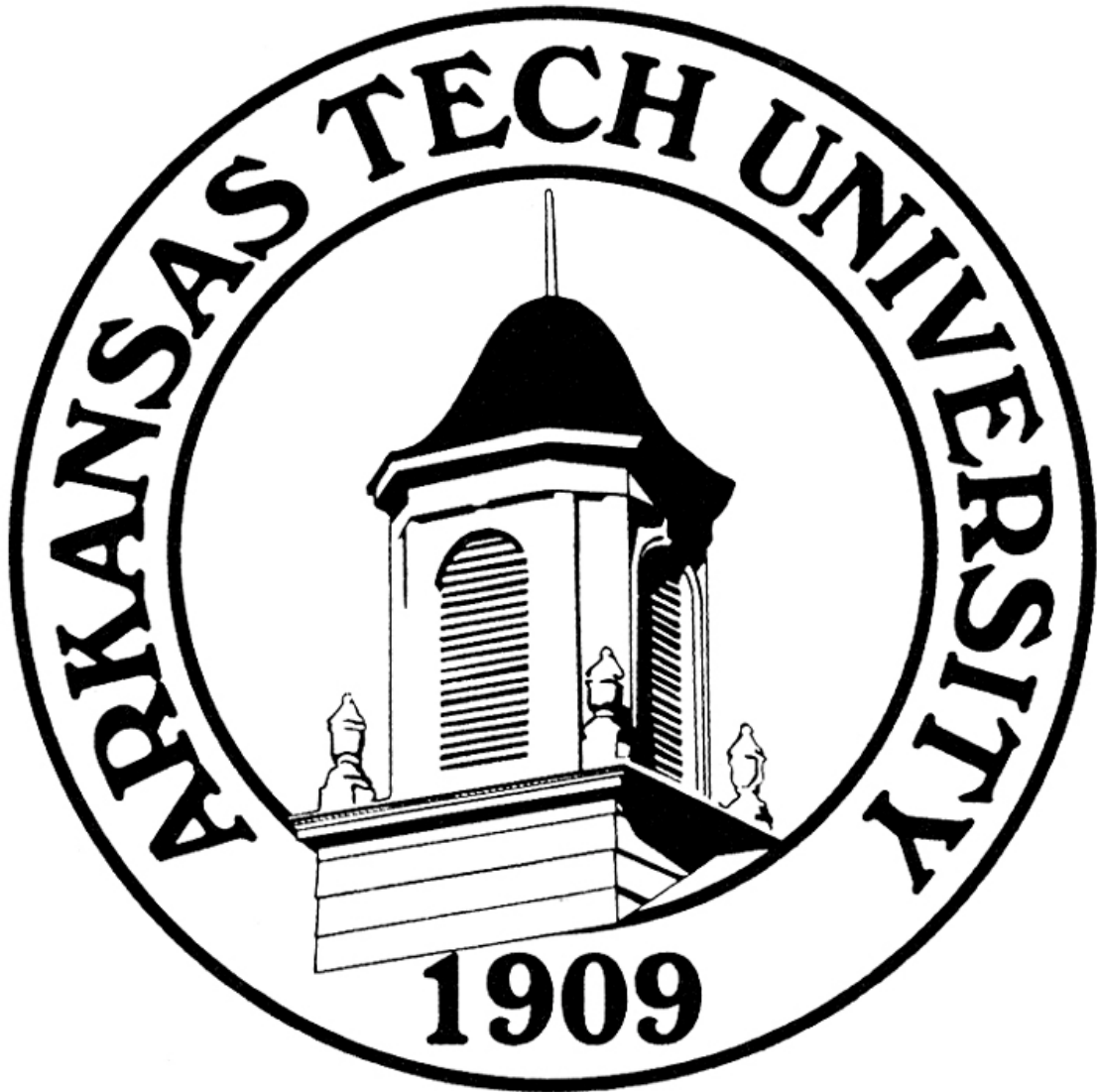


STAFF HANDBOOK



ATU STAFF HANDBOOK

Approved by Board of Trustees Action on October 17, 2019

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June 18, 2020 – Staff Credentialing (Section 116) and
Staff Professional Development and Training (Section 120)

August 4, 2020 – Sexual Harassment (Section 206) and
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INTRODUCTION

This handbook is designed to inform supervisors and non-faculty employees of the personnel policies and procedures at Arkansas Tech University.

The material in this manual is designed to assist users in simplifying some of the complexities inherent in daily personnel operations on the Tech campus but is not intended to cover all the details. The material represents a compilation of policies and procedures developed by the State of Arkansas and Arkansas Tech University. Any questions regarding these regulations should be referred to the Office of Human Resources.

This document is not a contract nor a guarantee of employment. Separation of employment may be initiated by the employee or Arkansas Tech University at any time.

As with all agency policies and procedures, changes may occur. If revisions are made, employees will be notified of the necessary changes and policies will be maintained on the University Counsel's website located at www.atu.edu/counsel.

HISTORY OF ARKANSAS TECH UNIVERSITY

Arkansas Tech University was created by an act of the Arkansas General Assembly in 1909. Under the provisions of the Act, the state was divided into four Agricultural School Districts. Boards of Trustees were appointed by the Governor with the approval of the Senate, and appropriations were made for the erection of buildings and employment of a faculty for a district agricultural school in each of the four districts.

Twenty counties of northwestern Arkansas were designated as the Second District. Several towns made efforts to have the school located in their midst. The Governor appointed a Board of Trustees for the Second District Agricultural School and after considering all proposals, they decided to locate it at Russellville, which had made an offer of a tract of 400 acres of land adjoining the city limits.

The school started classes in the fall of 1910. The first class to graduate from the school was the high school class of 1912. In 1921-22 a freshman year of college work was offered, in 1922-23 a second year, in 1923-24 a third year, and in 1924-25 a fourth year. In 1925 the General Assembly changed the name from the Second District Agricultural School to Arkansas Polytechnic College with power to grant degrees. The effort to maintain a four-year high school and a four-year college proved beyond the resources of the institution at that time, and it became a junior college in 1927. The four years of secondary work were dropped, one year at a time, and the last high school class was the class of 1929.

In 1948-49 the College offered a third year of college work, and in 1949-50 the fourth year, with the first baccalaureate degrees awarded at the end of the 1949-50 spring semester. A graduate program leading to the degree of master of education was established in 1976.

In accordance with an act of the Arkansas General Assembly and by the authority of the State of Arkansas Board of Education, the name of Arkansas Polytechnic College was changed to Arkansas Tech University, effective July 9, 1979.

GENERAL PROCEDURES

100 EMPLOYMENT WITH THE UNIVERSITY

- 101 Equal Employment Opportunity Policy**
- 102 Doctrine of Employment at Will**
- 103 Job Vacancies**
- 104 Hiring**
- 105 Employment of Extra Help Personnel**
- 106 Employment at Camps, Seminars, and Workshops**
- 107 Background Checks**
- 108 Verification of Citizenship and Legal Employment Status**
- 109 Employee Performance Evaluations**
- 110 Concurrent Employment**
- 111 External Employment**
- 112 Age Discrimination**
- 113 Compliance with Military Selective Service Act**
- 114 Employment of Persons Under 18 Years of Age**
- 115 Falsifying Employment Application**
- 116 Verification of Education/Training/Certification/Licensure**
- 117 Reference Inquiries**
- 118 Veteran's Preference**
- 119 American's with Disabilities Act**
- 120 Training**

101 EQUAL EMPLOYMENT OPPORTUNITY POLICY

Arkansas Tech University does not discriminate on the basis of race, color, sex, sexual orientation, gender identity, race, age, national origin, religion, veteran status, genetic information, or disability in any of its practices, policies, or procedures. This includes, but is not limited to, employment, admissions, educational services, programs or activities which it operates, or financial aid.

Arkansas Tech University complies with all applicable state and federal laws including, but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended, Title IX of the Educational Amendments of 1972, Section 503 of the Rehabilitation Act of 1973, Section 504 of the Rehabilitation Act Amendments of 1974, Age Discrimination Act, Vietnam Era Veterans Readjustment Assistance Act, Uniformed Services Employment and Reemployment Act, the Civil Rights Restoration Act of 1987, the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991.

Arkansas Tech University will provide equal opportunity in employment to all persons. This applies to all phases of the personnel process, including recruitment, hiring, placement, promotion, demotion, separation, transfer, training, compensation, discipline, and all other employment terms, conditions, and benefits. Arkansas Tech University prohibits discrimination based on race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, genetic information, or veteran status.

Arkansas Tech University will provide a copy of this policy to all applicants for employment. All faculty and staff will be notified annually of the policy. Further, Arkansas Tech University will consider through a designated grievance procedure, the complaints of any person who feels that he or she has been discriminated against on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, genetic information, or veteran status.

Arkansas Tech University will have an Affirmative Action Plan that contains a set of specific and result-oriented procedures to apply every good faith effort to achieve prompt and full utilization of minorities, women, those with disabilities or veterans at all levels and all segments of its workforce where deficiencies exist. Additionally, Arkansas Tech University will continually monitor and evaluate its employment practices to ensure that they are free of bias or discrimination based upon race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, genetic information, or veteran status.

A copy of the Affirmative Action Plan, including specific responsibilities and provisions for implementation and compliance will be made available upon request.

Responsibility for implementation and compliance with this Affirmative Action policy has been delegated to the Affirmative Action officer. Please see Section 212 for additional information.

102 DOCTRINE OF EMPLOYMENT AT WILL

The University is an at-will employer consistent with Arkansas law.

103 JOB VACANCIES

Employment vacancies for classified staff are advertised 10 working days and non-classified are advertised 15 working days. All positions are advertised through Cornerstone via our Career Site and all applications must be received prior to the closing date/time to be considered.

Employment of Personnel:

1. The position must be authorized in the operating budget and go through the established approval process.
2. The supervisor must notify the Office of Human Resources of vacancy and other pertinent information (complete requisition via Cornerstone)

3. Applications will be accepted for at least ten working days.
4. The Office of Human Resources will screen applicants for minimum qualifications under the job specifications for classified positions. The department will have the responsibility of screening applications, setting up interviews and calling references. Applicants who have a disability are considered qualified if they can document that they are able to perform the essential functions of the position with or without reasonable accommodations.
5. The salary will be set by the Human Resources Officer at entry level of the proper pay range. Any variation must be approved by the Vice President for Administration and Finance or the President. Actual employment and issuance of an employment notice will be done by the Office of Human Resources. Contracts for Non-classified positions are distributed by the office of University Counsel. Necessary forms will be completed and the new employee will be given information concerning University regulations and employee benefits, normally within the first week of employment.
6. All persons seeking employment should refer to the Office of Human Resources website located at: <https://www.atu.edu/hr/>. Job openings may be found here: <https://atu.csod.com/ats/careersite/search.aspx?site=1&c=atu>

104 HIRING

The selection team is responsible for checking references and scheduling interviews and are required to sign a confidentiality agreement for each search. The selection team will provide all documentation used in the hiring process over to Human Resources for retention to support the Affirmative Action goals of the University.

Immediately upon reporting for work, all new employees must furnish the Office of Human Resources with information and forms including:

1. Personnel Event Data Form
2. Federal Withholding Certificate
3. State Withholding Certificate
4. Retirement Information
5. Social Security Card
6. Documents for identification and to establish work eligibility

Effective the first day of employment, a “Notice of Employment” will be issued and payroll forms must be completed in the Office of Human Resources. The employee is considered to be in a “probationary status” for ninety (90) days.

105 EMPLOYMENT OF EXTRA HELP PERSONNEL

For employment of “Extra Help” personnel approved in the budget, the following will apply:

1. A written request to hire extra help is to be submitted and approved by the Office of Human Resources prior to seeking applicants to fill the position. The request is to include the beginning and ending dates of employment and a description of the duties the assignment is to entail. The Office of Human Resources will notify the department which classification and job description such employment best fits. The employee will be paid at the rate of Entry Level in the prescribed pay range.

Exception: In some circumstances, depending upon the applicant’s past experiences and time-in- service with the University, knowledge and abilities of the applicants toward the vacant job duties, and outside experience and education, the hourly rate may be assigned to a higher level upon the approval of the administration.

2. The Office of Human Resources will screen applicants for qualifications under job specifications and refer those qualified to the supervisor for interview.
3. Supervisor will notify the Office of Human Resources of a preference request for employment by submitting a Request for Extra Labor Form.
4. Once the applicant has been approved for employment, successfully completed a background check, and completed all necessary paperwork in the Office of Human Resources the employee is eligible to begin work.

106 EMPLOYMENT AT CAMPS, SEMINARS, AND WORKSHOPS

Individuals not currently employed by the University to assist with summer camps, continuing education seminars and other workshops may be paid by contract via the extra-labor payroll cycle. In order for an individual who is currently employed by the University to receive separate remuneration for employment at camps, seminars, and workshops, the employee must take annual leave and must also have the appropriate paperwork for concurrent employment completed, approved, and filed with the Arkansas Department of Finance and Administration as well as either the Office of Human Resources or Academic Affairs, as appropriate.

Such personnel must be hired and processed according to the extra-labor guidelines established by the Human Resources Director. The Program director must certify the amount of the contract in writing to the Payroll Officer.

Strict adherence to processing deadlines set forth by the Payroll Office is required to ensure timely processing of payment.

This policy is not designated for personnel employed on a work schedule at an hourly rate of pay. Those employees will continue to be paid in accordance with regular extra-labor procedures.

In certain instances, program directors may find it necessary to employ students to assist with campus and special programs. In such instances, when a program director must employ both students and non-students to perform identical duties and must pay the non-student fee or rate of pay which is greater than the prevailing college work-study rate, the director may pay the student an equivalent rate. It is the intent of this policy to eliminate disparity between individuals who perform identical duties.

Advance approval from the Human Resources Director is required to make use of the provisions of this policy. This exception is not available to the program director's family or relatives.

107 BACKGROUND CHECKS

All staff hired are subject to criminal background checks. The university will comply with the Fair Credit Reporting Act.

108 VERIFICATION OF CITIZENSHIP AND LEGAL EMPLOYMENT STATUS

Under authority of the Immigration Reform and Control Act (IRCA) of 1986, the University must verify citizenship and legal employment status of all persons hired after November 6, 1986.

Although the University is required to comply with IRCA, it is prohibited from discriminating in hiring or terminating anyone on the basis of national origin.

All employees must complete proper verification forms prior to beginning employment at the University. If time permits, a fact sheet on legal employment status and notice of employment will be mailed to the prospective employee prior to employment

109 EMPLOYEE PERFORMANCE EVALUATIONS

Full-time employees are subject to an annual performance evaluation. The evaluation is designed to give the University a chance to evaluate the work, attitude and attendance of an employee, to serve as a guideline in determining potential salary increases, and to afford the employee and supervisor an opportunity to discuss strengths and weaknesses of performance for the purpose of improvement. The employee will be given an opportunity to provide written comments regarding his/her performance evaluation.

The performance evaluation will be based on essential functions of the position. In the case of an employee who is disabled, the evaluation will be based on the ability of the employee to perform the essential functions of the assigned position with or without reasonable accommodations. A reasonable accommodation may include a transfer to another position, as available, in which the employee is able to perform the essential functions.

110 CONCURRENT EMPLOYMENT

A.C.A. §6-63-307; §19-4-1604; and §§21-8-203 and 204

Employment in more than one role or position within Arkansas Tech University and/or any other state agency or institution is regulated by the State of Arkansas.

University employees may work concurrently in two state positions if the conditions listed below are met:

1. Both the institution and/or agency directors approve the employment.
2. Employment in another state position does not interfere with the required performance of an employee's primary duties.
3. The combined salaries of both positions do not exceed the larger maximum annual salary of either position.
4. Authorization is granted by the Arkansas Department of Higher Education (ADHE) as requested by the secondary employer.

Pursuant to A.C.A. §6-63-307, any employee knowingly violating the provisions of this section will be subject to immediate termination and will be barred from employment by an agency or institution of the State of Arkansas for a period of not less than three years or until such employee will repay the State of Arkansas any sums received by such employee in violation of this section, together with interest at a rate of ten percent (10%) per annum.

111 EXTERNAL EMPLOYMENT

External employment is defined as any paid activity for any non-university entity or person, whether or not such work is performed on campus, and also includes self-employment such as, but not necessarily limited to, consulting, advising, workshops, seminars, conferences, or similar work performed in addition to the official responsibilities of a full-time employee.

Arkansas Tech University employees are expected to fulfill their duties and responsibilities assigned to their particular position or job. External employment should not interfere with university employment. External employment must not create or result in a conflict of interest.

External employment is subject to the following expectations:

1. The external employment may not interfere with the obligations of the employee to the university or create any conflicts of interest;
2. For employees who accrue annual leave, annual leave must be taken if the external employment would overlap with regularly scheduled work hours of the employee;
3. As a general rule, university resources (including facilities, supplies, and equipment) shall not be used for personal gain. However, in certain projects which accrue to the mutual benefit of the university and the individual faculty member, a Memorandum of Understanding for reimbursement to the university may be entered into in order to provide access to university resources.

4. Employees performing external employment are solely responsible for work performed in the course of external employment, and the university is not responsible for such work;
5. All external work is performed in the employee's individual capacity;
6. Employees engaged in external employment do not officially represent the university, will not receive legal representation from the university, and are not an agent of the university when acting in that capacity; and
7. The view, thoughts, and expressions of the employee during the external employment do not represent the views or position of the university.

112 AGE DISCRIMINATION

A.C.A. §21-3-203

Arkansas law protects employees against discrimination based on their age. This law protects those individuals who are at least forty (40) years of age or older.

The university shall not fail or refuse to hire or to discharge an employee or otherwise discriminate against the employee with respect to compensation, terms, conditions, or privileges of employment because of the employee's age.

The university shall not limit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of the individual's age. The university cannot reduce the wage rate of any employee because of age in accordance with this policy.

The university may take adverse personnel actions if age is a bona fide occupational qualification, reasonably necessary to the normal operations of a particular job, or where the differentiation is based on factors other than age.

The university may discipline an employee or discharge an employee for good cause and not be restricted by the intent of this law. Please see Section 212 for additional information.

113 COMPLIANCE WITH THE MILITARY SELECTIVE SERVICE ACT

A.C.A. §21-3-102

Most male U.S. citizens and every other male person residing in the United States between the ages of 18 and 25 are required by law to have registered with the Selective Service System within 30 days of their 18th birthday. The Federal Selective Service System is a means by which the United States maintains information on those subject to military drafting.

A male applicant between the ages of eighteen (18) and twenty-five (25) seeking employment with the university shall be registered with the Selective Service System.

An applicant is not required to register with the Selective Service System if the person is:

1. Under eighteen (18) years of age;
2. In the United States armed forces on active duty, other than in a reserve or national guard unit;
3. An alien lawfully admitted to the United States for so long as he or she continues to maintain a lawful nonimmigrant status in the United States;
4. A permanent resident of the trust territory of the Pacific Islands or the Northern Mariana Islands; or
5. Excused from registration for other reason provided by federal law and that reason is included in the certificate.

No person who is required to register with the Selective Service System shall be eligible for employment by the university or for admission to the university unless the person has signed a statement of selective service status.

For more information, see the Selective Service System website at <https://www.sss.gov/>.

114 EMPLOYMENT OF PERSONS UNDER 18 YEARS OF AGE

A.C.A. §§ 1-6-104 through 110

Purpose

Generally, children under the age of 18 are prohibited from working in the state of Arkansas; however, there are circumstances where it is permitted. State agencies wanting to hire children under the age of 17 should follow the Arkansas Department of Labor guidelines found at <http://www.labor.arkansas.gov/child-labor>.

Any person or employer found to be in violation of this law shall be subject to a civil penalty.

This policy does not include children between the ages of 16 and 18 who:

- have graduated from any high school, vocational school, or technical school;
- are married; or
- are a parent.

Limitations on hours of work for children

Under fourteen (14) years of age: Children under the age of fourteen (14) cannot be employed in any paying capacity, except during school vacation when they may be employed by their parents or guardians in occupations owned or controlled by them.

Under sixteen (16) years of age: Children under the age of sixteen (16) cannot be employed in any occupation that is dangerous to life and limb, injurious to the health and morals of the child, or in any saloon, resort, or bar where liquors are sold or dispensed.

115 FALSIFYING EMPLOYMENT APPLICATION

A.C.A. §21-12-102

A state employee who is found to have falsified his or her employment application by alleging to have earned a college degree which was not earned will be immediately terminated from employment. Falsifying an employment application in any other material way may be grounds for immediate termination.

116 VERIFICATION OF INITIAL AND CONTINUING EDUCATION/TRAINING/CERTIFICATION/LICENSURE

If it is a requirement that a college degree/master's degree/doctorate degree/license/registration is necessary to hold any position with the University, the employee must submit proof of such to the Office of Human Resources within 30 days of the hire date. Proof includes a notarized college transcript with the degree received indicated, a letter from a college registrar, copy of the license/registration, etc. It is incumbent upon the staff member to, by September 15th of each year, provide written evidence to the Office of Human Resources that any and all updates, continuing education requirements, renewed certification and/or licensure that may be a requirement for the staff member's position at the University, has been obtained.

Revised by Board of Trustee action on June 18, 2020.

117 REFERENCE INQUIRIES

A.C.A. §11-3-204

Prospective employers may request reference checks on prospective employees. A prospective employer is not required to request employment history on a prospective employee and a current or former employer is not required to disclose employment history to any prospective employer; however, a current or former employer may only provide information if there is written consent from the prospective employee.

Prospective Employee Written Consent

The employee's signed and dated consent must be given before any information can be released on the employee's employment history. The consent must be on a separate form from the employment application form, or, if included in the employment application form, must be in bold letters and in larger typeface than the largest typeface in the text of the employment application form.

The consent form must state, at a minimum, language similar to the following:

"I, (applicant), hereby give consent to any and all prior employers of mine to provide information with regard to my employment with prior employers to (prospective employer)."

If an applicant is hired and remains with the new employer for longer than six months, the consent shall be valid for no longer than six months. If the applicant is hired and remains with the new employer for less than six months, the consent shall be valid for six months after the termination of employment.

Providing References to Prospective Employers

The following information may be disclosed about a current or former employee's employment history to a prospective employer upon receipt of the written consent from the current or former employee.

1. Date and duration of employment;
2. Current pay rate and wage history;
3. Job description and duties;
4. The last written performance evaluation prepared prior to the date of request;
5. Attendance information;
6. Results of drug or alcohol tests administered within one (1) year prior to the request;
7. Threats of violence, harassing acts, or threatening behavior related to the workplace or directed at another employee;
8. Whether the employee was voluntarily or involuntarily separated from employment and the reasons for the separation; and
9. Whether the employee is eligible for rehire.

118 VETERAN'S PREFERENCE

A.C.A. §21-3-301

State agencies and institutions of higher education are required to give preference to certain qualified veterans and disabled veterans, spouses of disabled veterans, or the surviving spouse of a deceased qualified veteran during hiring, promotion and retention of employees.

Veteran:

- (1) A person honorably discharged from a tour of active duty, other than active duty for training only, with the United States Armed Forces; or
- (2) any person who has served honorably in the National Guard or reserve forces of the United States for a period of at least six years, whether the person has retired or been discharged or not.

An applicant must voluntarily submit official proof of his or her status as a veteran, disabled veteran, spouse or a surviving spouse of a deceased veteran to receive veteran's preference. Veteran's preference does not apply to elected officials or political employees or to any person hold a strictly confidential administrative or secretarial position in relation to the appointing officer.

An applicant entitled to preference shall not be disqualified from holding any position on account of age or by reason of any physical disability, provided that the age or disability does not hinder the applicant's ability to properly perform the duties of the position for which he or she applied.

Subject to numerical scoring

The total number of points assigned to an examination, evaluation or similar instrument is determined by each agency; however, the number should not be so great that it renders the

veteran's preference points as meaningless.

5 points

If an agency uses an examination, evaluation, or similar instrument subject to numerical scoring to establish a list of qualified candidates to be interviewed for a position and an applicant entitled to a veteran's preference receives a passing grade, the applicant shall have 5 points added to his or her final earned rating.

10 points

Disabled veterans, veterans over the age of 55 who are disabled and entitled to a pension or compensation under law, or the spouse of a disabled veteran whose disability disqualifies him or her for selection shall have 10 points added to his/her final rating score on the examination, evaluation or similar instrument.

The disability must be established by the United States Department of Veterans Affairs records.

Not subject to numerical scoring

If an agency uses an examination, evaluation, or similar instrument that is not subject to numerical scoring, then the selection authority must demonstrate how veteran's preference was applied in developing a list of qualified candidates to be interviewed and in selecting the successful candidate.

Interview list

Applicants who qualified in an examination, evaluation, or similar instrument given for the purpose of establishing an interview list will be placed on the list in the following order:

1. Names of 10 point preference eligible candidates will be placed at the top of the list of persons certified as having equal eligibility points;
2. Names of 5 point preference eligible candidates shall be placed at the tops of the list of persons certified as having equal eligibility points; and
3. The names of all other eligible candidates who do not have preferences as provided in this section shall be placed on the list according to their ranking of eligibility points.

