

AGENDA
ARKANSAS STATE UNIVERSITY
BOARD OF TRUSTEES
Wednesday, August 12, 2020
4:30 p.m.
By Telephone Conference Call
1-866-394-9513/Passcode 5773530#

I. Call to Order

Stacy Crawford, Chair

***II. Agenda**

- **Proposed ASU System Resolutions**
 - Resolution approving the ASU System to enact the new Title IX Regulations on each ASU System campus and to revise the ASU System Staff Handbook to incorporate the new regulations
 - Resolution approving the ASU System to mandate the use of face coverings by all persons on each campus within the ASU System

***III. Adjournment**

***Action Item**

EXECUTIVE SUMMARY

Contact: Jeff Hankins (501) 660-1000

ACTION ITEM: The Arkansas State University System requests approval to enact the new Title IX Regulations on each ASU System campus and to revise the ASU System Staff Handbook to incorporate the new regulations.

ISSUE: The Board of Trustees must approve all changes to the ASU System Staff Handbook.

BACKGROUND:

- Title IX is a comprehensive federal law prohibiting discrimination on the basis of sex by institutions of higher education that receive federal funds.
- The Arkansas State University System has maintained a policy prohibiting sexual discrimination in any program or activity and has also maintained a grievance procedure that complies with the requirements of Title IX.
- On May 6, 2020, the U.S. Department of Education released revised regulations governing campus compliance with Title IX.
- Institutions of higher education must implement these new regulations on or before August 14, 2020.
- Among other changes, these new regulations will address ways in which Title IX cases are investigated and adjudicated. Additionally, these new regulations make changes to Title IX jurisdiction, which will impact the cases that will be investigated for violating Title IX protections.
- These new regulations will require changes to the ASU System Staff Handbook, as well as all other handbooks on each ASU System campus.
- The proposed changes to the ASU System Staff Handbook are attached to this resolution.
- All of these changes have been shared with and approved by each ASU System campus.

RECOMMENDATION/RESOLUTION:

Be it resolved that the Arkansas State University Board of Trustees authorizes each campus to implement the new Title IX regulations and approves the proposed changes to the ASU System Staff Handbook and all other handbooks on each ASU System campus, which will be required to be in compliance with these new regulations.

made ASU aware of his or her disability, provided that such accommodation does not constitute an undue hardship on ASU. Employees with a disability who believe they need a reasonable accommodation to perform the essential functions of their job should contact their supervisor or their Human Resources Department. ASU encourages individuals with disabilities to come forward and request reasonable accommodation.

TITLE IX OF EDUCATION AMENDMENTS

Title IX is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity.

Title IX benefits both males and females, and is at the heart of efforts to create gender equitable schools. The law requires educational institutions to maintain policies, practices and programs that do not discriminate against anyone based on sex. Under this law, males and females are expected to receive fair and equitable treatment in all areas of public schooling including recruitment, admissions, educational programs, and activities, course offerings and access, counseling, financial aid, employment assistance, facilities and housing, health and insurance benefits, marital and parental status, scholarships, sexual discrimination and athletics. Arkansas State University has designated a Title IX coordinator for each campus. Any incidence of sexual discrimination including sexual harassment or sexual violence should be reported to the Title IX coordinator who will take prompt action to secure a full and equitable review. In the event the sexual discrimination allegation is against the Title IX coordinator, the report should be made to the Office of General Counsel.

AGE DISCRIMINATION IN EMPLOYMENT ACT

The Age Discrimination in Employment Act (ADEA) protects individuals who are 40 years of age and older from employment discrimination based on age. The ADEA's protections apply to both employees and applicants. Under the ADEA, it is unlawful to discriminate against a person because of age with respect to any term, condition, or privilege of employment including, but not being limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training.

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full and equitable review. In the event the sexual discrimination allegation is against the Title IX coordinator, the report should be made to the Office of General Counsel. Contact information for each campus is located on the respective campus's website.

Commented [KP1]: This language must be included as part of every application for enrollment or employment that we use.

SEXUAL DISCRIMINATION

Arkansas State University is committed to providing an educational and work environment for its students, faculty, and staff that is free from sexual discrimination including sexual harassment, sexual assault, sexual violence, stalking, domestic violence, and dating violence, as prohibited by Title IX of Educational Amendments of 1972, and/or Title VII of the 1964 Civil Rights Act. No form of sexual discrimination will be tolerated.

~~Sexual Harassment is defined as unwelcome gender-based verbal or physical conduct that is severe, persistent or pervasive and occurs when:~~

- ~~1. Submission to, or toleration of, such conduct is made a term or condition of instruction, employment, or participation in other university activities;~~
- ~~2. Submission to, or rejection of, such conduct is used as a basis for employment or education decisions affecting the individual; or~~
- ~~3. Such conduct has the effect of unreasonably interfering with an individual's education or employment performance or creating an intimidating, hostile, or offensive university environment.~~

~~Sexual assault occurs when a person is subjected to an unwanted sexual act by force or threat without consent. Sexual acts occur without consent when they are perpetrated against a person's will or where a person is incapable of giving consent due to minority, intellectual impairment, or use of mind-altering substances such as drugs or alcohol.~~

~~Sexual violence includes sexual assault but may also consist of an attempt to obtain a sexual act or sexual advances using coercion which do not result in a completed sexual act.~~

~~Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.~~

~~Domestic Violence is defined as felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Arkansas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Arkansas.~~

~~Dating Violence is defined as violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, and (iii) the frequency of interaction between the persons involved in the relationship.~~

It is important to preserve all evidence of sexual discrimination, especially if the discrimination is also a criminal offense, such as sexual assault, **sexual violence**, stalking, domestic violence, or dating violence.

