

APPENDIX FOUR: UNIVERSITY OF ARKANSAS SCHOOL OF LAW PROCEDURES FOR CASES INVOLVING TITLE IX MATTERS

Sexual harassment of students is a violation of Title IX of the Education Amendments of 1972. Title IX prohibits discrimination based on sex in education programs and activities. Discrimination based on sex can include, but is not limited to, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence and Stalking, as defined by the Clery Act. For all Title IX matters in which the complainant (or the alleged victim if different from the complainant) and the respondent are students, the following proceedings shall apply (for all other Title IX matters, i.e., student complaints against faculty, staff, or third parties, see the University of Arkansas Campus Policy on Sexual Harassment (Fayetteville Policy Number 418.0) and Campus Policy on Sexual Assault (Fayetteville Policy Number 418.1).

This policy does not apply to non-student complainants/alleged victims. For complaints against University of Arkansas School of Law students by non-students please contact the Title IX Officer in the University of Arkansas Office of Equal Opportunity and Compliance (479-575-4019). Adjudication of cases involving sexual harassment, sexual assault, domestic violence, dating violence and stalking, as defined by the Clery Act, where the complainant is a non-student will proceed consistent with University of Arkansas sexual harassment and sexual assault policies.

Proceeding means all activities related to a noncriminal resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings this does not include communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim.

Result means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The results will include any sanctions imposed by the institution and a rationale for the result and the sanctions.

Complaint Proceeding:

Upon receiving a report of a possible Title IX violation, the University's Title IX Coordinator (and/or his or her designee) will first conduct an intake meeting with the complainant and/or the alleged victim (if different from the complainant). During the complainant/alleged victim intake, the Title IX Coordinator (and/or his or her designee) will gather information and discuss, among other things, confidentiality standards and possible interim measures that could be provided during the pendency of the complaint proceeding, such as, changes in academic arrangements and/or or no contact requirements. During the intake meeting, the Title IX Coordinator (and/or his or her designee) will also make referrals, as appropriate, to law enforcement, advocacy, counseling, medical, academic and/or other available resources.

If during the complainant/alleged victim intake, the complainant (or alleged victim, if different from the complainant) requests that no further action be taken and/or that no complaint be pursued, the Title IX Coordinator (and/or his or her designee) will inform the complainant (or alleged victim, if different from the complainant) that retaliation is prohibited and that honoring the complainant's (or alleged victim's) request may limit the ability to fully respond to the incident. In the event the complainant (or alleged victim, if different from the complainant) stands firm on his or her request that no further action be taken, the Title IX Coordinator will evaluate whether the request can be honored while still providing a safe and non-discriminatory environment for all.

If during the complainant/alleged victim intake, the complainant (or alleged victim, if different from the complainant) states a desire to file a complaint, or if the Title IX Coordinator determines (based on the information gathered) that additional steps should be taken in the interest of providing a safe and non-discriminatory environment for all, the Title IX Coordinator (and/or the his or her designee) will next conduct an intake meeting with the respondent.

If, after gathering information through the intake meetings, the Title IX Coordinator makes an initial assessment that a possible Title IX violation occurred, he/she will forward the information and/or materials gathered during the intake meetings to the University of Arkansas Office of Student Standards and Conduct (OSSC), with a written request that a full and impartial investigation be conducted. Such investigation should conclude within sixty (60) calendar days, or as soon as practicable thereafter, from the date of referral from the Title IX Coordinator, and students can request status updates during this time. At the conclusion of the investigation, a summary of the investigation will be submitted to the Director of the OSSC, the Title IX Coordinator, and the School of Law Senior Associate Dean of Academic Affairs. Within five (5) business days, or as soon as possible thereafter, the Title IX Coordinator, or his or her designee, will then make a determination of whether a possible Title IX violation occurred and, in the event he/she determines that a possible violation occurred, he/she will inform the Director of the OSSC and the Senior Associate Dean of Academic Affairs of the same. The Director of the OSSC, in consultation with the School of Law Senior Associate Dean of Academic Affairs, will then determine the appropriate Title IX violation(s) with which to charge the respondent (i.e., Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence and/or Stalking), and will proceed initiating the student conduct disciplinary proceedings. Associated violations that are not defined as Title IX violations will proceed consistent with guidelines provided by the Law School Code of Student Conduct.