Failure to interview and/or hire a veteran

If a veteran is not selected for a position and numerical scoring was used, at the veteran's request the selection authority shall provide the veteran with his or her base score, adjusted score, and the successful candidate's score.

If a scoring method other than numerical was used, at the veteran's request, the selection authority must provide all documentation to the veteran to demonstrate how the veteran's preference was applied to develop the interview list and select the successful candidate.

The selection authority or hiring official must submit the reason(s) to the veteran in writing. The written reason will become a part of the employment application records of the agency and be retained for the same period of time as all other employment applications as established by law or agency policy.

The selection authority is not required to provide the veteran with testing materials or any other information concerning the successful candidate or other applicants that is not authorized for release under the Veterans Preference Law or the Freedom of Information Act.

119 AMERICAN'S WITH DISABILITIES ACT

Arkansas Tech University does not discriminate on the basis of race, color, sex, sexual orientation, gender identity, race, age, national origin, religion, veteran status, genetic information, or disability in any of its practices, policies, or procedures. This includes, but is not limited to, employment, admissions, educational services, programs or activities which it operates, or financial aid.

Arkansas Tech University complies with all applicable state and federal laws including, but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended, Title IX of the Educational Amendments of 1972, Section 503 of the Rehabilitation Act of 1973, Section 504 of the Rehabilitation Act Amendments of 1974, Age Discrimination Act, Vietnam Era Veterans Readjustment Assistance Act, Uniformed Services Employment and Reemployment Act, the Civil Rights Restoration Act of 1987, the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991. Responsibility for implementation and compliance with this Non-Discrimination Policy has been delegated to Christina Stolarz,, Director of Human Resources and Affirmative Action officer who can be reached by emailing cstolarz@atu.edu or by calling (479) 968-0396. Please see Section 212 for additional information

120 STAFF PROFESSIONAL DEVELOPMENT AND TRAINING

Professional development opportunities enhance employees' skills and abilities for improved performance within their current positions and for potential career advancement. Professional development and training opportunities should be relevant to the needs of the University and should also be available to all employees.

Given our academic environment, professional development activities can include, but are not limited to, attending classes, lectures, conferences, and other academic and cultural events that are part of the University calendar; participating in service opportunities at the College and University levels; Leadership Tech; and undertaking training and mentoring opportunities.

Supervisors are responsible, in collaboration with employees, for assessing and communicating the professional development and training needs of individual employees in their organization. Supervisors should plan for and support appropriate professional development and training activities that occur as part of work time. Supervisors should discuss and document training requirements and recommendations during each employee's annual performance review. Supervisors have the final approval for funding and providing time for professional

development and training opportunities. Only professional development approved by a supervisor is eligible for work time release. An employee's elective professional development may be subject to annual leave time requirements.

Employees are responsible for maintaining a high level of performance through their University employment, and for seeking approval for appropriate professional development and training opportunities in consultation with their supervisors.

Revised by Board of Trustee action on June 18, 2020.

200 GENERAL POLICIES AND PROCEDURES

201 Smoke and Drug Free Workplace

202 Political Freedom

203 Political Activity

204 Ethics Policy

205 Whistle Blower Protection Act

206 Sexual Harassment

207 Consensual Relations

208 Sexual Misconduct

209 Hiring Relatives – Nepotism

210 Married State Employees

211 Workers' Compensation

201 SMOKE AND DRUG FREE WORKPLACE

Clean Air on Campus Act of 2009; A.C.A. §§6-60-801 through 807; A.C.A. §20-27-1801

Clean Air on Campus Act

Definitions

“Campus” means all property, including buildings and grounds that are owned or operated by Arkansas Tech University.

“E-cigarette” means an electronic oral device that provides a vapor of nicotine or other substance that, when used or inhaled, simulates smoking, including without limitation a device that:

- A. Is composed of a heating element, battery, or electronic circuit or a combination of heating element, battery, and electronic circuit;
- B. Works in combination with a liquid nicotine delivery device composed, either in whole or in part, of pure nicotine and propylene glycol and manufactured for use with e-cigarettes; and
- C. Is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other name or descriptor.

“Employee” means an individual who is employed by a state-supported institution of higher education in consideration for direct or indirect monetary wages or profit;

“Governing authority” means the administrative branch of the state-supported institution of higher education.

“Guest” means a visitor to the campus of a state-supported institution of higher education;

“Secondhand smoke” means smoke:

- A. Emitted from lighted, smoldering, or burning tobacco when the person is not inhaling;
- B. Emitted at the mouthpiece during puff drawing; and
- C. Exhaled by the person smoking.

“Smoking” means inhaling, exhaling, burning, or carrying any:

- A. Lighted tobacco product, including cigarettes, cigars, and pipe tobacco; and
- B. Other lighted combustible plant material; and

“Student” means an individual enrolled in a credit or non-credit course at a state-supported institution of higher education.

Specific Provisions

Effective August 1, 2009, use of any tobacco product, including, but not limited to smoking, dipping, or chewing tobacco is prohibited on campus. This policy shall be enforced by the Arkansas Tech University Department of Public Safety.

Smoking or the use of e-cigarettes is prohibited on each campus of state-supported institutions of higher education.

An individual or campus subject to the smoking prohibitions of this section shall not discriminate or retaliate in any manner against a person for making a complaint of a violation of this section or furnishing information concerning a violation to a person, campus, or governing authority.

Pursuant to Act 743 of 2009, beginning August 1, 2010, any person who smokes on campus shall in addition to the penalties set forth above, be guilty of a violation and upon conviction in Russellville District Court, shall be punished by a fine of not less than (\$100) one hundred dollars nor more than (\$500) five hundred dollars.

Student discipline

Students who violate this policy shall be disciplined as follows:

1. First Offense –Written warning.
2. Second Offense –Six months probation as defined in the Student Code of Conduct.
3. Third and subsequent Offenses - \$50.00 fine.

Employee discipline

Employees who violate this policy shall be disciplined as follows:

1. First offense – written warning
2. Second offense –Written reprimand placed in personnel folder
3. Third and subsequent Offenses - \$50.00 fine

Visitors/independent contractor discipline

Visitors or employees of independent contractors who violate this policy shall be disciplined as follows:

1. First offense –written warning

2. Second offense –banishment from campus

Students may appeal their sanction pursuant to the terms of the Student Code of Conduct. All others may appeal the sanction imposed pursuant to this policy by submitting a written appeal to the Human Resources Committee within five calendar days of the infraction.

Drug Free Workplace

State agencies that receive federal funds certify that they will maintain a drug free workplace. Failure to do so may result in a suspension of contracted payments, contract termination or debarment from future government awards. Any employees violating this policy will be subject to discipline up to and including termination.

State agencies, boards and commissions are required to certify that they are in compliance with the Drug Free Workplace Act of 1988. It is the policy of the State of Arkansas that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in a state agency's or institution's workplace is prohibited. Violation of this policy can subject employees to discipline up to and including termination. Accordingly, the following are policy statements which shall govern the various forms of controlled substance abuse on the university campus or in the university workplace.

1. The university will not differentiate between drug users and drug pushers or sellers. Any employee who gives or in any way illegally transfers a controlled substances to another person, or illegally sells or manufactures a controlled substance, or illegally uses a controlled substance while on the job, on university premises, or in university vehicles will be subject to discipline up to, and including, termination.
2. The term "controlled substance" means any drug listed in 21 USC §812 and other federal regulations. Generally, these are drugs that have a high potential for abuse. Such drugs include, but are not limited to, heroin, marijuana, cocaine, PCP, "crack", and "ice". Also included are legal drugs which are not prescribed by a licensed physician.
3. Each employee is required by law to inform the university within five days after he or she is convicted of violation of any federal or state criminal drug statute if such violation occurred on university premises. A conviction means a finding of guilt (including a plea of *nolo contendere*) or the imposition of a sentence by a judge or jury in any federal court, state court, or other court of competent jurisdiction.
4. The university will notify the federal funding agency of the conviction of any employee for drug use or abuse who is employed in a position utilizing federal funds or a federal grant within ten days of receiving notice of the conviction from the employee or otherwise receiving actual notice of such conviction.
5. If an employee is convicted of violating any criminal drug statute while in the workplace, he or she will be subject to discipline up to, and including, termination. Alternatively, and at the sole discretion of the university, the employee may be required to successfully complete a drug rehabilitation program sponsored by an approved private or government institution.
6. Abiding by the Drug-Free Workplace policy is considered to be a condition of employment for all university employees. Human Resources will ensure that all

employees acknowledge, in writing, receipt of a copy of this policy.

202 POLITICAL FREEDOM

A.C.A. §§21-5-501 through 503

Definitions

Elected public official: The Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, Commissioner of State Lands, member of the Arkansas Senate and member of the Arkansas House of Representatives.

Public employee: Any person providing services for the State of Arkansas, a county, a municipal corporation, or any other political subdivision of this state for which compensation is paid.

Public employer: The State of Arkansas and each political subdivision of the State of Arkansas.

Provisions

It is unlawful for a state employee to be prohibited from communicating with an elected public official concerning matters related to the employee's job, except for matters exempted under the Arkansas Freedom of Information Act, or from exercising a right or privilege under the Freedom of Information Act.

It is unlawful for a state employee to be subjected to discipline, threats of discipline, reprimands, either oral or written, or notations in their personnel files disciplining or reprimanding or otherwise be discriminated against, because the employee exercised the right to communicate with an elected public official or exercised a right or privilege under the Arkansas Freedom of Information Act.

A state employee who has intentionally made untrue allegations to an elected official concerning matters related to the employee's job may be subject to discipline.

A person who intentionally violates a provision is guilty of a Class A misdemeanor.

203 POLITICAL ACTIVITY

A.C.A. §7-1-102, 103; Governor's Policy Directive #9

It is unlawful for a state employee to use any office or room furnished at public expense to distribute any letters, circulars, or other campaign materials, unless such office or room is regularly used by members of the public for such purposes without regard to political affiliation. It is further prohibit for a state employee to use for campaign purposes any item of personal property provided with public funds.

State employees can, should, and are encouraged to participate in the election process so long as

assistance to candidates is rendered on the employee's own time and State property is not involved. Employees are not to endorse candidates, including the Governor, in their official capacity as State employees. A person's status as an employee of the State is public knowledge. Public endorsements of a candidate can easily be interpreted as endorsements of an official capacity. The legal provisions can be summarized as follows:

1. State employees are prohibited from engaging in partisan political activity during the hours they are performing work for, and being paid by an agency of State government.
2. Political banners, posters or literature should never be allowed to be displayed on or in any State office.
3. Political bumper stickers or decals should never be displayed on or in a State car. State vehicles must not be used during or after work hours to promote or assist the candidacy of any person in any way. State employees may not display political advertising on personal vehicles when using these vehicles in the performance of official duties for which they shall be reimbursed by the State.

No State official (whether elected or appointed) shall assess employees for any political purpose or use threats or coercion to require or persuade an employee to contribute to a particular candidate or cause.

The University shall schedule work hours of employees on election days so that each employee will have an opportunity to exercise the right to vote.

In addition to these prohibitions established by Arkansas law and by administrative policy, there are other specific limitations which apply to employees whose salaries are either partially or totally paid from federal funds. These rules are established by the Federal Hatch Act.

For specific questions about Arkansas Election Law, consult the Secretary of State's Elections Division (501-682-1010). Questions regarding the Federal Hatch Act as it relates to federally-funded State employees may be answered by the Office of Special County in Washington, D.C. (<http://www.osc.gov>)

204 ETHICS POLICY

Introduction

This ethics policy serves (1) to emphasize the University's commitment to ethical conduct and compliance with the law; (2) to set forth basic standards of ethical behavior; (3) to provide reporting mechanisms for known or suspected ethical violations; (4) to help prevent and detect wrongdoing.

Given the variety and complexity of ethical questions that may arise in the course of carrying out the University's business, this Code can serve only as a general guide. Confronted with ethically ambiguous situations, employees should keep in mind the University's commitment to the highest ethical standards and seek advice from appropriate levels of University administration so as to ensure that this commitment is honored at all times.

This ethics policy has been adopted by the Board of Trustees and is to be administered at the direction of the President. A campus, department, or area may implement more specific associational or professional policies that supplement this policy, but each must be approved by the President and each must have a higher (and not lower) ethical requirement than this policy. In the event of a conflict between this policy and those of a campus, unit, or area, this policy will control.

This ethics policy applies to all Arkansas Tech University employees. This policy may be amended or supplemented from time to time by the Board of Trustees.

Public employment is a public trust. It is the policy of Arkansas Tech University to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the university. The policy is implemented by prescribing essential restrictions against conflict of interest without creating unnecessary obstacles to entering public service.

The institution and its employees shall conduct themselves in a manner that strengthens the public's trust and confidence by adhering to the following principles:

- Conduct that is beyond reproach and integrity of the highest caliber;
- Act with honesty and fairness in good faith and professionalism;
- Accountability, transparency and commitment to compliance with statutory requirements; and
- Being proactive in pursuing ethical conduct in future years.

Definitions

1. "Confidential information" means any information which is available to an employee only because of the employee's status as an employee of this state and is not a matter of public knowledge or available to the public on request.
2. "Employee" means an individual drawing a salary from the university and any non-salaried individual performing personal services for the university.
3. "Gift" is defined for purposes of this policy using the definition of the Arkansas Ethics Commission rule §300(b), which is set forth in its entirety in attachment "A".
4. "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
5. "Immediate family" means a spouse, children, parents, brother and sisters, and grandparents.
6. "Personal gain" means a benefit or advantage that relates to a particular person rather than to a business, group or organization.

General standards of ethical conduct

1. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.

2. Employee Conflict of Interest.

- a. It shall be a breach of ethical standards for any employee to participate directly or indirectly in any proceeding or application, in any request for ruling or other determination, in any claim or controversy, or in any other particular matter pertaining to any contract or subcontract, and any solicitation or proposal therefore, in which to the employee's knowledge;
 - (i) The employee or any member of the employee's immediate family has a financial interest;
 - (ii) A business or organization has a financial interest, in which business or organization the employee, or any member of the employee's immediate family, has a financial interest; or
 - (iii) Any other person, business, or organization with whom the employee or any member of the employee's immediately family is negotiating or has an arrangement concerning prospective employment is a party.
- b. "Direct or indirect participation" shall include, but not be limited to, involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request, including the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

3. Gratuities and kickbacks

- A. It is a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, including the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.
- B. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontract or order. Meals provided as part of a conference are excluded from this provision.

4. Use of confidential information

- A. It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person.

5. Non-employees

- A. Any effort to influence any public employee to breach the standards of ethical conduct set forth herein is also a breach of ethical standards.

6. Violations

Violations of this policy may constitute violations of law as set forth in A.C.A. §19-11-701 et. seq.

7. Reporting suspected violations

Employees wishing to report a suspected violation of this ethics policy may report it anonymously to the Human Resources department or the Office of University Counsel at <https://www.atu.edu/standingcommittees/ethics.php>.

8. Guidance

All employees must work together to ensure prompt and consistent enforcement of this Ethics Policy. In some situations, it may be difficult to know if a violation has occurred. Because it is impossible to anticipate every situation that will arise, it is important to approach a new question or problem with confidence. Employees having questions about their obligations under this Code should consult the University's administration and/or the University Counsel.

Attachment A

Gift - As used in these rules, the term "gift" means any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor. It does not include:

(1) Informational material such as books, reports, pamphlets, calendars, or periodicals informing a public servant regarding his or her official duties (NOTE: payments for travel or reimbursement for any expenses are not informational material);

(2) The giving or receiving of food, lodging, or travel which bears a relationship to the public servant's office and when appearing in an official capacity;

(3) Gifts which are not used and which, with in thirty (30) days after receipt, are returned to the donor;

(4) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any of these persons, unless the person is acting as an agent or intermediary for any person not covered, by this paragraph;

(5) Campaign contributions;

(6) Any devise or inheritance;

(7) Anything with a value of \$100 or less (NOTE: The value of an item shall be

considered to be less than \$100 if the public servant reimburses the person from whom the item was received any amount over \$100 and the reimbursement occurs within ten (10) days from the date the item was received.);

(8) Wedding presents and engagement gifts;

(9) A monetary or other award presented to an employee of a public school district, the Arkansas School for the Blind, the Arkansas School for the Deaf, the Arkansas School for Mathematics, Sciences, and the Arts, a university, a college, a technical college, a technical institute, a comprehensive lift-long learning center, or a community college in recognition of the employee's contribution to education;

(10) Tickets to charitable fundraising events held within this state by a non-profit organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(11) A personalized award, plaque, or trophy with a value of one hundred fifty dollars (\$150) or less;

(12) An item which appointed or elected members of a specific governmental body purchase with their own personal funds and present to a fellow member of that governmental body in recognition of public service;

(13) Food or beverages provided at a conference scheduled event that is part of the program of the conference;

(14) Food or beverages provided in return for participation in a bona fide panel, seminar, speaking engagement at which the audience is a civic, social, or cultural organization or group;

(15) A monetary or other award publicly presented to an employee of state government in recognition of his or her contributions to the community and State of Arkansas when the presentation is made by the employee's supervisor Or peers, individually or through a non-profit organization which is exempt from taxation under Section 501(c) of the Internal Revenue Code, and the employee's receipt of the award would not result in or create the appearance of the employee using his or her position for private gain, giving preferential treatment to any person, or losing independence or impartiality. (NOTE: This exception shall not apply to an award presented to an employee of state government by a person having economic interests which may be affected by the performance or nonperformance of the employee's duties or responsibilities.);

(16) Any work of art, contracted for prior to January 1, 1998, for public service

recognition for members of the Arkansas General Assembly; or

(17) Racing passes provided to and accepted by members of the General Assembly and other constitutional officers for redistribution to their constituents and persons residing outside the State of Arkansas to promote tourism and advance the economic interests of the State.

(18) Anything of value provided by a political party under § 7-1-101 or § 7-7-205 when serving as the host of the following events to all attendees as part of attendance at the event:

(A) The official swearing-in, inaugural, and recognition events of constitutional officers and members of the General Assembly; and

(B) An official event of a recognized political party so long as all members of either house of the General Assembly affiliated with the recognized political party are invited to the official event.

205 WHISTLE BLOWER PROTECTION ACT

A.C.A. §§21-1-601 through 608; §21-1-610; §§21-1-123 and 124

Arkansas law provides certain protections for state employees who blow the whistle regarding certain agency actions or inactions.

Definitions

Adverse action: To discharge, threaten, or otherwise discriminate or retaliate against a state employee in any manner that affects the employee's employment, including compensation, job location, rights, immunities, promotions, or privileges.

Appropriate authority: Any state agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or a member, officer, agent, investigator, auditor, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the office of the Attorney General, the office of the Auditor of state, the Arkansas Ethics Commission, the Legislative Joint Audit Committee and the Division of Legislative Audit, and the offices of the various prosecuting attorneys having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste.

Communicate: To give a verbal or written report to an appropriate authority.

Public employee: A person who performs a full or part-time service for wages, salary, or other remuneration for a public or state employer, and includes without limitation a state employee.

Public employer: An agency, department, board, commission, division, office, bureau,

council, authority or other instrumentality of the State of Arkansas, including the offices of the various Arkansas elected constitutional officers and the Arkansas General Assembly and its agencies, bureaus, and divisions; a state-supported college, university, technical college, community college or other institution of higher education or department, division, or agency of a state institution of higher education; The Arkansas Supreme Court, the Court of Appeals, the Administrative Office of the Courts, the circuit courts, and prosecuting attorneys' offices.

Violation: An infraction or a breach, which is not of a merely technical or minimal nature, of a state statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or code of ethics designed to protect the interest of the public or a public employer.

Waste: A public employer's conduct or omissions which result in substantial abuse, misuse, destruction or loss of public funds, property, or manpower belonging to or derived from state or local political subdivision's resources.

Whistle-Blower: A person who witnesses or has evidence of a waste or violation while employed with a public employer and who communicates in good faith or testifies to the waste or violation, verbally or in writing, to one of the employee's superiors, to an agent of the public employer, or to an appropriate authority, provided that the communication is made prior to any adverse action by the employer.

Fraud Detection

A public employer is required to obtain a criminal background check before hiring an applicant for a position with supervisory fiduciary responsibility over all fiscal matters. The Arkansas State Police will conduct the background check. The applicant must sign a release of information to the public employer. The releasable information will be forwarded to the public employer. The public employer may pay for the criminal background check or require the applicant to pay for it.

The Vice President of Administration and Finance is required to report a loss of public funds to Arkansas Legislative Audit (Legislative Audit) within five (5) business days of discovering the loss. The report can include apparent or unauthorized disbursements of public funds or apparent theft or misappropriation of public funds or property.

An employee who purposely fails to report is guilty of a Class A misdemeanor.

Whistle-Blower

Notification

State agencies and institutions of higher education shall use appropriate means to notify their employees of their protection and obligations under these provisions. Public employers must post the sign prepared by Legislative Audit in a visible place informing employees of the Whistle-Blower law, including the appropriate authority to contact to report waste or a violation and whether a telephone hotline number exists. The sign is available on the Legislative Audit website.

Reward

When a state employee communicates waste or a violation to an appropriate authority, and that communication results in savings of state funds, the state employee shall be eligible to receive a reward equal to ten percent (10%) of the savings in state funds as a result of the changes based on that communication. No reward shall be paid in excess of twelve thousand five hundred dollars (\$12,500). If a reward amount is greater than twelve thousand five hundred dollars (\$12,500), the reward shall be referred to the General Assembly for an appropriation. If a reward is appropriated to a state employer for the benefit of a state employee, it shall be paid from the funds available to the state employer.

A state employee is not eligible for a reward for a communication that is part of the state employee's normal course of job duties, unless that communication is not acted upon by the state employer within ninety (90) days.

A report by an employee of a loss of public funds is considered a communication in the normal course of the employee's job duties if the employee:

1. Handles or exerts control over the funds of the employer;
2. Participates in making decisions or recommendations concerning the deposit, investment, or expenditure of the funds of the employer; or
3. Is responsible for auditing the funds of the employer.

Report by appropriate authority

Upon the resolution of a communicated matter, the appropriate authority shall provide a written report detailing the content of the communication and the outcome of the communication to the:

1. State employee who made the communication; and
2. State employer that was the subject of the communication.

A state employee may choose to forego a reward or choose to remain confidential and request to the appropriate authority that the report not include their name or identifying information. If a state employee makes this request, they are not eligible to receive a reward. The name and identifying information of a state employee requesting confidentiality is not disclosable under applicable state or federal laws.

After receiving the report from the appropriate authority, the state employer must within thirty (30) days of the end of the first full fiscal year in which the changes based on the communication were implemented, issue a report. The report must contain the following:

- A. The total savings in state funds resulting from the communication for the first full fiscal year in which the changes were implemented;
- B. The name of the state employee who made the communication, unless the state employee chose to maintain confidentiality; and
- C. The reward amount the state employee is eligible to receive. If a state employer concludes that the state employee is not eligible for a reward, the reasons shall be stated in the report.

The state employer report must be submitted to the Performance Evaluation and Expenditure Review Subcommittee of the Legislative Council or, if the General Assembly is in session, the Review/PEER Subcommittee of the Joint Budget Committee and the Clerk of the Arkansas State Claims Commission. The report must also be submitted to the state employee who made the communication, unless that state employee chose to remain confidential.

Right to appeal

The state employer report to the state employee must include a notice of the right to appeal to the Arkansas State Claims Commission (“Commission”). A state employee who files an appeal is not subject to adverse action. The state employee has forty (40) days of the submission of the state employer report to file an appeal and the state employee must follow the rules and procedures of the Commission. The state employee who files an appeal has the burden of proving by a preponderance of the evidence that the:

1. The report from the state employer does not accurately reflect the savings attributable to the changes made based on the communication; or
2. The state employer did not accurately assess the determination of a reward, including denying a reward to the state employee.

When the Commission notifies the parties of its decision, it must notify them of a right to appeal that decision. The decision of the Commission may be appealed only to the Claims Review Subcommittee of the Legislative Council or, if the General Assembly is in session, the Claims Subcommittee of the Joint Budget Committee. The notice of appeal must be filed with the Commission within forty (40) days after the Commission renders a decision. The Commission is responsible for notifying the Legislative Council or Joint Budget Committee and all parties to the matter when a notice of appeal is filed.

Within thirty (30) days of the end of the appeal period to the Commission or the resolution of an appeal to the Claims Review Subcommittee, whichever is later, the clerk of the Commission shall notify the state employer of the reward amount to be paid to the state employee. The state employer shall deliver a check to the clerk of the Commission who must deposit the check as a nonrevenue receipt into the Miscellaneous Revolving Fund from which the state employee will be paid.

A state agency or institution is prohibited from taking adverse action against an employee for reporting the loss of public funds.

Communicate in good faith

A state agency or institution is prohibited from taking adverse action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith the existence of waste of public funds, property, or manpower, including federal funds, property, or manpower, administered or controlled by a public employer or a violation or suspected violation of a law, rule, or regulation adopted under the law of this State or a political subdivision of the state to an appropriate authority. The communication shall be made at a time and in a manner which gives the public employer reasonable notice of the need to correct the waste or violation.

