

Office of the University Provost

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P20: Prohibition Against Discrimination, Harassment, and Retaliation: Complaint and Investigation Procedure

Effective Date: July 1, 1978

Revised Date: May 29, 2015

All ASU campuses shall follow this process for the investigation and resolution of reports of violations of ASU's Prohibition Against Discrimination, Harassment, and Retaliation, ACD 401 (<http://www.asu.edu/aad/manuals/acd/acd401.html>). The purpose of these procedures is (1) to provide all members of the ASU community with a process for making the University aware of potential violations of ACD 401; and (2) to provide assistance and guidance to the Title IX Coordinator and the ASU Office of Equity and Inclusion in carrying out its responsibilities in administering and enforcing Arizona Board of Regents and ASU policies. The University may, from time to time, amend these procedures as necessary.

I. Procedures

A. Reporting of Violations

1. Reports alleging sexual harassment by employees may be made to any employee within the university. All employees, unless precluded by law, are required to immediately disclose any allegation of sexual harassment to the ASU Office of Equity and Inclusion who will coordinate with the Title IX Coordinator. Reports alleging sexual harassment by students may be made to any employee within the university. All employees, unless precluded by law, are required to immediately disclose any allegation of sexual harassment by a student to the Office of Student Rights and Responsibility who will coordinate with the Title IX Coordinator.
2. The Title IX Coordinator shall make a determination on a request for confidentiality, pursuant to ACD 401, within 3 business days of the request.
3. All other reports of violations of ACD 401 may be made to any manager, supervisor, or other administrator. If the person to whom a violation of ACD 401 normally would be reported is the individual accused of any conduct prohibited under ACD 401, reports may be made to another manager, supervisor, or administrator or the Office of Equity and Inclusion. Managers, supervisors, and administrators shall promptly notify the Office of Equity and Inclusion when a report is received. If a student is alleged to have violated ACD 401, a report shall be promptly made to the Office of Student Rights and Responsibilities by the person to whom the report is made.
4. In consultation with the Office of Equity and Inclusion, a supervisor receiving a report of a violation of ACD 401 may take actions needed to establish that there is a reasonable basis to suspect that a violation has occurred in order to confirm the appropriateness of any preliminary evaluation or indicate the need for additional assistance. No department or individual shall enter into any kind of discussion regarding settlement without prior approval from the Office of General Counsel and the Executive Vice President, University Provost or the President.
5. All reports should be made as soon as possible after the alleged violation. Prompt reporting enables the University to investigate the facts, determine the issues and provide an appropriate remedy or action. The ability of the Office of Equity and Inclusion and Title IX Coordinator to investigate complaints could be impacted (e.g. availability of witnesses, preservation of evidence) if a complaint is not filed promptly.
6. Employee relations or collegiality issues shall be addressed through normal supervisory channels and applicable policies.

B. Making a Report

1. With the exception of a faculty member making a complaint of discrimination under the terms set forth in Section C below, a report of a potential violation of ACD 401 may be made verbally or in writing but the person to whom the report is made shall document it with as much information as possible. If the report is not made directly to the Office of Equity and Inclusion or the Title IX Coordinator, then the person to whom the report is made shall notify the Office of Equity and Inclusion or Title IX Coordinator of the report.
2. The University shall respond, to the extent possible, to reports of potential violations of ACD 401 made anonymously or by third parties not directly involved in the alleged violation. However, the response to such reports may be limited if information contained in the report cannot be verified. Anonymous or third-party reports of potential violations of ACD 401 may be addressed through an informal resolution process.
3. Reports of violations of ACD 401 are strongly encouraged to be in writing, setting forth as much information as possible, including:
 - (A) The full name and contact information of the reporting or complaining party;
 - (B) The name of the individual(s) alleged to have violated ACD 401; and

(C) A clear and concise statement of the facts that constitute the alleged violation of ACD 401, including dates and sufficient information to identify any other individuals who may provide information during the course of an investigation.