Notifications:

After a student has been charged with Title IX violations related to Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence and/or Stalking, both the alleged victim and the respondent shall have and be notified of the following rights:

1. To have a pre-hearing meeting with the Senior Associate Dean of Academic Affairs and the Director of the OSSC or his/her designee, if desired. During the pre-hearing meeting, the Respondent will be provided the opportunity to accept, deny, or not respond to the

alleged violations of Title IX.

2. To have written notice of the charge(s) and an outline of rights prior to the hearing.
3. Within three (3) days of the hearing, or as soon as practicable thereafter, receive the hearing packet, which shall include available information, documents, exhibits, and a list of witnesses that is likely to be considered at the hearing. Ordinarily, the alleged victim and/or respondent will produce any information or materials responsive to the hearing packet within 24 hours prior to the hearing. If additional information or materials are submitted after this time, such information or material will only be considered if the Director of the OSSC, in consultation with the Senior Associate Dean of Academic Affairs, deems that such information is relevant and should be admitted for review by the Title IX Hearing Panel. Under such circumstances, the Director will reschedule the hearing date to allow both parties the opportunity to review and respond to the relevant evidence.
4. To propose information, documents, exhibits, and witnesses relating to the incident to be considered at the hearing.
5. To be accompanied by one advisor or support person. An advisor or support person may be defined as: a friend, a family member, and a member of the university community or an attorney. It is the student's responsibility to request and obtain the services of an advisor/support person. University officials are neither required nor obligated to act as advisors/support persons and the hearing will not be scheduled based on advisor availability. The advisor or support person may not speak on behalf of the student throughout the disciplinary proceeding. This includes but is not limited to: addressing the Hearing Panel, presenting evidence, making objections or statements, asking questions of any party or witness or otherwise participating in the hearing, beyond privately communicating with the party that he/she is supporting. ***If the student receives a suspension of ten (10) or more days or expulsion, the advisor or support person for both the alleged victim and the respondent may fully participate during the disciplinary appeal proceeding.***
6. Cases will receive priority in scheduling hearings.
7. The alleged victim and Respondent shall be notified simultaneously, in writing, whether the respondent has been found responsible for alleged misconduct and any disciplinary measures relating to alleged victim, for example, changes in academic arrangements or requirements to have no contact with the alleged victim. Neither party will be required to abide by a nondisclosure agreement, in writing nor otherwise, that would prevent the re-disclosure of information related to the outcome of the proceeding.

Hearing Panel:

A hearing will be conducted by a Title IX Hearing Panel, a mixed gender three-person committee of University of Arkansas hearing officers, all of whom have been trained in sexual assault prevention and response; students will not be allowed to serve on any Title IX Hearing Panel. When a student is found responsible for Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence and/or Stalking as defined by the Clery Act, the Hearing Panel will impose Disciplinary Sanctions ranging from Disciplinary Probation to Expulsion, as well as other penalties as deemed appropriate by the Hearing Panel and consistent with the enumerated sanctions in Section 7.08 of the School of Law Code of Student Conduct

(Penalties).

Hearing Proceeding:

The Hearing Panel will conduct an administrative hearing. A preponderance of the evidence standard will be used by the Hearing Panel in resolving the complaint. The alleged victim is not required to participate, but to the extent the alleged victim does participate, the Hearing Panel will separately interview and question the alleged victim, the Respondent, and any witnesses or other third parties whose testimony the Hearing Panel deems relevant. The parties will not be allowed to personally question or cross-examine each other during the hearing. The panel will resolve all questions concerning the proceedings or the admission of evidence or testimony, including the relevancy and reliability of the evidence and testimony. All participants at the hearing are expected to provide truthful testimony. The alleged victim should not be in the same room as the Respondent during the hearing. Either party may choose not to appear before the Hearing Panel; however, his/her exercise of that option will not preclude the Hearing Panel from making a determination regarding the Complaint filed against the Respondent.

Appeals:

In the event the Respondent or the alleged victim disagrees with the finding or sanction of the hearing panel, either may request an appeal within five (5) business days after notification of the decision. The appeal shall be submitted in writing to the Office of Student Standards and Conduct, with a copy to the Senior Associate Dean of Academic Affairs.