Supervisors and staff members must recognize that their positions necessarily embody unequal power relationships with their subordinates and students. Because of the inherent power differences in these relationships,

the potential exists for the less powerful to perceive a coercive element in suggestions relative to activities outside those appropriate to the professional relationship. It is the responsibility of supervisors and staff members to behave in such a manner that their words or actions cannot reasonably be perceived as coercive.

Each campus has a Title IX Coordinator who is charged with investigating allegations of sexual discrimination including sexual harassment, sexual assault, ~~sexual violence~~, stalking, domestic violence and dating violence. Each campus's Human Resources Department is responsible for investigating allegations of sexual discrimination, not covered by Title IX, and in violation of Title VII. Employees with supervisory responsibilities, including deans, vice chancellors, department chairs, faculty, student conduct personnel, human resources personnel, athletic administrators, coaches, and university police personnel must report incidents of sexual discrimination either observed by them or reported to them to the Title IX Coordinator. The Title IX Coordinator will conduct an immediate prompt, thorough, and objective investigation of all those claims which meet the requirements of a Title IX offense, and will refer other claims of sexual discrimination to the campus Human Resources department. If sexual discrimination has occurred, appropriate remedial action commensurate with the severity of the offense will be taken up to and including termination. All reports, complaints, and investigations are treated with discretion and confidentiality is maintained to the extent allowed by law.

The Title IX Coordinator or Human Resources representative, as applicable, will notify the appropriate law enforcement agency of all reports of sexual assault, ~~sexual violence~~, stalking, domestic violence or dating violence. The person who has allegedly been subjected to sexual discrimination may also contact law enforcement and may seek an order of protection, no contact order, or similar order. The Title IX Coordinator or Human Resources representative will assist the person alleging to be subjected to sexual discrimination and the person alleged to have committed sexual discrimination with locating resources for counseling, medical treatment, legal advice, victim advocacy, or other services.

Each campus within the Arkansas State University System provides educational materials and programs on sexual discrimination. Contact the Human Resources Department or Title IX Coordinator for information on awareness and prevention of sexual discrimination.

The University reserves the right to take ~~whatever those legally permitted supportive~~ measures it deems necessary in response to an allegation of sexual discrimination in order to protect individuals' rights and personal safety. Such supportive measures may include, but are not limited to: modification of campus living or employment arrangements; interim suspensions from campus; no contact or communications requirements; leave with or without pay; and, reporting the matter to law enforcement. Persons reporting allegations of sexual discrimination must follow the Sexual Discrimination Grievance Procedure or the Title IX Grievance Procedure, as applicable.

RETALIATORY ACTION PROHIBITED

Retaliation against a person who files a charge of discrimination, participates in an investigation, refuses to participate in an investigation, or opposes an unlawful employment practice is prohibited by law and Arkansas State University. Any person who needs further explanation or who believes he or she has been retaliated against should contact the Human Resources Department.

compensation will be paid if the person qualifies for benefits.

WEAPONS

To the fullest extent allowed by Arkansas law, all weapons are prohibited on all campuses within the Arkansas State University System. Weapons include but are not limited to firearms, explosive devices, hazardous chemicals, (other than pocket-sized sprays used for personal protection) knives with blades longer than four inches, nun chucks, brass knuckles, tasers or other electrical stun devices, bows or cross bows, arrows, objects that propel projectiles, replicas of weapons (including water or toy guns), or any device or substance designed or used to inflict a wound, cause injury, or incapacitate. If a weapon is discovered, it will be confiscated and employees will be subject to disciplinary procedures, including termination and/or arrest. Arkansas law allows a concealed-carry licensee to possess a weapon in a publicly owned and maintained parking lot if the licensee is carrying a concealed handgun in his or her motor vehicle or has left the concealed handgun in his or her locked and unattended motor vehicle.

WORKERS' COMPENSATION BENEFITS

Arkansas State University strives to maintain a safe and healthy environment for all employees. The university provides Workers' Compensation benefits for employees who are injured during the course of work. To ensure that full benefits may be obtained, it is crucial that the employee notify the direct supervisor immediately following a work-related injury. The employee and the supervisor must complete all Workers' Compensation paperwork within twenty-four (24) hours of the initial injury. The employer will not be responsible for disability, medical or other benefits prior to receipt of the report of injury.

All medical work-related injuries/illnesses will be treated at medical facilities designated for the campus. For specific information on designated facilities, employees should contact their supervisor or the Department of Human Resources. Employees working at off campus sites are to seek medical care at the nearest facility and coordinate further care with the Department of Human Resources. All work-related injuries/illnesses must be reported immediately.

Accrued sick leave, if available, may be used to supplement Workers' Compensation benefits so that the employee will receive normal pay. Therefore, all payments from Public Employees Claims Division for Workers' Compensation must be reported to the payroll office.