A state employee communicates in good faith if there is a reasonable basis in fact for the communication of the existence of waste or of a violation. Good faith is lacking when the state employee does not have personal knowledge of a factual basis for the communication or where the state employee knew or reasonably should have known that the communication of the waste or of the violation is malicious, false or frivolous.

A state agency or institution shall not take an adverse action against a state employee because the employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review.

A state agency or institution shall not take an adverse action against a state employee because an employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law or a rule or regulation adopted under the authority of laws of the state.

Civil action

A state employee who alleges a violation of Whistle-Blower protections may bring a civil action for appropriate injunctive relief or actual damages, or both, within one hundred eighty (180) calendar days after the occurrence of the alleged violation.

An action commenced under this law may be brought in the chancery court for the county where the alleged violation occurred or for the county where the complainant resides, or in the Chancery Court of Pulaski County.

To prevail in an action brought under this law, the state employee shall establish, by a preponderance of the evidence, that the employee has suffered an adverse action because the employee, or a person acting on his behalf, engaged or intended to engage in a protected activity.

As used in this section, "damages" means damages for a job-related injury or loss caused by each violation of the Whistle-Blower Act, including, but not limited to, fringe benefits, retirement service credit, compensation for lost wages, benefits, and any other remuneration, and reasonable court costs and attorneys' fees.

A state agency or institution shall have an affirmative defense to a civil action brought by a state employee if the adverse action taken against the state employee was due to employee misconduct, poor job performance or a reduction in workforce unrelated to a communication made pursuant to the Whistle-Blower protections. The state agency or institution of higher education must prove by a preponderance of the evidence that the existence of the state employee's misconduct, poor job performance or a reduction in workforce is unrelated to the communication. A court in rendering judgment under this act may order any or all of the following remedies:

1. An injunction to restrain continued violation of the provisions of the Whistle-Blower Act;
2. The reinstatement of the public employee to the same position held before the ad-

- verse action or to an equivalent position;
3. The reinstatement of full fringe benefits and retirement service credit;
 4. The compensation for lost wages, benefits, and any other remuneration;
 5. The payment by the state employer of reasonable court costs and attorney's fees.

A court may also order that reasonable attorney's fees and court costs be awarded to the employer if the court determines that an action brought by a state employee under this act is with- out basis in law or fact. Provided, a state employee shall not be assessed attorney's fees under this section if, after exercising reasonable and diligent efforts after filing the suit, the state employee files a voluntary non-suit concerning the employer within sixty (60) calendar days after determining the employer would not be liable for damages.

Expedited hearing

An employee may request an expedited hearing regarding the employee being reinstated to his or her position until the resolution of the civil action.

If at the hearing the employee can show that a reasonable person would conclude that the termination was the result of adverse action for the employee exercising his or her right under the Whistle-Blower law, the court will order the employee be 1) reinstated to his or her position until the conclusion of the civil action; or 2) reinstated and placed on paid administrative leave until the conclusion of the civil action.

Mediation

A state employee may voluntarily participate in mediation under OPM's mediation program if they wish to resolve a dispute between them that involves an adverse action taken against the state employee. Voluntary mediation shall occur before a civil action has been initiated in court in which the state employee and state agency or institution of higher education are parties.

FOIA and confidentiality

The Whistle-Blower law shall not be construed to permit a disclosure which would diminish or impair the rights of any person or any public official to the continued protection of confidentiality of records or working papers where a statute or the common law provides for protection.

Generally, materials and documentation, including notes, memoranda, recordings, preliminary drafts of investigation reports, and other data gathered in connection with a communication regarding the existence of waste or of a violation are privileged and confidential and exempt from disclosure under FOIA. Confidentiality also applies to communications received by a telephone hotline. Final reports and any supporting documentation regarding communication of the existence of waste or violation are open to public inspection and copying, except documents that are otherwise exempt under law. Additionally, the name and identifying information of the employee eligible to receive a reward may be disclosed, unless the employee requests confidentiality.

Reporting

State employees may report allegations directly to the DFA Internal Auction Section at (501) 682-0370 or (800) 952-8248. Complaint forms should be mailed to:

Department of Finance and Administration
Office of Accounting—Internal Audit Section
1515 W. 7th Street, Suite 215
Little Rock, AR 72201

206 SEXUAL HARASSMENT

Revised in August 2020. Please see new Section 212.

207 CONSENSUAL RELATIONS

Sexual relations between students and faculty members with whom they also have an academic or evaluative relationship are fraught with the potential for exploitation. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in an academic or evaluative role, make voluntary consent by the student suspect. Even when both parties initially have consented, the development of a sexual relationship renders both the faculty member and the institution vulnerable to possible later allegations of sexual harassment in light of the significant power differential that exists between faculty members and students.

In their relationships with students, members of the faculty and staff are expected to be aware of their professional responsibilities and to avoid apparent or actual conflict of interest, favoritism, or bias. When a sexual relationship exists, effective steps should be taken to ensure unbiased evaluation or supervision of the student.

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” 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. The “position of authority” may also include formally advising the student or when that student is a major in the employee’s department.

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” 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. 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. If this policy is violated, any discipline, if necessary, shall be reviewed on a case by case basis.

208 SEXUAL MISCONDUCT

Revised in August 2020. Please see new Section 212.

209 HIRING RELATIVES - NEPOTISM

A.C.A. §§25-16-1001 through 1007; Governor's Executive Order 98-04

State law prohibits an individual from working in certain positions for a state agency for the following reasons:

1. Public officials are prohibited from hiring relatives;
2. An employee is prohibited from supervising a relative; and
3. Employees working for the same agency who plan to marry must disclose this to the agency director.

Definitions

Employee: A person whose employment is not seasonal or temporary and whose actual performance of duty requires one thousand (1,000) or more hours during a fiscal year.

Public Official: The Secretary of State, Governor, Lieutenant Governor, Treasurer of the State, Auditor of the State, Attorney General, Commissioner of State Lands, a member of the Senate, a member of the House of Representatives, and the executive head of any agency, department, board, commission, institution, bureau, or council of this state.

Relative: A husband, wife, mother, father, stepmother, stepfather, mother-in-law, father-in-law, brother, sister, stepbrother, stepsister, half-brother, half-sister, brother-in-law, sister-in-law, daughter, son, stepdaughter, stepson, daughter-in-law, son-in-law, uncle, aunt, first cousin, nephew, or niece.

State agency: All boards, commissions, departments, agencies, institutions, state- supported institutions of higher education, and offices of constitutional officers of the State of Arkansas; and The General Assembly, including divisions, commissions, and bureaus operating under the authority of the General Assembly.

Supervisory employee: Any individual having authority in the interest of the state agency to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees of a state agency; or the responsibility to direct other employees of a state agency, to adjust their grievances, or to effectively recommend an action if the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Specific Provisions

A public official shall not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the state agency in which the official is serving or which the official exercises jurisdiction or control over any person who is a relative of the public official and is an employee of a state agency or as a result of the public official's action could be an employee of a state agency.

Within each state agency, no employees who are related shall be placed within the same line of supervision whereby one relative is in a supervisory position over the other. A temporary change in supervision resulting in the supervision of a relative will not be considered a violation of Arkansas law provided the supervision does not exceed 30 days. No hiring, firing, pay adjustments, or other personnel actions may occur during this temporary period of supervision.

All state agencies are required to obtain completed and signed disclosure forms from the top applicant(s), whether the applicant is a current or former (within the last 24 months) state employee or has never been employed by the state prior to a formal offer of employment. The disclosure requirements are as follows:

- F3-F4 - Employee Disclosure/Certification and Employment of Family Members Form
The F3-F4 form is a two page document in which an applicant and/or employee discloses his or her familial relationship, position and office, as defined. Additionally, the form provides the hiring official and subsequent reviewers, the opportunity to determine whether the applicant/employee meets or does not meet the requirements for hire, as defined.
- F5-F6, F7 - Employee Disclosure Requirements/Restrictions Notice
This portion of the form series is a three page document which includes information to an applicant and/or employee regarding financial interest gained through a familial tie to a state contract or grant, the penalties for non-disclosure, receipt and understanding of the legislation, and disclosure of his or her familial relationship, type of business, state contracting entity, amount, and nature of the benefit received/to be received.
- F8 - Employee Disclosure of Family Members Form (State Application Portion)
The F8 form is a checklist format found on state application forms for family member disclosure.

210 MARRIED STATE EMPLOYEES

A.C.A. §§25-16-1001 through 1007; Governor's Executive Order 98-04

For employees working for the same state agency who plan to marry, if the marriage will result in a violation of the Arkansas law prohibiting relatives from working within the same line of supervision whereby one relative is in a supervisory position over the other, the agency director or designee shall provide written notice of the following alternatives to resolve the violation:

1. Transferring one (1) of the employees to another position within the state agency;
2. Transferring one (1) of the employees to another state agency; or
3. The resignation of one (1) of the employees.

The employees shall have the opportunity to choose among the alternatives; however, there is no

guarantee that a position will be available within the employee's current agency, or another agency. If the employees are unable to agree within sixty (60) days, the agency director or their designee shall choose from the alternatives to correct the violation.

Agencies must inform employees of the law by written notification of the rules, including of the rules in the agencies employee handbook, and/or inclusion in new employee orientation programs.

The nepotism section of the State of Arkansas Employment Application shall be completed in its entirety listing the name, relationship, and job title of all relatives currently employed by the state agency for which application of employment is being submitted. The Human Resources section of the agency or institution will then decide if the hiring of the applicant is in violation of this law.

This provision does not apply to an employee who was hired, transferred or promoted in a state agency prior to August 12, 2005.

Penalties

Anyone who approves a position and authorizes compensation to an employee in violation of this law, the person will be charged with a Class A misdemeanor. A public official who knowingly violates this law shall be subject to a civil penalty of one thousand dollars (\$1,000).

211 WORKERS' COMPENSATION

A.C.A. §21-4-208; §21-5-417

Employees who encounter an injury or illness on-the-job and are entitled to workers' compensation benefits, upon proper application, may utilize their accrued sick leave as a supplement to such benefits.

The combination of workers' compensation benefits and sick leave pay shall not exceed the employee's normal pay period salary. Employees receiving workers' compensation benefits for a permanent disability are eligible for full pay from both sources.

The option will reduce the employee's accrued sick leave on a proportional basis. For example, an employee's normal salary is \$150.00. The employee receives \$75.00 workers' compensation benefits and elects to receive an additional \$75.00 per week in sick leave payments. Thus, the employee uses sick leave at a rate of one-half the weekly salary which is equivalent to 2-1/2 days of sick leave for each week of disability.

The sick leave used to supplement workers' compensation will be reinstated in reverse order from which absence due to sick leave is charged for that portion of time taken that was covered by workers' compensation. For example, absence due to sick leave is charged in the following order: earned sick leave, earned annual leave, leave without pay. Reinstated leave will then be annual leave, then sick leave. Leave without pay is not covered by worker's compensation and therefore is not re-established.

In the event an employee receives workers' compensation payments as a salary benefit in addition to sick leave payments and the combined payments exceed the employee's normal weekly pay, the employee shall pay the excess amount to the university for deposit in the university's fund from which the sick leave has been paid. Upon receipt of the excess amount of pay, the university shall then restore to the employee's credit that amount of sick leave that was used in a proportion that the workers' compensation payment is to the employee's weekly pay.

Agencies must continue to remit the employer's contribution to the State Employees/ Public School Employees Insurance Program when an employee is on leave without pay and receiving workers' compensation benefits as a result of a work related injury or illness.

212 EQUAL OPPORTUNITY, HARASSMENT (SEXUAL MISCONDUCT), AND NONDISCRIMINATION POLICY AND PROCEDURES¹

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 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. To ensure accurate interpretation of this Policy, please refer to Appendix A 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, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, ATU has developed policies and procedures that provide a process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and also for allegations of retaliation.

¹ ATIXA 2020 One Policy, Two Procedures Model use, and adaption of this model with citation to ATIXA is permitted through a limited license to Arkansas Tech University. All other rights reserved. © 2020. ATIXA.

3. Applicable Scope

The purpose of this Policy is the prohibition of discrimination. When an alleged violation of this anti-discrimination policy is reported, depending on the type of allegation, it will be investigated using ATU's "Process A" or "Process B" as detailed below.

When the Respondent is a member of the ATU community, 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,² student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, 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.

4. Title IX Coordinator and Affirmative Action/Equal Opportunity Officer

At ATU, multiple individuals work together to oversee implementation of best-practice policies and procedures to support students, staff, and faculty.

- 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.
- Christina Stolarz serves as the Affirmative Action/Equal Employment Opportunity Officer (AA/EEO) and oversees protected class discrimination, excluding gender, 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 as well as Process A and Process B. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

Christina Stolarz, 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, Christina Stolarz oversees protected class discrimination resolutions under this Policy, specifically those in Process B.

² For the purpose of this Policy, ATU defines "student" as any individual who is currently enrolled, full-time or part-time, in any non-credit or credit courses pursuing undergraduate, graduate, post-graduate/professional studies, or concurrent high school. This includes an individual who has been notified of acceptance for admission but has yet to be enrolled for study.

Reports of misconduct or discrimination committed by the Title IX Coordinator, Amy Pennington, or the AA/EEO Officer, Christina Stolarz, should be reported to Dr. Robin Bowen, ATU President, or designee. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to Amy Pennington.

6. Complaints of Discrimination, Harassment, and/or Retaliation and Administrative Contact Information

Complaints or notice of alleged violations of this Policy, may be made to the following employees, which triggers the obligation for ATU to respond:

1) File a written complaint with:

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

You may also contact any of the individuals below:

Christina Stolarz
Director of Human Resources and AA/EEO Officer/Deputy Title IX Coordinator
Human Resources
[Focus-All types of protected class discrimination]
Brown Hall, Suite 434
Russellville, AR 72801
479-968-0396
cstolarz@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

Stacy Galbo
Deputy Title IX Coordinator for Educational Outreach and Training/Investigator
Title IX Office
[Focus-Gender discrimination, including sexual misconduct]
Doc Bryan Student Services Center, Suite 233
Russellville, AR 72801
479-964-0583 ext. 4714
sgalbo2@atu.edu

Susie Nicholson
Director of Compliance and Deputy Title IX Coordinator/Investigator
Athletics
[Focus-Gender discrimination, including sexual misconduct and athletics]
Tucker Coliseum
Russellville, AR 72801
479-964-3230
snicholson@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

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

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

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

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

These employees typically work Monday-Friday from 8:00 am until 5:00 pm. Reports may be made (including leaving messages during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed. In case of emergency or for immediate assistance, please dial 911.

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. The section titled "Responsible Employees" details which employees have this responsibility and their duties.

2) Report online, using the reporting form posted at

https://cm.maxient.com/reportingform.php?ArkansasTechUniv&layout_id=2.

Anonymous reports are accepted via this reporting mechanism but can give rise to a need to investigate. ATU tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Reporting carries no obligation to initiate a formal response. ATU respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety.

A formal complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that ATU investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person,

by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a written document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by ATU) 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 will contact the Complainant to ensure that it is filed correctly.

7. External Contact Information

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
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

8. Supportive Measures

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

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

The Title IX Coordinator or the AA/EEO Officer will make 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 will work with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

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 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 will 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 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.

In all cases in which 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 a show cause meeting with Amy Pennington, AVP/Dean of Students and Title IX

Coordinator, or Christina Stolarz, Director of Human Resources and AA/EEO Officer/Deputy Title IX Coordinator, prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

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 stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this Policy will be grounds for discipline, 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.

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. Privacy

Every effort is made by ATU to preserve the privacy of reports.³ Unless required by law or this Policy, ATU will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination (gender discrimination), any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of 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 within 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. This may include, 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.

³ 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 employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. 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: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) 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.

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 below.

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 off-campus misconduct that effectively deprives someone of access to ATU's educational program. ATU may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial ATU interest.

A substantial ATU interest includes:

- a. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual or the ATU campus

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 campus and local resources and supportive measures available and, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

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 allege violations 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 submitting complaints to the Title IX Coordinator or the AA/EEO Officer. However, if the Respondent is no longer subject to ATU's jurisdiction or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on 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 complaint is affected by significant time delay, ATU will 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 uses ATU networks, technology, or equipment.

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 be subject to this Policy only when such online conduct can be shown to cause a substantial in-program disruption.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally 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 Definitions

A. Policy on Nondiscrimination

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

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 at the University and access to University 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 membership in the protected classes listed above is in violation of ATU policy on nondiscrimination.

When brought to the attention of the AA/EEO Officer, any such discrimination will be addressed by ATU according to the grievance process described in Process B.

B. 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 and state 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.

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 reports 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.

i. Students with Disabilities

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

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. 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.

ii. 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 Christina Stolarz, Director of Human Resources and AA/EEO Officer/Deputy Title IX Coordinator, and providing necessary documentation at cstolarz@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.

C. Policy on Discriminatory Harassment

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. ATU's harassment 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 policies encompass actual and/or attempted offenses.

i. 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 membership in a class protected by policy or law.

ATU does not tolerate discriminatory harassment of any employee, student, visitor, or guest. 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.⁴ This discriminatory

⁴ 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](#).

effect results from harassing verbal, written, graphic, 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 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 status. Addressing such conduct will not result in the imposition of discipline under ATU policy, but may be addressed through respectful conversation, remedial actions, education, and/or other informal resolution mechanisms.

ii. 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.

ATU has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community.

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.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

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

- 1) Quid Pro Quo:
 - a. an employee of ATU,
 - b. conditions the provision of an employment or educational benefit, aid, or service of ATU,
 - c. on an individual’s participation in unwelcome sexual conduct.

- 2) Sexual Harassment:
 - 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 person equal access to ATU’s education program or activity.⁵

⁵ Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below 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.

- 3) Sexual assault, defined as:
- a. Sex Offenses, Forcible:
 - Any sexual act directed against another person,
 - without the consent of the Complainant,
 - including instances in which the Complainant is incapable of giving consent.
 - b. Forcible 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 the consent of the Complainant.
 - c. Forcible Sodomy:
 - Oral or anal sexual intercourse with another person,
 - forcibly,
 - and/or against that person's will (non-consensually), or
 - not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age⁶ or because of temporary or permanent mental or physical incapacity.
 - d. 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 another person,
 - forcibly,
 - and/or against that person's will (non-consensually),
 - or not forcibly or against the person's 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. Forcible Fondling:
 - The touching of the private body parts of another person (buttocks, groin, breasts),
 - for the purpose of sexual gratification,
 - forcibly,
 - and/or against that person's will (non-consensually),
 - or not forcibly or against the person's 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.
 - f. Sex Offenses, Non-forcible:
 - Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,
 - 3) within the degrees wherein marriage is prohibited by Arkansas law.

⁶ Per state law.

- Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) 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—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.

5) Domestic Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Arkansas, or
- g. by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of Arkansas.

To categorize an incident as Domestic Violence, 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.

6) Stalking, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, 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—

1. 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.

2. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
3. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

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.

iii. Force, Coercion, Consent, and Incapacitation⁷

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

⁷ 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
 - 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.

overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “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.

Consent is:

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

Individuals may experience the same interaction in different ways. 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. 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 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.

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 incident occurred.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. 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 sound judgment.

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, blackout, 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 drugs.

iv. 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 membership in a protected class.

- Sexual Exploitation, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and 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)
 - Invasion of sexual privacy.
 - 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 revenge 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 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
 - 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 membership in a protected class, 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 reprimand up to and including suspension or expulsion/termination.

16. Retaliation

Protected activity under this Policy includes reporting an incident that may implicate this Policy, participating in the grievance process, 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. ATU is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for any member of ATU's community 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.

Charges against an individual for code of conduct violations that do not involve sex

discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

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

Charging an individual with 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 a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

17. Responsible Employees

Many ATU employees are mandated to report actual or suspected discrimination or harassment 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.

In order 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 or harassment. 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 crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at ATU for a Complainant or third-party (including parents/guardians when appropriate):

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, and/or professional credentials, 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 are confidential 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.

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, Associate Dean for Student Wellness, kdavis51@atu.edu

Craig Witcher, LPC, Counselor, cwitcher@atu.edu

Janis Taylor, LPC, Counselor, jtaylor78@atu.edu

Josh Root, LAC, Counselor, jroot4@atu.edu

Leann Watson, LPC, Counselor, lwatson12@atu.edu

Health Services:

Brandye Bisek, APRN, Director of Health Services/Nurse Practitioner, bbisek@atu.edu

Robin Joslin, APRN, Nurse Practitioner, rkoontz@atu.edu

Kyle Wewers, APRN, Nurse Practitioner, kwewers@atu.edu

Heather Stout, RN, Registered Nurse, hstout1@atu.edu

Cori Hinson, RN, Registered Nurse, 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 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.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator 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 or discrimination of which they become aware is a violation of ATU policy and can be subject to disciplinary action for failure to comply.

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.

18. 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, 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 has ultimate discretion over whether ATU proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process 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 (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, it 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.

19. 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.

20. 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 can be subject to discipline under ATU policy.

21. Amnesty for Complainants and Witnesses

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 grievance 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 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.

22. 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 homicide (criminal homicide-murder and non-negligent manslaughter, manslaughter by negligence), sexual assault (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/theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA⁸-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 abuse-related 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 Fire Safety Report and daily crime log.

Campus Security Authorities include: student affairs/student conduct staff, public safety staff, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities. A complete list of employees who serve as a CSA can be obtained by contacting the Department of Public Safety.

23. Preservation of Evidence

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

1. Seek forensic medical assistance at a local hospital, ideally within 72-120 hours of the incident (sooner is better). 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.

⁸ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

2. Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
3. Try not to urinate.
4. If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
5. If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence).
6. Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be reiterated, if timely.

PROCESS A

INTERIM 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 or informal notice/complaint of violation of the Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures that is received by the Title IX Coordinator⁹, the AA/EEO Officer, or any other Official with Authority by applying these procedures, known as Process A.

The procedures below, Process A, apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrator, or faculty members.

If other policies are invoked, such as policies on protected class harassment or discrimination above, 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 above) 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 arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). 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 notice or complaint to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates an initial assessment to determine the next steps ATU needs to take.

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; and/or
- 2) An informal resolution (upon submission of a formal complaint); and/or
- 3) A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

⁹ Anywhere this procedure indicates "Title IX Coordinator," ATU may substitute a trained designee.

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

3. Initial Assessment

Following receipt of a notice or complaint of an alleged violation of this Policy, the Title IX Coordinator¹⁰ 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 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 reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- 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 wishes, assess the request, 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, and may seek to determine if the Respondent is also willing to engage in informal resolution.
 - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate issue, based on the nature of the complaint.
 - If it does not, the Title IX Coordinator determines that Title IX does 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. Please note that dismissing

¹⁰ If circumstances require, the ATU President or designee, or the Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

a complaint under Title IX is solely a procedural requirement under Title IX, and does not limit ATU's authority to address a complaint with another appropriate process and remedy.

a. Violence Risk Assessment

In many 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:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- 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 below in Appendix B.

b. Dismissal (Mandatory and Discretionary)¹¹

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

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
- 2) The conduct did not occur in an employment or educational program or activity controlled by ATU (including buildings or property controlled by recognized student organizations), and/or ATU does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) 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.

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; or
- 2) The Respondent is no longer enrolled in or employed by ATU; or
- 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 to the parties on the same day.

This dismissal decision is appealable by any party under the procedures for appeal below. 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. 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 by a Respondent may be made in good faith, but are, on occasion, made for purposes of retaliation, instead. Counterclaims made with retaliatory intent will not be permitted.

¹¹ These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.

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

Counterclaims may also be resolved through the same investigation as the underlying allegation, 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 an Advisor¹² 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.¹³

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. An Advisor cannot serve as a witness.

ATU may permit parties to have more than one (1) Advisor with a maximum of two (2) Advisors allowed upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties. Only one of the Advisors may be designated to participate in the cross-examination.

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 for 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.

¹² 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).

¹³ "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.

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 U.S. Department of Education regulations under Title IX, a form of indirect questioning is required during the hearing, but must be conducted by the parties' Advisors. The individual party members 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 other party or witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, ATU will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-Maker(s) during the hearing.

d. Pre-Interview Meetings

Advisors 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. Advisors are expected to advise their parties 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 advisee¹⁴ 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 cross-examination.

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

¹⁴ Subject to the state law provisions or ATU policy above.

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 will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will stop, or other appropriate measures implemented. 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. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

ATU also provides a consent form that authorizes ATU to share such information directly with their 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 when planned, but may change scheduled meetings 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 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.

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.

a. Informal Resolution

Informal Resolution can include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.
- When the parties agree to resolve the matter through an alternate resolution mechanism including mediation, restorative practices, etc.
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process.

To initiate Informal Resolution, a Complainant needs to 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.

Prior to implementing Informal Resolution, ATU will provide the parties with written notice of the reported misconduct and any sanctions or measures 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.

b. Alternate Resolution Mechanism

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

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 parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of allegation;
- 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 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. Results of complaints resolved by Informal Resolution or 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 in that section above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and ATU are able to agree on responsibility, sanctions, 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 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

terms of resolution. 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 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.

d. Negotiated Resolution

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and ATU. Negotiated Resolutions are not appealable.

