

## TITLE IX GRIEVANCE PROCEDURES [Updated 1/20/2022]

Arizona Virtual Academy is committed to providing an environment that is free from all forms of sex discrimination, which includes gender-based discrimination, sexual harassment and sexual violence, as regulated by Title IX, and to insuring the accessibility of appropriate grievance procedures for addressing all complaints regarding all forms of sex discrimination and sexual harassment. Arizona Virtual Academy reserves the authority to address sex discrimination and sexual harassment whenever becoming aware of their potential existence, regardless of whether a complaint has been lodged in accordance with the grievance procedure set forth below. Arizona Virtual Academy reserves the authority to address sex discrimination and sexual harassment even if the same, similar or related circumstances are also being addressed under another policy, whether of Arizona Virtual Academy or another entity. Furthermore, Arizona Virtual Academy reserves the right to pursue sexual misconduct violations that fall outside of the scope of Title IX based on Arizona Virtual Academy judgment that the alleged actions are contrary to any part of its code of conduct.

### **INFORMATION AND ASSISTANCE**

Sex Discrimination and Sexual Harassment means conduct of a sexual nature that meets any of the following:

- Sex discrimination occurs when a person, because of their sex, is denied participation in or the benefits of any education program or activity that receives federal financial assistance.

**Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:

- 1) A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo); or
- 2) Unwelcome conduct that a *reasonable person* would determine is so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the school's education program or activity; or
- 3) Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA). Sexual harassment can be verbal, nonverbal or physical.

Any individual, who believes they may have experienced any form of sex discrimination or sexual harassment, or who believes that they have observed such actions taking place, may receive information and assistance regarding the School's policies and reporting procedures from any of the following:

**Title IX Coordinator:** Kylee Mills/Federal Programs Manager/(480) 228-5519/kmills@k12.com

*Additionally, you may contact the Office of Civil Rights by calling 1-800-421-3481.*

**GRIEVANCE PROCEDURE** Any student, parent/guardian, current or prospective employee or other individual within the school community who believes they have experienced and/or observed and/or is aware of sex

discrimination or sexual harassment (“grievant”) should promptly report the matter to the school’s Title IX Coordinator, a school counselor, principal or other school administrator.

A “**formal complaint**” is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. A “**nonformal complaint**” is any notification regardless if by mail, telephone, or email, not utilizing the formal complaint form or not signed by a complainant or by the Title IX Coordinator.

### **Response to a Formal Complaint**

In response to a formal complaint, the school will follow the defined grievance process within this procedure. With or without a formal complaint, the school, if it has actual knowledge of sexual harassment against a person in an education program or activity, will take certain steps such as offering supportive measures, throughout the grievance process, to the complainant to address student safety and provide equal access to the education program or activity while preserving the recipient’s discretion to address facts or circumstances present by a particular situation.

Complaints of alleged sex discrimination, including sexual harassment, brought forth by students, parents/guardians, current or prospective employees, and other members of the school community will be promptly investigated in an impartial and in as confidential a manner as reasonably possible, so that corrective action can be taken if necessary.

### **Privacy Protections**

The school will never use or attempt to use questions or evidence that is protected by a legally recognized privilege, unless the person holding the privilege waives the privilege.

The school cannot unilaterally access or consider a party’s records, if those records are made or maintained by a physician, psychiatrist, or other recognized professional and made for the purpose of providing treatment to the party. These records can only be accessed with a party’s voluntary written consent.

During the grievance process, questions or evidence about the Complainant’s prior sexual behavior – even with the respondent accused of sexual harassment, and even in the cases where the respondent already possesses evidence about sexual history – are never deemed relevant, with only two narrow and limited exceptions.

