ARKANSAS TECH UNIVERSITY

Civil Rights Resolution Board

Annual training for Advisors and Decision-Makers for the Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures

August 3, 2026

atu.edu/titleix

Welcome!

Stacy Galbo, Title IX Coordinator

Foundations

EON Policy and Procedures, EEO and Title IX basics and history, due process

Intakes

Notice, confidentiality, reporting requirements, resources, supportive measures, resolution options, terminology

Investigations

Criminal vs. University complaints and processes, interviews, evidence, bias, relevance

Resolutions

Pre-Hearing: Consent construct, questioning, and relevance; Hearing: Hearing decorum and procedures, credibility, weighing evidence; Post-Hearing: Rendering a finding, sanctioning, deliberation statements

Training Objectives

Questioning

Formulate example questions to ask parties at a hearing

Relevance

Categorize evidence as relevant or irrelevant to a determination

Outcomes

Evaluate a case study to determine if a party violated policy and, if so, develop appropriate sanctions.

CIVIL RIGHTS RESOLUTION BOARD ANNUAL TRAINING

Content Advisory

Discussions of Violence
Obscene/Profane Language
Occasional Use of Humor

CIVIL RIGHTS RESOLUTION BOARD ANNUAL TRAINING

Foundations

Stacy Galbo

EON Policy & Procedures

Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures

Policy on Nondiscrimination:
ATU does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of: **color, sex, 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.

Implicated Laws and Regulations:

- Title VI
- Title VII/FHA

Oversight
Kathleen Martin, Director of Human Resources and EEO Officer/Title VI Coordinator, oversees reports, complaints, and investigations into discrimination and harassment based on protected class status (except sex).

EON Policy & Procedures

Equal Opportunity, Harassment (Sexual Misconduct), and Nondiscrimination Policy and Procedures

Policy on Disability Discrimination and Accommodations:

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.

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

Oversight:

Hunter Bramlitt, Associate Dean for Student Wellness and Health and Wellness Center Director, serves as the 504 Coordinator. In partnership with Kathleen Martin, he oversees reports, complaints, and investigations into disability-related discrimination and harassment claims.

Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)

Title IX Umbrella

Title IX covers a range of behaviors that can interfere with a person's ability to learn, work, or participate in university programs. The categories below represent the types of conduct that may be addressed through the Title IX process.

Sex-Based Discrimination

- Athletics
  - *West Virginia v. B.P.J* and *Little v. Hecox*, 2026 Supreme Court decision
- Program Equity (STEM, Nursing, Early Education, etc.)
- Pregnancy
- Sex-Based Harassment (Sexual Misconduct)

Sex-Based Harassment

- Sexual Harassment
  - Hostile Environment
  - Quid Pro Quo
- Sexual Assault
- Dating/Domestic Violence
- Stalking
- Sexual Exploitation*

Retaliation

- Reporting Incidents
- Participating in the Process
- Integrity of the Process
- “Good Faith” Reports and Information

Who's Who of the Core Team?

Title IX Coordinator

Offical designated by ATU to ensure compliance with Title IX and ATU's Title IX program (Stacy Galbo).

EEO Officer/Title VI Coordinator

Official designated by ATU to ensure compliance with Title VII, Title VI, and other discrimination cases (Kathleen Martin).

504 Coordinator

Official designated to oversee disability compliance for students (Hunter Bramlitt).

Who's Who of the Core Team?

- **Deputy Title IX Coordinators**
- **Investigators**
- **Hearing Facilitator**

Title IX Office staff who can conduct intakes, offer supportive measures, and provide specific services (i.e., pregnancy) to ATU community members (Ashlee Leavell - pregnancy; Sandra Patterson - Ozark; Kathleen Martin - employees).

The person(s) authorized by ATU to gather facts about an alleged violation of the EON Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report of relevant evidence and file of directly related evidence (William Titsworth - Title IX; Kim Gray - EEO cases).

Non-voting hearing assistant who may be present to assist with recording, witness logistics, party logistics, curation of documents, separation of the parties, etc.

Who's Who of the Core Team?

Advisors

A person chosen by a party or appointed by ATU to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct questioning for the party at the hearing, if any (CRRB).

Decision-Maker

The person or panel who hears evidence, determines relevance, and makes the final determination of whether the EON Policy has been violated and/or assigns sanctions (CRRB).

Appeals Decision-Maker

The person or panel who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs corrective action, accordingly (VP or AD for Respondent. Tenured faculty → Faculty Handbook.)

Advisors

ATU-Appointed Advisors

- Provide assistance navigating the process
- The Advisee is not your “client”
- Relationship is not governed by any “privilege”
- May not provide legal advice
- Keep information private
- May not like or believe an Advisee (contact Stacy Galbo or Kathleen Martin if there may be cases when you are unable to advise fairly)
- Offer a compassionate listening ear when the advisee needs to vent
- Be aware of resources for your Advisee
- Be aware of and advise your Advisee to follow any supportive measures that have been put into place (i.e., No Contact Directives)
- Advisees can have very different needs and may want different levels of involvement from you
- Act as a tutor. Help guide them but do not do the work **for** them.

Advisors

ATU-Appointed Advisors

- Keep an eye open for procedural errors and biases as the resolution process unfolds and contact the Title IX Coordinator, EEO Officer, ADA/504 Coordinator, or other appropriate administrator as warranted to raise your concerns.
- Each party **must** have an Advisor at the hearing for cross-examination.
- Parties have the right to not attend or participate in any or all steps in the process, but Advisors may want to discuss with them how non-participation may impact the process.

www.atu.edu/titleix

A CARING PROFESSIONAL

DOES...

- Listen compassionately
- Answer questions about the process
- Help parties identify concerns (safety or otherwise)
- Connect parties with resources and problem solve to address those concerns
- Practice self-care and ask for help

DOES NOT...

- Offer legal advice*
- Provide therapy*
- Make decisions and choices for the party
- Tell the party how they should feel about what has happened or what is happening
- Expect to know all the answers

Reporting Overlap

Officials with Authority
Core Team - Notice to University

Campus Safety Authorities
Must report certain crimes for Clery

Responsible Employees
Must report Title IX-related issues

Mandated Reporters
Must report abuse and neglect of minors

Confidential Resources

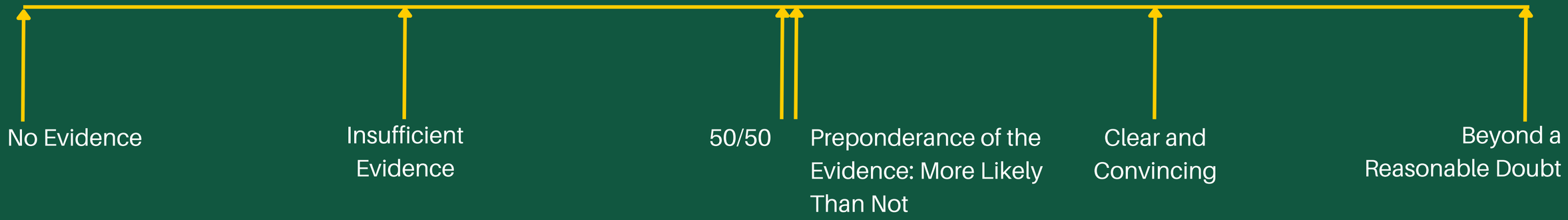
Counselors
HWC for students, EAP for employees

Ozark Rape Crisis Center
24/7 hotline, hospital accompaniment

Medical Staff
STI/pregnancy screenings, medications

River Valley Shelter
24/7 hotline, emergency shelter

CRRB & CRIMINAL COMPLAINTS



- A Complainant has the ability to pursue a civil rights complaint through ATU, a criminal complaint through law enforcement, or neither or both options.
- A criminal investigation is conducted by law enforcement who have subpoena power, while CRRB investigations are conducted by non-sworn ATU staff.
- Sanctions for a CRRB resolution range from a **warning to expulsion or termination**, while criminal penalties can include prison and sex offender registration.
- Both cases may run parallel, and some information may be shared between staff in Title IX/EEO and the Department of Public Safety.