7. Grievance Process Pool

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this Policy to all students, employees, prospective students, and prospective employees.

The list of Pool members and a description of the Pool can be found at <http://atu.edu/titleix/pool>.

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 Decision-Maker regarding the complaint

b. Pool Member Appointment

The Title IX Coordinator, in consultation with the President, appoints the Pool¹⁵, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, 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.

¹⁵ This does not preclude ATU from having all members of the Pool go through an application and/or interview/selection process.

c. Pool Member Training

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

- The scope of ATU's discrimination and harassment policy and procedures
- How investigation and hearings are conducted that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- Types of evidence
- Deliberation
- 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 investigations and grievance process 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
- 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 Appeal Decision-Makers, intake personnel, Advisors (who are ATU employees), 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 <http://atu.edu/titleix/pool>.

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 those representative 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. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. 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 of 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 to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about ATU’s policy on retaliation,
- Information about the privacy 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 interview 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, and
- 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 charges.

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, 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 Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints an Investigator(s) to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

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.

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 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 thirty (30) business days, though some investigations may 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.

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 accommodations for disabilities or health conditions.

ATU will communicate in writing the anticipated duration of the delay and reason to the parties 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 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.

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
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator with conducting an initial assessment to determine if the allegations indicate a potential policy violation

- Commence an 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 witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
 - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) 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 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 witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation 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 will be used to render a finding
- 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
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, 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. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- The Investigator(s) 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

- The Investigator(s) will 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
- The Investigator(s) shares the report with the Title IX Coordinator for their review and feedback
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report

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. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline. As part of the ATU community, students have a responsibility to cooperate with and/or participate in the investigation and resolution process. 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, pandemic) 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. Witnesses are strongly encouraged to participate in the entire process. If a witness submits a written statement but is not present for cross-examination at a hearing, their written statement may not be used as evidence.

16. Recording of Interviews

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

17. Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or 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.

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 will select appropriate Decision-Makers from the Pool.

19. Hearing Decision-Makers Composition

ATU will designate a three-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 investigation. 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 this role. The hearing will convene at a time determined by the Chair or designee.

20. Evidentiary Considerations in the Hearing

Any evidence that the Decision-Maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or 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.

Previous disciplinary action of any kind involving the Respondent may be considered in

determining an appropriate sanction upon a determination of responsibility, because ATU uses a progressive discipline system. This 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 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.

After post-hearing deliberation, the Decision-Makers render a determination based on the preponderance of the evidence, 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 policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- 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 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 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 on 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, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-Makers. 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 do not have an Advisor, and ATU will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-Makers about the matter, unless they have been provided already.
- An invitation to each party to submit to the Chair an impact 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). A student facing charges under this Policy is not in good standing to graduate.

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

The Chair, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, 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. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, at the discretion of the Chair, the hearing will either be recessed to allow all parties to review new information or may, in extreme circumstances, 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 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 bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator 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. 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 have 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 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 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.

Witnesses will not be allowed in the hearing room until they are called to provide testimony or

answer questions. 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 the witnesses will then be excused, unless the witness is also serving as an Advisor.

25. Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have 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 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 with respect to each alleged policy violation.

26. 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. 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.

27. Investigator Presents the 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) will 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 the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

28. Testimony and Questioning

Once the Investigator(s) present their report and are questioned, 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 (“cross-examination”).

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 or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may explore arguments 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, subject to any appeal. The Chair may consult with 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.

29. Refusal to Submit to Cross-Examination and Inferences

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-Makers may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-Makers must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the Decision-Maker(s), as distinguished from questions posed by Advisors through cross-examination.

The Decision-Makers may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-Makers may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their

Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with ATU's established rules of decorum for the hearing, ATU may require the party to use a different Advisor. If an ATU-provided Advisor refuses to comply with the rules of decorum, ATU may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

30. Recording Hearings

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 listen to the recording in a controlled environment 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.

31. Deliberation, Decision-making, and Standard of Proof

The Decision-Maker will deliberate in closed session to determine whether the Respondent is responsible or not 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 statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-Makers may – at their discretion – consider the statements, but they are not binding.

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

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions.

This report is typically three (3) to five (5) pages in length and 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.

32. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator 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.

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 articulate the specific policy(ies) violated, including the relevant policy section, 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 sanctions issued which ATU is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to ATU's educational or employment program or activity, to the extent ATU is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by ATU to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

33. 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
- Previous allegations or allegations involving similar conduct
- 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 sanctions 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.

a. Student Sanctions

The following are the sanctions that may be imposed upon students or organizations singly or in combination¹⁶:

- *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 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.
 - 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

¹⁶ Subject to ATU's Organizational Code of Conduct.

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/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *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.

34. Withdrawal or Resignation While Charges Pending

a. 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, in the event the student is found responsible, that student is not permitted to return to ATU unless and until all sanctions have been satisfied.

b. 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.

However, ATU will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

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.

35. Appeals

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within five (5) days of the delivery of the Notice of Outcome.

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.

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.

a. Grounds for Appeal

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) 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; and
- (C) 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 the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-Makers.

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-Makers will be mailed, emailed, and/or provided a hard copy of the request 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 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 raise a new ground for 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 Investigator(s) and/or original Decision-Makers, as necessary, who will submit their responses in three (3) business days, which will be circulated for review and comment by all parties.

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 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 including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions 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 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 hearing 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

- Decisions on appeal are to be deferential to the original decision, 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.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and documentation regarding the specific grounds for appeal.
- 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 on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be 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). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

- In rare cases where a procedural error cannot be cured by the original Decision-Makers (as in cases of bias), the appeal may order a new hearing with new Decision-Makers.
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results 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.

36. 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
- 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 privacy of any long-term remedies/actions/measures, provided privacy does not impair ATU's ability to provide these services.

37. 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.

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 suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator or the AA/EEO Officer.

38. Recordkeeping

ATU will maintain for a period of at least seven (7) years 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; and
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; and
 - 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.

39. 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 or Christina Stolarz, Director of Human Resources and AA/EEO Officer and Deputy Title IX Coordinator, who coordinates services for employees at cstolarz@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.

40. Revision of this Policy and Procedures

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation 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 regulations or 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

- *Arkansas Tech University* herein referenced as “ATU”.
- *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 cross-examination for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that ATU investigate the allegation.
- *Confidential Resource* means an employee who is not mandated to report notice of harassment, discrimination, and/or retaliation. At ATU, this includes the licensed counselors and the licensed health care providers in the Health and Wellness Center.
- *Day* means a business day when the ATU is in normal operation.
- *Education program or activity* means locations, events, or circumstances where ATU exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by ATU.
- *Final Determination*: A conclusion by preponderance of the evidence of whether or not the alleged conduct did or did not violate policy.
- *Finding*: A conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged.
- *Formal Grievance Process* means “Process A,” 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 CFR § 106.45).
- *Grievance Process Pool* includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Decision Panel* refers to those who have decision-making and sanctioning authority within the ATU’s Formal Grievance process.

- *Investigator* means the person or persons charged by ATU with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *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.¹⁷
- *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.
- *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.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Process A* means the Formal Grievance Process used to address qualifying allegations of sexual harassment (including 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.
- *Recipient* means a postsecondary education program that is a recipient of federal funding.
- *Remedies* are post-finding 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 class; or retaliation for engaging in a protected activity.
- *Resolution* means the result of an informal or Formal Grievance Process.
- *Sanction* means a consequence imposed by ATU on a Respondent who is found to have violated this Policy.

¹⁷ 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.

- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence.
- *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, and any deputy coordinators, and any member of the Grievance Process Pool.

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; and
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 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 the for the operationalization of the risk levels.

Some examples of formalized approaches to the VRA process include: The NaBITA Risk Rubric,¹⁸ The Structured Interview for Violence Risk Assessment (SIVRA-35),¹⁹ The Extremist

¹⁸ www.nabita.org/tools

¹⁹ www.nabita.org/resources/assessment-tools/sivra-35/

Risk Intervention Scale (ERIS),²⁰ Looking Glass,²¹ Workplace Assessment of Violence Risk (WAVR-21),²² Historical Clinical Risk Management (HCR-20),²³ and MOSAIC.²⁴

The VRA is conducted independently from the Title IX process, free from outcome pressure, but is informed by it. 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.

²⁰ www.nabita.org/resources/assessment-tools/eris/

²¹ www.nabita.org/looking-glass

²² www.wavr21.com

²³ hcr-20.com

²⁴ www.mosaicmethod.com

APPENDIX C: PROCESS B

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

ATU may use Process B of this Policy for all protected-class 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, the 2001 Revised Guidance, etc.) may also be applicable to Process B.

PROCESS B

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

ATU will act on complaints of violation 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, Appendix C, known as “Process B.”

The procedures described below apply to allegations of harassment or discrimination on the basis of protected class 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 or discriminatory 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. Initial Assessment

Following an intake meeting with the Complainant, receipt of a written report, or receipt of a written complaint of an alleged violation of this Policy, the Title IX Coordinator²⁵ and/or the AA/EEO Officer engages in an initial assessment, which is typically one (1) to five (5) business days in duration. The steps in an initial assessment may include:

- The Title IX Coordinator and/or the AA/EEO Officer reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator and/or the AA/EEO Officer informs the Complainant the opportunity to have an Advisor.
- The Title IX Coordinator and/or the AA/EEO Officer works with the Complainant to determine whether the Complainant prefers an Informal Resolution Process or a Formal Complaint Resolution Process.

Complainant's Initial Meeting with the Title IX Coordinator or AA/EEO Officer

As soon as is practicable after receiving a complaint, 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. Request that the Complainant submit a written complaint which the Complainant may, if he or she agrees to disclose the information, provide details regarding the allegation, including the name of the accused individual and the date, location, and general nature of the alleged violation;
3. Explain avenues for Informal Resolution Process and Formal Complaint Resolution Process of the Complaint;
4. Explain the steps involved in an investigation;
5. Discuss confidentiality standards and concerns with the Complainant;
6. Determine whether the Complainant wishes to pursue a resolution (informal or formal) through ATU, or no resolution of any kind;
7. 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:

²⁵ 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.

- a. issuing no-contact directives to prevent any contact between the Complainant, the Respondent, witnesses and/or third parties;
- b. providing the Complainant an escort to ensure that he or she can move safely between classes, work, and/or activities;
- c. changing a Complainant's or a Respondent's on-campus housing or dining, if any, to a different on-campus location and providing assistance from ATU support staff in completing the relocation;
- d. arranging to dissolve a campus housing contract and offering a pro-rated refund;
- e. changing work arrangements;
- f. rescheduling class work, assignments, and examinations without penalty;
- g. arranging for the Complainant to take an incomplete in a class; or
- h. moving the Complainant or the Respondent from one class section to another without penalty;
- i. permitting a temporary withdrawal from ATU;
- j. providing alternative course completion options without penalty;
- k. providing counseling services;
- l. providing academic support services such as tutoring.

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 Complaint;
2. Provide Respondent with a copy of this Policy;
3. Explain the ATU's procedures for Informal Resolution Process and Formal Complaint Resolution Process of the Complaint
4. Explain the steps involved in an investigation;
5. Discuss confidentiality standards and concerns with the Respondent;
6. Discuss non-retaliation requirements with the Respondent;
7. 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:
 - a. issuing no-contact directives to prevent any contact between the Complainant, the Respondent, witnesses and/or third parties;
 - b. providing the Complainant an escort to ensure that he or she can move safely between classes, work, and/or activities;
 - c. changing a Complainant's or a Respondent's on-campus housing or dining, if any, to a different on-campus location and providing assistance from ATU support staff in completing the relocation;
 - d. arranging to dissolve a campus housing contract and offering a pro-rated refund;
 - e. changing work arrangements;

- f. rescheduling class work, assignments, and examinations without penalty;
- g. arranging for the Complainant to take an incomplete in a class; or
- h. moving the Complainant or the Respondent from one class section to another without penalty;
- i. permitting a temporary withdrawal from ATU;
- j. providing alternative course completion options without penalty;
- k. providing counseling services;
- l. providing academic support services such as tutoring.

ATU provides two options for resolving matters of discrimination, harassment, and retaliation: an Informal Resolution Process and a Formal Complaint Resolution Process. An individual who believes that he or she has been subjected to discrimination, harassment, or retaliation and seeks to take action may use the Informal Resolution Process, the Formal Complaint Resolution Process, or both. The Informal Resolution Process and the Formal Complaint Resolution Process are not mutually exclusive and neither is required as a pre-condition for choosing the other. However, they cannot both be used at the same time.

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.

2. 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:

- Interim suspension of a Respondent who is a threat to health/safety;
- Whether the Title IX Coordinator and/or the AA/EEO Officer should pursue a Complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potentially predatory conduct;
- To help assess/identify grooming behaviors;
- Whether a Complaint is amenable to informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Assessment of appropriate sanctions/remedies;
- 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

An individual who believes that he or she has been subjected to discrimination, harassment, 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, or retaliation.

Informal Resolution Process.

The Informal Resolution Process may be appropriate when the conduct complained of is not of a serious or repetitive nature and disciplinary action is not required to remedy the situation. As there is no formal investigation involved in the Informal Resolution Process, there is no imposition of discipline.

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 offensive conduct occurred;
- Assisting a department or division with the resolution of a real or perceived problem; or
- Arranging for a documented meeting between the Respondent and an ATU official that involves, at a minimum, a discussion of the requirements of this Policy.

ATU will document any Informal Resolution Process. The documentation will be retained by the Title IX Coordinator and/or the AA/EEO Officer and, if a faculty member is involved, and so requests, the Faculty Welfare Committee representative. The documentation will be kept confidential to the extent permitted by law. If a complaint is filed in a faculty or staff's permanent record, the faculty or staff member must be notified. An Informal Resolution Process is not a precondition for filing a formal written complaint.

Formal Complaint Resolution Process.

A Formal Complaint Resolution Process (including an investigation and hearing) can be pursued for any behavior for which the Respondent has not accepted responsibility that constitutes conduct covered by the Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures at any time during the process. The Formal Complaint Resolution Process starts with an investigation and concludes with a hearing. An individual who believes that he or she has been subjected to discrimination, harassment, or retaliation may submit a written formal complaint setting forth all facts to the Title IX Coordinator and/or the AA/EEO Officer who will assign an Investigator(s) to review the facts presented. The individual, if they are a faculty member, may also request that a copy of the complaint be sent to the Faculty Welfare Committee representative.

Proceedings are private. All persons present at any time during the resolution processes 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.

If the Formal Complaint Resolution Process is initiated, the Title IX Coordinator or the AA/EEO Officer will provide written notification of the investigation to the parties at an appropriate time during the investigation. Typically, notice is given at least 48 hours in advance of an interview. Advanced notice facilitates the parties' ability to identify and choose an Advisor, if any, to accompany them to the interview.

4. Counterclaims

Counterclaims by the Respondent may be made in good faith but are also sometimes made for purposes of retaliation. ATU is obligated to ensure that any process is not abused for retaliatory purposes.

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

5. Advisors

The parties may each have an Advisor²⁶ 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.²⁷

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. An Advisor cannot serve as a witness.

ATU may permit parties to have more than one (1) Advisor with a maximum of two (2) Advisors allowed upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties. Only one of the Advisors may be designated to participate in the cross-examination.

²⁶ 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).

²⁷ "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 for 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.

b. Advisors in Hearings/ATU-Appointed Advisor

Under U.S. Department of Education regulations applicable to Title IX, cross-examination is required 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 cross-examination.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct cross-examination, ATU will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-Maker(s) during the hearing.

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 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. Advisors are expected to advise their parties 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 advisee²⁸ 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 cross-examination.

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 will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will stop, or other appropriate measures implemented. 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. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

ATU also provides a consent form that authorizes ATU to share such information directly with their 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.

²⁸ 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 when planned, but may change scheduled meetings 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 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.

6. Notice of Investigation and Allegations

The Title IX Coordinator or the AA/EEO Officer will provide written notice of the investigation and allegations (the "NOIA") to the Respondent upon commencement of the Formal Complaint Resolution Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. 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 of 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 to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about ATU's policy on retaliation,

- Information about the privacy 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 interview process,
- A link to ATU's VAWA brochure (if applicable);
- 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, and
- 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 charges.

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.

7. 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, 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.

8. 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, concerns should be raised with Dr. Keegan Nichols, Vice President for Student Affairs, at knichols@atu.edu.

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 is determined to be responsible for a policy violation by the preponderance of the evidence standard.

9. Investigation Timeline

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may 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.

10. Investigation

A formal investigation will be initiated if the complaint articulates sufficient specific facts which, if determined to be true, would support a finding that this Policy was violated. The Title IX Coordinator and/or the AA/EEO Officer, will give the Respondent a copy of the complaint. The Respondent is also provided with an opportunity to respond to the Complaint within five (5) days of receipt by the Respondent.

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 Complaint. Documents relevant to the Complaint will also be examined.

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

- Determine the identity and contact information of the Complainant
- In coordination with campus partners (e.g., the Title IX Coordinator, AA/EEO Officer), initiate or assist with any necessary supportive measures
- Identify policies implicated by the alleged misconduct
- Assist the Title IX Coordinator or the AA/EEO Officer 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 an 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

- Meet with the Complainant to finalize their statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA) on the basis of the initial assessment. Notice may be one step or multiple steps, depending on how the investigation unfolds, and potential policy violations may be added or dropped as more is learned. Investigators will update the NOIA accordingly and provide it to the parties.
- Notice should inform the parties of their right to have the assistance of an Advisor appointed by ATU or other Advisor of their choosing present for all meetings attended by the advisee
- When formal notice is being given, it should provide the parties with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result
- Give an instruction to the parties to preserve any evidence that is directly related to the allegations
- Provide the parties and witnesses with an opportunity to review and verify the Investigator's summary notes from interviews and meetings with that specific party or witness
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- Interview relevant individuals and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest questions they wish the Investigator(s) to ask of the other party and witnesses
- Complete the investigation 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
- 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, including all relevant evidence, analysis, credibility assessments, and recommended finding(s)
- Provide each party with a full and fair opportunity to respond to the report in writing within five (5) business days and incorporate that response into the report
- Investigators 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 without making a finding, conclusion, determination or recommendation
- Provide the final report to the Title IX Coordinator or the AA/EEO Officer

In the course of an investigation, ATU will attempt to maintain confidentiality for all parties involved. However, there can be no guarantee of confidentiality and anonymity based upon the course and scope of the complaint investigation.

Investigations are completed expeditiously, normally within thirty (30) 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.

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. Investigators do not meet with character witnesses.

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

11. Additional Details of the Investigation Process

a. Witness responsibilities

Witnesses (as distinguished from the parties) who are students, staff, or faculty of ATU should cooperate with and participate in ATU's investigation and resolution process. Failure to participate may hinder ATU's ability to stop, remedy, and prevent the described forms of discrimination and harassment.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break, pandemic) 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.

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. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator(s), though this approach is not ideal. 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.

d. Evidence

Any evidence that the Decision-Maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or 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.

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

The parties may each submit a written impact 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.

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

e. Character witnesses

The Investigator(s) do not meet with character witnesses.

12. 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.

13. Resolution Process Pool

The Formal Complaint Resolution Process relies on a pool of officials (“Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this Policy to all students, employees, prospective students, and prospective employees.

The list of members and a description of the Pool can be found at <https://www.atu.edu/titleix/pool>. 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 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.

Pool members receive annual training organized by the Title IX Coordinator and the AA/EEO Officer, including a review of ATU policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety, and promote accountability.

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

- The scope of ATU’s discrimination and harassment policies and procedures
- How investigation and hearings are conducted that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- Types of evidence
- Deliberation
- 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 investigations and grievance process 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
- 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

Specific training is also provided for Appeal Decision-Makers, intake personnel, and Advisors (who are ATU employees), 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.

14. Hearing Panel Composition

ATU will designate a three-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.

The Decision-Maker(s) will not have had any previous involvement with the investigation. 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 role. The hearing will convene at a time determined by the Chair or designee.

15. Evidentiary Considerations in the Hearing

Any evidence that the Decision-Maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and

evidence about the Complainant's sexual predisposition or 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.

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

The parties may each submit a written impact 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.

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

16. 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 will contain:

- A description of the alleged violation(s), a list of policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- 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 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 on 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, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-Makers. 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 do not have an Advisor, and ATU will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-Makers about the matter, unless they have been provided already.
- An invitation to each party to submit to the Chair an impact 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). A student facing charges under this Policy is not in good standing to graduate.

In hearings involving more than one Respondent or in which two (2) or more Complainants have 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 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 with respect to each alleged policy violation.

17. 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 have 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 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 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.

18. Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have 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 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 with respect to each alleged policy violation.

19. 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. 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.

20. Investigator Presents the 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) will 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 the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

21. Testimony and Questioning

Once the Investigator(s) present their report and are questioned, 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 (“cross-examination”).

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 or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may explore arguments 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, subject to any appeal. The Chair may consult with 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.

22. Refusal to Submit to Cross-Examination and Inferences

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-Makers may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of

responsibility. The Decision-Makers must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the Decision-Maker(s), as distinguished from questions posed by Advisors through cross-examination.

The Decision-Makers may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-Makers may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with ATU's established rules of decorum for the hearing, ATU may require the party to use a different Advisor. If an ATU-provided Advisor refuses to comply with the rules of decorum, ATU may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

23. Respondent Accepts Responsibility for Alleged Violation(s)

At any time prior to the date of his or her designated hearing, the Respondent may elect to acknowledge his or her 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, which determination may be subject to appeal as outlined in this Policy.

24. Decision

The Decision-Maker will deliberate in closed session to determine whether the Respondent is responsible or not 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 statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-Makers may – at their discretion – consider the statements, but they are not binding.

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 then prepare a written deliberation statement and deliver it to the Title IX Coordinator or AA/EEO Officer, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions.

This report typically should not exceed three (3) to five (5) pages in length and 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.

25. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator or the AA/EEO Officer will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator or AA/EEO Officer 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.

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 identify the specific policy(ies) reported to have been violated, including the relevant policy section, 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 sanctions issued which ATU is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to ATU's educational or employment program or activity, to the extent ATU is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by ATU to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

26. Sanctions

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

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- 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 Title IX Coordinator

The sanction(s) will be implemented as soon as is feasible. 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.

a. Student Sanctions

The following are the sanctions that may be imposed upon students or organizations singly or in combination²⁹:

- *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 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.

²⁹ Subject to ATU's RSO Code of Conduct sanctions.

- *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.
- *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.
- *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/Management Process*
- *Required Counseling*
- *Required Training or Education*

- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *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.

27. 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.

During the resolution process, ATU may put a hold on a responding student's transcript.

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.

However, ATU will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

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.

28. Appeals

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing 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). Any party may appeal the findings only under the grounds described below.

Respondent is a student or non-faculty employee:

Student appeals will be decided by the Vice President for Student Affairs or Chief Student Officer. 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.

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).

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) 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; and
- (C) 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 the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-Makers.

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-Makers will be mailed, emailed, and/or provided a hard copy of the request 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 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 raise a new ground for appeal at this time. If so, that will be reviewed for standing 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 Investigator(s) and/or original Decision-Makers, as necessary, who will submit their responses in three (3) business days, which will be circulated for review and comment by all parties.

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 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 including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions 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 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, then emergency removal procedures (detailed above) for a hearing 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.

- Decisions on appeal are to be deferential to the original decision, 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.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and documentation regarding the specific grounds for appeal.
- 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 on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be 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). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.
- In rare cases where a procedural error cannot be cured by the original Decision-Makers (as in cases of bias), the appeal may order a new hearing with a new Decision-Makers.
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results 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.

29. Long-Term Remedies/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 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
- 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 and/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.

30. 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.

31. Recordkeeping

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

32. 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 sleavell8@atu.edu or Christina Stolarz, Director of Human Resources and AA/EEO Officer and Deputy Title IX Coordinator, who coordinates services for employees at cstolarz@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.

33. 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.

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 on August 14, 2020.

Appendix D: Suggested Actions for Victims of Sexual Assault

If you have experienced a form of sexual misconduct, 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).

If you choose to have forensic evidence collected at a hospital, it is important to do so within 72-120 hours of an assault. Even if you do not want to file charges at the time, by having evidence collected, you keep your options open. There is a window of time after an assault to collect evidence, and having evidence collected does not mean you have to want to press charges or even make up your mind about what you want to do. It means that if you decide a few days, weeks, or months later that you want to report the assault to law enforcement, the physical evidence has been preserved.

Some general guidelines for evidence collection:

- You may want to shower, bathe, brush your teeth, smoke, change your clothes, or clean the area where the assault occurred. Try to avoid these things before having evidence collected if possible, but an evidence collection kit can still be completed if you have already done any or all of these things.
- If you have already changed clothes, take what you were wearing at the time of the assault to the hospital in a paper (not plastic) bag.
- Save any forms of communication or documents that might be helpful in an investigation. This may include text messages, emails, messages on social media like Instagram, Facebook, and Snapchat, pictures, etc.
- If you are unsure about the identity of your assailant, write down everything you are able to remember about that person, including a physical description and any information you remember about the person's identity.