### ***The grievance procedures will be as follows:***

1. It is the express policy of Arizona Virtual Academy to encourage the prompt reporting of claims of sex discrimination and/or sexual harassment. Once the school has “actual knowledge” of sexual harassment, or allegations of sexual harassment, the school will respond within 24 hours. “Actual knowledge” means notice or allegations received by Title IX coordinator, school official with authority to institute corrective measures on behalf of the school, or any school employee. The school must treat a person as a complainant any time the school has notice that the person is alleged to be the victim of conduct that could constitute sexual harassment (regardless of whether the person themselves reported, or a third party reported the sexual harassment), and

irrespective of whether the complainant ever chooses to file a formal complaint. Further, it should be noted, there is no time limit or statute of limitations on a complainant's decision to file a formal complaint.

2. At the time the complaint is filed, the grievant shall promptly be given a copy of these grievance procedures and a description of the supportive measures offered by the school. A formal complaint form for such purpose can be found on our website and will also be provided to the grievant upon notification of such complaint. It is the responsibility of the Title IX Coordinator or designee to explain these procedures and measures and answer any questions anyone has. As it pertains to students, in appropriate circumstances, due to the age of the student making the complaint, a parent/guardian or school administrator may be permitted to fill out the form on the student's behalf. In addition, if the grievant is a minor student, the Title IX Coordinator should consider whether a child abuse report should be completed in accordance with Arizona Virtual Academy's policy on the Reports of Suspected Child Abuse or Neglect of Children.
3. The Title IX Coordinator or designee shall investigate the complaint as promptly as practicable but in no case more than ten (10) working days from the date the complaint was received. The Title IX Coordinator or designee shall have the complete cooperation of all persons during the investigation.
4. The Title IX Coordinator will provide written notice to the parties identified in the complaint. The written notice will include, the allegations and facts that may constitute sexual harassment, the presumption of that the accused did not engage in prohibited conduct, notice that parties are entitled to an advisor of their choice, parties can request to inspect and review certain evidence, a copy of the code of conduct, false statements (if any), the opportunity to engage in informal resolution, the right to appeal, the range of possible remedies and disciplinary sanctions following determination of responsibility, and which standard of evidence will be used to reach a determination. During the investigation, Arizona Virtual Academy will not restrict the rights of either party to discuss the allegations under investigation or to gather and present relevant evidence.

Arizona Virtual Academy can choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. As such, the school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. The school will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

5. The Title IX Coordinator or designee shall meet with all individuals reasonably believed to have relevant information, including the grievant and the individual(s) against whom the complaint was lodged, and any witnesses to the conduct. The investigation shall be carried on by the school discreetly, maintaining confidentiality insofar as reasonably possible while conducting an effective investigation. The investigator will objectively evaluate all relevant evidence regardless of who it favors or disfavors. Where facts are in conflict, credibility determinations can be made. However, credibility determinations will not be based on a person's status as a complainant, respondent, or witness. Following the evaluation, the investigator will prepare an investigative report and will share the report with all parties before a determination regarding responsibility is reached.
6. Prior to sharing the investigation report, the Title IX Coordinator must provide all parties a copy of the evidence used to form the basis of the report, and allow all parties 10 days to submit a written response. All written responses received will be objectively reviewed and considered by the school's investigator before issuing the report. Further, the Title IX Coordinator must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
7. Finally, the school's identified decision-maker, not the Title IX Coordinator or investigator, will make a determination and provide written determination of responsibility to both parties simultaneously. The written determination will include:
  - Identification of the allegations potentially constituting sexual harassment as defined in §106.30; 2027
  - A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - Findings of fact supporting the determination;
  - Conclusions regarding the application of the recipient's code of conduct to the facts;
  - A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
  - The recipient's procedures and permissible bases for the complainant and respondent to appeal.

8. If after an investigation, the decision-maker determines that there is reasonable cause to believe that sex discrimination or sexual harassment in violation of the school's policy has occurred, the Arizona Virtual Academy shall take appropriate corrective action in an effort to ensure that the conduct ceases and will not recur. The Title IX Coordinator or designee shall also provide and or arrange for support services that are individualized, non-disciplinary, non-punitive, protect the safety of all parties and educational environment, deter harassment, and are not unreasonably burdensome. Such support services may include, no contact orders, academic accommodations, health and mental health services, disability services, confidential counseling or training where appropriate.