The IX Commandments

Investigation

Thorough
Reliable
Impartial
Prompt & Fair (VAWA Sec. 304)

Process

Prompt
Effective
Equitable

Remedies

Stop Discrimination/Harassment
Prevent Recurrence
Remedy Effects

Due Process

What is Due Process?

- Federal and state constitutional and legal protections ensuring no public entity deprives someone of education or employment without substantive and procedural fairness.
- The set of rights-based protections that accompany disciplinary action by a school, college, or university.
- Informed by law, history, public policy, culture, etc.
- Historically focused on the rights of the Respondent.
- Perceptions of “due process” can be connected to perceptions of legitimacy of a process’s outcome.
- Arkansas Student Due Process and Protection Act (Acts 470 & 731)
- Disparate **treatment** refers to policies, practices, rules, or other systems that appear to be neutral, but result in a disproportionate impact on protected groups.
- Disparate **impact*** refers to policies, practices, rules, or other systems that appear to be neutral but result in a disproportionate impact on protected groups.

Due Process

Procedural Due Process

- Detailed and specific Notice of Investigation and Allegations (NOIA)
- Right to an Advisor of their choice
- Right to present evidence
- Right to present witnesses
- Opportunity to be heard and address the allegations and evidence
- Notice of Hearing
- Right to review all relevant evidence and the investigation report prior to a decision being rendered
- Right to indirectly cross-examine through their Advisor
- Right to appeal

Due Process

Due Process in Outcomes

A decision and sanction must:

- Be impartial and fair
- Be neither arbitrary or capricious
- Be based on a fundamentally fair rule or policy
- Be made on good faith (i.e., without malice, ill-will, conflict, or bias).
- Have a rational relationship to (be substantially based upon, and a reasonable conclusion from) the evidence

Due Process

Emergency Removals

- A Respondent may be removed from ATU's education program or activities (partially or entirely) on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.
- Risk analysis is performed by the Title IX Coordinator and/or the EEO Officer in conjunction with the CARE Team.
- The Respondent is given notice of the action and the option to request to meet with Stacy Galbo or Kathleen Martin prior to the removal or as soon as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.
- For cases involving alleged **serious violations** by a student Respondent, they will be notified within 24 hours of the emergency removal. Within three (3) business days of this notice, an interim hearing is convened to determine if there is substantial evidence that the Respondent poses a health and safety risk for an individual and that emergency removal is appropriate to mitigate that risk. This meeting may include the Complainant and/or advisors if appropriate.

Due Process
Emergency Removals

- ATU will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. Actions may include:
  - Removing a student from a residence hall
  - Temporarily reassigning an employee
  - Restricting a student's or employee's access to or use of facilitites or equipment
  - Allowing a student to withdraw or take grades of incomplete without financial penalty
  - Authorizing administrative leave
  - Suspending a student's participation in extracurricular activites, student employment, student organizational leadership, or intercollegiate/intramural athletics
- When the Respondent is an employee, or a student employee, accused of misconduct in the course of their employment, existing provisions for interim action are applicable instead of the Emergency Removal process.

CIVIL RIGHTS RESOLUTION BOARD ANNUAL TRAINING

Intakes

Stacy Galbo

Intake Timeline

Referral and Outreach to Complainant

TIXC or EEO Officer will email and/or call the Complainant to schedule a meeting. There is no requirement for them to meet or even to respond to our outreach.

Meeting with Complainant

TIXC or EEO Officer reviews options, discusses supportive measures, assists with safety concerns

Assessment of Jurisdiction

TIXC or EEO Officer conduct an initial assessment, asking the question, “If everything reported is true, does the described behavior violate ATU policy?”

Determine Policy and Proceed

Supportive measures only
Alternate Resolution
Formal Resolution

CIVIL RIGHTS RESOLUTION BOARD ANNUAL TRAINING

CASE STUDY

Review Initial Report

Intake

First Conversation

- Once a referral is received, the Title IX Coordinator or EEO Officer/ Title VI Coordinator sends an introductory letter via email to the Complainant inviting them to come in for a meeting to discuss resources, supports, and options available.
- During the initial meeting, the administrator will review the First Conversation Checklist with the Complainant, discuss supportive measures, explain procedural options for addressing the behavior, and learn more about the circumstances for potential Clery reporting.
- Complainants may bring an Advisor of their choosing to the meeting, ATU can appoint an Advisor to join the meeting, or the Complainant may choose to meet with the administrator without an Advisor.
- There is no requirement for a Complainant to decide at that time what process, if any, they want to pursue. As long as ATU has jurisdiction over the Respondent (student, employee, etc.), a formal or alternate resolution can be requested by the Complainant.

ARKANSAS TECH UNIVERSITY

ual Opportunity, Harassment (Sexual Misconduct), and Nondiscrimina
Policy and Procedures

First Conversation Checklist

order to be thorough and to make the complaint/grievance process as clear as possible, this checklist is designed to assist parties at the beginning of the complaint/grievance processes. The following items will be addressed and/or clarified with Complainants (C), Respondents (R), and Witnesses (W) at their first meeting with the Title IX and/or EEO staff member.

_____ **Advisor Support (C, R).** The parties (Complainants and Respondents) may each have one (1) Advisor of their choice present with them for all meetings, interviews, and the hearing within the resolution processes, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as their Advisor is eligible and available. The Title IX Coordinator and/or the EEO Officer 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 will be familiar with ATU's policies and procedures. Whether or not the arties utilize an Advisor throughout the resolution processes, both must have an Advisor present during the aring.

_____ I have been informed of the Advisor resource.

___ I would like to have an ATU Advisor assigned.

_ I do not wish to have an ATU Advisor assigned at this time, but I understand that I m this request at a later date.

have selected an Advisor of my choice.

directed to the Equal Opportunity, Harassment (Sexual Misconduct), ation Policy and Procedures, referred to in this document as the "P he opportunity to ask any questions or have any part of the Poli

Intake

Supportive Measures

- Supportive measures are individualized services offered before or concurrent with a formal complaint and/or resolution process.
- Supportive measures are non-disciplinary actions taken to support the Complainant/parties.
- ATU *cannot* take punitive action against a Respondent unless:
  - They have been found responsible for violating policy
  - A Violence Risk Assessment determines that they need to be removed from the campus environment due to safety concerns
  - They agree to certain terms in an alternate resolution

Supportive measures are available whether a Complainant moves forward with a resolution process or not.