3. **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.

4. **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 Sexual Misconduct 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 Sexual Misconduct 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

Doc Bryan Student Services Center, Suite 233

Russellville, AR 72801

Stacy Galbo, Deputy Title IX Coordinator for Educational Outreach and Training/Title IX Investigator
479-964-0583 ext. 4714
sgalbo2@atu.edu
Doc Bryan Student Services Center, Suite 233
Russellville, AR 72801

Susie Nicholson, Director of Compliance/Deputy Title IX Coordinator
479-964-3230
snicholson@atu.edu
Tucker Coliseum
Russellville, AR 72801

Ashlee Leavell, Assistant Dean for Student Wellness/Deputy Title IX Coordinator
479-968-0302
Doc Bryan Student Services Center, Suite 141
sleavell8@atu.edu

Christina Stolarz, Director of Human Resources and AA/EEO Officer/Deputy Title IX Coordinator
479-968-0396
Brown Hall, Suite 434
cstolarz@atu.edu

Ozark

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

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.

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, Associate Dean for Student Wellness, kdavis51@atu.edu

Craig Witcher, LPC, Counselor, cwitcher@atu.edu

Janis Taylor, LPC, Counselor, jtaylor78@atu.edu

Josh Root, LAC, Counselor, jroot4@atu.edu

Leann Watson, LPC, Counselor, lwatson12@atu.edu

Health Services:

Brandye Bisek, APRN, Director of Health Services/Nurse Practitioner, bbisek@atu.edu

Robin Joslin, APRN, Nurse Practitioner, rkoontz@atu.edu

Kyle Wewers, APRN, Nurse Practitioner, kwewers@atu.edu

Heather Stout, RN, Registered Nurse, hstout1@atu.edu

Cori Hinson, RN, Registered Nurse, 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, Fatima Gomez, can be reached at 479-968-8600 and the Coordinator for Johnson and Franklin County, Melissa Vandever, 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://acasa.us>.

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

National Sexual Assault Hotline

24-hour hotline: 1-800-656-4673

24-hour online hotline: <https://ohl.rainn.org/online/>

300 COMPENSATION AND PAYROLL POLICIES

301 Compensation

302 Overtime and Compensatory Time

303 Monthly, Bi-Weekly, and Hourly Salaries

304 Obtaining Setoff

305 Payout of Leave

306 Regular Salary Procedures

307 Retroactive Pay Prohibited

308 Career Service Pay

301 COMPENSATION

There are three (3) general types of payrolls used by the University. Salary payrolls for instructional, administrative, non-classified, and some classified personnel are paid monthly and either receive a direct deposit or their check is issued through the Payroll Office on the last working day following the end of the payroll period. Wage payrolls for employees who worked by the hour are paid semi-monthly on the 15th and last work day of each month. Payrolls for work-study student employees and those paid from University funds are paid by the 15th of the month following the end of each pay period. Student payroll checks are issued through the Student Accounts Office.

Classified personnel at Tech are compensated according to the Higher Education Uniform Classification and Compensation Act (Act 599 of 2017). All state and classified personnel beginning initial employment enter at level 1 of the pay grade assigned for the position except for some special entry rates. Employees may become eligible for an additional increase after twelve months, however, this increase must be earned by demonstrated work performance, experience and proven ability.

302 OVERTIME AND COMPENSATORY TIME

A.C.A. §19-4-1612 and §21-5-214; Fair Labor Standards Act

Employees considered nonexempt³⁰ for overtime under the Federal Fair Labor Standards Act are encouraged to complete their job duties within a normal 40 hour work week. In the event that excess hours are required; advance authorization by the immediate supervisor is required. All compensatory time must be reflected on employee's official timesheet. A Compensatory Time Earned form must be completed and approved by the immediate supervisor and the appropriate Department Head before compensatory time is granted. Nonexempt employees will accrue

³⁰ The determination of exempt versus non-exempt is complex and may be on a case-by-case basis. Current examples of exemptions include: executive, administrative, professional employees; employees in computer-related occupations, and highly compensated workers. For more information, please go to www.dol.gov/whd/overtime/fact_sheets.htm.

compensatory time at the rate of one and one-half times the number of hours worked in excess of 40 hours within a specified work week (Sunday to Saturday). The following actions are the preferred order for addressing the accumulation of compensatory time:

1. Supervisors should adjust work schedules and/or leave approval during the workweek to prevent the accumulation of compensatory time.
2. Supervisors may request or direct employees to use their compensatory time during a period of time that has minimal impact on the work unit's operations. This action may be taken to reduce the accrued compensatory time balance and avoid cash payments.
3. Employees must exhaust all accrued compensatory time before use of annual leave.

Employees may only carry forward 80 hours of compensatory time at the beginning of each calendar year. Compensatory time in excess of 80 hours should be used prior to the end of each calendar year. If at any time during the year, an individual employee's compensatory time balance exceeds 240 hours; the hours in excess of 240 must be compensated in cash payment. Cash Overtime payment is the least desirable method of compensation for overtime work. Predetermined emergency personnel are the only employees that may be eligible for cash overtime payment. An Overtime Approval form must be submitted with both Supervisor and Vice President approval before any cash overtime will be paid.

303 MONTHLY, BI-WEEKLY, AND HOURLY SALARIES

A.C.A. §19-4-1607

Except for those state agencies which operate principally on a scholastic year, or on a part-time basis, or where such salaries or personal services are specifically established for a period less than one (1) year, all salaries established by the General Assembly shall be considered to be a maximum amount to be paid for a twelve-month payroll period.

No greater amount than that established for the maximum annual salary of any state official or employee shall be paid to such employee during any such twelve-month payroll period, nor shall more than one-twelfth (1/12) of such annual salary be paid to any such employee during any calendar month.

The limitations set out in this section may be converted to biweekly or weekly increments of one-twenty-sixth (1/26) or one-fifty-second (1/52) of the maximum annual salary.

Remuneration Payment

The remuneration paid to an employee of the state may exceed the maximum annual salary as authorized by the General Assembly as follows:

1. Overtime payments as authorized by law;
2. Payment of a lump sum to a terminating employee, to include accrued annual leave payment, accrued compensation time, accrued holiday and birthday leave, lump sum payment of sick leave balances upon retirement as provided by law;

3. Payment for overlapping pay periods at the end of the fiscal year as defined or authorized by law;
4. Payment for the biweekly twenty-seven (27) pay periods;
5. Payment for career service recognition as authorized by law;
6. Payment for a merit increase payment as authorized by law;
7. Payment in accordance with special language salary provisions in individual agency appropriation acts as authorized by law;
8. Payment of salary differentials such as hazardous duty, education, certification, geographic and second language as well as shift differentials and on call payments as authorized by law; and
9. As approved under §21-5-209.

304 OBTAINING SETOFF

A.C.A. §26-36-303

The Arkansas Department of Finance and Administration is authorized to obtain a setoff of State Income Tax refunds to collect a debt resulting from an overpayment of salary or wages.

When the university opts to collect an overpayment of salary or wages to a current or former employee through a setoff of a State Income Tax refund must send the current or former employee a Debt Collection Letter that allows the current or former employee thirty (30) days to request a hearing concerning the validity of the debt. Current or former employee's requesting a hearing within the timeframe must be granted a hearing by the university.

305 PAYOUT OF LEAVE

A.C.A. §§21-4-204 through 207; §21-4-404; and §§21-4-501 through 505

Termination/Resignation of employee

Annual Leave

For a regular employee, a maximum of 30 working days or 240 hours, including holidays and birthdays, is paid out.

Sick Leave

No sick leave is paid out.

Death of the employee

No payment is made until it has been determined that the deceased employee was not indebted to the state.

Annual Leave

A maximum of 480 hours or 60 working days, including holidays and birthdays.

Sick Leave

Only classified employees may receive a payout of accrued sick leave upon their death. A deceased employee or his or her beneficiary cannot receive an amount that exceeds \$7,500.

The amount of sick leave paid out is calculated as follows:

1. If the deceased employee had accumulated at least 50 days but fewer than 60 days of sick leave, the employee shall receive an amount equal to 50% of the number of accrued sick leave days rounded to the nearest day multiplied by 50% of the employee's daily salary.
2. If the deceased employee has accumulated at least 60 days but fewer than 70 days of sick leave, the deceased employee shall receive an amount equal to 60% of the number of accrued sick leave days rounded to the nearest day multiplied by 60% of the employee's daily salary;
3. If the deceased employee has accumulated at least 70 days but fewer than 80 days of sick leave, the deceased employee shall receive an amount equal to 70% of the number of accrued sick days rounded to the nearest day multiplied by 70% of the employee's daily salary; and
4. If the deceased employee has accumulated at least 80 or more days of sick leave, the deceased employee shall receive an amount equal to 80% of the number of accrued sick leave days rounded to the nearest day multiplied by 80% of the employee's daily salary.

The daily salary is determined by dividing the annual salary by 260.

Paid sick leave taken under FMLA will be added to the deceased employee's final sick leave balance for the purpose of qualifying for the incentive payout; however, the amount paid out is based on the unused sick leave balance at the time of death.

Retirement of the employee

Annual Leave

For a regular state employee, a maximum of 240 hours or 30 working days, including holidays and birthdays.

Sick Leave

Only classified employees may receive a payout of accrued sick leave upon their retirement. An employee cannot receive an amount that exceeds \$7,500. The amount of sick leave paid out is calculated as follows:

1. If the employee has accumulated at least 50 days but fewer than 60 days of sick leave, the employee shall receive an amount equal to 50% of the number of accrued sick leave days rounded to the nearest day multiplied by 50% of the employee's daily salary.
2. If the employee has accumulated at least 60 days but fewer than 70 days of sick leave, the employee shall receive an amount equal to 60% of the number of accrued sick leave days rounded to the nearest day multiplied by 60% of the employee's daily salary;

3. If the employee has accumulated at least 70 days but fewer than 80 days of sick leave, the employee shall receive an amount equal to 70% of the number of accrued sick days rounded to the nearest day multiplied by 70% of the employee's daily salary; and
4. If the employee has accumulated at least 80 or more days of sick leave, the employee shall receive an amount equal to 80% of the number of accrued sick leave days rounded to the nearest day multiplied by 80% of the employee's daily salary.

The daily salary is determined by dividing the annual salary by 260.

Paid sick leave taken under FMLA will be added to the employee's final sick leave balance for the purpose of qualifying for the incentive payout; however, the amount paid out is based on the unused sick leave balance at the time of retirement.

306 REGULAR SALARY PROCEDURES

A.C.A. §19-4-1601

This law establishes the General Assembly's authority to fix salaries for State employees and fees of all officers in the state. All salaries and wages will be fixed in law and the provisions in this law shall be applicable to all authorized regular salary positions in appropriation acts unless specific exception is made otherwise in the law.

The Higher Education Uniform Classification and Compensation Act (Act 599 of 2017) implements the intent of the Regular Salary Procedures and Restrictions Policy with respect to:

- The entry salary of all classified and unclassified positions;
- The frequency with increases throughout each grades; and
- The maximum annual salary allowed in each grade of the pay plans.

The law specifically provides that the rate of pay shall not exceed the maximum rate of pay for the position classification during any one (1) fiscal year unless specific provisions are made in law.

When determining an employee's rate of pay, their qualifications and length of service must be taken into consideration.

All salaries may only be paid by the university if there are appropriations and funds available for wages and salaries.

State employees may not be paid any additional cash allowances, including but not limited to uniform allowance, clothing allowance, motor vehicle depreciation or replacement allowance, fixed transportation allowance, and meals and lodging allowance, other than for reimbursement of costs actually incurred by the employee unless specific provisions are made in law.

307 RETROACTIVE PAY PROHIBITED

A.C.A. §19-4-1610

In the event that a state employee is being paid less than the maximum provided for by law, and the President of the University provides for an increase in the rate of pay for the employee, the employee's rate of pay shall not exceed one-twelfth (1/12) of the annual maximum salary allowed for that grade, for the remainder of the annual period. In no case shall such payments be made for the preceding fiscal year.

No increase in the rate of pay, either by paying the full amount of the maximum salary or by placing an employee in a position calling for a greater salary, shall be construed as authorizing the payment of any retroactive salary to the employee. In no case shall such payments be made for the preceding fiscal year.

Salary payments made to correct an administrative error shall not be considered retroactive pay, nor shall such payment be construed as exceeding the employee's maximum authorized pay. Payments may be made to correct an administrative error for the preceding fiscal year if the payment is requested within twelve (12) months of the end of the preceding fiscal year and it is approved by the Chief Fiscal Officer of the State.

308 CAREER SERVICE PAY

A.C.A. §21-5-106

Employees who satisfy the eligibility requirements may be awarded annual lump sum career service recognition payments on the next regularly scheduled pay cycle after the completion of state service based on the following schedule:

Years of Service	Amount of Recognition Payment
10-14 years	\$800
15-19 years	\$1,000
20-24 years	\$1,200
25 or more years	\$1,500

To receive the full amount of the recognition payment, the service must have been in regular full-time positions.

Employees who work part-time in regular salary positions may receive annual career service recognition payments on a pro-rata basis.

Authorized leave without pay and leave for military service when veteran's reemployment rights are exercised will not preclude an employee from being eligible for the career service payment.

The payments are subject to state and federal tax withholding and are included by retirement systems to determine benefits.

400 LEAVE POLICIES

- 401 Annual Leave**
- 402 Catastrophic Leave**
- 403 Serving as a Juror or Witness**
- 404 Educational Leave**
- 405 Emergency Paid Leave, Disaster Service Volunteer Leave, Emergency and Rescue Service Leave**
- 406 Family Medical Leave**
- 407 Holiday Leave**
- 408 Inclement Weather**
- 409 Long Term Leave of Absence Without Pay**
- 410 Organ Donation Leave**
- 411 Child Educational Leave**
- 412 Maternity Leave**
- 413 Military Leave**
- 414 Funeral Leave**
- 415 Bereavement Leave**
- 416 Sick Leave**
- 417 Transfer Leave**

401 ANNUAL LEAVE

A.C.A. §§ 21-4-204 and 205; and §21-5-1007

This policy applies to all employees except faculty, graduate assistants, hourly, intermittent, extra labor help, and per diem employees.

An employee who works in a regular salary position shall accrue annual and sick leave in the same proportion as time worked.

Specific Provisions

An employee who works in a regular salary position shall accrue annual leave as defined in the timetable below. Full-time employees accrue leave at the rates shown in the timetable listed below. Employees who work less than full-time per year accrue annual leave in the same proportion as time worked. For example, employees who work half-time would receive half of the annual leave accrual shown on the timetable. Employees must have completed full years of employment before movement to the next higher accrual rate. For example, an employee would not move to the second level of annual leave accrual rate until they had completed three (3) full years of employment and starting their fourth (4th) year.

<u>Years of Employment</u>	<u>Monthly</u>	<u>Annually</u>
Through 3 years	1 Day	12 Days
4 through 5 years	1 Day, 2 Hours	15 Days
6 through 12 years	1 Day, 4 Hours	18 Days

13 through 20 years	1 Day, 6 Hours	21 Days
Over 20 years	1 Day, 7 Hours	22.5 Days

1. Through three (3) years: Employees must have completed three (3) full years of employment, before movement to the next higher accrual rate—(1 through 36 months).
2. Four (4) through five (5) years: Employees must have completed three (3) full years of employment and be starting their fourth (4th) year—(37 through 60 months).
3. Six (6) through twelve (12) years: Employees must have completed five (5) full years of employment and be starting their sixth (6th) year—(61 through 144 months).
4. Thirteen (13) through twenty (20) years: Employees must have completed twelve (12) full years of employment and be starting their thirteenth (13th) year—(145 through 240 months).
5. Over twenty (20) years: Employees must have completed twenty (20) full years of employment and be starting their twenty-first (21st) year—(241 months and beyond).

Annual leave accrued during a calendar month is not considered to be earned by an active employee in active pay status until the last working day of the month, and the leave must be earned before it can be used. For accrual purposes only, new employees will accrue their full monthly accrual of annual leave if employed on the first (1st) working day of the month and are in active status on the payroll through the entire month. New employees will accrue half their monthly accrual if employed on the 16th of the month and are in active status on the payroll through the last working day of that month. (If the 16th falls on a weekend or holiday, accrual begins on the first (1st) working day thereafter.)

Annual leave is granted on the basis of work days, not calendar days. Non-work days, such as holidays and weekends, are not charged as annual leave.

Annual leave shall be granted to permanent, probationary, provisional, and temporary employees who are working one-half time on a pro rata basis. Annual leave shall not be granted to emergency, hourly, intermittent, or per diem employees. An employee who works a minimum of 1000 hours per year in a regular salary position shall accrue annual leave. Employees who work less than full time, but more than 1000 hours per year, accrue annual leave in the same proportion as time worked.

Any employee who works in a regular salary position shall accrue annual leave in the same proportion as time worked.

Annual Leave is cumulative and no employee shall have over 30 days accumulated on December 31st of each year. Accrued leave may exceed 30 days during the calendar year, but those days in excess of 30 will be forfeited if not used by December 31st of each year. Employees who have a balance of over 30 days at the end of the calendar year may donate their time over 30 days to the Catastrophic Leave Bank ~~or as shared leave~~. Accrued Birthday

and Holiday leave balances are not forfeited at the end of the year even though the employee is carrying over 30 days of annual leave.

An employee may request to use accrued annual leave at any time. The Department Head may grant the leave request at such time that will cause the least disruption to the efficient operation of the university.

Employees shall not borrow from anticipated future accruals and may not use annual leave accrued by other employees.

The minimum annual leave amount an employee can use is fifteen (15) minutes. No smaller amounts shall be used.

Employees continue to earn annual leave at their normal accrual rate when on annual or sick leave.

An employee may not earn annual leave when in a leave without pay status for ten (10) or more cumulative days within a calendar month.

All compensatory time must be used before the use of annual leave.

Employees transferring without a break in service, between state agencies and/or state-supported institutions of higher education, that are covered by these policies, shall retain all accumulated annual leave.

When an employee terminates employment with the state, they are eligible to receive a payout of their annual, as well as earned birthday and holiday, leave balances; however, the payout may not exceed thirty (30) days or 240 hours.

Additional Provisions

The President, Vice Presidents, and academic Deans are entitled to accrue annual leave with full pay on the basis of 20 working days per calendar year, or on the basis of the schedule contained in this section, whichever is greater.

Administrative Staff, defined as administrative positions other than those listed above, Auxiliary Non-Classified positions, and twelve-month academic positions (with the exception of Deans), all as listed in the current appropriation act, are entitled to accrue leave with full pay on the basis of 15 working days per calendar year or the basis of the schedule contained in this section, whichever is greater.

402 CATASTROPHIC LEAVE

A.C.A. §21-4-214; A.C.A. §21-4-217

Arkansas law establishes a Catastrophic Leave Bank Program. The Catastrophic Leave Bank Program creates no expectation or promise of continued employment, and is intended simply to assist eligible employees during medical emergencies.

Definitions

Catastrophic Leave Bank: A pool of accrued annual and sick leave voluntarily donated by employees which may be approved for use by employees who meet the catastrophic illness/injury eligibility requirements.

Catastrophic Illness: A medical condition of an employee, spouse, parent of the employee, or a child of the employee which may be claimed as a dependent under the Arkansas Income Tax Act of 1929, as certified by a physician that requires an employee's absence from duty for a prolonged period of time and which, except for the catastrophic leave program, would result in a substantial loss of income to the employee because of the exhaustion of all earned sick, annual, holiday and compensatory leave.

Catastrophic Leave for Maternity Purposes: An eligible female employee may receive up to four consecutive weeks of paid leave within the first twelve weeks after the birth of the employee's biological child or placement of an adoptive child in the employee's home.

Prolonged Period of Time: A continuous period of time (minimum of thirty (30) working days) whereby a medical condition prevents the employee from performing the employee's duties.

Medical Condition: Emergencies limited to catastrophic and debilitating medical situations, severely complicated disabilities and/or severe accidents of the employee or a qualifying family member that could not have been anticipated and which cause the employee to be unable to perform his/her job, require a prolonged period of recuperation and/or require the employee's absence from duty as documented by a physician or other appropriate healthcare provider. Elective surgery does not qualify as a medical condition for catastrophic leave purposes.

For maternity purposes, the birth of the employee's biological child or placement of an adoptive child in the employee's home is the medical condition. Approved catastrophic leave will be granted for the birth of the employee's biological child effective the date of the birth or after and approved catastrophic leave will be granted for the placement of an adoptive child in the employee's home effective the date the child is placed in the home or after, but both within the first twelve weeks after the birth or placement.

Dependent Child Certification: Complete the "Dependent Child Certification Form", sign and attach to the catastrophic leave request. If the child was acquired after the most current income tax filing, provide other proof, i.e., birth certificate, adoption order, etc.

Substantial Loss of Income: A continuous period of time where the employee will not be compensated by the employing state agency/institution due to a medical condition after the exhaustion of all earned sick, annual, holiday and compensatory leave. This requirement does not apply for maternity purposes.

Onset of the Illness or Injury: The initial beginning, or start, as certified by a physician or other appropriate healthcare provider, of the medical condition which created the need for the catastrophic leave request. If a recurrence of the same illness necessitates a subsequent catastrophic leave request, the eligibility requirement that the employee has eighty (80) hours of combined sick and annual leave at the onset of the illness shall not be required on the illness recurrence date.

Eligibility Requirements for Catastrophic Leave

1. The applicant must be a regular, non-faculty, benefits-eligible, full-time, employee of the university. A person who works less than full-time (forty hours per week) or who is in an extra-help position is ineligible to participate as a recipient in the Catastrophic Leave Bank Program; an employee in a regular, part-time position may elect to donate annual and sick leave.
2. The employee must have been employed by the State of Arkansas for at least one year in a regular, full-time position.
3. Employees with a medical emergency must have exhausted all accumulated sick, annual, holiday and compensatory leave, and, at the “onset of the illness or injury”, had to his or her credit at least eighty hours of combined sick and annual leave. For maternity purposes, the eighty (80) hours of combined sick and annual leave credit is not required at the time of application for catastrophic leave.

The 80-hour requirement for a medical emergency due to illness/injury may be waived for an otherwise eligible employee if an “extraordinary circumstance” is declared by an institution of higher education president/director due to the applicant providing documentation that one of the following conditions has occurred:

- The employee applying for catastrophic leave had, during the previous one year period, another medically documented illness or injury which was not compensated under an approved Catastrophic Leave Bank Program, but was documented under the Family and Medical Leave Act (FMLA) as a qualifying event, and caused the exhaustion of all sick and annual leave, or
- The employee applying for catastrophic leave had, during the previous one year period, exhausted his or her sick and annual leave as a direct result of supplementing workers' compensation benefits, which were received due to an on-the-job injury or illness with the State of Arkansas.

4. If the medical condition is due to illness/injury or for maternity purposes and the employee is covered by workers' compensation, the compensation based on catastrophic leave, when combined with the weekly workers' compensation benefit received by the employee, shall not exceed the compensation being received by the employee at the onset of the illness/injury or maternity leave.
5. The employee has not been disciplined for leave abuse during the past one year period from the date of application. This requirement does not apply for maternity purposes.
6. An employee is eligible for approved catastrophic leave due to injury/illness for a maximum of six (6) months (1,040 hours) within a five year period. This requirement does not apply for maternity purposes.
7. The combination of catastrophic leave for the stated medical conditions, due to illness/injury or for maternity purposes, received by an employee may not exceed one thousand, two hundred (1,200) hours in a calendar year (1,040 hours for illness/injury and 160 hours for maternity purposes).
8. Catastrophic Leave Bank Committee shall not grant an employee catastrophic leave beyond the date certified by a physician or other appropriate healthcare provider for the employee to return to work.
9. An employee shall not be approved for catastrophic leave for a medical emergency unless that employee has provided an acceptable medical certificate from a physician or other appropriate health care provider supporting the continued absence and setting forth that the employee is, and will continue to be, unable to perform the employee's duties due to a catastrophic illness/injury of the employee or a qualifying family member. The employee is responsible for providing information regarding his/her assigned job duties to the physician in order to have a more accurate medical certification. This requirement does not apply for maternity purposes.
10. An employee shall not be approved for catastrophic leave for a maternity purpose unless the employee has provided acceptable proof of the birth or placement. For the birth of an employee's biological child, acceptable proof includes a hospital announcement with the mother's name and/or the biological child's name, hospital discharge papers with the mother's name and the biological child's name, or a birth certificate of the biological child. For the placement of an adoptive child in an employee's home, acceptable proof includes the following:
 - a. Formal document from the placement entity with the mother's name and the child's name, or;
 - b. Legal guardianship papers with the mother's name and the child's name.

Donations of Leave to the Catastrophic Leave Bank

The President or his or her designee shall screen leave donated by the employees of the university to ensure that the following criteria are met:

1. Accrued leave may only be donated to the Catastrophic Leave Bank in one (1) hour increments. Donations of leave shall be granted hour-for-hour and not dollar-for-dollar.
2. No employee of a participating agency/institution shall be allowed to donate leave to the Catastrophic Leave Bank if such donation will reduce that employee's accrued sick and annual leave balance to less than eighty (80) hours. This restriction does not apply to employees who are terminating their employment.
3. Annual and/or sick leave which has been donated to the Catastrophic Leave Bank may not be restored to the employee who donated the leave time.
4. Approved donations of leave shall be transmitted to the Catastrophic Leave Bank by submitting an approved donor form.