WORKPLACE VIOLENCE

Arkansas State University observes a zero-tolerance policy regarding workplace violence. Fighting or other activities which may endanger the wellbeing of employees, students, or others may result in immediate termination of employment. Actions that create an environment that is threatening, violent, intimidating, hostile, or abusive will not be tolerated and must be immediately reported to a supervisor.

SHARED GOVERNANCE

Staff employees at Arkansas State University participate in shared governance if established at your campus. Please see your Human Resources Department for information regarding shared governance on your campus.

STAFF GRIEVANCE PROCEDURES

GRIEVANCE ISSUES

The Staff Grievance Procedure applies only to alleged institutional error which affects the terms or conditions of that staff member's employment. Institutional error occurs when no legitimate reason exists for the action taken. Decisions which require the exercise of judgment or discretion cannot constitute institutional error. This procedure may be used for complaints alleging discrimination on the basis of protected status other than gender which is governed by the ~~Sexual Discrimination~~ Title IX Grievance Procedure. This procedure may also be used for allegations of discrimination, ~~excluding those governed by the Title IX Grievance Procedure, (other than gender)~~ taken against the staff member by students, employees, or third parties. Often, grievances can be reviewed and resolved through the informal discussion process. However, when a difference of opinion exists and the grievance remains unresolved, the issue should proceed through a more formal complaint procedure for a final decision.

All grievances will be investigated within the stated time frame to ensure prompt yet thorough action. The university will grant time adjustments only for extenuating circumstances. Arkansas State University will not discriminate against any person who has filed a grievance.

A grievance must be activated within sixty (60) days from the time the events leading to the complaint occurred.

INFORMAL DISCUSSIONS

Initially, a staff person having a grievance should discuss the grievance with the immediate supervisor. It is the supervisor's responsibility to give an impartial, informal hearing; to make a complete investigation; and, if possible, to arrive at a resolution which is mutually agreeable. The supervisor is expected to reply orally to the staff member within ten (10) working days. If a mutually agreeable resolution is not reached within ten (10) working days after presentation of the grievance to the supervisor, the employee may submit a written complaint to the head of the department.

If the grievance involves the immediate supervisor and the employee does not feel comfortable discussing the situation with the supervisor, the employee may contact his or her Human Resources Department.

WRITTEN COMPLAINT

If the grievance is not solved through informal discussions, a written complaint should be submitted to the head of the department within ten (10) working days after a response is received from the supervisor. A grievance may be filed in the Human Resources Department and, upon request, a staff person there will assist in the preparation of a complaint and explain the steps involved in the grievance procedure. The Human Resources Department maintains files on all grievances and monitors their outcome once they have reached this level.

DEPARTMENT HEAD'S RESPONSE

After receiving a written complaint, the department head has ten (10) working days to prepare a written response. In that time, the department head shall consult the supervisor involved, study all the pertinent facts, carefully examine any policies involved, discuss the issue with the employee and if possible, resolve the matter within the framework of existing university policy to the satisfaction of the employee and the supervisor. The employee and the Human Resources Department should receive written notification of the department head's response to the complaint.

If the time period has expired without a response, or if a mutually agreeable resolution is not reached within this time period, the employee has ten (10) working days to submit a written complaint to the Staff Hearing Committee. This action should be forwarded through your Human Resources Department with a copy of the notification sent to the department head.

STAFF HEARING COMMITTEE COMPOSITION

The Staff Hearing Committee is made up of a pool consisting of no fewer than fourteen (14) and no more than twenty one (21) members representing administrative, professional, clerical, and service/maintenance staff. Members are appointed by the chancellor and serve a two year term with one half of the committee being replaced annually. The Chancellor of the campus appoints seven (7) of these members to review each case. The committee elects a chairman each year.

A member of Human Resources sits as an ex-officio, non-voting member of the Staff Hearing Committee, offering technical assistance on procedural and policy matters.

STAFF HEARING COMMITTEE FUNCTIONS

The Staff Hearing Committee functions in a flexible and informal manner to determine whether institutional error has occurred and, if so, to recommend an appropriate corrective action. Complaints for Staff Hearing Committee review must be submitted to the Human Resources Department to be forwarded to the committee. The committee has twenty (20) working days to prepare a written response after it has received a complaint. All proceedings shall be in closed session and will not include the grievant, the party complained against, or other witnesses unless the Committee requests their oral testimony. In the event that oral testimony is requested, the grievant and the party complained against may be present and question the witnesses. Each party may have an advisor present during the testimony who may provide personal consultation but may not actively participate in the hearing. The parties must disclose to the Chair of the Staff Hearing Committee the identity of any advisor at least two (2) working days before any hearing. No audio or video recording is permitted.

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

1. It may find no institutional error has occurred and recommend that no further action be taken.
2. It may find that institutional error has occurred and recommend a remedy for a change in the term or condition of employment.