Intake

Supportive Measures - Academic

- Excused absences
- Flexible attendance
- Deadline extensions
- Assignment extensions
- Alternative assignments
- Incompletes
- Readmission assistance
- Course section changes
- Advising changes
- Alternate practicum placement
- Student teaching reassignment
- Faculty outreach
- Course withdrawal or retroactive withdrawal
- Recording lectures
- Academic coaching
- Alternate testing location or schedule
- Extended testing time
- Leave of absence
- Academic reinstatement

Supportive measures are available whether a Complainant moves forward with a resolution process or not.

Intake

Supportive Measures - Housing and Dining

- Housing relocation (on campus, room/building/floor changes)
- Housing contract release
- Single room assignment
- Door viewer installment by FAMA
- Waiver of housing fees
- Early move-in or late move-out
- Housing safety planning
- Escort between residence halls and other buildings
- Roommate mediation (if appropriate)
- Parking permit changes
- Temporary parking access
- Dining hall schedule adjustments
- Alternate meal pickup
- Dining plan accommodations

Supportive measures are available whether a Complainant moves forward with a resolution process or not.

Intake

Supportive Measures - General Safety

- Timely warnings
- No Contact Directive
- Campus ban (non-ATU members or post-finding)
- Educational conversations
- Building access modifications
- Separate entrances/exits
- Safety planning
- Increased patrols
- Counseling and medical referrals
- Crisis intervention
- Sexual assault forensic exam referrals
- Safety/threat assessments
- Enforcing contact limitations (Order of Protection)
- Pregnancy support
- Visa and immigration assistance
- Connection to victim advocates
- Documentation assistance

Supportive measures are available whether a Complainant moves forward with a resolution process or not.

Intake

Supportive Measures - Employment

- Schedule/shift changes
- Supervisor/reporting structure changes
- Office/workplace relocation relocation
- Remote work
- Temporary reassignment
- Modified job duties
- Leave options
- Parking changes
- Building access changes
- Committee reassignment
- Supervisor outreach for an employee participating in a resolution process as a party or witness

Supportive measures are available whether a Complainant moves forward with a resolution process or not.

Intake Timeline

Referral and Outreach to Complainant

TIXC or EEO Officer will email and/or call the Complainant to schedule a meeting. There is no requirement for them to meet or even to respond to our outreach.

Meeting with Complainant

TIXC or EEO Officer reviews options, discusses supportive measures, assists with safety concerns

Assessment of Jurisdiction

TIXC or EEO Officer conduct an initial assessment, asking the question, “If everything reported is true, does the described behavior violate ATU policy?”

Determine Policy and Proceed

Supportive measures only
Alternate Resolution
Formal Resolution

INITIAL ASSESSMENT

Who?

Are the parties members of the ATU community and/or P/ATP?

What?

What policy, if any, governs the reported behavior?

Where?

On or off campus?
Online?
Study abroad?

How?

If everything reported is true, does it violate policy? Which procedure is implicated?

P/ATP: Are the parties participating in or attempting to participate in ATU's program or activity? Examples: student, employee, applicant for admission/employment, etc.

INITIAL ASSESSMENT

Process A (Title IX)

Some or all alleged conduct occurred in the United States on ATU property (SA/SH/DV/DV/S)

Process B

Off-campus sexual misconduct, sexual exploitation, discrimination based on protected class status

Student Conduct

No EON implications. Collateral misconduct may be charged under Process A or B when stemming from the same facts

Employee Professionalism

Employee handbook violations and professionalism standards addressed through Human Resources, Grievance Process, academic processes, etc.

If some or all alleged behavior *could* be heard under Process A, *all* potential policy violations related to the reported conduct *must* be routed through Process A.

Intake

Protected Characteristics (Process B)

- Color
- Sex
- Sexual Orientation (Bostock v. Clayton County/Title VII)
- Gender Identity (Bostock v. Clayton County/Title VII)
- Race
- Age
- National Origin
- Religion
- Veteran Status
- Genetic Information
- Disability
- 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 EEOC.

Intake

Policy on Disability Discrimination and Accommodation (Process B)

- ADA/Section 504 of the Rehabilitation Act of 1973 prohibit discrimination against qualified persons with disabilities.
- Hunter Bramlitt, Associate Dean for Student Wellness, Health and Wellness Center Director, and ADA/504 Coordinator is responsible for overseeing efforts to comply with these disability laws, including responding to grievances:
  - Allegations of non-compliance with ADA/Section 504
  - Allegations of discrimination based on disability
- Grievances are addressed through Process B

Intake

Collateral Misconduct

- Underage drinking
- Drinking on campus
- Providing alcohol to minors
- Possession/use of illegal drugs
- Misuse of prescription medications
- Public intoxication
- Unauthorized guests in residence halls
- Visitation policy violations
- Failure to comply with University officials
- Property damage
- Hazing-related conduct

ATU offers amnesty for Complainants and witnesses who may have engaged in minor policy violations related to the reported misconduct. Amnesty does not apply to more serious allegations like physical abuse or distributing illicit drugs.

Intake

Employee Professionalism/Handbook Violations

- Conduct that does not meet Title IX or Title VII definitions of Sexual Harassment but is inappropriate and not germane to the subject matter of the class (faculty)
- Favoritism that is not based on a protected characteristic
- Publicly criticizing or embarassing an employee
- A single off-color joke that is inappropriate but not severe enough to create a hostile environment
- Awkward attempts at flirting that stop when unwelcome
- One-time insensitive comments
- Bullying that is not tied to a protected characteristic

EON Policy Resolution Options

Assess for: Pattern, Predation, Threat, Violence/Weapons, Minors

Formal Resolution

Complainant or Title IX Coordinator signs a formal written complaint resulting in an investigation into the allegations and concluding with a hearing to determine if policy was violated.

Informal/Alternate Resolution

Voluntary process individualized for the parties. Can be an agreement, facilitated dialogue, accepted responsibility, etc. Employee v. Student cases are ineligible in Process A.

Supportive Measures Only

Complainant chooses not to move forward with a formal or alternate resolution, but they can change their mind at any time as long as we have jurisdiction over the Respondent.

Informal Resolution Options

Alternate Resolution

- Voluntary process where the parties agree to resolve the matter through an alternate resolution mechanism, including mediation, restorative practices, facilitated dialogue, shuttle diplomacy, etc., often before a formal investigation takes place, but any time prior to a hearing.
- Does not result in sanctions or conduct record.

Accepted Responsibility

- Respondents may accept responsibility for violating Policy at any point during the resolution process. If they intend to accept responsibility for all of the alleged misconduct, the Title IX Coordinator will propose sanctions. If either party objects to the sanctions, the Hearing Board will convene to determine sanctions.