Catastrophic Leave Committee

Membership: The Committee shall be comprised of at least five (5) members, one who is from the Ozark campus, representing a cross section of the university, and shall be appointed by the President and shall serve a term of two years. The Committee shall elect a chairperson from the committee membership. The Office Human Resources shall designate a person from the office to serve as ex-officio on the Committee.

Responsibility: The purpose of the Committee will be to review all catastrophic leave requests, ensure that all eligibility requirements are met, and make recommendations to the President. The Committee shall make determinations of continuing eligibility.

403 SERVING AS A JUROR OR WITNESS

A.C.A. §21-4-213; §16-43-806; §21-5-104

Serving as a Juror

A university employee serving as a juror in state or federal court shall be entitled to the following:

1. Full compensation;
2. Any fees paid for such services; and
3. Is not required to use annual leave.

Any state agency that deducts any juror fees from an employee's compensation is guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars (\$25) up to two hundred fifty (\$250). Violation of this law constitutes grounds for dismissal.

Serving as a Witness

If a university employee is subpoenaed as a witness to give a deposition or testimony in state or federal court, at a hearing, or before anybody with power to issue a subpoena, the state employee is:

1. Entitled to his or her salary
 - a. If the employee is a witness in a matter within the employee's scope of employment, or
 - b. If the employee is a witness outside the scope of employment and the employee is not serving as a paid expert witness or is not a party to the matter.
2. Entitled to witness fees
 - a. If the employee is a witness in a matter outside the employee's scope of employment, or
 - b. If the employee is a party to the matter other than as a representative of the state employer.
3. Entitled to mileage fees
 - a. If the employee is a witness in a matter within the employee's scope of employment and the employee uses a personal vehicle for travel in obeying the subpoena and the agency does not reimburse the employee for travel expenses; or
 - b. If the employee is a witness in a matter outside the employee's scope of employment and the employee does not use a state-owned vehicle for travel in obeying the subpoena.
4. Required to use annual leave
 - a. If the matter is outside the employee's scope of employment, and
 - b. If the employee is serving as a paid expert or is a party.

A law enforcement officer who is subpoenaed to appear when the officer is not scheduled for regular duty is not entitled to salary. The officer is entitled to retain any witness or mileage fees.

Employees who work night shifts and are required to serve in court during the day or are subpoenaed as a witness to give a deposition in a court or hearing, not involving personal litigation or service as a paid witness outside the scope of university employment, shall be allowed to take court and jury leave on the night shift of the day on which they served.

404 EDUCATIONAL LEAVE

A.C.A. §21-4-211

A permanent employee who is given out-of-service training may be granted educational leave by the President on the following conditions:

Specific Requirements

1. The employee agrees to continue in the service of the university for a period of time as statutorily required or, in the absence of a specific law, at least twice the length of his/her course of training.
2. An employee who does not fulfill these obligations shall be required to pay the university the total cost, or a proportionate share of the cost, of the out-service training and compensation paid during the training period.
3. A written contract setting forth all terms of the agreement shall be signed by the employee and a representative of the university.

Salary, Rights and Benefits

The employee shall retain all rights in the position held at the time when leave was granted or in one of comparable security and pay.

The employee shall retain all benefits and rights during the training period that accrued during that time to regular employees.

The amount of the salary paid during the training period will be as agreed on by the employee and the President; however, the salary cannot exceed the regular salary paid to the employee.

Payment of tuition, fees, books and transportation may be made if money has been specifically appropriated by the General Assembly for such purposes.

405 EMERGENCY PAID LEAVE, DISASTER SERVICE VOLUNTEER LEAVE, EMERGENCY AND RESCUE SERVICE LEAVE

A.C.A. §12-85-102; §21-4-104

To promote the most efficient operation of state government, to allow state employees to take emergency paid leave to address the losses they incur in the wake of severe weather conditions such as tornadoes, damaging high winds, heavy rain, and flooding, and to allow state employees to take leave to participate in disaster relief efforts.

Emergency Paid Leave

The University President is authorized to grant emergency paid leave to those employees who suffer the loss of, or substantial damage to, their principal place of residence due to tornadoes, high winds, rain, flooding, or other severe weather conditions. The emergency paid leave may not exceed forty (40) hours. The University President may only grant this leave to employees whose principle residence is located in a county that has been declared to be a disaster area by the Governor as a result of severe weather.

The university shall maintain records of the amount of emergency paid leave claimed and forward their reports to the Office of Personnel Management.

Employees may use additional earned leave time over and above the emergency paid leave granted if approved by the University President.

Disaster Service Volunteer Leave

An employee of a state agency or state-supported institution of higher education may be granted leave with pay for not more than fifteen (15) working days in any calendar year to participate in specialized disaster relief, without loss of seniority, pay, annual leave, sick leave, compensatory time, offset time, or overtime wages if the employee:

1. Is trained and certified as a disaster service volunteer by the American Red Cross;
2. Has specialized disaster relief services that are requested by the American Red Cross in connection with a disaster; and
3. Obtains consent from the President of the University.

Leave shall only be granted for disaster relief services occurring within Arkansas or states contiguous to Arkansas.

The employee shall receive their regular rate of pay for the regular work hours during which the employee is absent from work.

The number of certified disaster service volunteer state employees and institution employees shall not be greater than 100 at any one time.

Within 60 days of the request, the American Red Cross will prepare a report to submit to the Department of Finance and Administration stating the reasons and needs for the request.

With regard to the Employee Request for Leave form, these two types of leave shall be specified in the leave category and codes as follows:

1. State employees receiving emergency paid leave will be categorized in the 'Other' column on the leave form and coded as PROL;
2. State employees receiving disaster service volunteer leave will be categorized in the 'Other' column on the leave form and coded as DSTR.

Emergency and Rescue Services

A state employee who is a member of the following is entitled to fifteen (15) working days of paid leave in a calendar year to participate in a training program or in emergency and rescue services:

1. The United States Air Force Auxiliary Civil Air Patrol or the United States Coast Guard Auxiliary. The leave must be at the request of the employee's wing commander, the wing commander's designated representative, or District 15 Captain; or
2. The National Disaster Medical System, a Disaster Mortuary Operational Response Team, or a Disaster Medical Assistance Team, of the Office of Emergency

Management of the Office of the Assistant Secretary of Preparedness and Response of the United States Department of Health and Human Services. The absence must be in response to a United State Department of Health and Human Services National Disaster Team Alert Order.

406 FAMILY MEDICAL LEAVE

Family Medical Leave Act of 1993; 29 C.F.R. §825

The FMLA allows employees to balance their work and family life by taking unpaid leave for certain family and medical reasons. The FMLA seeks to accomplish these purposes in a manner that accommodates the legitimate interests of employers, and minimizes the potential for employment discrimination on the basis of gender, while promoting equal employment opportunity for men and women.

Definitions

Group Health Plan - A plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to employees, former employees, the employer, or others associated or formerly associated with the employer in a business relationship, or their families.

Health Care Provider - A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or any other person determined by the United States Department of Labor to be capable of providing health care services. Included in the second part of that definition are podiatrists, dentists, clinical psychologists, clinical social workers, optometrists and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated to exist by x-ray), nurse practitioners and nurse-midwives and Christian Science Practitioners.

In Loco Parentis - Those with day-to-day responsibilities to care for or financially support a child. Employees who have no biological or legal relationship with a child may, nonetheless, stand in loco parentis to the child and be entitled to FMLA leave. Similarly, an employee may take leave to care for someone who, although having no legal or biological relationship to the employee when the employee was a child, stood in loco parentis to the employee when the employee was a child, even if they have no legal or biological relationship.

Parent - A biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents "in law."

Period of Incapacity - A period of time when an employee or family member is unable to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from.

Serious Health Condition - An illness, injury, impairment, or physical or mental condition that involves:

1. Inpatient care: Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice or residential medical care facility.
2. Continuing treatment by a health care provider: Any period of incapacity of more than three consecutive calendar days, that also involves continuing treatment as follows:
 - a. Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g. physical therapist) under orders of, or on referral by, a health care provider; or
 - b. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under supervision of a health care provider. A regimen of continuing treatment includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. It does not include the taking of over-the-counter medications or other similar activities that can be initiated without a visit to a health care provider.
3. Any period of incapacity due to pregnancy, or for prenatal care.
4. Treatment for a chronic health condition: 1) requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider, 2) continues over an extended period of time (including recurring episodes of a single underlying condition), and 3) may cause episodic rather than a continuing period of incapacity (asthma, diabetes, epilepsy, etc...).
5. A period of incapacity: Permanent or long-term incapacity due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include: Alzheimer's', severe stroke or the terminal stages of a disease.
6. Multiple treatments for non-chronic conditions: Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition such as cancer, severe arthritis, or kidney disease that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment. FMLA only allows leave for substance abuse in order to undergo treatment by a health care provider and specifically excludes employee absence because of the use of the substance. Stress qualifies as a serious health condition only if it rises to the level of a mental illness or results in a physical illness.

Son or Daughter - A biological, adopted, foster child, stepchild, legal ward or a child of a person standing in loco parentis who is:

1. Under eighteen (18) years of age; or
2. Eighteen (18) years of age or older and incapable of self-care because of mental or physical disability at the time the FMLA leave is to commence.

Spouse - Determined by applicable state law and U.S. Supreme Court decisions.

Treatment - For purposes of FMLA, includes examinations to determine if a serious health condition exists and evaluations of the condition, but does not include routine physical examinations, eye examinations, or dental examinations.

Eligibility

To be eligible for leave under this policy an employee must have been employed by the university for at least twelve (12) months and must have worked at least 1,250 hours during the twelve month period preceding the commencement of the leave.

Spouses who are both employed by the state are entitled to a total of twelve weeks of leave (rather than twelve weeks each) for the birth or adoption of a child or for care of a sick parent. However, each spouse would be entitled to twelve (12) weeks for their own serious health condition or the care of a child or spouse. Each employee is entitled to FMLA for the care of his/ her parent only. Nevertheless, the marital couple is limited to a combined 12 weeks for this purpose regardless of which parent or the number of parents involved.

Leave Entitlement

The Family and Medical Leave of 1993 (FMLA), entitles "eligible" employees to a total of twelve (12) workweeks of leave during any 12-month period for one of the following reasons:

1. The birth of a son or daughter, and to care for the newborn child;
2. The placement with the employee of a son or daughter for adoption or foster care;
3. The care of the employee's spouse, son or daughter, or parent with a serious health condition; and,
4. A serious health condition that makes the employee unable to perform the functions of the job.

The 12-month period used by the state for determining eligibility is the calendar year. In the case of birth or adoption, eligibility for FMLA leave shall expire at the end of the 12-month period beginning on the date of a child's birth or placement. However, leave used for this purpose shall also be calculated on a calendar year basis.

The National Defense Authorization Act of 2008 amended the Family Medical Leave Act to provide eligible employees leave rights related to military service. The new leave entitlements are:

1. Qualifying Exigency Leave - Eligible employees are entitled to up to 12 weeks of leave in a calendar year because of "any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation. The qualifying exigency's for which employees can use FMLA leave are:
 - a) Short-notice deployment
 - b) Military events and related activities
 - c) Childcare and school activities
 - d) Financial and legal arrangements
 - e) Counseling

- f) Rest and recuperation
 - g) Post-deployment activities
 - h) Additional activities not encompassed in the other categories, but agreed to by the employer and employee
2. Military Caregiver Leave - Eligible employees who are the spouse, parent, child, or next of kin of a service member who incurred a serious injury or illness on active duty in the Armed Forces may take up to 26 weeks of leave in a calendar year to care for the injured service member. Military Caregiver Leave is used in combination with regular FMLA leave.

Designation of Family and Medical Leave

Employee Notice

The employee's notice to the employer may be verbal or written. The first time the employee requests leave, the employee is not required to specifically mention the FMLA. However, the employee is required to provide enough information for the employer to know that the leave may be covered by the FMLA, and when and how much leave the employee anticipates needing to take.

If possible, the employee shall provide the employer with a completed Certification of Physician or Practitioner form 30 days prior to the date leave begins and make efforts to schedule leave so as not to disrupt agency/institution operations when the necessity for leave is foreseeable such as for the birth or adoption of a child, or planned medical treatment. If circumstances require that leave begin in less than 30 days, the employee shall provide such notice as is practical. In cases of illness, the employee will be required to report periodically on his or her status and intention to return to work.

Employer Notice

If the university has knowledge that an employee's requested leave period is covered by FMLA, it is the responsibility of the university to notify the employee that they have been placed on FMLA leave. The university must determine whether leave will be counted within **5 business days** of the time the employee gives notice of the need for leave, or if the university does not initially have sufficient information to make a determination, at the point this information become available.

Each time the university is required to provide the eligibility notice, it will also provide the employee with a rights and responsibilities notice, notifying the employee of his or her obligations concerning the use of FMLA leave and the consequences of failing to meet those obligations.

If the university learns that the leave is for an FMLA purpose after leave has begun or within two days of the employee's return to work, the entire or some portion of the leave period may be retroactively counted as FMLA. An employee desiring to have a leave period designated as FMLA and obtain FMLA protections for the absence must notify the Office of Human Resources within two business days of returning to work.

Substitution of Paid Leave

FMLA leave is without pay. However, if an eligible employee has accrued, unused leave, the employee must substitute, such paid leave, including any paid shared leave and catastrophic leave benefits, for any FMLA leave taken during the 12-week period, with the exception that an employee taking maternity leave is not required to substitute accrued, unused leave while on FMLA leave. Paid leave to handle personal and family medical needs is currently available under existing sick, annual, shared, and catastrophic leave policies.

Intermittent/Reduced Leave Schedule

FMLA may be taken “intermittently or on a reduced leave schedule” under certain circumstances.

1. So long as it does not result in a reduction in the total amount of leave to which the employee is entitled. Only the amount of leave taken may be counted toward the 12 weeks of leave to which an employee is entitled. For example, if an employee who normally works five days a week takes one day, the employee would use 1/5 of a week of FMLA Leave.
2. When medically necessary. If an employee requests intermittent leave that is foreseeable based on planned medical treatment, the university may require such employee to transfer temporarily to an available alternative position with equivalent pay and benefits but which better accommodates recurring periods of leave.
3. When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees. Such a schedule reduction might occur where an employee, with the university’s agreement, works part-time after the birth of a child, or takes leave in several segments. The university’s agreement is not required for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.
4. An expectant mother may take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work.
5. An employee may request leave before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or doctor(s) representing the birth parent, or submit to a physical examination.
6. An employee may request intermittent or reduced leave schedule to care for a family member in situations where the family member’s condition itself is intermittent or where the employee may be needed to share care responsibilities with another party or to make arrangements for changes in care, such as transfer to a nursing home.
7. For a serious health condition which requires treatment by a health care provider periodically, rather than for one continuous period of time.
8. For absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health

condition even if he/she does not receive treatment by a health care provider.

Certification

A request for leave for an employee's own serious health condition or to care for seriously ill child, spouse or parent must be supported by a certificate issued by a health care provider. The certificate must contain the following information:

1. The date on which the serious health condition commenced.
2. The probable duration of the condition.
3. The appropriate medical facts within the knowledge of the health care provider regarding the condition.
4. If the leave is to care for a family member, the certificate must contain a statement that the eligible employee is needed to care for the son, daughter, spouse or parent and an estimate of the amount of time required.
5. If the leave is due to the employee's illness, a statement that the employee is unable to perform the functions of the position must be included.

The university must allow the employee at least **15 calendar days** to obtain the medical certification.

Confidentiality

Medical information as a result of the serious health condition is considered confidential. If an employee submits a complete certification signed by a health care provider, the employee's supervisor may not request additional information from the employee's health care provider. However, a human resources professional, a leave administrator, another health care provider, or a management official may contact the employee's health care provider for purposes of clarification and authenticity of the medical certificate.

Second Medical Certification

If there is reason to doubt the validity of a medical certification, the university may require a second opinion from a health care provider designated or approved by the university so long as that provider is not employed by the state on a regular basis.

Third Medical Certification

If that opinion differs, the opinion of a third health care provider jointly approved by the university and employee may be solicited. That opinion shall be final and binding. The opinions of both the second and third health care providers shall be obtained at the university's expense.

The university and the employee must each act in good faith to attempt to reach agreement on whom to select for the third health care provider. If the university does not attempt in "good faith" to reach agreement, the university will be bound by the first certification. If the employee does not attempt in "good faith" to reach agreement, the employee will be bound by the second certification.

Recertification

The university may request the employee to provide a recertification no more often than every 30 days and only in connection with an absence by the employee. If a certification indicates that the minimum duration of the serious health condition is more than 30 days, the university must generally wait until that minimum duration expires before requesting recertification. However, in all cases, including cases where the condition is of an indefinite duration, the university may request a recertification for absences every six months.

The university may request a recertification in less than 30 days only if:

1. The employee requests an extension of leave,
2. The circumstances described by the previous certification have changed significantly, or
3. The employer receives information that causes it to doubt the employee's stated reason for the absence or the continuing validity of the existing medical certification.

Employment and Benefits Protections

Health Benefits

The university shall maintain benefits coverage for the employee under its group health plan at the same level and under the conditions coverage would have been provided if the employee had continued in employment. The university shall continue to pay the "employer matching" portion of the health insurance premium and the employee will pay the employee's portion if such was the arrangement prior to leave. If the university paid the full premium it must continue to do so.

The same group health plan benefits provided to the employee prior to taking FMLA leave must be maintained during the FMLA leave. Therefore, if family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. Similarly, benefit coverage during FMLA leave for medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, etc. must be maintained during leave if provided in the university's group health plan, including a supplement to a group health plan whether or not provided through a flexible spending account or other component of a cafeteria plan.

An employee may choose not to retain health coverage during leave. However, when the employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, without any qualifying period, physical examination, exclusion of preexisting conditions, etc.

The university's obligation to maintain health benefits under FMLA stops if and when an employee informs the university of an intent not to return to work at the end of the leave period, or if the employee fails to return to work when the FMLA leave entitlement is exhausted. The university's obligation also stops if an employee's premium payment is more than 30 days late. Written notice to the employee that the payment has not been received must be mailed at least 15 days before coverage is to cease.

The university may recover any payments made by the university to cover the employee's share of the premium once the employee returns to work. The university may recover its share of health plan premiums paid during unpaid FMLA if the employee fails to return to work unless the failure to return to work is due to a serious health condition or other circumstances beyond an employee's control. If the university has maintained other benefits such as life or disability insurance in order to meet its responsibilities to provide equivalent benefits to the employee upon return from FMLA leave, the university is entitled to recover the costs incurred for paying

the premium whether or not the employee returns to work.

Job Restoration

Upon return from FML an employee shall be entitled to be restored to (a) the position formerly occupied or (b) a position with equivalent employment benefits, pay and other terms and conditions of employment.

Apart from the paid leave actually used during the FML period, the taking of leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. However, no seniority or employment benefits shall be accrued during the period of leave. The employee is not entitled to any right, benefit, or position of employment other than any right, benefit or position to which the employee would have been entitled had the employee not taken leave.

407 HOLIDAY LEAVE

A.C.A. §§1-5-101 through 104; 21-4-210

Arkansas State Government observes the following holidays:

New Years Day	January 1
Dr. Martin Luther King, Jr. Birthday	The third Monday in January
George Washington’s Birthday and Daisy Gatson Bates Day	Transferred to Holiday Break
Memorial Day	The last Monday in May
Independence Day	July 4
Labor Day	The first Monday in September
Veterans Day	Transferred to Holiday Break
Thanksgiving Day	The fourth Thursday in November
Friday after Thanksgiving (By Governor’s declaration only)	The fourth Friday in November
Christmas Eve	December 24
Christmas Day	December 25
An employee’s birthday	An employee is granted one holiday to observe his/her birthday

The university will be closed on the above legal holidays with the exception of the Employee’s Birthday. Also, George Washington’s Birthday/Daisy Gaston Bates Day, and Veterans Day are taken during the Christmas holiday break period. However, these closings do not apply to employees who are essential to the preservation and protection of the public peace, health and safety.

The university may require employees to work on a legal holiday. An employee who is required to work on a legal holiday shall be entitled to equivalent time off on another date.

The Governor may issue an Executive Proclamation and proclaim additional days as holidays in observance of special events or for other reasons.

Eligibility for Holiday Pay

1. All "regular salaried" and "extra help" employees are eligible to receive holiday pay if they are in pay status on at least fifteen (15) minutes on their last scheduled work day before the holiday and at least fifteen (15) minutes on the first scheduled work day after the holiday.
2. An employee on leave of absence without pay is not in pay status and is not eligible to receive holiday pay.
3. An employee with 10 or more days of leave without pay in a calendar month is not eligible for holiday pay, even if the employee is in a pay status fifteen (15) minutes the day before and fifteen (15) minutes the day after the holiday.
4. When a holiday occurs while an employee is on annual or sick leave, that day will be considered a holiday and will not be charged against the employee's annual or sick leave.
5. Employees must work on holidays when the needs of the university require it. This need will be determined by the President or the President's designee.
6. Days off in lieu of holidays worked may be taken at a time approved by the employee's supervisor. (Such time off is to be taken as soon as is practical.)
7. Employees who work a flex schedule earn holiday hours at the same rate as the number of hours the employee was scheduled to work on the holiday.
8. Employees who work less than full-time may take the holiday at a rate proportionately equal to their time worked. For example, if an employee works half-time, a holiday would be granted equivalent to four (4) hours.
9. Holidays which occur on a Saturday will be observed on the preceding Friday. Holidays which occur on a Sunday will be observed on the following Monday.
10. The minimum holiday leave amount an employee can use is fifteen (15) minutes. No smaller amount shall be authorized or used.

408 INCLEMENT WEATHER

All employees are expected to report to work in the event of severe weather on a work day unless the University is officially closed by the Administration. If the campus is open, office work, physical plant operations, etc., are expected to continue. If the inclement weather policy is announced after 5 p.m. of the preceding work day, employees arriving by 10 a.m. the following day will be given credit for a full day's attendance. Employees arriving after 10 a.m. will be charged the full amount of time involved in the tardiness. Employees not coming to work at all will be charged a full days absence. In the event of an announced early closure due to inclement weather, employees are expected to complete critical tasks. Employees absent on early closure days will still be required to record their full day absence as leave time.

Employees specifically identified as critical personnel may be required to report to work regardless of weather conditions. Critical personnel will be allowed excused time off to be used at a later date for time worked while campus is officially closed. All excused leave must be used within the pay period of the inclement weather. If the inclement weather event occurs on the last day of the pay period the excused time must be used in the following pay period. Excused time is only allowed for predetermined employees deemed critical personnel. Non-critical personnel may not voluntarily come to work while campus is closed and claim excused time off.

409 LONG TERM LEAVE OF ABSENCE WITHOUT PAY

A.C.A. §21-4-210

Leave of absence without pay (LWOP) is the least desirable employment status and should be requested by employees only in rare circumstances. An employee on unapproved LWOP may be subject to disciplinary action, up to and including termination.

Employees may not take leave without pay (LWOP) as authorized in Arkansas Law until all their leave has been exhausted, except in the following circumstances:

1. Maternity leave;
2. Inclement weather as designated by state policy;
3. Active duty military leave;
4. Budget reductions as determined by the University President;
5. University disciplinary actions according to the University's written policies.

The University President may grant continuous leave without pay. Any such period shall not exceed six (6) continuous months. Each request for leave without pay (LWOP) is to be considered on a case-by-case basis. At the expiration of a six (6) month period of LWOP, additional extensions up to six (6) months may be requested by the employee if updated justification with appropriate documentation is provided.

Approval or disapproval of requests for leave without pay as an accommodation should be determined based upon impact on the university's operation and mission and whether approval would create an undue hardship on the university.

"Undue hardship" is defined as "an action requiring significant difficulty or expense" when considered in relationship to a number of factors. These factors may include, but not limited to, the nature of the position occupied by the employee and cost of the request in relation to the size, resources, nature and structure of the university's operation and mission. Whether or not an accommodation request would create an undue hardship focuses on the resources and circumstances of the university in relationship to the cost or difficulty of providing a specific leave request. Undue hardship refers not only to financial difficulty, but also to requests that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature of operation of the university.

410 ORGAN DONATION LEAVE

A.C.A. §21-4-215

All university employees (as defined below) are entitled to leave with pay for up to thirty (30) days per calendar year in order to serve as a human organ donor. In addition, all employees (as defined below) are entitled to leave with pay for up to seven (7) days per calendar year to serve as a bone marrow donor.

Definitions

Bone marrow donor: a person from whose body bone marrow is taken to be transferred to the body of another person.

Organ: a human organ that is capable of being transferred from the body of a person to the body of another person, including eyes.

Organ donor: a person from whose body an organ is taken to be transferred to the body of another person.

Specific Provisions

Employee: a full-time employee of the university.