Respondent's appeal shall proceed as follows:

1. The Chancellor and Dean of the School of Law ("Dean") shall receive the petition from the student choosing to appeal the decision of the Title IX Hearing Panel. Such petition shall be submitted in writing to the Office of Student Standards and Conduct, with a copy to the Senior Associate Dean of Academic Affairs, explaining in detail the reasons for the student's appeal.
2. Upon receiving the petition, the Chancellor and Dean shall be provided a copy of the record from the Hearing Panel. A statement prepared by the Chair of the Title IX Hearing Panel shall summarize the rationale for the disciplinary decision.
3. Following review of the record, the Chancellor and Dean shall approve, reject, or modify the Title IX Hearing Panel decision, or remand the case to the Title IX Hearing Panel for clarification or a new hearing. A new panel shall be convened in the event of remand for a new hearing. This decision shall be based on the grounds for an appeal outlined below.
4. The decision of the Chancellor and Dean shall be made within thirty (30) business days of the receipt of all information outlined above, or as soon as possible thereafter.

****If the student has received a suspension of ten (10) or more days or expulsion, the student's advisor or support person may fully participate during the disciplinary appeal***

process.

Additional Provisions Pertaining to All Appeals

1. Appellate review shall be based on the record in the case and does not include a right of additional hearings or meetings on behalf of the student.
2. The function of the Chancellor and Dean in reviewing an appeal is that of reviewing the action of the Title IX Hearing Panel to determine if the appeal meets one of the four grounds listed below:
 - a) An alleged violation of the rights guaranteed the accused has occurred.
 - b) The sanction(s) imposed are outside the School of Law's sanction range for such violations and/or not justified by the nature of the offense.
 - c) New and significant evidence that was not available at the time of the hearing has developed which has a bearing on the outcome.
 - d) An objective assessment of the evidence under the preponderance of evidence standard does not support a finding of responsibility.
3. The Director of the OSSC, in consultation with the Senior Associate Dean of Academic Affairs has the authority to deny a student's case for an appellate review in the event that the appeal does not meet the below listed criteria:
 - a) Be submitted within the designated time frame (5 business days from the date of the decision).
 - b) All appeals must be in writing signed by the student.
 - c) Select one or more of the four (4) appeal grounds.
 - d) Provide a detailed discussion of the reasoning for the selected ground(s) for appeal and the student's evidence to support the reasoning.
4. In the event of a permissible appeal, subject to all applicable School of Law policies, the sanctions will be put into effect only after the Chancellor and Dean make a decision, although sanctions may be retroactive to the date of the alleged offense.

****If the student has received a suspension of ten (10) or more days or expulsion, the advisor or support person for both the alleged victim and the respondent may fully participate during the disciplinary appeal proceeding.***

The alleged victim's appeal shall proceed consistent with the provisions above with the exception of the appeal grounds. The alleged victim shall have the option to appeal based on one or more of the following four (4) grounds:

1. The above stated special proceedings were not followed and that affected the hearing outcome.
2. New evidence has become available that was not available during the time of the original hearing.
3. The sanction(s) imposed are outside the School of Law's sanction range for such violations and/or not justified by the nature of the offense.
4. An objective assessment of the evidence under the preponderance of evidence standard supports a finding of responsibility.

In cases where the Respondent or alleged victim each submit an appeal, both parties will be notified in writing that an appeal was submitted and the other party may provide a written response to the appeal within five (5) business days after notification. The written response must: (1) address only the specific point(s) raised in the other party's appeal, and (2) be limited to a one-time submission. Responses that do not meet this criteria will not be forwarded to the appellate body for consideration. No additional submissions, beyond the appeal and the response, will be considered.

Both parties shall be informed of the appellate outcome rendered.

Administrative Actions:

Administrative Actions (i.e., interim actions or interim suspension) may be imposed in matters related to Title IX. In the event the Respondent requests a review of an Administrative Action, the alleged victim will be notified and provided with (3) business days to request a meeting with the Senior Associate Dean of Academic Affairs to discuss the Administrative Action. During the meeting, the alleged victim will provide information, for consideration, as to why the terms of the Administrative Action should be continued, not modified, or not terminated.

Retaliation Prohibited:

University policy and federal law prohibit any form of retaliation against a person who, in good faith, makes a complaint of a possible Title IX violation, participates in an investigation of a possible Title IX violation, or participates in the resolution of a possible Title IX violation. Retaliation against a complainant, alleged victim (if different from the complainant), or any witness is, in itself, a violation of university policy and the law, and is a serious separate offense.

Education Records:

To comply with the Family Educational Rights to Privacy Act (FERPA), released document(s) or correspondence will not include information considered part of the alleged victim's or Respondent's "education record" (as defined by FERPA), or other information about sanctions that do not relate to the alleged victim, and/or information as it relates to either party's prior disciplinary history. Compliance with the Law School's Title IX complaint process does not constitute a violation of Family Educational Rights and Privacy Act.

August 28, 2015