Intake

Advising in the Intake Stage

- Help your advisee to understand the ATU process and prepare them for next steps along the way
- Discuss how involved your advisee wants you to be in the process
- Discuss and weigh resolution options if a decision has not been made
- Assist Complainants with submitting a formal complaint
- Assist Respondents with submitting a written response to the complaint
- Discuss possible witnesses, lines of questioning, and evidence with your advisee
- Help your advisee to identify, gather, review, organize, and present any evidence they may wish to submit (photographs, screenshots, texts, etc.)
- Remind your advisee to bring any devices that contain evidence so that investigators can see originals when possible
- Remind your advisee to not alter or omit evidence as this will likely be quickly discovered and would be harmful to their credibility

CIVIL RIGHTS RESOLUTION BOARD ANNUAL TRAINING

Formal Resolution Process

Stacy Galbo

FORMAL RESOLUTION TIMELINE

1

Referral
Intake
Options
(No Time Limit)

2

NOIA
Investigation
Evidence Gathering
(30-60 Business Days)

3

Draft Report
10-Day Review
Report Finalized
(10+ Business Days)

4

Notice of Hearing
10-Day Pre-Hearing
Live Hearing
(10+ Business Days)

5

Outcome Letter
Appeal Window
Appeal Procedures
(About 10 Business Days if Appealed)

Formal Resolution Process

10 Steps of a Formal Resolution

1. Notice/complaint is received
2. Initial assessment and written complaint
    a. After the Title IX Coordinator or EEO Officer receives or signs a formal complaint, they meet with the Respondent to:
    b. Review the First Conversation Checklist
    c. Provide the Respondent with a copy of the formal complaint and a deadline of five (5) business days to respond in writing as part of the initial assessment
3. The Title IX Coordinator or EEO Officer completes their assessment, determines potential policies violated, and appoints investigator(s)
4. Notice of Investigation and Allegations: the Title IX Coordinator or EEO Officer sends a letter to both parties that includes the policy allegations, written formal complaint, written response (if submitted), statement of non-responsibility, and more important information.

CIVIL RIGHTS RESOLUTION BOARD ANNUAL TRAINING

Terminology & Analysis

Stacy Galbo

Terminology & Analysis

Sexual Harassment (Sexual Misconduct)

- 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 offense of sexual harassment, sexual assault, domestic violence, dating violence, and stalking.

Terminology & Analysis

Sexual Harassment (Hostile Environment)

- Unwelcome conduct,
- determined by a reasonable person,
- to be so severe, and
- pervasive, and
- objectively offensive,
- that it effectively denies a Complainant equal access to ATU's education program or activity.

Unwelcome

Unwelcomeness is subjective and determined by the Complainant (unless the Complainant is younger than the age of consent).

Terminology & Analysis

Sexual Harassment (Hostile Environment)

- Unwelcome conduct,
- determined by a reasonable person,
- to be so severe, and
- pervasive, and
- objectively offensive,
- that it effectively denies a Complainant equal access to ATU's education program or activity.

Reasonable Person

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").

Terminology & Analysis

Sexual Harassment (Hostile Environment)

- Unwelcome conduct,
- determined by a reasonable person,
- to be so severe, and
- pervasive, and
- objectively offensive,
- that it effectively denies a Complainant equal access to ATU's education program or activity.

Severe

- Physical conduct is more likely to be severe.
- Was the behavior accompanied by threats or violence?
- Consider the circumstances (e.g., ability of the Complainant to remove themselves from the harassment).

Terminology & Analysis

Sexual Harassment (Hostile Environment)

- Unwelcome conduct,
- determined by a reasonable person,
- to be so severe, and
- pervasive, and
- objectively offensive,
- that it effectively denies a Complainant equal access to ATU's education program or activity.

Pervasive

- Widespread, openly practiced, or well-known among students or employees (reputation of a person/department)
- Occurring in public spaces
- Frequency of the conduct (intensity and duration)
- Unreasonable interference with school or job

Terminology & Analysis

Sexual Harassment (Hostile Environment)

- Unwelcome conduct,
- determined by a reasonable person,
- to be so severe, and
- pervasive, and
- objectively offensive,
- that it effectively denies a Complainant equal access to ATU's education program or activity.

Objectively Offensive

- Relationship of Complainant/Respondent
- Number of people involved
- Frequency and severity
- Physically threatening, humiliating, intimidating, ridiculing, abusive

Terminology & Analysis

Totality of the Circumstances

Consider:

- Frequency, nature, and severity of the conduct
- Identity of and relationship between the parties
- Age of the parties
- Location of the incidents and context in which they occurred
- Whether the conduct unreasonably interfered with the Complainant's access to ATU's program or activity
- Effect on the Complainant's mental or emotional state
- Whether the speech or conduct deserves the protections of academic freedom or First Amendment protection
- "I know it when I see it..." -Justice Potter Stewart, 1964

Terminology & Analysis

Sexual Harassment (Hostile Environment)

- Unwelcome conduct,
- determined by a reasonable person,
- to be so severe, **and**
- pervasive, and
- objectively offensive,
- that it effectively denies a Complainant equal access to ATU's education program or activity.

Discriminatory Harassment (Process B)

May implicate Title VI, Title VII, Fair Housing Act, and more.

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

Terminology & Analysis

Sexual Harassment (Quid Pro Quo)

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

Terminology & Analysis

Sexual Assault

Rape

- Penetration, no matter how slight,
- of the vagina or anus of a person,
- with any body part or object, or
- oral penetration
  - of a sex organ of the Complainant, or
  - by the Respondent's sex organ, or
  - by a sex-related object
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity.

Terminology & Analysis

Sexual Assault

Fondling

- The touching of the private body parts (genitals, buttocks, groin, breasts) of the Complainant by the Respondent, or
- the Respondent's private body parts touching the Complainant, or
- the Respondent causing the Complainant to touch the Respondent's or their own private body parts,
    - for the purpose of sexual gratification,
    - without the consent of the Complainant,
    - including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity.

Terminology & Analysis

Sexual Assault

Incest

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

Statutory Rape

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

Terminology & Analysis

Dating Violence

- Violence,
- committed by the Respondent,
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
    - 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—
        - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
        - Dating violence does not include acts covered under the definition of Domestic Violence.

Terminology & Analysis

Domestic Violence

- Violence,
- committed by the Respondent who is a current or former spouse or intimate partner of the Complainant,
- by a person with whom the Complainant shares a child in common, or
- by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- by a person similarly situated to a spuse of the Complainant under the domestic violence or family laws of Arkansas, or
- 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.

*Parties cannot just be roommates

Terminology & Analysis

Violence (Dating & Domestic Violence)

For the purposes of this Policy, violence includes situations where the Respondent intentionally or recklessly causes the Complainant serious physical, emotional, or psychological harm, including but not limited to physical, sexual, verbal, psychological, economic, or technological abuse, or abuse later in life.

- Intent is evidenced when a Reasonable Person would be more likely to act with the purpose of causing serious harm rather than for any other reason.
- Recklessness is evidenced by a disregard of obvious risk to the safety of the Complainant.

Continued →

Terminology & Analysis

Violence (Dating & Domestic Violence)

- Legitimate use of violence for self-defense is not chargeable under the Policy because the purpose is safety, not harm. It may also be used as a defense if it is not clear at the time of charging whether the use of violence was for self-defense or not. Self-defense is only to be considered if it is prompted by physical violence or the threat thereof.
- Threats to seriously harm the Complainant or people they care about may be chargeable under this definition if doing so causes serious emotional or psychological harm.

