

Shared Governance Proposal Review Process

Proposal: 16 FA 05 - Sexual Discrimination Grievance Procedure		
Date Received: Nov 1, 2016		Expedited (39 Business Days)
Is Proposal a SGOC Issue? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		2 Days Due By:
Responsible Assigned Committee: SGOC		11/3/2016 2 Days Due By:
Type of Review: <input checked="" type="checkbox"/> Expedited <input type="checkbox"/> Full <input type="checkbox"/> Extended		11/7/2016 7 Days Due By:
Handbook Issue: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		11/16/2016 7 Days Due By:
Constituency Groups: <input type="checkbox"/> Faculty Senate <input checked="" type="checkbox"/> Staff Senate <input type="checkbox"/> Dean's Council <input type="checkbox"/> Chair's Council <input checked="" type="checkbox"/> SGA <input checked="" type="checkbox"/> GSC <input checked="" type="checkbox"/> Vice Chancellor(s)		12/2/2016 2 Days Due By:
Notes:		12/6/2016 7 Days Due By:
		12/15/2016 2 Days Due By:
		- 10 Days Due By:

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- I. **Date:** February 17~~6~~, 2015
- II. **Sponsoring Constituent:** The proposed changes come from Lori Winn, Assistant Vice Chancellor of Human Resources
- III. **Statement of the Issue:** The current Staff Handbook does not reflect a reasonable amount of time for a thorough Title IX investigation. Also, it does not include the Medical Amnesty Policy and the necessary updates to the Sexual Discrimination Grievance Procedures.
- IV. **Rational for Proposal:** The purpose of this proposal is to modify the existing policy and add current policies to the Staff Handbook to ensure it has the most current information.
- V. Expedited

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The following are additions (underlined) and modifications to the existing Staff handbook. This shows the existing language with the additions underlined and the language being removed is shown by a line through it.

Staff Handbook, p. 36--37

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SEXUAL DISCRIMINATION GRIEVANCE PROCEDURE

REPORT OF SEXUAL DISCRIMINATION, p. 36 ~~(Existing)~~

Commented [LW1]: This is existing language from handbook related to Reporting of Sexual Discrimination

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Any employee, student, or visitor who believes he or she has been subjected to sexual discrimination should report the incident to the Title IX Coordinator utilizing the grievance form available on the Human Resources or Student Conduct web sites. Employees with supervisory responsibilities and university police personnel must report incidents of sexual discrimination either observed by them or reported to them to the Title IX Coordinator.

...

~~(Proposed)~~

Any employee, student, or visitor who believes he or she has been subjected to sexual discrimination should report the incident to the Title IX Coordinator utilizing the grievance form available on the Human Resources or Student Conduct web sites. Employees with supervisory responsibilities, including deans, vice chancellors, department chairs, faculty, student conduct, human resources, athletic administrators and coaches, and university police personnel must report incidents of sexual discrimination either observed by them or reported to them to the Title IX Coordinator who will conduct an immediate, thorough, and objective investigation of all claims.

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Commented [LW3]: This change is to provide further clarification. This language should also be updated to reflect Faculty members as mandatory reports. I request that this be added.

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Commented [LW4]: Language added again to provide further clarification. On the ASU-J campus investigations are assigned by the Title IX Coordinator to Deputy Investigators.

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TITLE IX COORDINATOR'S RESPONSE, p. 37

~~(Existing)~~

Within twenty (20) working days, after receipt of a written grievance form, the Title IX Coordinator, or designee, will conduct a full and impartial investigation including interviewing the complainant, the

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accused, and any witnesses identified as well as reviewing any documentary evidence submitted by either party.

...

(Proposed)

Within twenty (20) forty-five (45) calendar working days after receipt of a written grievance form, the Title IX Coordinator, or designee, will conduct a full and impartial investigation including interviewing the complainant, the accused, and any witnesses identified as well as reviewing any documentary evidence submitted by either party.

...

Staff Handbook, pp. 36-39

Sexual Discrimination Grievance Procedure, pp. 36-39

Sexual Discrimination Hearing Committee Functions, p. 38

(Existing)

The Sexual Discrimination Hearing Committee reviews the findings of the Title IX Coordinator to determine, based on the preponderance of the evidence, whether institutional error has occurred and, if so, to recommend an appropriate corrective action. Institutional error occurs when no legitimate reason exists for the action taken. Decisions which require the exercise of judgment or discretion cannot constitute institutional error. The committee has twenty (20) working days to prepare a written response after it has received a complaint. All proceedings shall be in closed session. Because the committee will have received the entire file from the Title IX Coordinator including all witness statements, the hearing will not include the grievant, the party complained against, or other witnesses unless either (1) the Committee requests their oral testimony or (2) either party requests to testify and/or present witnesses. In the event that oral testimony is requested, the grievant and the party complained against may be present and question the witnesses. If the grievance is one alleging sexual assault or sexual violence, the parties will not question the other. Instead, the party testifying before the committee shall be screened so that they may be heard by the other party but not seen. The non-testifying party shall have the opportunity to provide written questions to the committee to be asked of the testifying witness based on his or her testimony. The committee may also question any person testifying. Each party may have an advisor present during the testimony who may provide personal consultation but may not actively participate in the hearing. The parties must disclose to the Chair of the Sexual Discrimination Hearing Committee the identity of any testifying witness or

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Commented [LW7]: Proposed language to improve the process and to ensure sufficient time is provided to conduct a thorough review. Federal law allows a maximum of 60 days.