In order to qualify for organ donor or bone marrow donor leave, employees must request the leave in writing and provide the university with written verification by the physician performing the transplant that the employee will serve as a human organ or bone marrow donor. Following the transplantation, the employee shall provide the university with written verification by the same physician that the employee did serve as a human organ or bone marrow donor.

A university employee may use this leave without loss or reduction in pay, leave, or credit for time of service.

411 CHILD EDUCATIONAL LEAVE

A.C.A. §21-4-216; §6-15-509

Purpose

All employees (as defined below) shall be entitled to eight (8) total hours of leave, regardless of the number of children, during any one (1) calendar year for the purpose of engaging in and traveling to and from the educational activities or interscholastic activities of a child.

Definitions

Child: A person enrolled in prekindergarten through grade 12, including a home-schooled student, who is of the following relation to an employee:

1. Natural child
2. Adopted child
3. Stepchild
4. Foster child
5. Grandchild
6. Ward of the employee by virtue of the employee's having been appointed the person's legal guardian or custodian
7. Any other legal capacity where the employee is acting as a parent for the child.

Child includes a person who meets the criteria above but is over eighteen (18) years of age and:

1. Has a developmental disability; or
2. Is declared legally incompetent.

Developmental Disability: A disability of a person that:

- (A)(1) Is attributable to mental retardation, cerebral palsy, spina bifida, Down syndrome, epilepsy, or autism; (2) Is attributable to any other condition of a person found to be closely related to mental retardation because the condition results in an impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation or requires treatment and services similar to that required for a person with mental retardation; or (3) Is attributable to dyslexia resulting from a disability described in (A)(1) or (A)(2);
- (B) Originates before the person attains the age of twenty-two (22) years;
- (C) Has continued or can be expected to continue indefinitely; and
- (D) Constitutes a substantial handicap to the person's ability to function without appropriate support services, including, but not limited to, planned recreational activities, medical services such as physical therapy and speech therapy, and possibilities for sheltered employment or job training.

Educational Activity: Any school-sponsored activity including without limitations:

1. Attending a parent-teacher conference;
2. Participating in school-sponsored tutoring of the child;
3. Participating in a volunteer program sponsored by the school in which the child is enrolled;
4. Attending a field trip with the child;
5. Attending a school-sponsored program or ceremony in which the child is participating;
6. Attending a graduation or homecoming ceremony in which the child is participating;
7. Attending an awards or scholarship presentation in which the child is participating;
8. Attending a parents' or grandparents' breakfast in which the child is participating;
9. Attending a classroom party in which the child is participating;
10. Attending a school committee meeting of the school in which the child is enrolled;
11. Attending an academic competition in which the child is participating;
12. Attending an athletic, music, or theater program in which the child is enrolled; and
13. Engaging in any of the activities listed above that are connected with a prekindergarten program.

Home-schooled student: A student legally enrolled in an Arkansas home school.

Interscholastic activity: An activity between schools subject to regulations of the Arkansas Activities Association that is outside the regular curriculum of a school district, including without limitation an athletic activity, a fine arts program, or a special interest club or group; and taught by an individual with a minimum of a high school diploma.

Prekindergarten: means an educational and child development program that is designed to prepare children who are at least three (3) years of age for an academic kindergarten program.

Resident school: The school to which the student would be assigned by the resident school district in which the home-schooled student's parent resides.

Employee: A full time employee of the university.

Specific Provisions

A home-schooled student shall not participate in interscholastic activities at a public school other than the student's resident school.

Children's Educational Activities Leave that is unused may not be carried over to the next year. Children's Educational Activities Leave is not compensable to the employee at the time of retirement.

412 MATERNITY LEAVE

A.C.A. §21-4-209

Maternity leave is treated as any other leave for sickness or disability; however, the employee may elect to take unpaid leave of absence without pay without exhausting accumulated annual and sick leave.

An employee may request catastrophic leave to receive paid maternity leave.

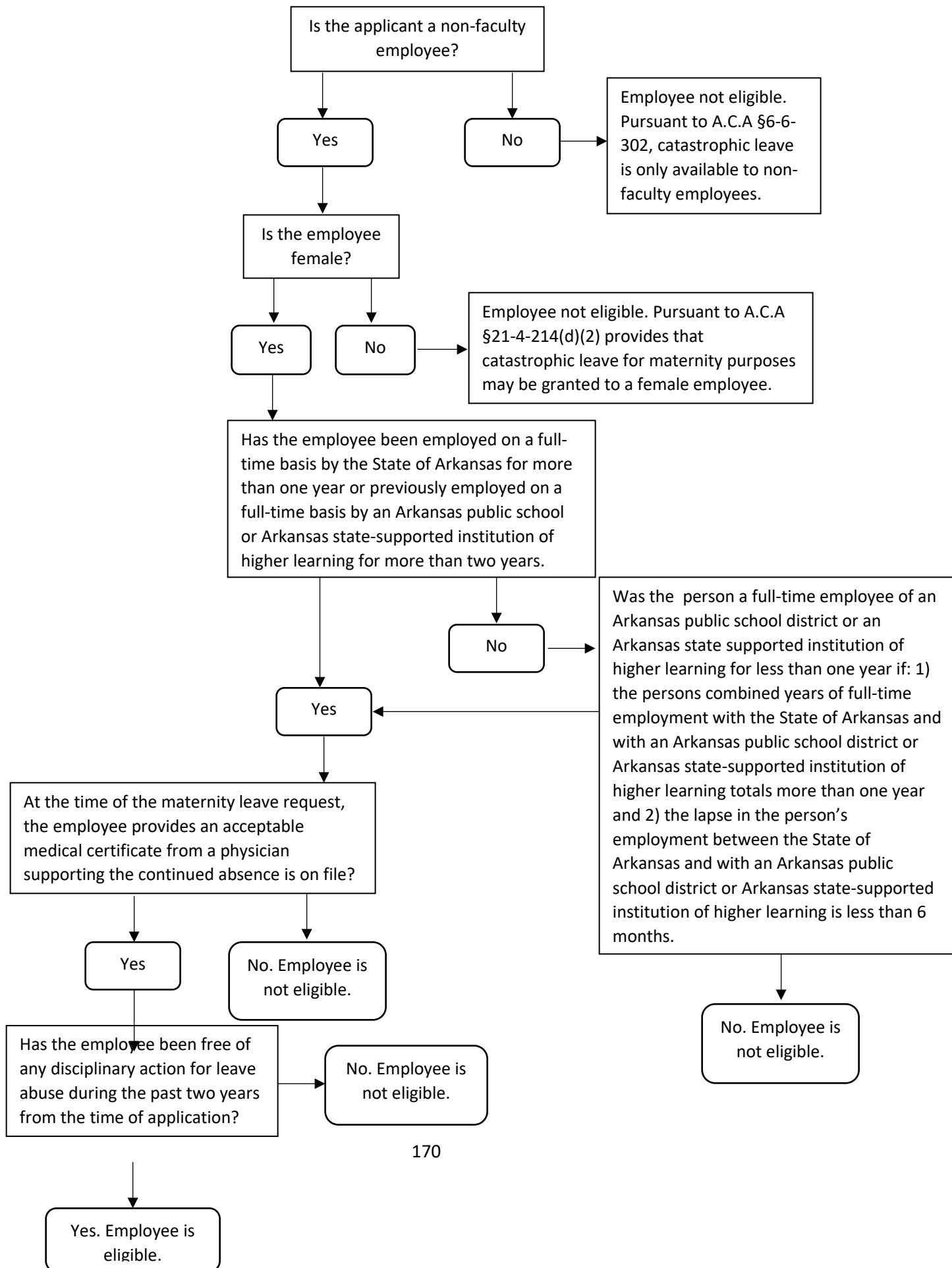
If an employee is eligible for both catastrophic leave for maternity purposes and family medical leave for maternity purposes, the two shall run concurrently.

Pursuant to Act 182 of 2017, catastrophic leave under A.C.A. §21-4-214 may be used by eligible employees for maternity leave under certain circumstances. Generally, the provisions are as follows:

1. Up to four consecutive weeks of catastrophic leave with full pay may be granted to an employee for maternity purposes.
2. An employee shall be eligible for catastrophic leave for maternity purposes only within the first twelve weeks after the birth or adoption of a child.

3. After the expiration of the four weeks of catastrophic leave for maternity purposes, the employee's maternity leave shall be treated as any other leave for sickness or disability.
4. Maternity leave shall be treated as any other leave for sickness or disability. Accumulated sick leave and annual leave, if requested by the employee, shall be granted for maternity use, after which leave without pay may be used.
5. Catastrophic leave for maternity purposes shall run concurrently with any leave under the Family Medical Leave Act of 1993, 29 U.S.C. 2601.
6. Catastrophic leave for maternity purposes may be granted to a female employee after: (a) the birth of the employee's biological child; or (b) the placement of an adoptive child in the home of the employee.
7. An employee on catastrophic leave for maternity purposes is not required to exhaust sick or annual leave before being granted catastrophic leave for maternity purposes.
8. Employees on catastrophic leave for maternity purposes do not accrue sick or annual leave while on catastrophic leave for maternity purposes.
9. **For specific guidance on whether an employee is eligible for participation in the catastrophic leave for maternity program, see the flowchart located at www.atu.edu/ucounsel.**

Catastrophic Leave for Maternity Purposes Flowchart



413 MILITARY LEAVE

A.C.A. §21-4-102; §21-4-105; §21-4-212; §21-4-302; §§21-4-311 and 312; and §21-5-1202

Military leave may only be used by active members of the US Armed Forces which include: United States Marine Corp, United States Army, United States Navy, United States Air Force, Arkansas National Guard, and all reserve branches of the armed forces.

There are five types of military leave available to state employees:

1. Called to regular active duty;
2. Annual training, including drill;
3. Called to duty in emergency situations;
4. Called to duty for specialized training; and
5. Treatment for a service-connected disability.

1. Regular Active Duty

A regular, full-time employee who is drafted or called to active duty in the Armed Forces of the United States or who volunteers for military service, shall be placed on extended military leave without pay.

All unused sick leave at the time of military leave will be reinstated at the time the employee returns. All accrued, unused annual leave at the time of military leave will be reinstated at the time the employee returns to state employment unless the employee requested and received a lump-sum payment for the accrued, unused annual leave when placed on the extended military leave.

Employees performing active military service for fewer than thirty-one (31) days must report for reemployment on the first regularly scheduled workday within eight (8) hours after discharge from military service. Those serving more than thirty (30) days but less than one hundred and eighty-one (181) days must report within fourteen (14) days after discharge. Those serving more than one hundred and eighty (180) days must report for reemployment within ninety (90) days after discharge from military service.

The employee will be reinstated to the position vacated or an equivalent position for which he or she is qualified in the same agency or its successor in interest. The employee shall not lose any seniority rights or any of the other benefits and privileges of employment.

Former employees returning to State service after military service, but who extended their enlistment or re-enlisted for additional military service beyond the initial period for more than a period of 4 years will lose all re-instatement rights and will be considered a rehire. Military service time may be extended beyond the 5 year period for reasons stated in 38 US Code Section 4312(c).

2. Annual Training

Employees participating in military training programs made available National Guard or any of the reserve branches or the US Public Health Service training program shall be entitled to a leave of absence for a period of 15 days plus necessary travel time for annual training requirements, including drill requirements, or other duties performed in an official duty status in any one calendar year. To the extent this leave is not used in a calendar year, it will accumulate for use in the succeeding calendar year until it totals 15 days at the beginning of the calendar year. An employee who requests military leave shall furnish a copy of his or her orders for his or her personnel file.

Whenever an employee of a political subdivision is granted military leave for a period of 15 days per calendar year or fiscal year, the military leave will accumulate for use in succeeding calendar years or fiscal years until it totals 15 days at the beginning of the calendar year or fiscal year, for a maximum number of military leave days available in any one calendar year or fiscal year to be 30 days.

The period of military service shall, for purposes of computations to determine whether such person may be entitled to retirement benefits, be deemed continuous service and the employee shall not be required to make contributions to any retirement fund. The state agency or political subdivision shall continue to contribute its portion of any life or disability insurance premiums during the leave of absence on behalf of the employee, if requested, so that continuous coverage may be maintained.

When an employee is granted a leave of absence under this, he or she shall be entitled to his or her regular salary during the time he or she is away from his or her duties during such leave of absence. This leave of absence shall be in addition to the regular annual leave accrued by the employee. During a leave of absence, the employee shall be entitled to preserve all seniority rights, efficiency or performance ratings, promotional status, retirement privileges, life and disability insurance benefits, and any other rights, privileges, and benefits to which they may become entitled.

3. Emergency Situation

Regular, full-time state agency employees who are called to active duty in emergency situations (and in situations covered by 10 United States Code §12304) as declared by the Governor or President shall be granted leave with pay not to exceed 30 working days. Periods beyond the 30 day limit may be charged as annual leave at the employee's option and, if necessary, as leave without pay.

Emergency situations means any case of invasion, disaster, insurrection, riot, breach of peace, or imminent danger; threats to the public health or security; or threats to the maintenance of law and order.

The reinstated employee will not lose any seniority rights with respect to leave accrual rates, salary increases, Reduction in Force policies, or other benefits and privileges of employment.

The period of military service, for purposes of computations to determine whether such persons may be entitled to retirement benefits, should be deemed continuous service and the employee shall not be required to make any contributions to any state supported retirement fund. To receive service credit for retirement purposes, a copy of the employee's DD214 must be submitted to the appropriate retirement system. The retirement system will notify the appropriate agency to remit the employer's contributions to update the employee's account.

To be eligible for emergency active military duty paid leave, the employee must be actively employed by the state and submit a copy of military orders for each emergency deployment. Military leave for emergency active duty situations is granted in addition to annual military leave for training purposes and annual leave.

4. Specialized Training

An employee who volunteers or is ordered to duty for the purpose of special training is placed on leave without pay for the period of training unless the employee elects to use accrued annual leave. This training is considered sporadic and separate from the required annual training. This leave without pay is given in addition to the paid leave for annual military training.

The employee retains eligibility rights including accumulated annual leave (unless the above option has been exercised) and any sick leave not used at the time the employee begins the training. The employee does not accumulate annual or sick leave during a leave without pay period, and the annual leave accrual rate will be calculated as though there had been no period of absence.

5. Service-Connected Disability

All state agency employees who have been rated by the United States Department of Veterans Affairs or its predecessor to have incurred a military service-connected disability and have been scheduled to be reexamined or treated for the disability shall be entitled to a leave of absence with pay.

The employee shall be entitled to his or her regular salary during the time the employee is away from his or her duties during the leave of absence. The leave with pay may not exceed 6 days for the purpose specified in this law during any one calendar year. The leave of absence shall be in addition to the regular annual leave and sick leave allowed to the employee. During the leave of absence allowed under this law, the employee shall be entitled to preserve:

1. All seniority rights, efficiency or performance ratings, promotional status, retirement privileges, and life and disability insurance benefits; and
2. Any other rights, privileges, and benefits to which he/she has become entitled.

For computation purposes to determine whether the employee may be entitled to retirement benefits, the period of the leave of absence shall be deemed continuous service. The state agency shall continue to contribute its portion of any life or disability insurance premiums during the leave of absences on behalf of the employee, if requested, so that continuous

coverage may be maintained.

Military Leave – Vacancy and Compensation

Any person appointed to fill the office or perform the duties of an employee on a military leave of absence who dies, resigns, or in any manner or for any cause vacates the office or position to which he or she was appointed, the Governor, or person whose duty it would be to fill the office or position if a vacancy should occur, shall select and appoint a capable and competent person to perform the duties of the office or position until the term of office or employment expires or until the official or employee appears for the purpose of resuming the office or position. The appointment shall expire upon the expiration of the term of the office or employment of the employee for the purpose of the resumption of his or her duties. The deputies or other persons appointed to fill the office or position of the official or employee during a leave of absence under the provisions of this subchapter shall receive the same compensation and shall be paid in the same manner as the official or employee whose duties he or she assumes. During the time any official or employee is absent from his or her office or position on a leave of absence granted under the provisions of this subchapter, he or she shall not be entitled to compensation.

414 FUNERAL LEAVE

Requests for leave to attend funeral services for an immediate/step family member are made under Sick Leave. Requests for leave to attend funeral services for someone who is not an immediate/step family member will be made under Annual Leave or Leave-Without-Pay.

Immediate/step family members are defined in the chart below.

Funeral Leave	
Definition of Immediate and/or Step Family Members	
Brother	Husband
Child	In-Laws
Father	Mother
Grandchildren	Sister
Grandparents and Great Grandparents	Wife
Any individual acting as a parent or legal guardian of an employee	

For immediate and/or step family members an employee may take up to five (5) days of Sick Leave to attend funeral services. If additional time off is required due to family responsibilities, an employee may use Annual Leave or apply for Leave-Without-Pay.

415 BEREAVEMENT LEAVE

For immediate and/or step family members an employee may take up to ten (10) days of Sick Leave for bereavement leave. If additional time off is required due to family responsibilities, an employee may use Annual Leave or apply for Leave-Without-Pay.

416 SICK LEAVE

A.C.A. §§21-4-206 through 208; §21-4-501

State employees who work in a regular salary position accrue paid sick leave at the rate of 1 day (8 hours) for each completed month of service. Sick leave with pay is allowed to permanent, probationary, provisional, and temporary employees who are working ½ time or more on a pro-rata basis for each complete month of service. Emergency, hourly, intermittent, extra help, and per diem employees do not accrue sick leave.

Sick leave can only be used for the following purposes:

1. When the employee is unable to work because of sickness, injury or for medical, dental or optical treatment,.
2. Death or serious illness of employee's immediate family member. Immediate family is defined as the father, mother, sister, brother, spouse, child, step-child, grandparents, great grandparents, grandchild, in-laws or any individual acting as a parent or guardian of an individual.

Sick leave accrued during a calendar month is not considered to be earned by an active employee until the last working day of the month, and the leave must be earned before it can be used. For accrual purposes only, employees will accrue half their monthly accrual of sick leave if employed on the first (1st) working day of the month and are in active status on the payroll through the 15th of that month. Employees will accrue half their monthly accrual if employed on the 16th of the month and are in active status on the payroll through the last working day of that month. (If the 16th falls on a weekend or holiday, accrual begins on the first (1st) working day thereafter.) Employees will not borrow from anticipated future accruals.

Sick leave is approved on the basis of work days, not calendar days. Non-work days, such as holidays and weekends, are not charged as sick leave. The minimum sick leave amount an employee can use is 15 minutes. Absences due to sick leave, except in the case of maternity leave, shall be charged in the following order: (1) earned sick leave; (2) earned annual leave; (3) catastrophic leave; and (4) leave without pay. If an employee does not qualify for catastrophic leave, the employee may request leave without pay.

Employees who are on sick leave for five (5) or more consecutive days must furnish a certificate of illness from an attending physician. An agency or institution which has a written procedure to identify patterns of sick leave usage may require an employee to furnish a certificate from an attending physician for any use of sick leave. A certificate from a Christian Science practitioner listed in the Christian Science Journal may be submitted in lieu of a physician's certificate.

Employees continue to earn sick leave at the normal accrual rate when they are on sick leave or annual leave, but an employee may not earn sick leave when in a leave without pay status for 10 or more cumulative days within a calendar month.

No employee can carry over to the next calendar year more than 120 days, or 960 hours, of accumulated sick leave. Accrued leave may exceed 960 hours during the calendar year, but those days in excess of 120 days hours will be forfeited if not used by December 31st of each year. Employees who have a balance of over 120 days at the end of the calendar year may donate their time over 120 days to the catastrophic leave bank.

Leave Transfer and Payout

Employees transferring without a break in service between state agencies that are covered by this policy will retain all accumulated sick leave.

If an employee is terminated due to a reduction in force, the employee will have all accrued sick leave restored if the employee returns to state employment within 6 months of termination.

Employees are not entitled to payment for accrued and unused sick leave when they terminate their employment; however, they may be eligible for a payment when they retire or die.

417 TRANSFER OF LEAVE

A.C.A. §§21-4-204 through 207

Employees transferring between state agencies without a break in service retain their annual and sick leave benefits upon transferring to their new state agency.

If an employee separates from a state agency or institution of higher education and is paid for their annual leave upon separation, the employee is not allowed to return to state employment until he or she has exhausted the number of days for which they were paid annual leave. If the employee has been separated from state government for 30 working days or less, they have the option of purchasing their unexpired leave balance from the hiring state entity.

If an employee receives compensation for unused sick leave at retirement and returns to state employment, the employee is not required to wait until the expiration of the number of days for which he or she received additional compensation before returning to state employment or to repay the amount of the compensation.

When an employee is laid off because of budgetary reasons or curtailment of activities and he or she is reinstated within a period of six (6) months, accumulated sick leave may be restored to his or her credit.

When an officer or employee of a state office or agency excluded from the provisions of the Uniform Attendance and Leave Act leaves employment of the excluded office or agency and becomes employed by an agency or institution which is subject to the Uniform Attendance and Leave Act, the period of employment with the excluded office or agency shall be included as state employee service for the purpose of determining the rate at which the employee earns

paid annual leave.

Upon return to state employment, the hiring state entity shall request a Proof of Prior Service from each agency or institution of higher education where the employee has previously worked. The employee's rate of annual leave accrual shall be determined by considering all past state employment.

500 TERMINATION OF EMPLOYMENT

501 Termination, Suspension & Dismissal Procedures

502 Grievance Procedure

501 TERMINATION, SUSPENSION & DISMISSAL PROCEDURES

- A. If an employee plans to terminate employment with the University, the University expects a two-week notice. The employee is expected to be physically present on their last day of employment. The following outlines the termination process:
1. All terminations must be reported immediately to the Office of Human Resources in writing by the employee.
 2. Before an employee's final paycheck will be issued the following should be completed:
 - a. Exit interview with the Office of Human Resources
 - b. Exit interview packet of termination materials completed and returned to the Office of Human Resources
 - c. Clearance from the Library, Media Services, Physical Plant, Public Safety, Student Accounts Office, and other offices as required.
 - d. Any questions concerning leave, conversion of insurance, or retirement will be addressed during this interview
 3. Once the Office of Human Resources receives written notification from an employee, a Notice of Termination will be sent to the Payroll Office.
 4. Any keys or University property the employee may have must be returned prior to the delivery of the final pay check.
 5. After clearance has been approved, and step 4 above has been complied with, the employee may pick up the final paycheck from the Payroll Office, or it can be directly deposited, unless otherwise arranged.
 6. Supervisors are cautioned that the policy on Termination and Grievances must be fully complied with.
 7. Pursuant to A.C.A. §11-4-405, employees who have been discharged are to be paid all wages they are due by the next regular payday.
- B. Any employee may be dismissed from the University's employment with the same two-week notice; however, the following procedure is required:

1. The employee must receive a conference with the supervisor or department head at which time the unsatisfactory aspects of the work performance of the employee must be discussed and reported on appropriate Performance Evaluation Forms, followed immediately by a written memorandum from the supervisor to the employee outlining the points covered in the conference. A copy of this memorandum and Performance Evaluation must be on file in the department office and a copy submitted to the Office of Human Resources.
 2. After a reasonable trial period of not less than two weeks, the employee may be dismissed for continued unsatisfactory performance.
- C. Suspension due to dishonesty, insubordination, violation of the law, violation of the sexual harassment or sexual misconduct policy, or other conduct reflecting unfavorably upon the reputation of the University may be made without prior notice. Suspension may be made with or without pay depending upon the severity of the case and will be determined by the administration. This does not obviate the right of the employee to due process.
- D. Dismissal due to dishonesty, insubordination, violation of the law, or other conduct reflecting unfavorably upon the reputation of the University may be made without prior notice or termination pay. This does not obviate the right of the employee to due process.
- E. If an employee has a complaint, he/she should follow the Grievance Procedures as outlined in this handbook.
- F. An employee discharged by the University may, within one week after termination, follow the grievance procedure for a complaint concerning their discharge. A delay of more than two weeks will not be considered a reasonable time for this step.

502 GRIEVANCE PROCEDURE

Any employee having a grievance, complaint or question concerning a condition of his or her employment should pursue the grievance, complaint, or question within 14 days of the event calculated as of the date of contact with Human Resources causing the grievance, complaint or question, and take the steps as follows:

Informal Process

1. **STEP ONE.** Discuss the matter first with his/her supervisor. If the matter is not resolved, the employee should contact the Office of Human Resources to indicate you are initiating an informal grievance and a representative from the Office of Human Resources will appoint someone to serve as a mediator to facilitate this discussion. It is the duty of the supervisor to make a thorough investigation and, if possible, to arrive at an answer or settlement which is mutually agreeable.

2. **STEP TWO.** If the matter is not resolved, the matter must then be presented verbally to the appropriate Vice President or Athletic Director by the employee with the immediate supervisor and a representative from the Office of Human Resources. If a mutually agreeable settlement is not reached within ten business days, the employee may then submit a formal complaint in writing to the Director of Human Resources and to the supervisor.

Exception: In the case of complaints based on alleged sexual harassment or alleged sexual misconduct involving the employee's immediate supervisor, the employee is not required to discuss the complaint at that level.