Continued →

Terminology & Analysis

Violence (Dating & Domestic Violence)

- Economic Abuse, in the context of domestic violence, dating violence, and abuse later in life, means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to—
  - Restrict a person's access to money, assets, credit, or financial information;
  - Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or
  - Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

Continued →

Terminology & Analysis

Violence (Dating & Domestic Violence)

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

Continued →

Terminology & Analysis

Violence (Dating & Domestic Violence)

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

Terminology & Analysis

Stalking

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

For the purposes of this definition—

- Course of condut 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.

Terminology & Analysis

Process B

- ATU may use Process B of this Policy for all protected-characteristic discrimination complaints, except for sex 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 (Section 106.30).
- Please note:
  - Process B is applicable for sex discrimination complaints when the Title IX Coordinator determines Process A is inapplicable, or offenses subject to Process A have been dismissed.
  - ATU can substitute any alternative process instead of Process B, if desired.
  - In compliance with federal law, VAWA Section 304 requirements also apply to Process B or any alternative process for reports that fall under VAWA.

Terminology & Analysis

Sexual Exploitation (Process B)

- An individual 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)
- Indecent exposure
- Invasion of sexual privacy (e.g., doxing)

Continued →

Terminology & Analysis

Sexual Exploitation (Process B)

Examples of Sexual Exploitation, Continued:

- 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
- Disseminating sexual pictures or videos without the consent of all photographed or videoed parties, including the making or posting of non-consensual pornography
- Exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with HIV or an STD/STI, without informing the other person of the virus, disease, or infection

Continued →

Terminology & Analysis

Sexual Exploitation (Process B)

Examples of Sexual Exploitation, Continued:

- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity.
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing).
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.

Continued →

Terminology & Analysis

Sexual Exploitation (Process B)

Examples of Sexual Exploitation, Continued:

- 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
- Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes).

CIVIL RIGHTS RESOLUTION BOARD ANNUAL TRAINING

CASE STUDY

Review Complaint and Response

Terminology & Analysis

Sexual Assault

Rape

- Penetration, no matter how slight,
- of the vagina or anus of a person,
- with any body part or object, or
- oral penetration
  - of a sex organ of the Complainant, or
  - by the Respondent's sex organ, or
  - by a sex-related object
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity.

Terminology & Analysis

Sexual Exploitation (Process B)

- An individual 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)
- Indecent exposure
- Invasion of sexual privacy (e.g., doxing)

Continued →

Terminology & Analysis

Sexual Exploitation (Process B)

Examples of Sexual Exploitation, Continued:

- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity.
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing).
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.

Continued →

CIVIL RIGHTS RESOLUTION BOARD ANNUAL TRAINING

Bias, Impartiality, and Objectivity

Stacy Galbo

Bias, Impartiality, Objectivity

Bias

- People do not shed their values, beliefs, and life experiences at the hearing room door.
- While bias can occur, it does not automatically undermine the fairness or appropriateness of resolution outcome.
- The key is to recognize bias and ensure it does not impact how they advise parties, investigate, decide cases, or provide support during the resolution process.
- Outcomes based on bias are improper and not permitted.
- Determinations must be based on evidence, not on personal beliefs.

Bias, Impartiality, Objectivity

Prejudice

- To “pre-judge”
- **Prejudice Defined (dictionary.com):**
  - An unfavorable opinion or feeling formed beforehand or without knowledge, thought, or reason.
  - Any preconceived opinion or feeling, either favorable or unfavorable.
- Often based on things we have previously read, seen, heard, or experienced.

Conflicts of Interest

- Simply knowing a party or having had them in class is not automatically a conflict of interest. A conflict might exist if a relationship or circumstance would reasonably impair an individual’s ability to remain fair and impartial.

Bias, Impartiality, Objectivity

Common Issues

- The role of alcohol
- Personal experiences
- Student athlete, fraternity/sorority, etc. involvement
- Disabilities
- Mental health conditions
- International students
- Color, sex, sexual orientation, gender identity, race, age, national origin, religion, veteran status, genetic information
- Immigration status
- Academic major/field of study
- Socioeconomic status
- Politics
- Pre-disposition toward one party
- How the party(ies) reacted

Bias, Impartiality, Objectivity

Implicit Bias

- Also called unconscious bias or implicit social cognition.
- Attitudes and beliefs that occur outside of our conscious awareness and control
- Unconscious attitudes and stereotypes that can manifest in the resolution process
- Often arise from trying to find patterns, culture, media, and upbringing
- *Explicit* biases are biases we are aware of on a conscious level
- Checking each other's potential biases and self-reporting is an important check in ensuring fair resolutions.

www.simplypsychology.org/implicit-bias

Bias, Impartiality, Objectivity

Ways to Reduce Implicit Bias

- Look beyond your own point of view so that you can consider how someone else might think or feel about something.
- Understand what implicit bias is, how it can arise, and how to recognize implicit bias in yourself and others.
- Learn about other cultures or outgroups and what language and behaviors may be considered offensive.

www.simplypsychology.org/implicit-bias

CIVIL RIGHTS RESOLUTION BOARD ANNUAL TRAINING

Investigations

William Titsworth, Assistant Dean for Student Conduct &
Lead Investigator

FORMAL RESOLUTION TIMELINE

1

Referral
Intake
Options
(No Time Limit)

2

NOIA
Investigation
Evidence Gathering
(30-60 Business Days)

3

Draft Report
10-Day Review
Report Finalized
(10+ Business Days)

4

Notice of Hearing
10-Day Pre-Hearing
Live Hearing
(10+ Business Days)

5

Outcome Letter
Appeal Window
Appeal Procedures
(About 10 Business Days if Appealed)

Investigations

10 Steps of an Investigation

1. *Notice/complaint is received*
2. *Initial assessment*
3. *Investigation basis and appointment of investigators*
4. *Notice of Investigation and Allegations*
5. Develop strategic investigation plan (witness/evidence list, order)
6. Conduct investigation (conduct interviews, gather evidence)
7. Complete a draft investigation report
8. Provide at least 10 business days for the parties to review the draft report and submit comments, corrections, proposed redactions (or removing redactions), suggesting additional witnesses or specific questions to be asked of witnesses/parties
9. Finalize investigation report by incorporating responses to draft report and taking any appropriate steps. Provide final report to the Title IX Coordinator or EEO Officer
10. Notice of Hearing sent to parties/Advisors and Decision-Makers. Date of hearing must be at *least* 10 business days from the NoH.

Investigations

Types of Evidence

- Documentary evidence (supportive writings or documents)
- Electronic evidence (photos, text messages, videos
- Physical evidence
- Direct or testimonial evidence (personal observation or experience)
- Circumtantial evidence (requires inference)
- Hearsay evidence (Will told Stacy that William took a two-hour lunch)
- Character evidence (rarely useful)

Only assign weight to evidence when it is relevant and credible.

Investigations

Advising During Investigations

- Help your advisee understand the process and prepare them for next steps along the way.
- Accompany your advisee to meetings and interviews.
- Assist your advisee in presenting information clearly during interviews (side bar, taking breaks).
- Help your advisee identify the names of witnesses and lines of questions that are relevant to the issues at hand (collect contact information in advance if possible).
- Help your advisee to present evidence to the investigator(s).
- Help your advisee review the investigation report and respond as needed.
- Help your advisee identify gaps in the investigation and suggest additional relevant questions or witnesses.
- Remind your advisee of the deadline for the review/comment period.
- Reading the draft investigation report may be extremely emotional for either or both parties, and they may need extra support.