4. If the Office of Equity and Inclusion determines that the report does not allege possible violations of ACD 401 or that the information provided indicates that further investigation would not result in a finding of a violation of ACD 401, the Office of Equity and Inclusion will, where appropriate, refer the matter to the appropriate unit or department to address any employee relations issues. If such a determination is made the Office of Equity and Inclusion shall notify the reporting individual of the referral and will facilitate contact with the appropriate university representative in the unit or department. Ordinarily, this initial review process will be concluded within 7 business days of the date the complaint was filed. If it is determined that possible violations of ACD 401 have been alleged or that the information provided by the reporting individual indicates that further investigation may result in a finding of violation of ACD 401 then the report will be accepted as a complaint. The Office of Equity and Inclusion and Title IX Coordinator will always consider a report of sexual harassment to be a complaint and initiate an investigation as specified in Section D.

C. Faculty Member Complaints of Discrimination

1. Unless the complaint involves sexual harassment, a faculty member who receives an adverse decision concerning his or her promotion, tenure, nonrenewal, suspension without pay or dismissal for just cause may file a written complaint alleging that the adverse decision was a discriminatory action. This complaint must be filed with the Office of the President within ten (10) days of the faculty member's "receipt of notice" (delivery of written notice of final adverse decision to the last known address by certified return receipt requested mail, deemed received if undeliverable) of the final adverse decision. A faculty member who wishes to report an alleged violation of ACD 401 with respect to any term or condition of employment, other than promotion, tenure, nonrenewal, suspension without pay or dismissal for just cause who does not timely file a complaint with the Office of the President, or who is making a complaint of sexual harassment, must use the procedures specified in Sections A, B, D, E and F herein.
2. Upon receipt of the written complaint of discrimination from the faculty member, the Office of the President will forward the complaint to the Office of Equity and Inclusion to initiate an investigation per the provisions of Section D below.
3. The faculty member and the academic administrator(s) who is alleged to have rendered the adverse employment action on a discriminatory basis will participate in the Informal Resolution Process described in Section E below as an alternate resolution process. This alternate resolution process shall adhere to the timelines specified in ABOR 6-201.M.1.d (<http://www.azregents.edu/policymanual/default.aspx>). If the matter is not resolved through this alternate resolution process, the complaint will be transmitted to the Chair of the Committee on Academic Freedom and Tenure by the Office of Equity and Inclusion.
4. The faculty member's written complaint of discrimination will be heard by the Committee on Academic Freedom and Tenure in accordance with the hearing procedures specified in ABOR 6-201.M.2 (<http://www.azregents.edu/policymanual/default.aspx>). If it is not resolved through the alternate resolution process The president will render a final decision pursuant to the provisions of [ABOR 6-201.M.3 and 4](http://www.azregents.edu/policymanual/default.aspx) (<http://www.azregents.edu/policymanual/default.aspx>).

D. Investigative Process

1. Investigations shall be conducted by the Title IX Coordinator, Office of Equity and Inclusion, or by a designee of the Chief Human Resources Officer as appropriate.
2. Notice of investigation will be provided to the parties. All parties will be given the opportunity to provide information and respond. Additional notice may be provided to individuals with a legitimate need to know, including appropriate administrators including Deans, Directors, Academic or Administrative Unit Heads or Vice Presidents, who may have an obligation to monitor the environment to ensure that retaliatory action does not occur during or after the investigative process.
3. In cases involving allegations of dating violence, domestic violence, sexual assault, or stalking, the parties will be given timely notice of meetings taking place as well as access to information that will be used during any hearings. Parties may be accompanied by an advisor of their choice to meetings. During the investigation process, the advisor can provide support, guidance, and advice but the advisor is not an active participant in the meeting. If the investigation results in disciplinary action for which there is a hearing process, the right to an advisor shall be as set forth in that hearing process.
4. An investigation may include, as needed, the gathering of information, including interviews with individuals who may have information concerning the allegations as set forth in the report and gathering and review of documents as appropriate. At any time during the investigation, the investigator or the Title IX Coordinator may recommend that interim protections or remedies be provided by appropriate University officials. Failure to comply with the terms of interim protections may be considered a separate violation of ACD 401. The investigation shall be completed as promptly as possible and in most cases, within 60 calendar days for complaints of sexual harassment and within 90 calendar days for all other complaints, of the date the investigation is initiated. If more than time is necessary to complete an investigation, then the investigator shall notify the relevant parties. In the event that there is a simultaneous criminal investigation, the investigator will coordinate with law enforcement and determine what, if any, delay is appropriate.