STAFF HEARING COMMITTEE FINDINGS

In all instances the committee shall make a record of its findings, a statement of its conclusion, including the reason or policy criteria used in reaching a decision, and its recommendations for resolution of the grievance. The Committee decision shall be forwarded to the Chancellor of the campus for action. Copies will be filed with the Human Resources Department as a part of the complaint record and sent to the grievant and the department head. Within ten (10) working days of receipt of the Committee recommendation, the Chancellor will accept or reject the Committee recommendation in writing after review of all file materials. The Chancellor's decision is final.

DOCUMENT COLLECTION

When a grievance proceeding has been closed, all material relating to that case shall be retained on file in the Human Resources Department for five years. Care will be taken to ensure that no incomplete or inaccurate information pertaining to the grievance is retained in the file. Grievance proceedings are considered confidential and no person involved with the grievance may make the documents public except as required by law.

SEXUAL DISCRIMINATION-TITLE IX GRIEVANCE PROCEDURE

GRIEVANCE ISSUES

The Sexual Discrimination Title IX Grievance Procedure applies to all allegations of sexual discrimination, including sexual harassment, sexual assault, sexual violence, stalking, domestic violence, and dating violence, occurring in the United States and in an educational program or activity of any campus within the Arkansas State University System, which is made by a person participating in or attempting to participate in an educational program or activity of the campus.

Sexual Harassment under Title IX is defined as unwelcome gender-based verbal or physical conduct and occurs when:

1. Submission to, or toleration of, such conduct is made a term or condition of instruction, employment, or participation in other university activities;

2. Submission to, or rejection of, such conduct is used as a basis for employment or education decisions affecting the individual; or

3. Such conduct is severe, pervasive, and objectionably offensive such that it has the effect of unreasonably interfering with an individual's education or employment performance or creating an intimidating, hostile, or offensive university environment.

Sexual assault occurs when a person is subjected to an unwanted sexual act without consent. Sexual acts occur without consent when they are performed by force, in response to a threat, against a person's will, or where a person is incapable of giving consent due to minority, intellectual impairment, or use of mind altering substances such as drugs or alcohol.

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

Domestic Violence is defined as felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Arkansas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Arkansas.

Dating Violence is defined as violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, and (iii) the frequency of interaction between the persons involved in the relationship.

REPORT OF SEXUAL DISCRIMINATION

Any employee, student, or visitor participating in or attempting to participate in an educational program or activity offered by a campus in the Arkansas State University System who believes he or she has been subjected to sexual

discrimination should report the incident to the Title IX Coordinator utilizing the ~~grievance-reporting~~ form available on the ~~Human Resources or Student Conduct~~ Title IX web sites for the campus. Employees with supervisory responsibilities including deans, vice chancellors, department chairs, faculty, student conduct personnel, human resources personnel, athletic administrators, coaches, and university police personnel must report incidents of sexual discrimination either observed by them or reported to them to the Title IX Coordinator. In the event the sexual discrimination allegation is against the Title IX Coordinator, the report form should be submitted to the Office of General Counsel. Reporting may be done by telephone, fax, email, or a hard copy communication, and may be submitted during or outside of business hours. In order to ensure timely investigation and remedy, a ~~sexual discrimination~~ Title IX grievance should be activated within sixty (60) days from the time the events leading to the complaint occurred as. ~~All complaints are investigated; however, delay in reporting impedes the ability to achieve prompt resolution. All efforts will be made to honor a request for confidentiality but confidentiality cannot be ensured.~~ Reports of sexual assault, sexual violence, stalking, domestic violence and dating violence will be reported to law enforcement authorities.

Criminal investigations by any law enforcement agencies or investigations conducted under the Faculty, Staff, or Student Handbooks may occur simultaneously with a sexual discrimination grievance ~~and do not affect the grievance process.~~

TITLE IX COORDINATOR'S RESPONSE

A. Upon receipt of a report of an allegation of sexual discrimination, the Title IX Coordinator will contact the person alleged to have been subjected to the sexual discrimination (hereinafter referred to as a "Complainant") within two (2) business days. During the initial contact, the Title IX Coordinator shall notify the Complainant of available supportive measures with or without the filing of a formal complaint, the process for filing a formal complaint, and the potential code of conduct violations for knowingly providing false information. If the Complainant decides to file a formal complaint, the Complainant must submit a written and signed statement of the facts surrounding the allegations sufficient to allow the Title IX Coordinator to determine whether:

1. the actions alleged to have occurred meet the definition of sexual harassment, sexual assault, dating violence, domestic violence, or stalking;
2. the actions alleged to have occurred were perpetrated against someone who was engaged in or attempting to engage in an educational activity or program offered by the campus;
3. the actions alleged to have occurred were perpetrated by someone who is a student or employee of the campus, if the person's identity is known;
4. the acts alleged to have occurred took place against a person located in the United States; and,
5. the acts alleged to have occurred took place in a location or under circumstances over which the campus exercises substantial control, including but not limited to on

campus buildings, buildings owned or operated by registered student organizations, or during off campus class events.

The formal complaint may be submitted electronically or in hard copy format. If the Complainant determines that he or she does not wish to pursue a formal complaint, the Title IX Coordinator shall assist the Complainant with appropriate continued supportive measures, and shall make a determination as to whether or not, based on the information that the Title IX Coordinator has at that time, the Title IX Coordinator will sign a formal complaint. The Title IX Coordinator shall only sign a formal complaint over the objection of a Complainant in the event that, based on the available facts at the time, failure to do so would be clearly unreasonable and would amount to deliberate indifference.