CIVIL RIGHTS RESOLUTION BOARD ANNUAL TRAINING

Questioning and Relevance

William Titsworth

Questioning and Relevance

- Have a purpose for every question you ask.
- Be sure to ask a question, not make a speech.
- Avoid compound, complicated, and lengthy questions. Consider breaking up your question into parts.
- Ask questions about the allegations, the evidence, and the policy elements.
- Do not be accusing or argumentative.
- Focus on areas of conflicting evidence or gaps of information.
- Avoid evaluative responses to answers (“That’s too bad,” “I’m glad you said that,” nonverbal gestures beyond acknowledging what they said).
- Avoid blaming questions (“Why didn’t you hit them?” “Why did you get so drunk?”)
- Remember that trauma responses can be quite varied.
- Seek to clarify terms, such as “hooked up,” “drunk,” “sex,” etc.
- **Listen carefully and ask follow-up questions.**

Questioning and Relevance

- Evidence that is relevant helps to prove (inculpatory) or disprove (exculpatory) whether or not a policy violation occurred or speaks to the credibility of the Complainant, Respondent, or witness(es).
- Investigators have already done some preliminary assessment of relevance based on what is included in the investigative report.
- Relevance is ultimately decided by the Decision-Makers at the hearing.
- Relevant evidence must be evaluated impartially.
- Character evidence is of little to no value.
- Impact statements are useful during sanctioning but are of little evidentiary value during the hearing (outside of hostile environment analysis).
- The Complainant's prior sexual history and behavior are irrelevant with limited exceptions:
    - Relationship history with the Respondent (must evaluate for relevance)
    - Proves the person accused is not the Respondent

CIVIL RIGHTS RESOLUTION BOARD ANNUAL TRAINING

CASE STUDY

Relevance Activity

Determine the relevance of evidence:

Complaints
Response
Police Report
Screenshots of Messages
Letter of Support

CASE STUDY

Questioning Activity

- Brainstorm information you need to know to make a determination.
- Develop three (3) questions you would want asked either in the investigation or at the hearing.

CIVIL RIGHTS RESOLUTION BOARD ANNUAL TRAINING

The Hearing

Will Cooper, Associate Dean for Student Conduct & Hearing Chair

FORMAL RESOLUTION TIMELINE

1

Referral
Intake
Options
(No Time Limit)

2

NOIA
Investigation
Evidence Gathering
(30-60 Business Days)

3

Draft Report
10-Day Review
Report Finalized
(10+ Business Days)

4

Notice of Hearing
10-Day Pre-Hearing
Live Hearing
(10+ Business Days)

5

Outcome Letter
Appeal Window
Appeal Procedures
(About 10 Business Days if Appealed)

You do not have a side.

You represent the process.

Preparing for the Hearing

Advisors

- Meet with Advisee to review the final investigation report (pay attention to changes and review the investigator's summary).
- Discuss cross-examination/your role at the hearing.
- You are a mouthpiece for your advisee, asking questions that they want you to ask. It is helpful to meet in advance of the hearing to draft questions.
- Encourage a pre-hearing meeting with Will Cooper to discuss logistics and relevancy of questions they want asked in the hearing.
- Discuss submitting an impact or mitigation statement.

Decision-Makers

- The Hearing Panel will most likely meet prior to the scheduled hearing.
- The Panel will review the investigation report.
- The Panel will compile relevant questions for the parties and any witnesses.
- The Panel will discuss anticipated relevance issues.

The Three Questions

Force

Was force used by the Respondent to obtain sexual access? Force could by physical, threatened, coerced, etc.

Incapacitation

Did the Respondent know, or should they have known, that the Complainant was incapacitated due to alcohol, other drugs, etc.?

Consent

What clear words or actions by the Complainant gave the Respondent permission to engage in the sexual activity?

The Three Questions

Was force used by the Respondent to obtain sexual access?

- Physical violence: Hitting, restraining, pushing, kicking, etc.
- Threats: Anything that forces the other person to do something they would not ordinarily have done absent the threat
- Intimidation: An implied threat that menaces and/or causes reasonable fear
- Coercion: The application of an unreasonable amount of pressure for sexual access. Consider the following:
  - Frequency
  - Intensity
  - Isolation
  - Duration
- Because consent must be voluntary (an act of free will), consent cannot be obtained through any type of force
- If force, in any of the four forms, was used, stop here. Your analysis is done. The policy has been violated. Incapacity and consent are irrelevant now.
- Sanction appropriately to: bring an end to the discrimination/harassment, prevent its future recurrence, and remedy the effects on the Complainant

The Three Questions

Did the Respondent know, or should they have known, that the Complainant was incapacitated?

- Alcohol and/or other drugs administered voluntarily or without the Complainant's knowledge
- Drug-facilitated sexual assault
  - #1: Alcohol
  - Prescription drugs (Ambien, Valium, Xanax) or if the Complainant's medication interacts with alcohol
- Mental/cognitive impairment
- Injury
- Asleep

Common Vocabulary: Impaired, stoned, wasted, under the influence, drunk vs. incapacitated

- First, was the Complainant incapacitated at the time of contact?
- Could the Complainant make rational, reasonable decisions?
- Could the Complainant appreciate the situation and address it consciously such that any consent was informed (knowing who, what, when, where, why, and how)
- Second, did the Respondent know of the incapacity (fact)?
- Or, should the Respondent have known from the circumstances (reasonable person standard refers to a sober person)

The Three Questions

Did the Respondent know, or should they have known, that the Complainant was incapacitated?

- Incapacitation is a determination that will be made after the incident in light of all the facts available
- Assessing incapacitation is very fact-dependent
- Blackouts are frequent issues
- FAQ: What if the Respondent was drunk, too?
  - "Drunk" does not necessarily mean incapacitated
  - The question is about the *Complainant's* capacity to consent
  - People are still accountable for actions they take while under the influence

- If the Complainant was **not** incapacitated, move on to the third question (consent).
- If the Complainant **was** incapacitated but the Respondent **did not know and should not have known**, policy was not violated. Move on to the third question (consent).
- If the Complainant **was** incapacitated, and the Respondent **knew** or **should have known**, policy was violated. Sanction accordingly.

The Three Questions

What clear words or actions by the Complainant gave the Respondent permission for the specific sexual activity that took place?

Consent:

- Knowing
- Voluntary
- Clear permission
- By word or action
- To engage in sexual activity

What is consent?

- Consent may be given verbally or nonverbally, but it must be communicated clearly in whatever form. Best practice is to supplement verbal consent with non-verbal communication.
- Silence/passivity is not consent.
- Must be a verbal or non-verbal “Yes”
- Consent is in doubt when a party to a sexual interaction is making assumptions about what their partner does or does not want.
- Absence of clear signals means no consent, not “Try it and see if they like it or object.”
- The idea of pure, autonomous consent rules out any requirement to show that force was used or that the Complainant resisted, but use of force or the showing of resistance demonstrate non-consent.

