEO Officer within five (5) business days of the delivery of the written finding of the Decision-Maker(s). A student Respondent found responsible for a serious violation has twenty-five (25) days to submit an appeal.

The Request for Appeal will be forwarded to the appropriate Appeal Decision-Maker(s) for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

### **Respondent is a student or non-faculty employee:**

Student appeals will be decided by the Vice President for Student Affairs. Employee appeals will be decided by the appropriate Vice President or Athletic Director.

### **Respondent is a faculty member:**

If the Respondent is a faculty member with tenure or with a special or probationary appointment, the procedures set forth in the Academic Termination Policies and Procedures section of the Faculty Handbook shall govern the Respondent's appeal.

Appeals are limited to the following grounds:

1. A procedural irregularity that affected the outcome of the matter
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
3. The Title IX Coordinator or AA/EEO Officer, Investigator(s), or Decision-Makers had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Decision-Maker(s) and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Decision-Maker(s) will notify all parties and their Advisors, the Title IX Coordinator or AA/EEO Officer, and, when appropriate, the Investigator(s) and/or the original Decision-Makers.

All other parties and their Advisors, the Title IX Coordinator or the AA/EEO Officer, and, when appropriate, the Investigator(s) and/or the original Decision-Makers will be mailed, emailed, and/or provided a hard copy of the Request for Appeal with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Appeal Decision-Maker(s) to all parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that will be reviewed to determine if it meets the grounds of this Policy by the Appeal Decision-Maker(s) and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator or the AA/EEO Officer, the Investigator(s), and/or original Decision-Makers, as necessary, who will submit their responses, if any, in three (3) business days, which will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

Neither party may submit any new requests for appeal after this time period. The Appeal Decision-Maker(s) will collect any additional information needed and all documentation regarding the approved grounds for appeal and the subsequent responses and will render a decision in no more than five (5) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which ATU is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent ATU is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official ATU records, or emailed to the parties' ATU-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Any sanctions imposed as a result of the hearing are stayed (i.e., not implemented) during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within 48 hours of implementation.

ATU may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

#### **Appeal Considerations**

- Appeals are not intended to provide for a full rehearing of the allegation(s). In most cases,

appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

- Decisions on appeal are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- An appeal is not an opportunity for the Appeal Decision-Maker to substitute their judgment for that of the original Decision-Makers merely because they disagree with the finding and/or sanction(s).
- The Appeal Decision-Maker may consult with the Title IX Coordinator or the AA/EEO Officer on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained. Appeals granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-Makers for reconsideration.
- Once an appeal is decided, the outcome is final. Further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where error cannot be cured by the original Investigator(s) and/or the Decision-Makers (as in cases of bias), the Appeal Decision-Makers may order a new investigation and/or hearing with new Investigator(s) and/or Decision-Makers.
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to ATU or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

#### **24. Vice President for Student Affairs Certification**

At the conclusion of a disciplinary proceeding or an appeal that involves an alleged serious violation by a student Respondent, the Vice President for Student Affairs will certify that the substantial rights of student complainants and respondents established by Act 470, the Arkansas Student Due Process and Protection Act, have been followed. The certification will be maintained in the administrative file.

#### **25. Long-Term Remedies/Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator or the AA/EEO Officer may implement long-term remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator or the AA/EEO Officer, long-term remedies may also be provided to the Complainant even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator or the AA/EEO Officer will address any remedies to be provided by ATU to the Respondent.

**26. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/responsive/corrective action(s), including suspension, expulsion, and/or termination from ATU. A hold will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator or the AA/EEO Officer.

**27. Recordkeeping**

ATU will maintain for a period of at least seven (7) years records of complaints filed under Process B. ATU will also maintain any and all records in accordance with state and federal laws.

**28. Disabilities Accommodation in the Resolution Process**

ATU is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution process at ATU.

Anyone needing such accommodations or support should contact either Ashlee Leavell, Assistant Dean for Student Wellness and Deputy Title IX Coordinator, who coordinates services for students at [sleavell@atu.edu](mailto:sleavell@atu.edu) or Melissa Riffle, Director of Human Resources and AA/EEO Officer and Deputy Title IX Coordinator, who coordinates services for employees at [mriffle@atu.edu](mailto:mriffle@atu.edu). These individuals will review the request and, in consultation with the person requesting the accommodation, and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

**29. Revision**

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator and the AA/EEO Officer. ATU reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect.