E. Informal Resolution

The Office of Equity and Inclusion will determine when informal resolution may be appropriate. The informal resolution process will not be used for complaints of sexual harassment.

Individuals making reports of violations of ACD 401 may wish to resolve the matter through an informal process or reach a resolution through alternatives to the investigative process. The goal of an informal resolution is to resolve concerns at the earliest stage possible, with the cooperation of all parties involved. Informal resolution is an option when the parties desire to resolve the situation cooperatively.

Means for informal resolution shall be flexible and encompass a full range of possible appropriate outcomes. Informal resolution includes options such as facilitating an agreement between the parties, separating the parties, referring the parties to counseling programs, imposing appropriate remedial action as determined by the University, conducting targeted educational and training programs, and providing remedies for the individual harmed by the violation

of ACD 401. Informal resolution efforts, including any mutually agreed upon outcome, shall be documented.

If a mutually acceptable solution cannot be reached through the informal resolution process, an investigation through the appropriate office will continue to proceed.

F. Reviews of Findings of Violations of ACD 401

1. Upon the completion of the investigation, the investigator shall prepare a written report, including a finding of whether or not a policy violation has occurred. A copy of the written report shall be provided to the University Provost or appropriate vice president or designee for acceptance, rejection or modification of the findings.
2. The University Provost or appropriate vice president or designee shall provide his/her determination to the reporting party, the party accused of violating the policy, the appropriate university administrator, the Office of Equity and Inclusion, and the Title IX Coordinator in cases involving claims of sex discrimination. The determination is final.
3. Disciplinary action will be issued under the applicable procedure for the employment classification of the employee who has been found to have violated ACD 401, i.e. for faculty, at ABOR 6-201.J. and L (<http://www.azregents.edu/policymanual/default.aspx>); for administrators, at ABOR 6-101.H (<http://www.azregents.edu/policymanual/default.aspx>), for academic professional staff, at ABOR 6-302.G. and I (<http://www.azregents.edu/policymanual/default.aspx>), or ACD 508-03 (<http://www.asu.edu/aad/manuals/acd/acd508-03.html>); university staff, at SPP 301 (<http://www.asu.edu/aad/manuals/spp/index.html>), SPP 801, SPP 808; and for classified staff, at SPP 809 (<http://www.asu.edu/aad/manuals/spp/spp809.html>); and, at SPP 901 (<http://www.asu.edu/aad/manuals/spp/spp901.html>).

II. Records Retention

The written report and referenced exhibits developed or created as a result of an investigation, shall be retained by the Office of Equity and Inclusion for the length of the employee's term of employment and for a period of 5 years from the time of separation of employment by the employee. All other related documents, materials and records shall be destroyed in accordance with the records retention policy.

Student records related to or arising out of an investigation by the Office of Student Rights and Responsibilities shall be retained in accordance with student records retention policies and procedures.

For more information, see ACD 401 (<http://www.asu.edu/aad/manuals/acd/acd401.html>): "Prohibition Against Discrimination, Harassment, and Retaliation," ACD 402 (<http://www.asu.edu/aad/manuals/acd/acd402.html>): "Romantic or Sexual Relationships between Faculty and Students,"and ACD 515 (<http://www.asu.edu/aad/manuals/acd/acd515.html>): "Nepotism."

Office of the University Provost

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