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any advisor at least two (2) working days before any hearing. The Chair shall provide the list of witnesses to each party upon receipt. No audio or video recording is permitted.

In reviewing a case two options are open to the Committee:

1. It may find no institutional error has occurred and recommend that no further action be taken.
2. It may find that institutional error has occurred and recommend a remedy different than that proposed by the Title IX Coordinator.

(Proposed)

The Sexual Discrimination Hearing Committee reviews the findings of the Title IX Coordinator to determine, based on the preponderance of the evidence, whether institutional error has occurred and, if so, to recommend an appropriate corrective action. Institutional error occurs when no legitimate reason exists for the action taken. Decisions which require the exercise of judgment or discretion cannot constitute institutional error. The committee has twenty (20) working days to prepare a written response after it has received a complaint. All proceedings shall be in closed session. Because the committee will have received the entire file from the Title IX Coordinator including all witness statements, the hearing will not include the grievant, the party complained against, or other witnesses unless either (1) the Committee requests their oral testimony or (2) either party requests to testify and/or present witnesses.

In the event that oral testimony is requested, the grievant and the party complained against may be present and question the witnesses. Generally, each party may have an advisor present during the testimony who may provide personal consultation but may not actively participate in the hearing. In a circumstance where a student has received a sanction of a suspension of ten (10) or more days or expulsion, the student may request an appeal proceeding and choose to be represented at the student's expense by a licensed attorney or, if the student prefers, a non-attorney advocate who, in either case, may fully participate during the appeal proceeding. In this circumstance, if the appeal proceeding arises from a complaint by a student against another student, both students can be so represented. (Arkansas General Assembly, Act 1194 of 2015, effective July 22, 2015)

If the grievance is one alleging sexual assault, sexual violence, stalking, domestic violence, or dating violence the parties will not question the other. Instead, the party testifying before the committee shall be screened so that they may be heard by the other party but not seen. The non-testifying party shall have the opportunity to provide written questions to the committee to be asked of the testifying witness based on his or her testimony. The committee may also question any person testifying. ~~Each party may have an advisor present during the testimony who may provide personal consultation but may not actively participate in the hearing.~~ The parties must disclose to the Chair of the Sexual Discrimination Hearing Committee the identity of any testifying witness or any advisor at least two (2) working days before any hearing. The Chair shall provide the list of witnesses to each party upon receipt. No audio or video recording is permitted.

In reviewing a case two options are open to the Committee:

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Commented [LW10]: This language was added to ensure compliance with State Law.

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Commented [LW11]: This was removed because it is replaced with the above language

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1. It may find no institutional error has occurred and recommend that no further action be taken.
2. It may find that institutional error has occurred and recommend a remedy different than that proposed by the Title IX Coordinator.

~~...Sexual Discrimination Hearing Committee Findings, p. 39~~

~~In all instances the committee shall make a record of its findings, a statement of its conclusion, including the reason or policy criteria used in reaching a decision, and its recommendations for resolution of the grievance. The Committee decision shall be forwarded to the Chancellor of the campus for action. Copies will be filed with the Title IX Coordinator as a part of the complaint record and sent to the grievant and the accused. Within ten (10) working days of receipt of the Committee recommendation, the Chancellor will accept or reject the Committee recommendation in writing after review of all file materials. The Chancellor's decision is final. A copy of the decision shall be provided to the Title IX Coordinator for distribution to both the complainant and the accused. The Department of Human Resources or Student Conduct (as appropriate) will coordinate the implementation of any remedies resulting from the grievance.~~

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Medical Amnesty Policy (Addition)

The safety and welfare of students is a University priority, and at times, students may need immediate medical assistance. However, students may be reluctant to get help because of concerns that their own behavior may be a violation of the student conduct code. To minimize any hesitation students or student organizations may have in obtaining help due to these concerns, the University has instituted a medical amnesty policy. This policy is applicable to the following parties: 1) a student requesting medical assistance for oneself; 2) a student requesting medical assistance for another person; 3) a student for whom medical assistance was provided.

Commented [LW13]: Additional language – it is not required, but believe it will encourage students to come forward. This policy is common among other Universities.

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When responding to any alcohol or drug violations, the University will consider a student's decision to request medical assistance, and in most cases, view the act of seeking medical assistance as good judgment, therefore not deserving of the typical sanctions. At a minimum, students or student organizations should make an anonymous report that would put the student in need in contact with professional help. Examples where this policy may apply include:

1. A student is reluctant to call an ambulance when a friend becomes unconscious following excessive consumption of alcohol because the reporting student is under the age of 21 and was also consuming alcohol.
2. A student is reluctant to report that he/she has been sexually assaulted because he/she had been consuming alcohol and is under the age of 21. It is in the best interests of this community that victims choose to report to University officials. To encourage reporting incidents of sexual misconduct, the University pursues a procedure of offering victims of sexual misconduct limited immunity from being charged for any policy violations related to the sexual misconduct incident.

Although the University may choose not to impose disciplinary sanctions, the University may mandate educational options (such as alcohol and other drug assessments and attendance to alcohol education programs) in such cases. Once a student receives medical amnesty, any future amnesty is at the discretion of the Vice Chancellor for Student Affairs or his/her designee. The Vice Chancellor for Student Affairs or his/her designee also has discretion to determine that this policy does not apply in more serious situations, including criminal possession of drugs, property damage, and acts of violence.