The Title IX Coordinator or the AA/EEO Officer may make minor modifications to these procedures that do not materially jeopardize the fairness to be provided to any party, such as to accommodate summer schedules.

The Title IX Coordinator or the AA/EEO Officer may also vary procedures materially with notice (on the ATU website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedure.

Policy and procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred.

If government regulations change in a way that impacts this document, this document will be construed to comply with the most recent government regulations.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This Policy was implemented in August 2020.



## **Appendix D: Suggested Actions for Victims of Sexual Assault**

If you have experienced a form of sexual assault, please consider your options. ATU's first priority is to help you take steps to address your safety, medical needs, and emotional well-being. You are encouraged to take the following actions, as applicable, regardless of whether you have made a decision about whether to pursue a complaint at ATU or criminal charges.

### **1. Ensure Your Physical Safety.**

You may seek help from local law enforcement agencies by dialing 911.

### **2. Seek Medical Assistance and Treatment.**

Local options for medical care include the ATU Health and Wellness Center, Saint Mary's Regional Medical Center in Russellville, and Mercy Hospital in Ozark. Even if you do not believe you have urgent medical needs, it is crucial that you obtain medical attention as soon as possible after experiencing sexual misconduct to determine the possibilities of physical injury and to prevent or treat sexually transmitted infections.

The Health and Wellness Center at Arkansas Tech University can help survivors of sexual misconduct sort through their feelings and begin the recovery process. The professionals at Counseling Services are trained to provide crisis intervention on short term and emergency issues. Counseling Services can also provide referral services for outside providers, law enforcement, and Title IX. Staff in the Health and Wellness Center can provide:

- Counseling services (free for all students)
- Sexually transmitted infection testing and treatment
- Women's health services

Saint Mary's Regional Medical Center in Russellville and Mercy Hospital in Ozark offer many services 24/7 for survivors of sexual and interpersonal violence such as:

- Prevention and treatment of sexually transmitted infections as well as pregnancy prevention
- Forensic evidence collection such as DNA and injury documentation
- Screening for the presence of sedative drugs such as Rohypnol or GHB (date-rape drugs)

### **3. Preserve Evidence.**

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining orders/protective orders, and is particularly time-sensitive. Complainants should consider preserving evidence by taking the following actions:

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
  - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
  - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of e-mail and social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence including notes, gifts, etc. in place when possible.
- Save copies of any messages, to include those showing any request for no further contact.

- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

In cases of sexual assault, these additional actions should be considered:

- Seek forensic medical assistance at a local hospital, ideally within 96 hours of the incident (sooner is better), and this exam is paid for by the State of Arkansas. In Russellville, Saint Mary's Regional Medical Center is located at 1808 West Main Street. In Ozark, Mercy Hospital is located at 801 West River.
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence).
- Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

#### **4. Obtain Emotional Support.**

The ATU Health and Wellness Center can assist victims sort through their feelings and begin the recovery process. The professionals in Counseling Services are trained to provide crisis intervention on short term and emergency issues. Counseling Services can also provide referral services for outside providers and law enforcement. Counseling is free of charge to all students. In some instances, the law may require the disclosure of information shared by students with counselors. However, absent a legal mandate to the contrary, Counseling Services are strictly confidential, are not part of students' ATU records, and will not be reported to other ATU personnel.

#### **5. Obtain Information/Report Misconduct.**

You are encouraged to report incidents of sexual assault to ATU's Title IX Coordinator or other designated University individuals or offices as outlined in the Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures (even if you have filed a report directly with law enforcement). Further information about how to report sexual assault is provided in the Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures. ATU staff in the Title IX Office can help you access resources and can provide you with support and information, including information on the ATU's procedures for investigating and addressing instances of sexual assault.

## **IMPORTANT CONTACT INFORMATION**

### **ATU Resources**

#### **Title IX Office**

Russellville

Amy Pennington, AVP/Dean of Students and Title IX Coordinator  
479-968-0407

[apennington@atu.edu](mailto:apennington@atu.edu)

Doc Bryan Student Services Center, Suite 233  
Russellville, AR 72801

Ashlee Leavell, Assistant Dean for Student Wellness/Deputy Title IX Coordinator  
479-968-0302

[sleavell8@atu.edu](mailto:sleavell8@atu.edu)

Doc Bryan Student Services Center, Suite 141  
Russellville, AR 72801

Melissa Riffle, Director of Human Resources and AA/EEO Officer/Deputy Title IX Coordinator  
479-968-0396

[mriffle@atu.edu](mailto:mriffle@atu.edu)

Brown Building, Suite 420  
Russellville, AR 72801

### **Title IX Office**

Ozark

Mitzi Reano, Project/Program Specialist and Deputy Title IX Coordinator  
479-667-2117 ext. 6532

[mreano@atu.edu](mailto:mreano@atu.edu)

Technology and Academic Support Building, Room 154  
Ozark, AR 72949

### **Law Enforcement Resources**

In case of emergency, dial 911.