The Three Questions

What clear words or actions by the Complainant gave the Respondent permission for the specific sexual activity that took place?

- Every person has a right to personal sovereignty (autonomy): a right not to be acted upon by someone else in a sexual manner unless they give clear permission to do so.
- Consent can be broad or narrow and can be limited, such as in cases where someone is willing to engage in some forms of sexual activity but not in other forms.
- Consent means all parties decide together to do the same thing, at the same time, in the same way, with one another.
- Permission to engage in sexual activity does not exist in the absence of a “no” or resistance.
- “Consent” is not always valid, as in the case of force, threats, intimidation, coercion, incapacitation, and age

The Three Questions

What clear words or actions by the Complainant gave the Respondent permission for the specific sexual activity that took place?

- To be valid, consent must be given **prior to** or **contemporaneously with** the sexual activity.
- Consent can be withdrawn at any time, as long as that withdrawal is clearly communicated by the person withdrawing consent.
    - Consent cannot be withdrawn after the activity is over, though some Complainants need time to label a non-consensual experience as sexual assault.
- People can place conditions on consent (i.e., "I will only do X if we use protection).
- If someone has to physically manipulate the other person (even in the absence of resistance), there is likely a consent issue.
- Consent cannot be taken. It can only be freely given.
- "What clear words or actions by the Complainant gave the Respondent permission for the specific sexual activity that took place?"
    - If the Respondent can answer this question with evidence of sufficient words or actions, and/or if there is other sufficient proof, you are done. There is no policy violation.

Hearing Logistics

Hearing Decorum

- Maintain a professional demeanor and alertness for the duration of the hearing.
- Aim for business casual attire. This is a serious meeting that could impact the trajectory of someone's life, whether they are the Complainant or Respondent.
- Cell phone etiquette: To avoid accusations of recording, not paying attention, etc., please either keep your phone out of view or be mindful of when you check it. If you need to take a call, let the Hearing Chair know so they can call for a break in the hearing to allow you to do so.

Hearing Technology

- Webex is used when a virtual option is needed, such as if one or more parties or witnesses are unable to appear in-person or if one or more parties request to attend the hearing virtually as a supportive measure.
- Each hearing is recorded, and there is one verbatim record that is property of Arkansas Tech University. Parties and administrators who may request or need to review the hearing audio (such as in the case of an appeal) may review it with TIX or EEO staff in the office *or* they may review the audio at the Department of Public Safety, especially if the party has been removed from the University.

Hearing Procedures

- TIXC or EEO Officer collect any impact or mitigation statement(s) that have been prepared by the parties prior to the start of the hearing. These will only be shared with the Hearing Panel should there be a finding
- Chair calls the meeting to order…
- Investigator presents the history of the case and, if requested, reads the executive summary into the record
- Opening statements: Complaint then Respondent (opening statements are not required)
- Complainant is questioned by the Hearing Panel and then by the Respondent's Advisor
- Respondent is questioned by the Hearing Panel and then by the Complainant's Advisor
- Witnesses are questioned by the Hearing Panel, Complainant's Advisor, and then the Respondent's Advisor
- Witnesses are sometimes called prior to the Respondent's questioning period due to tight schedules or unforeseen delays such as technology issues
- Participants are asked to pause before answering a question to allow the Hearing Chair and/or Panel to make a relevancy determination
- Possible additional round of questions by the Hearing Panel for the Complainant and/or Respondent
- Break for 15+ minutes to prepare closing statements
- Closing statements: Complainant then Respondent (closing statements are not required)

Weighing Evidence

Credibility

- Credibility is the process of weighing the accuracy and reliability of evidence.
- To assess credibility, evaluate the:
  - Source (where is the information coming from?)
  - Content (could the witness actually hear what they say they heard?)
  - Plausibility (does the information even make sense to a reasonable person?)
- When all three (source, content, plausibility) are strong, credibility is most likely strong.
- Think of credibility on a 100% scale:
  - If it dips below 50%, the witness or evidence doe not weight the scale.
  - If the witness or evidence is more credible than not, it does weight the scale for determining a preponderance.
  - Credibility weighted on neutrality, impartiality, and objectivity:
    - The more loyal a witness is based on their relationship to one party, the more biased their evidence could be.
    - Neutral witnesses may be more objective than partisan witnesses.

Weighing Evidence

Credibility

- Avoid micro-expression analysis
- Major inconsistencies likely detract from credibility, but the Hearing Panel must consider if there are alternate reasons for the inconsistencies (personally violating policy, embarrassment, etc.)
    - Motivation to lie, exaggerate, or distort information should be assessed when there are differences in what was reported or questions about veracity or accuracy.
- If established, the continuation of harassing behavior after the Respondent was informed it was unwelcome would be corroborating
- Documents such as diaries, journals, calendar entries, notes, or letters describing the incident(s) can add to credibility but can also be manufactured after-the-fact.
- Telling another person (outcry witness) about the harassment/discrimination may add to credibility, but if the accounts provided to others vary meaningfully, that can also undermine credibility.

Weighing Evidence

Credibility

Questions to consider in assessing credibility:

- How might a reasonable person react to the incident(s) (remember that trauma impacts people differently)
- What was the effect of the behavior on the Complainant?

- A preponderance can be established simply because you believe one party and not the other based on your assessment of the credibility of the party and the evidence provided.
- Explanations of why the harassment occurred do not add to credibility.
- People who have sexually harassed and/or discriminate against others may acknowledge their behavior but try to explain and defend it in ways that do not justify their actions and should not add to their credibility. On the contrary, such excuses should be seen as admissions of having engaged in prohibited behavior.

Weighing Evidence

Credibility

The following do not add or detract from credibility of the Respondent because they are irrelevant:

- Character witnesses. (“He is such a good kid. I know he would never do that.”)
- Popularity with staff and other students. (“The whole Campus Life team loves her. She’s worked for us for three years. I just don’t believe she could have done that.”)
- No history of past conduct issues. (“They’ve never been in trouble before.”)
- Academic performance. (“But he’s a really good student. He wins awards and his professors really like him.”

The following do not add or detract from the credibility of the Complainant:

- Clothing. (“Just look at what she was wearing.”) Clothing does not cause sexual harassment, nor does it give anyone permission to touch someone else or make sexual remarks.
- Flirting behavior. (“He’s always flirting with the boys. What did he expect?”)
- Appearance. (“They are so unattractive, and he could get with anyone he wants.”)
- Males being Complainants. (“He should have realized she meant it as a compliment.”)
- Sexual orientation or gender identity. (“They came out to everyone. They should have expected this response.”)
- Politics, including athletics participation, concern about the team, concern about “getting a good student in trouble,” whether someone is close to graduation, etc., **cannot impact decisions about whether a policy was violated.**

Making a Determination

Rendering a Finding

- Decisions must be based on the facts in the investigation report and presented at the hearing, not any outside evidence.
- The Panel must first determine whether or not the policy was violated. The sanction discussion will take place **if the Panel reaches a finding of responsibility.**
- Do not let the severity of the case change your standard of evidence. Even when the stakes are very high, we use the Preponderance of the Evidence standard for all civil rights resolution cases.