B. Following the receipt of the formal complaint, the Title IX Coordinator will send a Notice of Allegations to both the Complainant, and the person alleged to have perpetrated the sexual discrimination (hereinafter referred to as the "Respondent"). The Notice of Allegations will:

1. set forth the allegations outlined in the formal complaint;
2. advise the parties on the Title IX Grievance Procedure, including their right to not participate;
3. set forth the available supportive measures for the parties, which will be equitably available to each;
4. outline the availability of and describe the informal resolution procedure;
5. notify the parties that they have the right to have an advisor of their choice, who may but does not have to be an attorney, and that the advisor may attend but not directly participate in any meetings or interviews throughout the investigation;
6. notify the parties that they are required to have an advisor for the purposes of the hearing, and the availability of an advisor to be provided by the campus in the event that either party cannot obtain one;
7. state the standard of evidence used in the Title IX Grievance procedure is preponderance of the evidence;
8. state that the parties each have the right to inspect, review, and respond to all information and evidence gathered, which will be presented to the parties promptly after its receipt by the Title IX Coordinator or investigator;
9. inform the parties of the potential code of conduct violations that can be pursued in the event that a party knowingly gives false statements or evidence; and,
10. state clearly that the Respondent is presumed "not responsible" unless and until there is a finding of responsibility at the conclusion of the hearing.

C. Immediately following the issuance of the Notice of Allegations, the Title IX Coordinator will review the formal complaint to verify that the conduct complained of meets the definition of sexual harassment, sexual assault, domestic violence, dating violence, or stalking; that it occurred in the campus's education program or activity; and, it occurred against a person in the United States. Following the verification of this information, the Title IX Coordinator will take one of the following actions:

1. If the allegations in the formal complaint fails to meet any of these requirements, it must be dismissed under the Title IX Grievance Procedure, but can be pursued under the Staff Grievance Procedure, or the campus's code of conduct. The parties will be notified simultaneously in writing of this action.

2. If the formal complaint meets the requirements, but: the Complainant requests in writing to withdraw the allegations or formal complaint; the Respondent is no longer enrolled or employed by the campus; or, specific circumstances prevent the Title IX Coordinator from gathering enough evidence to make a determination, the Title IX Coordinator may dismiss the Title IX investigation. In such an instance, the Title IX Coordinator shall notify both parties simultaneously in writing of the dismissal of the formal complaint, and the reason for the dismissal. Either party may appeal this dismissal to the Director of Human Resources. The appeal must be transmitted within five business (5) days of the issuance of the decision by the Title IX Coordinator. The Director of Human Resources shall review the decision, the rationale for the decision, and the appeal, and shall make the final determination as to whether the Title IX Discrimination Grievance shall be permitted to proceed to investigation, and shall transmit that decision, simultaneously and in writing, to both parties within five (5) business days of the receipt of the appeal.

3. If the formal complaint meets the requirements, and the investigation isn't dismissed as permitted in Section C.2., the formal complaint shall proceed to the investigation. If the formal complaint meets the requirement set forth in Section A. herein, the allegations of the formal complaint may only be addressed under the Title IX Grievance Procedure.

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D. Within forty-five (45) calendar days after receipt of a ~~written grievance form~~ formal complaint, the Title IX Coordinator, or ~~designee~~ investigator, will conduct a full and impartial investigation, considering all available inculpatory and exculpatory evidence, by: including interviewing the complainant, the ~~accused~~ respondent, and any witnesses identified throughout the investigation; considering any expert testimony offered by either party; and, as well as by reviewing any documentary evidence submitted by either party or obtained by the Title IX Coordinator or investigator.

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The Title IX Coordinator or investigator will:

1. not seek or consider any evidence which is protected by a legally acknowledged privilege without the written consent of the party who holds the privilege;

2. not consider evidence of the Complainant's sexual history or predisposition, unless offered to prove that someone else committed the acts the Respondent is accused of, or specific incident between the Complainant and Respondent are offered to prove consent;
3. make no credibility assessments based solely on a party's status as a complainant or respondent;
4. provide any party requested to attend a meeting or interview with written notice of the day, time, location, invited participants, and purpose of the meeting or interview no less than two (2) business days in advance of the proposed meeting;
5. make ongoing determinations, throughout the investigation, regarding the appropriateness of available supportive measures, such as: suspension from employment with or without pay; suspension from classes following an individualized determination that based upon the allegations the Respondent poses an immediate threat to a faculty member, staff member, or student; issuance of a no contact directive to both parties; reassignment of job duties; counseling; campus escort services; increased security and monitoring certain areas on campus; or, changing class or classroom assignments. If immediate action is required, the Title IX Coordinator shall work with the appropriate administrator to implement supportive measures.