### **Dismissal**

If the allegations in a formal complaint do not meet the definition of sexual harassment, or did not occur in the school's education program or activity against a person in the United States, the school must dismiss such allegations for purposes of Title IX but may still address the allegations in any manner the school deems appropriate under the school's own code of conduct.

Arizona Virtual Academy, at their discretion, may dismiss a formal complaint or allegations if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination. (School Name) must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.

### **Determination**

Arizona Virtual Academy will consistently apply the same "standard of evidence" in all formal complaints, in making a determination of responsibility. Per Title IX regulations, there are two "standard of evidence" options,

- **Preponderance of evidence** – a majority of the evidence proves a fact. Mathematically, it would be more than 50% of the evidence.
- **Clear and convincing evidence** – a heightened standard which requires more than a *preponderance of evidence* to prove a fact. One definition of *clear and convincing* evidence is something that is highly and substantially more probable than not.

Arizona Virtual Academy will apply the following "standard of evidence" **Preponderance of evidence**. The same standard of evidence for formal complaints will be applied for formal complaints against all parties, including but not limited to students, employees, and teachers. All determinations will be rendered within 45 school days from the formal grievance filing.

## **Disciplinary Sanctions and Remedies**

A range of different disciplinary sanctions or remedies may be implemented by the school following a determination of responsibility. Due to the unique nature of the situation and individual needs, the following is a non-exhaustive list of possible actions,

- support services may be warranted and may include, no contact orders, academic accommodations, health and mental health services, disability services, confidential counseling or training where appropriate
- verbal or written warning
- altered schedules to eliminate interaction opportunities
- exclusions from certain school activities
- access to recorded class sessions in lieu of live participation
- suspension or expulsion

## **Appeal Process**

Under § 106.45(b)(1)(viii), all parties have the right to appeal for specified reasons. Appeals must be submitted within 30 school days following the initial determination. This equal right amongst the accuser and accuse will promote a fair process that will benefit everyone and ensure parity between the parties. Thus, when a complainant or a respondent disagrees with a decision of responsibility, they have the right to appeal on the basis of the following conditions:

- (1) procedural irregularity that affected the outcome;
- (2) new evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome; or
- (3) the Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome

Upon receipt of a written appeal request with evidence of one or more of the above conditions, the Title IX Coordinator will

- notify the parties in writing and implement appeal procedures equally,
- provide both parties the equal opportunity to submit a written statement of support or disagreement to the appeal,
- identify a new and impartial decision-maker to review the original and newly submitted evidence, and
- after reviewing the new written statements, the new decision-maker will issue a decision to the parties simultaneously within 20 school days.

The determination regarding responsibility becomes final either on the date that the investigator provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Where deadlines are set forth in the grievance process, a temporary delay of the grievance process or the limited extension of time frames for good cause are permitted with written notice by the Title IX Coordinator to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include, but are not limited to, considerations such as the absence of a party or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

### **Record Retention**

The Title IX Coordinator shall make all records of Title IX complaints and their disposition for a period of seven years.

### **Retaliation**

Retaliation against an individual for filing a complaint or cooperating in an investigation is strictly prohibited, and Arizona Virtual Academy will take actions necessary to prevent such retaliation.

### **DISSEMINATION OF INFORMATION**

Arizona Virtual Academy must provide name, title, contact information of the identified Title IX Coordinator on the school's website. Further, the school shall notify applicants for admission and employment, students, parents/guardians of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or other professional organizations with a collective bargaining agreement with the institution that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that it is required by Title IX and its administrative regulations not to discriminate in such a manner. The notification shall be made in the form and manner required by law or regulation.