Due Process in Decision

A decision must:

- Be appropriately impartial and fair (both finding and sanction).
- Be neither arbitrary or capricious.
- Be based on a fundamentally fair rule or policy.
- Be made on good faith (i.e., without malice, ill-will, conflict, or bias).
- Have a rational relationship to (be substantially based upon, and a reasonable conclusion from) the evidence.

Making a Determination

Sanctioning

Sanction appropriately to:

- Bring an end to the discrimination
- Prevent its future recurrence
- Remedy the effects on the Complainant
- Sanctions for serious misconduct should be aimed at protecting the Complainant and the ATU community.
- ATU utilizes progressive discipline and may refer to prior findings of responsibility during the sanctioning phase. Prior conduct is not disclosed to the Hearing Panel unless/until they determine the Respondent was responsible for violating policy.

The full list and descriptions of student, employee, and organization sanctions can be found in the EON Policy.

Sanction Spectrum

- Warning
- Probation
- Loss of privileges (i.e., banned from the library)
- Monetary fines and/or restitution
- Educational sanctions (Judicial Educator, policy reviews, etc.)
- Discretionary sanctions (i.e., work assignments, service to ATU)
- Holds (grades, registration, degree, etc.)
- Housing suspension or housing expulsion
- University suspension
- University expulsion
- Loss of scholarship
- Withholding diploma or revocation of admission/degree
- Performance improvement plan
- Denial of pay increase/pay grade
- Administrative leave with or without pay
- Termination of employment

Making a Determination

Generating a Rationale

- Once the Panel has a finding of responsible or not responsible and determined (if responsible) any appropriate sanctions, a written determination is composed.
- The determination includes a deliberation statement where the Hearing Panel explains how they came to their decision, what was and was not considered, and how they arrived at the selected sanction(s) (in cases of responsibility).
- The Notice of Outcome (letter that includes the deliberation statement and findings) is shared simultaneously with both parties.

CASE STUDY

Rendering a Finding

- Review the document containing testimony collected during the investigation.
- Based on the information available, determine if it is more likely than not that the Respondent violated policy(ies).
- If responsible, determine sanctions.

CIVIL RIGHTS RESOLUTION BOARD ANNUAL TRAINING

Appeals

Stacy Galbo

FORMAL RESOLUTION TIMELINE

1

Referral
Intake
Options
(No Time Limit)

2

NOIA
Investigation
Evidence Gathering
(30-60 Business Days)

3

Draft Report
10-Day Review
Report Finalized
(10+ Business Days)

4

Notice of Hearing
10-Day Pre-Hearing
Live Hearing
(10+ Business Days)

5

Outcome Letter
Appeal Window
Appeal Procedures
(About 10 Business Days if Appealed)

Grounds for Appeal

Procedure

A procedural irregularity that affected the outcome of the matter (e.g., parties were not provided the opportunity to review the Draft Investigation Report).

New Evidence

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.

Bias

The Title IX Coordinator/EEO Officer, Investigator(s), and/or Decision-Maker(s) had a conflict of interest or bias for or against Complainants/Respondents generally or the specific Complainant/Respondent that affected the outcome of the matter.

Appeals

- Any party may file a written request for appeal (“Request for Appeal”) to the Title IX Coordinator or EEO Officer within 7 calendar days of the delivery of the Notice of Outcome letter.
- The Request for Appeal is forwarded to the appropriate Appeal Decision-Maker(s) for consideration to determine if the request meets the grounds for appeal (a Review for Standing).
- Student Respondent appeal requests are heard by Amy Pennington, Vice President for Student Affairs.
- Non-faculty employee appeal requests are decided by the appropriate Vice President or Athletic Director.
- If the Respondent is a faculty member with tenure or with a special or probationary appointment, the Academic Termination Policies and Procedures section of the Faculty Handbook governs the Respondent’s Request for Appeal.
- If the grounds in the Request for Appeal do **not** meet the grounds in the EON 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 rationale.

Appeals

- If the grounds do meet the EON Policy grounds for appeal, the Appeal Decision-Maker(s) will notify all parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-Makers.
- All other parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-Makers will be provided a physical or electronic copy of the Request for Appeal with the approved ground(s) and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Appeal Decision-Maker(s) to all parties for review and comment.
- The non-appealing party (if any) may also choose to appeal at this time. If so, that will be reviewed to determine if it meets the grounds of this Policy by the Appeal Decision-Maker(s) and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, the Investigator(s), and/or the original Decision-Makers, as necessary, who will submit their responses, if any, in three (3) business days. Any such responses will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

Appeals

- Neither party may submit any new requests for appeal after this time period. The Appeal Decision-Maker(s) will collect any additional information needed and all documentation regarding the approved grounds for appeal and the subsequent responses and will render a decision in no more than five (5) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.
- A Notice of Appeal Outcome is sent to all parties simultaneously. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which ATU is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent ATU is permitted to share under state or federal law.
- Notification is 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 the the parties' ATU-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Appeals

- Any sanctions imposed as a result of the hearing are **stayed** during the appeal process.
- If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures for a show cause meeting on the justification for doing so must be permitted within 48 hours of implementation
- ATU may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.
- At the conclusion of a disciplinary proceeding or an appeal that involves an alleged serious violation by a student Respondent, the Vice President for Student Affairs will certify that the substantial rights of student complainants and respondents established by the Arkansas Student Due Process and Protection Act have been followed.

Appeal Considerations

- Appeals are not intended to provide for a full re-hearing of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding hte specific grounds for appeal.
- Decisions on appeal are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- An appeal is not an opportunity for the Appeal Decision-Maker(s) 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(s) may consult with the Title IX Coordinator, EEO Officer, and/or legal ocunsel on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-Makers for reconsideration.
- Once an appeal is decided, the outcome is final. Further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).

Appeal Considerations

- In rare cases where error cannot be cured by the original Investigator(s) and/or the Decision-Makers (as in cases of bias), the Appeal Decision-Maker(s) may order a new investigation and/or a new hearing with new Investigator(s) and/or Decision-Makers.
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to ATU or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

Questions?

Title IX Contact

Title IX covers cases involving sex discrimination, sexual harassment, sexual assault, dating or domestic violence, stalking, pregnancy or parenting discrimination, and related retaliation. The Title IX Office provides supportive measures, explains reporting options, and helps ensure the University responds promptly and equitably.

Website
www.atu.edu/titleix

Email
sgalbo2@atu.edu

Telephone
479-964-0583 ext. 4714

Address
Doc Bryan, Suite 233
1605 Coliseum Drive
Russellville, AR 72801

EEO Contact

The Human Resources Director/EEO Officer/Title VI Coordinator manages cases involving protected-class discrimination, harassment, retaliation, and other issues, including Title VII & Title VI.

Website
www.atu.edu/hr

Email
kmartin51@atu.edu

Telephone
479-968-0396

Address
Brown Building, Suite 420
105 W. O Street
Russellville, AR 72801

504 Contact

The Director of the Health and Wellness Center and ADA/504 Coordinator, in coordination with the EEO Officer, manage cases involving discrimination based on disability status and failure to provide reasonable accommodations.

Website
www.atu.edu/hr

Email
jbramlitt@atu.edu

Telephone
479-968-0396

Address
Doc Bryan Suite 119
1605 Coliseum Drive
Russellville, AR 72801