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F. After studying all the pertinent facts and documents, carefully examining any policies involved, and discussing the issue with the parties and witnesses, the Title IX Coordinator shall either:

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1. propose an informal resolution procedure be utilized to the parties which, if accepted, shall be documented in writing, and, if successful, shall conclude the investigation, or, if unsuccessful, shall result in the investigation proceeding towards a formal hearing, with all informal resolution proceeding documents being maintained and submitted to the Hearing Committee; or,
2. gather all evidence collected throughout the investigation that is directly related to the allegations in the complaint and simultaneously submit, in electronic or hard copy, it to the parties and their advisors, if any. The parties shall have ten (10) business days to review and respond to all evidence provided. The Title IX Coordinator or investigator will review and consider the response(s) of the parties before completing its investigative report. The investigative report shall be a formal written report which sets forth:

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- a. the timeline of the investigation, beginning with the formal complaint, and includes all notices given, meetings or interview conducted, and communications received;

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- b. the allegations contained in the formal complaint;
- c. the evidence relevant to the allegations gathered throughout the investigation; and,
- d. the specific form of sexual discrimination the Respondent is alleged to have engaged in.

G. Following the completion of the investigative report, the Title IX Coordinator will simultaneously submit, in electronic or hard copy, the investigative report to both parties and their advisors, if any. Both parties shall have a period of ten (10) business days to review the investigative report before the hearing date. Both parties have the option to submit a written response to the investigative report. The investigative report and any written responses by either party shall be submitted to the Title IX Hearing Committee.

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H. Timelines may be extended by the Title IX Coordinator in extenuating circumstances and for good cause shown.

I. Allegations of sexual discrimination which meet the requirements of a Title IX offense and which are made by a student against a staff or faculty member shall not be resolved by the informal resolution procedure.

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~~As early as possible in the investigation, the Title IX Coordinator should determine whether temporary remedial measures are warranted such as suspension from employment with or without pay, suspension from classes, issuance of a no contact directive, reassignment of job duties, or changing class or classroom assignments. If immediate action is required to protect the complainant, the Title IX Coordinator shall work with the appropriate administrator to implement temporary remedial measures.~~

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~~The past sexual history or sexual character of a party will not be admissible by the other party in the investigation or any subsequent hearing unless the party was found to be responsible, the previous incident was substantially similar to the present allegation, and the past actions indicate a pattern of behavior consistent with the current allegations.~~

~~After studying all the pertinent facts and documents, carefully examining any policies involved, and discussing the issue with the parties and witnesses, the Title IX Coordinator shall either (1) propose an informal resolution to the parties which, if accepted, shall be documented in writing and shall conclude the investigation or (2) prepare a formal written report making a finding, based on the preponderance of the evidence, as to whether sexual discrimination occurred, and if so, recommending a remedy which will end the discrimination, prevent its recurrence, and remove its effects on the complainant and the university community. The report shall be transmitted simultaneously to the complainant and the accused and implemented immediately. If both parties agree with the report, the grievance shall be closed and the remedies continued. If either party does not agree with the finding of the Title IX Coordinator and desires to appeal, that party must submit, within five (5) working days of the date of the report, a written request to the Department of Human Resources for a hearing before the Sexual Discrimination Hearing Committee. The written request will detail the alleged error of the Title IX Coordinator and the requested remedy. The Department of Human Resources will provide the party not appealing with a copy of the request. Within five (5) working days of the date of~~

the letter from the Human Resources Department, the party not appealing may submit a written response to the request for hearing countering any allegations in that document. Copies will be provided to the Title IX Coordinator for placement in the case file. Timelines may be extended by the Title IX Coordinator in extenuating circumstances.

SEXUAL-TITLE IX DISCRIMINATION HEARING COMMITTEE COMPOSITION

The Sexual-Title IX Discrimination Hearing Committee is composed of members selected by the Chancellor or Chancellor's designee from the Academic Hearing Committee, the Student Conduct Hearing Committee, and the Staff Hearing Committee for that campus. The Sexual-Title IX Discrimination Hearing Committee is composed of seven-five (75) voting members, and one (1) ex-officio non-voting chair. A member of the Human Resources department or Human Resources' designee sits as an ex-officio non-voting chair of the Title IX Discrimination Hearing Committee, making determinations of relevance, overseeing the orderly operation of the hearing, and offering technical assistance on procedural and policy matters. One (1) voting member of the Title IX Discrimination Hearing Committee shall be a student, one (1) shall be a faculty member, and one (1) shall be a staff member. One (1) voting member shall be selected so that his or her primary classification of student, faculty, or staff aligns with the primary classification of the Complainant, and one (1) voting member shall be selected so that his or her primary classification aligns with the primary classification of the Respondent. When a student is the complainant, three (3) members of the committee shall be students, two (2) members faculty, and two (2) members staff; when the complainant is a staff member the committee shall be composed of three (3) staff members, two (2) faculty members, and two (2) students; when the complainant is a faculty member the committee shall be composed of three (3) faculty members, two (2) students, and two (2) staff. The committee elects a chair once convened. The Sexual-Title IX Discrimination Hearing Committee shall have specific training on sexual discrimination under Title IX, and the Arkansas State University System Title IX policy and Title IX Grievance Procedure.

A member of Human Resources or Human Resources' designee sits as an ex-officio, non-voting member of the Sexual Discrimination Hearing Committee, offering technical assistance on procedural and policy matters.