Formal Process

1. The Formal Grievance committee membership shall include:
 - A. The grievance committee shall consist of three members.
 - B. Two members of the grievance committee shall be selected by random draw from the then existing Staff Senate Grievance Committee Pool. A selected member who announces a conflict of interest to the Staff Senate President shall be excused and another member's name drawn. Both the grievant and respondent shall also be allowed, based upon an announced conflict of interest to the Staff Senate President, to have one member of the pool recuse.
 - C. The third person on the grievance committee shall be a chairperson selected from the campus community by the Chief of Staff.
 - D. The Director of Human Resources shall serve as a secretary and have no vote. The Affirmative Action Officer will serve as an advisor and have no vote.
2. The Grievance Committee shall hear the grievance as well as such witnesses as it deems necessary relative to the grievance. The formal hearing procedures are as follows:

Procedures for Formal Grievance Hearing

- A. Call to order by Chairperson with opening comments regarding the procedures for conducting the hearing.
 - i. The parties in the hearing will conduct themselves in a professional manner. Unruly behavior, inappropriate language or interruption of others will not be tolerated. The parties to the hearing shall not badger, harass, or intimidate witnesses. Further, once a witness has been asked a question by a party and the witness has answered it, the party shall not ask the question again. The chairperson will have responsibility for maintaining order throughout the hearing.
 - ii. Failure of the grievant to follow the procedures and requirements set forth herein may result in denial of the grievance.
 - iii. Failure of the respondent to follow these requirements or other requirements set forth herein may result in disciplinary actions by the University.
 - iv. The relevant issues of the hearing will be identified by the chairperson, and the chairperson will have the right to caution parties if subjects considered irrelevant are introduced.

- v. The chairperson will confirm that all parties have the official file of the hearing.
 - vi. An official transcript of the hearing will serve as the record of the hearing with a copy to be made available to both parties.
 - vii. A list of witnesses to be called by each party along with a summary of their expected testimony will be submitted to the chairperson and the opposing party at least two days prior to the hearing. Only witnesses relevant to the proceeding, as determined by a majority of the committee, may be called. Further, witnesses not listed may not be called. There is no subpoena power and the university will not force witnesses to attend. The hearing will be closed and witnesses will be excused after presenting testimony and responding to questions. Failure to comply with the requirements under this section will result in witnesses not be permitted to testify in this grievance process. Arkansas Tech University specifically prohibits retaliation by any employee against another employee as the result of participation by an employee in the university's grievance process. An employee who is found to have engaged in retaliation will be subject to discipline up to and including termination of employment.
 - viii. Documents to be introduced by each party will be submitted to the Chairperson and opposing party at least two days prior to the hearing. Only documents relevant to the proceeding, as determined by a majority of the committee, will be introduced at the hearing. Further, documents not submitted in compliance with these procedures may not be introduced in the grievance process or appeal.
 - ix. Each party (grievant and respondent) may have one person who serves in an advisory capacity only. The advisor will not be permitted to participate in the hearing process.
- B. The Chairperson will introduce the participants.
 - C. The grievant will have up to ten minutes to present a statement which summarizes the nature of the grievance and the action which is requested.
 - D. The Committee members may question the grievant.
 - E. The grievant may call in relevant witnesses one at a time to present statements. Up to ten minutes will be allowed for each witness. The chairperson will have discretion to allow questions past the ten minute limit.
 - F. Committee members may question each witness.
 - G. The respondent may have ten minutes to present an opening statement pertaining to the complaint.
 - H. The Committee members may question the respondent.
 - I. The respondent may call in relevant witnesses to present statements. Up to ten minutes will be allowed for each witness. The chairperson will have discretion to allow questions past the ten minute limit.
 - J. The Committee members may question each witness.
 - K. Committee members may pose questions to both parties.
 - L. A closing statement of up to ten minutes may be presented by the grievant.
 - M. A closing statement of up to ten minutes may be presented by the respondent.

- N. A rebuttal statement of up to five minutes may be presented by the grievant.
 - O. A closing statement will be presented by the Chairperson with clarification of the role of the Committee.
 - P. Committee adjourns into executive session, where it will deliberate and make findings and a recommendation by a majority vote.
3. The Committee will reach its findings and recommendation within three business days of the close of the hearing. Copies of the findings and recommendations will be made available to all parties in the proceedings. The evidentiary standard to be used by the Committee shall be the preponderance of the evidence standard.
 4. The recommendations of the Committee will be presented in writing to the President within three (3) working days of the close of the hearing for review and action.
 5. The President will review the Committee's recommendations and will submit, within three business days of receipt of the Committee's recommendation, his or her decision in writing to all parties, representatives, and supervisors involved. The Committee will be copied on this decision. The decision of the President will be final and binding on all concerned.

600 EMPLOYEE CONDUCT

601 Hours of Work

602 Attendance

603 Break Time

604 Time Reporting

605 Telephone Calls

606 Parking

607 Attitude

608 Travel

609 Personnel Records

610 Children in the Workplace

611 Wage Garnishment

612 Animals on Campus

601 HOURS OF WORK

The hours of work are from 8:00 a.m. to 5:00 p.m. with one hour for lunch. However, this may vary at times depending on the job requirements, departmental routine and administrative approval. All employees are expected to be in their respective departments and ready for work at the scheduled starting time. The work week consists of five (5) days. Due to state policy, compensatory time is given in most instances for overtime work.

602 ATTENDANCE

Attendance is vitally important to the University, supervisors, and co-workers. Remember that the total effort of a department diminishes when employees are not present. It is important that employees be present during all normal working hours except when emergencies prevent an employee's presence. When illness keeps an employee at home or when an employee must be absent for some other reason, an employee is responsible for notifying their supervisor at the time the employee is scheduled to report to work. The employee's failure to do so will constitute an unexcused absence.

An unexcused absence is an absence from work where the supervisor is not notified or the employee does not have available any of the leave time that accrues under the provisions of this handbook. Additional items that will be considered unexcused absences include:

- Leaving work early before the end of your scheduled work for any reason that is unexcused after notifying your supervisor.
- Arriving after your scheduled work hours that is unexcused after notifying your supervisor.
- Absence for any reason that is unexcused with proper call-in to supervisor.
- Absence for any reason that is unexcused without proper call-in to supervisor.

Three (3) unexcused absences are grounds for termination. An unexcused absence should be written in memorandum form, signed by the supervisor in the employee's presence, and forwarded to the Office of Human Resources.

On January 1 of each year, unexcused absences accumulated during the calendar year will be evaluated during the employee's performance evaluation, then removed and begin at zero for the New Year.

If the employee knows in advance that he/she will be absent due to an illness in the family, jury duty, special health care or treatment, notify your supervisor or department head for approval.

603 BREAK TIME

A mid-morning and mid-afternoon break of no more than 15 minutes each, to be taken on campus, is authorized. Break periods are not cumulative and cannot be saved and used for other purposes. Breaks should not interfere with work schedules and deadlines. Health and safety may require adjustments to the frequency of breaks, as approved by a Vice President.

604 TIME REPORTING

Classified employees should complete time sheets at the end of each pay period.

Supervisors are responsible for the submission of time records in accordance with the prescribed University formats and deadlines. Timesheets must reflect an accurate record of all hours worked. An approval signature, whether manual or electronic, will reflect the approver's personal responsibility for the truthfulness and validity of the time record. Timesheets and leave reports are required to be approved by both the employee's immediate supervisor as well as the appropriate department head. Those supervisors approving time records should agree with the approved supervisor and department head list maintained in the payroll office. This approver list will be maintained on a position basis to reflect any changes in personnel. Supervisor changes may be requested by memorandum to the Payroll Office by the appropriate department head.

605 TELEPHONE CALLS

Calls of a personal nature are discouraged during working hours.

606 PARKING

When an employee reports for the first day of work, arrangements should be made to purchase a parking permit for your vehicle.

607 ATTITUDE

Arkansas Tech University is a public educational institution whose success depends largely upon the personal attitudes of its employees toward the general public, students and visitors.

Employees have an obligation to be considerate and courteous to all students, faculty, staff, visitors, co-workers and supervisors. All jobs are important, and should be performed in a professional manner. The impression employees create on our students and the public is very important to University operations. An employee's personal appearance must be professional with all attire appropriate for the job.

To acknowledge employees that exhibit exemplary attitudes in the workplace, the University has developed a "Service Excellence" program. The Service Excellence program promotes initiatives that unite the ATU family in providing a seamless experience of exceptional service to all of our campus community. Service excellence extends far beyond the traditional approach to service. Service excellence at Arkansas Tech is about all units working together to create consistent attitudes, behaviors, and processes. The idea behind our philosophy and the direction of our standards is intended to empower our workforce to provide exceptional service that ultimately contributes to a culture of continuous improvement aiming for organizational excellence. More information about the University's Service Excellence program can be found by visiting: <https://www.atu.edu/serviceexcellence/>.

608 TRAVEL

It may be necessary for employees to travel to different locations for business or training exercises related to the general operation and best interest of the University. Travel request forms must be completed and submitted in advance to the proper office for approval. A separate travel request form must be completed for each traveler who will be requesting reimbursement. Reimbursement not to exceed state allowances will be made for meals, travel and lodging unless otherwise approved, such as out-of-state travel, for example.

609 PERSONNEL RECORDS

It is vitally important that personnel records be up-to-date at all times. Employees should report all changes in address, telephone number, marital status, number of dependents, and any other information pertinent to personnel records to the Office of Human Resources as soon as they occur. Incomplete information can result in the loss of some benefits.

610 CHILDREN IN THE WORKPLACE

Arkansas Tech makes every effort to provide a family-friendly environment for its students, faculty and staff and encourages children to participate in family and youth oriented programs on campus. The University understands that brief and infrequent visits by children of faculty, staff and students to campus and facilities occur for a variety of reasons (such as on-campus events, entertainment, meals and other activities). While it is not the policy to restrict visits by children for such activities, the frequent, regular, or extended presence of children during working hours is not permitted due to (i) the potential for interruption of work or educational activity; (ii) health and safety concerns; and (iii) potential liability to the University.

611 WAGE GARNISHMENT

Garnishment is a legal procedure through which the salary of an employee is withheld for payment of a debt.

The University honors wage garnishment orders and follows guidelines set out in federal wage garnishment laws.

612 ANIMALS ON CAMPUS

Arkansas Tech University is committed to allowing people with disabilities the use of a Service or Assistance Animal, as necessary, on campus to facilitate their full-participation in University programs and activities. Set forth below are specific requirements and guidelines concerning the appropriate use of and protocols associated with Service Animals and Assistance Animals. Arkansas Tech University reserves the right to amend this policy as circumstances require.

Section I. Definitions

A. Service Animal

A Service Animal is “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler’s disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, pulling a wheelchair, assisting an individual during a seizure, providing physical support and assistance with balance and stability to individuals with mobility disabilities, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Dogs whose sole function is to provide comfort, emotional support, well-being, or companionship do not constitute work or tasks for purposes of this definition³¹.”

B. Assistance Animal

Assistance Animals are (1) animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or (2) animals that provide emotional support which alleviates one or more identified symptoms or effects of a person’s disability. Some, but not all, animals that assist persons with disabilities are professionally trained. Other Assistance Animals are trained by the Handlers. In some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed as

³¹ Department of Justice Revised ADA Regulations Implementing Title II and Title III, Federal Register, September 15, 2010 (Volume 75, Number 178)

a reasonable accommodation by the person with the disability. Unlike a Service Animal, an Assistance Animal does not assist a person with a disability with activities of daily living, nor does it accompany a person with a disability at all times. Assistance Animals may be considered for access to University housing, however, they are not permitted in other areas of the university (e.g. libraries, academic buildings, classrooms, labs, student center, etc.).

C. Partner/Handler/Owner

A Partner/Handler/Owner is a person with a Service or Assistance Animal. (The term Handler will be used in this document to reflect any of these terms.)

D. Pet

A pet is a domestic animal kept for pleasure or companionship. A pet is not considered a Service Animal or an Assistance Animal. Pets are not permitted on campus and are not covered by this policy.

E. Approved Animal

An “approved animal” is a Service Animal or Assistance Animal that has been granted as a reasonable accommodation by Arkansas Tech University under this policy.

Section II. Service Animal Use on Campus

Visitors: Visitors to campus with Service Animals may access all public facilities, with the exception of areas where service animals are specifically prohibited due to safety or health restrictions, where the Service Animal may be in danger, or where the Service Animal’s use may compromise the integrity of research.

Employees: Employees with a disability who wish to utilize a Service Animal as a reasonable accommodation in a University office or other areas of campus buildings not open to the general public must register with the Disability Services office and complete paperwork with the Office of Human Resources.

Section III. Guidelines for Maintaining an Approved Animal at Arkansas Tech University

A. Introduction

The following guidelines apply to all Approved Animals and their Handlers, unless the nature of the documented disability of the Handler precludes adherence to these guidelines, and permission for a variance from the guidelines has been granted.

B. Care and Supervision

Care and supervision of the Approved Animal are the responsibility of the individual who

benefits from the Approved Animal's use. The Handler is required to maintain control of the Approved Animal at all times.

The Handler is also responsible for ensuring the cleanup of the Approved Animal's waste and, when appropriate, must toilet the animal in areas designated by the University consistent with the reasonable capacity of the Handler. Indoor animal waste, such as cat litter, must be placed in a sturdy plastic bag and securely tied up before being disposed of in an outside trash dumpster. Litter boxes should be placed on mats so that waste is not tracked onto carpeted surfaces.

C. Animal Health and Well-Being

1. **Vaccination:** In accordance with local ordinances and regulations the Approved Animal must be immunized against diseases common to that type of animal. Dogs must have current vaccination against rabies and wear a rabies vaccination tag. Although not mandated, cats should have the normal shots required for a healthy animal. Local licensing requirements are followed.
2. **Health:** Animals, other than cats and dogs, to be housed in University housing must have an annual clean bill of health from a licensed veterinarian. Documentation can be a vaccination certificate for the animal or a veterinarian's statement regarding the animal's health. The University has authority to direct that the animal receive veterinary attention. (Local licensing law is followed.)
3. **Leash:** If appropriate the Approved Animal must be on a leash, unless the leash would inhibit the Approved Animal's ability to be of service.
4. **Other Conditions:** Disability Services may place other reasonable conditions or restrictions on the Approved Animal depending on the nature and characteristics of the Approved Animal.

D. Requirements for Faculty, Staff, Students, and Other Members of the University Community

Members of the University community are required to abide by the following practices:

1. They are to allow a Service Animal to accompany its Handler at all times and in all places on campus, except where animals are specifically prohibited.
2. They are not to touch or pet a Service or Assistance Animal unless invited to do so.
3. They are not to feed a Service or Assistance Animal.
4. They are not to startle a Service or Assistance Animal, deliberately.
5. They are not to separate or to attempt to separate a Handler from his or her Service or Assistance Animal.
6. They are not to inquire for details about the Handler's disabilities. The nature of a person's disability is a private matter.

E. Removal of Approved Animal

The University may exclude/remove an Approved Animal when:

1. The animal poses a direct threat to the health or safety of others;
2. The animal's presence results in a fundamental alteration of the University's program;
3. The Handler does not comply with Handler's Responsibilities in University housing;
4. The animal or its presence creates an unmanageable disturbance or interference (e.g. barking, wandering, displaying aggressive behavior) and the behavior is outside the duties of the Approved Animal on the Arkansas Tech University campus;
5. The animal is not house broken;
6. The animal is physically ill;
7. The animal is unreasonably dirty; or
8. The animal is found by the university to be out of control and the animal's handler does not take immediate and effective action to control it.

F. Damage

Handlers of Approved Animals are solely responsible for any damage to persons or University property caused by their animals.

G. Areas Off Limits to Service Animals

The University may prohibit the use of Service Animals in certain locations because of health and safety restrictions (e.g. where the animals may be in danger, or where their use may compromise the integrity of research). Restricted areas may include, but are not limited to, the following areas: custodial closets, boiler rooms, facility equipment rooms, research laboratories, classrooms with research/demonstration animals, areas where protective clothing is necessary, wood and metal shops, motor pools, rooms with heavy machinery, and areas outlined in state law as being inaccessible to animals. Exceptions to restricted areas may be granted on a case-by-case basis by contacting Disability Services and the appropriate department representative; the person directing the restricted area has the final decision.

700 Employee Benefits

701 Types of Appointments – Benefits of Each

702 Insurance

703 Retirement

704 Social Security Participation

705 Tuition Benefit Policy

706 I.D. Card Usage

707 Business Discount

708 Unemployment Insurance

709 Arkansas State Employees Association

710 Credit Union

711 Tech Retiree Benefits

701 TYPES OF APPOINTMENTS – BENEFITS OF EACH

A full-time employee is under Notice of Employment for at least 30 hours a week. They are eligible for group insurance, vacation and sick leave, paid holidays, tuition waiver benefit, bookstore discounts, credit union participation, and the Section 125 plan. They also participate in Worker's Compensation, Retirement and Social Security.

Part-time employees are under Notice of Employment for Less than $\frac{3}{4}$ time in a regular salary position with an expected employment duration of at least nine months. They are not eligible for group insurance. However, part-time employees participate in Workers' Compensation, Retirement, and Social Security programs, and are eligible for vacation and sick leave if scheduled to work at least one thousand (1,000) hours for the University. They are also eligible for aid for on-campus study, bookstore discounts, and credit union participation.

Extra-labor staff is employed as seasonal, casual or extra help employees in positions which are not permanent and for an expected employment duration of less than nine months. These employees participate in Workers' Compensation and Social Security programs and are eligible for holiday pay; however, they may only be eligible for retirement benefits

702 INSURANCE

The insurance programs offered to full-time employees by the University are as follows:

A. Health Insurance

Group insurance is available to all full-time employees. This currently includes dental, vision, and also includes hospitalization and other illness coverage up to a major medical maximum. The University participates in the premium payments for employees' coverage.

B. Life Insurance

Group term insurance with accidental death provision is available on an elective basis

to all full-time employees. The amount of coverage provided depends upon the employee's salary. The University participates in the premium payments.

C. Long-term Disability Insurance

Long-term disability insurance is available to full-time University employees to purchase.

D. Short Term Disability Insurance.

1. Short Term Disability Insurance

This insurance is designed to cover a person who is disabled on a short-term basis only.

E. Cancer Insurance

1. Cancer Insurance

This plan is designed to pay in addition to the regular medical insurance plan.

F. Medical Reimbursement

1. Medical Reimbursement

This plan can benefit you if you have any predictable out-of-pocket medical, dental, or vision for you and/or any of your legal tax dependents.

703 RETIREMENT

All full-time and half-time employees are required by law to participate in one of the following retirement systems plus Social Security. Employee payments to the following systems are matched at varying rates by the University.

A. Teachers Insurance and Annuity Associate (TIAA)

This is a non-profit organization sponsored by the Carnegie Foundation specifically for educational institutions. Coverage by this system or the Arkansas Public Employees Retirement System is mandatory for all administrative and professional personnel. Retirement is permissible at any age.

B. Arkansas Teacher Retirement System

Benefits from this system are comparable to TIAA; however, transfers to other institutions not in the Arkansas System are not permitted. Currently, retirement from the system is permissible at age 60 or at any age with 28 years of service. Not all employees are eligible for Arkansas Teacher Retirement. Please check with the Office of Human Resources for more information.

C. Arkansas Public Employees Retirement System

This system is mandatory for all employees not eligible and covered by one of the above systems. Coverage in other state, county, and city employment is transferrable. Currently retirement is permissible at age 65 or at any age with 28 years of service.

Supplemental Retirement Plans are also available with certain specified companies.

704 SOCIAL SECURITY PARTICIPATION

All employees are required by law to participate in social security contributions. Deductions at federal rates will be made from each individual's compensation.

705 TUITION BENEFIT POLICY

I. Eligibility

All full-time, active ATU employees, their spouses, and their dependants (as defined by the Internal Revenue Service Qualifying Child Test: <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/qualifying-child-rules>) are eligible. Employees on workers' compensation, military or family medical leave are eligible. Employees on leave without pay are not eligible.

Tuition Waiver requests must be submitted by the first day of class (fall, spring, summer, condensed classes) in order for the waiver to be considered.

For the employee's waiver and/or the dependent's waiver to be valid the employee must be an active employee on the first day of class (fall, spring, summer, condensed classes).

II. Extent of Benefit

a. Employee

i. For employees hired after July 1, 2018 and for current employees on June 30, 2018 who earn hours after July 1, 2018, employees may take up to a lifetime total of 144 undergraduate and/or 40 graduate master's level, semester credit hours at ATU with a 100% tuition and fee waiver benefit (excluding course specific fees). For purposes of clarity, hours already earned by existing employees on June 30, 2018 will not count against the lifetime total caps that begin on July 1, 2018.

ii. Employees must have the permission of their immediate supervisor and appropriate dean or vice president to take courses. Employees may not take classes during regular duty hours without permission from their supervisor. The sole exception to this is that with their supervisor's permission, an employee may take a course in lieu of their lunch hour.

iii. Employees' semester credit hours may not exceed 18 hours total in any fiscal year (July 1 through June 30) unless approved by the Vice President for the employee's specific unit.

iv. Tuition and fee waiver will cover audited courses provided the employee initially registers to audit the course.

b. Dependents

i. Employee's spouses and dependents may take up to a lifetime total of

144 undergraduate and/or 40 graduate master's level, semester credit hours at ATU with a 50% tuition only waiver benefit. Dependents may receive a full discount of tuition for three semester credit hours or 50% of total tuition for the semester, whichever is greater. Reduced tuition for dependents applies only to tuition not otherwise covered by scholarships and the total should not exceed the total tuition charged for the semester. The maximum graduate course discount is equivalent to three semester credit hours per term.

ii. Tuition waiver benefit does not cover audited courses for dependents.

III. Failure and Withdrawal guidelines

a. Failure

i. Employees who receive failing grades, F in undergraduate level courses and D or F in graduate level courses, must repay 100% of the total tuition and fee benefit for each course in which they receive a failing grade.

b. Withdrawal

i. Employees and dependents who withdraw or change the status of their course(s) to audit after the last day to withdraw with a full reduction of tuition and fees and before the last day to withdraw with an 80% reduction of tuition only (as indicated by the Academic Calendar) will be required to repay the University benefit by 20% of tuition and all fees.

ii. Employees and dependents who withdraw or change the status of their course(s) to audit after the final day for an 80% reduction in tuition (as indicated by the Academic Calendar) will be required to repay the University 100% of the total waiver benefit.

c. Appeal

To appeal the requirement of repayment for failure or withdrawal in (a) or (b) above, the employee shall use the Financial Aid appeal process for students. The instructions for submitting such an appeal are located here:

<https://www.atu.edu/finaid/docs/Appeal Letter latest.pdf>

IV. Financial Obligation

a. Failure to Pay

i. Employees and/or dependents who do not complete their financial obligation to the University due to III, a., i. or III b., i, ii, iii; will be billed for the amount owed. If not paid, the University has the right to forward the account outstanding to a collections processor or the use of the State's Set-Off Fund.

706 I.D. CARD USAGE

Active full-time and regular Part-time employees, including members of the immediate family, may receive free admittance to most athletic events upon presentation of the employee I.D. card. The card may be obtained at the Student Accounts Office upon presentation of proof of employment.

Employees are also entitled to discounts on purchases of new and used books and supplies from the college bookstore.

Library materials may also be checked out upon presentation of the employee I.D. card.

707 BUSINESS DISCOUNTS

Occasionally, all employees and members of the immediate family are eligible to receive discounts from area businesses. Information may be obtained in the Office of Human Resources.

708 UNEMPLOYMENT INSURANCE

Unemployment insurance is a benefit provided to all employees when unemployment results through no fault of their own.

709 ARKANSAS STATE EMPLOYEES ASSOCIATION

ASEA is an independent, non-profit organization which works to make conditions better for state employees. The association works with the legislature, agencies and institutions of state government, and employees of the state. Information is available in the Office of Human Resources. Dues can be payroll deducted.

710 CREDIT UNION

Employees may participate in the Priority Federal Credit Union through payroll deduction of at least \$5 per month. Additional information is available in the Office of Human Resources.

711 TECH RETIREE BENEFITS

- A. Employees who are age 60 or above and have completed ten (10) years of service at Arkansas Tech University may retire and have a portion of their health insurance premium paid by Arkansas Tech University until the retiree reaches Medicare eligibility age. All employer contributions will then cease. Also a partial premium is paid for life insurance. All other family insurance coverage is the responsibility of the retiree.
- B. As is the case with all other benefits, this is subject to continuing approval by the Board of Trustees. Arkansas Tech University reserves the right to amend, revise, supplement, or rescind any policies or portion of the handbook from time to time as it deems appropriate, in its sole and absolute discretion. 08/2001
- C. Retirees are issued an Arkansas Tech University identification card free of charge.

- D. Retirees are admitted free to conference athletic events by showing the Tech identification card.
- E. Discounts at the Tech Bookstore are given to retirees.
- F. The Tech identification card allows retirees the use of the Library when it is open.
- G. Retirees are invited to special social events on the campus which are for the purpose of entertaining faculty and staff.