On Campus – Russellville: Assistance can be obtained 24 hours a day, 7 days a week, from the Arkansas Tech University Department of Public Safety located at 716 North El Paso Avenue and available by telephone at 479-968- 0222 or dialing 911.

On Campus – Ozark: Assistance can be obtained from 8 am to 5 pm, Monday through Friday by contacting Officer David Spicer, Public Safety Officer, located at the Collegiate Career Center, Room 100C, 1700 Helberg Lane or by telephone at 479-508-3359 or dialing 911.

### **Health and Wellness Center**

Counseling Services and Health Services are available to students on both the Russellville and Ozark campuses by calling the Health and Wellness Center at 479-968-0329 or visiting in-person in the Doc Bryan Student Services Center, Suite 119, Russellville, AR. For more information on the Health and Wellness Center please visit <https://www.atu.edu/hwc/>.

You may also contact a licensed counselor or health care provider directly. A contact list is provided below:

### **Counseling Services:**

Kristy Davis, LPC-S, Associate Dean for Student Wellness, [kdavis51@atu.edu](mailto:kdavis51@atu.edu)

Janis Taylor, LPC, Counselor, [jtaylor78@atu.edu](mailto:jtaylor78@atu.edu)

Hunter Bramlitt, LPC, Counselor, [jbramlitt@atu.edu](mailto:jbramlitt@atu.edu)

Leann Watson, LPC, Counselor, [lwatson12@atu.edu](mailto:lwatson12@atu.edu)

Dillon Webster, LAC, Counselor, [dwebster@atu.edu](mailto:dwebster@atu.edu)

### **Health Services:**

Robin Joslin, APRN, Nurse Practitioner, [rkoontz@atu.edu](mailto:rkoontz@atu.edu)

Kyle Wewers, APRN, Nurse Practitioner, [kwewers@atu.edu](mailto:kwewers@atu.edu)

Heather Stout, RN, Registered Nurse, [hstout1@atu.edu](mailto:hstout1@atu.edu)  
Cori Hinson, RN, Registered Nurse, [cpoore1@atu.edu](mailto:cpoore1@atu.edu)

### **Community Resources**

Saint Mary's Regional Medical Center  
1808 West Main Street, Russellville, AR 72801  
479-968-2841

Mercy Hospital  
801 West River, Ozark, AR 72949  
479-667-4138

#### **Victim Assistance Outreach Program**

The 5th Judicial District Prosecuting Attorney's Office's Victim Assistance Outreach Program provides assistance with:

- Orders of Protection
- Contacting Law Enforcement Agencies
- VINE (Victim Identification and Notification Everyday)
- Arkansas Crime Victims Reparations Program (assists with financial compensation, counseling, lost wages, and funeral expenses)
- Referrals to other community services such as the Ozark Rape Crisis Center, River Valley Shelter, and Crisis Intervention Center
- Information on the criminal court process

The Arkansas Victim Assistance Coordinator for Pope County can be reached at 479-968-8600 and the Coordinator for Johnson and Franklin County can be reached at 479-705-0579.

#### **Arkansas Coalition Against Sexual Assault**

The Arkansas Coalition Against Sexual Assault provides a 24-hour Sexual Assault Crisis Response Hotline. The hotline telephone number is 1-800-656-4673 and the website can be located at <https://www.arkcasa.org/>.

#### **Arkansas Coalition Against Domestic Violence**

The U. S. Hotline number is 1-800-799-7233. List of domestic violence shelters throughout the state: <https://www.domesticpeace.com/>

#### **Ozark Rape Crisis Center**

With locations in Clarksville and Russellville, Arkansas, this entity provides 24-hour crisis intervention. The hotline telephone number is 1-800-818-1189 and the website can be located at <https://www.ozarkrapecrisiscenter.org>.

#### **National Domestic Violence Hotline**

24-hour hotline: 1-800-799-(SAFE) 7233  
24-hour live chat: [www.thehotline.org](http://www.thehotline.org)

#### **National Sexual Assault Hotline**

24-hour hotline: 1-800-656-4673  
24-hour online hotline: <https://hotline.rainn.org/online>