SEXUAL-TITLE IX DISCRIMINATION HEARING COMMITTEE FUNCTIONS

The Sexual-Title IX Discrimination Hearing Committee shall reviews the findings-investigative report of the Title IX Coordinator, the responses to the investigative report by the party (ies), the inculpatory and exculpatory evidence (that being both evidence which proves and evidence which disproves statements or allegations made by a witness or party) relevant to the allegations gathered by the Title IX Coordinator or investigator, any live testimony offered by the party(ies) and/or witnesses, and and evidence offered by the party(ies) to determine, based on the preponderance of the evidence, whether institutional-error-has-occurred the Respondent is responsible for a violation of the Title IX policy, and, if so, to recommend an appropriate to end the discrimination, prevent its recurrence, and remove its effects on the Complainant and the University community corrective action. Institutional-error-occurs-when-no legitimate-reason-exists-for-the-action-taken. Decisions which require the exercise of judgment or discretion cannot constitute institutional error.

Each party shall be represented by an advisor, who may but does not have to be an attorney. The advisor will directly participate in the hearing, and question witnesses on the respective party's behalf. If either party is unable to obtain an advisor, the campus will provide a pool of advisors who have been trained on Title IX from which the party

may select an advisor. A party who needs the campus to provide them with an advisor shall give notice to the campus no less than five (5) business days prior to the hearing so availability may be determined and the selected advisor can have an opportunity to review all relevant materials. If a party appears at the hearing without an advisor, and without having given notice of his or her need for an advisor, the campus will assign an advisor who is trained on Title IX, and who is selected by the campus based on availability. In the event that either party's advisor hinders the ability to conduct the hearing in an orderly fashion, that advisor may be removed from the hearing by the Chair of the Hearing Committee, and shall be replaced by an advisor to be provided by the campus.

The entirety of the hearing will be recorded by the Chair of the Hearing Committee, and conducted in closed session. At the request of either party, or in the discretion of the Chair of the Hearing Committee, the parties may be located in separate physical locations, but by use of appropriate technology shall be able to simultaneously see and hear each other and the Hearing Committee, and be seen and heard by the Hearing Committee.

During the course of the hearing, the Hearing Committee will call the witnesses interviewed during the investigation for testimony, and each party's advisor shall be permitted to question those witnesses. Both parties shall be permitted to offer an opening statement, and to testify and offer witnesses, including expert witnesses, to testify. In the event that either party wishes to call witnesses, they will disclose the identity of the witnesses to the Chair of the Hearing Committee no less than two (2) business days prior to the hearing. The Chair of the Hearing Committee will notify each party of the witnesses the other party intends to call. Testimony shall be elicited through direct and cross-examination by both parties, acting by and through their respective advisors, and the Hearing Committee. In the event that a party or witness refuses to attend the live hearing and submit to cross-examination, that witness's previous statements will not be considered in making a determination of responsibility, and no inferences shall be drawn by the Hearing Committee based on the refusal to testify. Each party shall be permitted to present evidence for the Hearing Committee's consideration. All evidence collected by the Title IX Coordinator or investigator throughout the investigation will be presented to the Hearing Committee, and both parties shall have the right to utilize the evidence as part of their presentation to the Hearing Committee. Both parties shall have the opportunity to offer a closing statement.

TITLE IX DISCRIMINATION HEARING COMMITTEE FINDINGS

The committee has ~~Within~~ twenty (20) ~~working business~~ days of the conclusion of the hearing, the Hearing Committee shall ~~issue to~~ prepare a written ~~response~~ decision which will be simultaneously sent to both parties and their advisors by the Chair of the Hearing Committee ~~after it has received a complaint~~. The written decision shall include:

- A. the timeline of the investigation, beginning with the formal complaint and including all notices, interviews, communications, and the hearing date;
- B. the finding of facts from the evidence and testimony presented at the hearing in support of the determination regarding responsibility;
- C. the Hearing Committee's determination regarding responsibility based on the preponderance of the evidence;
- D. the rationale for the determination regarding responsibility, including the application and analysis of the testimony and evidence presented to the Hearing Committee to Title IX policy to the allegations contained in the formal complaint for each alleged violation contained in the formal complaint;

- E. any disciplinary or remedial sanctions to be imposed, which may be up to and including suspension or expulsion, as appropriate;
- F. a statement that each party has the right to appeal the decision of the Hearing Committee within five (5) business days on the bases of: procedural irregularity that affected the outcome; new evidence not reasonably available at the time of the Hearing Committee's determination that could affect the outcome; and/or, bias or conflict of interest on the part of the Title IX Coordinator, investigators, or Hearing Committee; and,
- H. a statement that the standard of evidence used in the appeal shall be the preponderance of the evidence.

TITLE IX DISCRIMINATION APPEAL COMMITTEE PROCEDURE

- A. Either party shall have five (5) business days following the issuance of the Hearing Committee's written decision to submit an appeal. Either party may appeal on the basis of:
 - 1. procedural irregularity that affected the outcome;
 - 2. new evidence not reasonably available at the time of the Hearing Committee's determination that could affect the outcome; and/or,
 - 3. bias or conflict of interest on the part of the Title IX Coordinator, investigator, or Hearing Committee.
- B. The letter of appeal shall be submitted to the Chair of the Hearing Committee, and shall set forth the specific basis or bases for the appeal, and all facts, evidence, and a statement in support of the basis or bases of appeal.
- C. Any letter of appeal shall be transmitted to the other party by the Chair of the Hearing Committee, and that party shall have two (2) business days to respond, in writing, to the contents of the letter of appeal. Any response shall be presented by the Chair of the Hearing Committee to the appealing party, who shall have two (2) business days to respond. Any response by the appealing party shall be presented by the Chair of the Hearing Committee to the other party, who shall have two (2) business days to respond. The letter of appeal, all responses to the same, the Hearing Committee's written decision, the Title IX investigative report, and the recording of the hearing (hereinafter referred to as the "Appeal Packet") will be presented by the Chair of the Hearing Committee to the Title IX Discrimination Appeal Committee for consideration.
- D. The Title IX Discrimination Appeal Committee shall be comprised of one (1) student, one (1) faculty member, and (1) staff member selected by the Chancellor or the Chancellor's designee. Each member shall have specific training on sexual discrimination under Title IX, and the Arkansas State University System Title IX policy and Title IX Grievance Procedure. No member of the Hearing Committee may serve on the Appeal Committee for the same formal complaint. The Title IX Appeal Committee shall convene in closed session to consider the Appeal Packet. The Appeal Committee shall use the preponderance of the evidence basis in making its determination on the basis for appeal.
- E. Within ten (10) business days of the receipt of the Appeal Packet, the Appeal Committee shall issue a written recommendation. The Appeal Committee can recommend either that:
 - 1. the bases of appeal are not supported by the Appeal Packet and confirm the decision of the Hearing Committee; or,

2. the bases of appeal are supported by the Appeal Packet, and:

- a. overturn the decision of the Hearing Committee, or
- b. confirm the finding of the Hearing Committee but modify the sanctions or remedial measures ordered by the Hearing Committee.

F. The written recommendation shall state the recommendation of the appeal, and the rationale for the recommendation. The Appeal Committee shall transmit its written decision to the Chancellor. The Chancellor shall have ten (10) business days to review the Appeal Packet and the written recommendation of the Appeal Committee, and issue a written decision accepting or rejecting the recommendation of the Appeal Committee. The Chancellor's decision is final.

All proceedings shall be in closed session. Because the committee will have received the entire file from the Title IX Coordinator including all witness statements, the hearing will not include the grievant, the party complained against, or other witnesses unless either (1) the Committee requests their oral testimony or (2) either party requests to testify and/or present witnesses. In the event that oral testimony is requested, the grievant and the party complained against may be present and question the witnesses. If the grievance is one alleging sexual assault, sexual violence, stalking, domestic violence, or dating violence the parties will not question the other. Instead, the party testifying before the committee shall be screened so that they may be heard by the other party but not seen. The non-testifying party shall have the opportunity to provide written questions to the committee to be asked of the testifying witness based on his or her testimony. The committee may also question any person testifying. Each party may have an advisor present during the testimony who may provide personal consultation but may not actively participate in the hearing. The parties must disclose to the Chair of the Sexual Discrimination Hearing Committee the identity of any testifying witness or any advisor at least two (2) working days before any hearing. The Chair shall provide the list of witnesses to each party upon receipt. No audio or video recording is permitted.

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

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

SEXUAL DISCRIMINATION HEARING COMMITTEE FINDINGS

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

DOCUMENT COLLECTION

When a ~~sexual~~-Title IX discrimination grievance proceeding has been closed, all material relating to that case shall be retained on file by the Title IX Coordinator for seven (7) years. Care will be taken to ensure that no incomplete or inaccurate information pertaining to the grievance is retained in the file. ~~Sexual~~-Title IX discrimination grievance proceedings are considered confidential and no person involved with the grievance may make the documents public except as required or permitted by law.

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EXECUTIVE SUMMARY

Contact: Jeff Hankins (501) 660-1000

ACTION ITEM: The Arkansas State University System seeks approval to mandate the use of face coverings by all persons on each campus within the ASU System.

ISSUE: The Board of Trustees is charged with establishing substantive institutional policies for the operation of the ASU System.

BACKGROUND:

- On July 16, 2020, Arkansas Governor Asa Hutchinson issued an Executive Order (20-43) requiring individual face coverings in all indoor and outdoor settings, unless physical distancing of six feet or more could be maintained.
- Each campus within the ASU System has developed plans and strategies to address the COVID-19 pandemic based upon applicable state and federal guidance.
- The wearing of face coverings has proven to be an effective deterrent to the spread of COVID-19.
- Each campus within the ASU System shall, at a minimum, require students, faculty, staff, and guests in University-operated and -controlled facilities to wear face coverings when physical distancing of six feet or more cannot be maintained.
- In addition, all students and faculty shall be required to wear face coverings during all sessions of classroom instruction, regardless of physical distancing.
- Each campus within the ASU System may develop exceptions to this policy if they are based on public health recommendations, intercollegiate athletics participation requirements, state or federal law, or other applicable state or federal regulatory guidance.
- This System directive will remain in effect until the Board of Trustees rescinds this directive.

RECOMMENDATION/RESOLUTION:

Be it resolved that the Arkansas State University Board of Trustees mandates face coverings on each ASU System campus, as outlined above.

Christy Clark, Secretary

Stacy Crawford, Chair