

Austin Peay State University **Equal Opportunity, Harassment, and Nondiscrimination Policy for all Faculty, Students, Staff, Applicants and Third Parties**

POLICIES **Issued:** ~~February 28, 2023~~
Responsible Official: Chief Diversity Officer/Title IX Coordinator
Responsible Office: Office of Equity, Access, & Inclusion

Policy Statement

It is the policy of Austin Peay State University to ensure compliance with federal and state civil rights laws and regulations and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Austin Peay State University (APSU) has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment based on protected class status, and for allegations of retaliation.

Purpose

The purpose of this policy is to provide a workplace and educational environment, as well as other benefits, programs, and activities that are free from discrimination, harassment, and retaliation. APSU values and upholds the equal dignity of all members of its community and strives to balance the parties' rights in the grievance process during what is often a difficult time for all those involved.

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Definitions

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| Actual Knowledge | Notice of sexual harassment or allegations of sexual harassment to an APSU's Title IX Coordinator or any APSU official who has authority to institute corrective measures on behalf of APSU. This definition is not met when the only APSU official with actual knowledge is also the respondent. |
| Advisor | A person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, advise the party on that process, and conduct cross-examination for the party at the hearing, if any. |
| Complainant | An individual is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class or retaliation for engaging in a protected activity. |
| Complaint (formal) | A document filed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that Austin Peay State University investigate the allegation. As used in this definition, the phrase "document filed by the Complainant" means a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint. |
| Confidential Resource | An employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status). |
| Deliberately Indifferent | A response that is clearly unreasonable in light of the known circumstances. |
| Directly Related Evidence | Evidence connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report. |
| Educational Program or Activity | Locations, events, or circumstances where APSU exercises substantial control over both the Respondent and the context in which the harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by APSU. |

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| Final Determination | A conclusion by the preponderance of evidence standard that the alleged conduct did or did not violate policy. |
| Finding | A conclusion by the preponderance of evidence standard that the conduct did or did not occur as alleged (as in a finding of fact). |
| Formal Grievance Process | A formal resolution designated by APSU to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45). |
| Grievance Process Pool | Includes any investigators, hearing officers, appeal officers, and advisors who may perform any or all of these roles (though not at the same time or with respect to the same case). |
| Hearing Panel/Decision Makers | Refers to those who have decision-making and sanctioning authority within APSU's Formal Grievance process. |
| Investigator(s) | The person or persons charged by APSU with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence. |
| Mandated Reporter | An employee of APSU who is obligated to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator. ¹ |
| Official with Authority (OWA) | An employee of APSU explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of APSU. |
| Parties | The Complainant(s) and Respondent(s), collectively. |
| Recipient | A postsecondary education program that is a recipient of federal funding. |
| Relevant Evidence | Evidence that tends to prove or disprove an issue in the complaint. |

¹ Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

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| Remedies | Post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to APSU’s educational program. |
| Resolution | The result of an Informal or Formal Grievance Process. |
| Respondent | An individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class or retaliation for engaging in a protected activity. |
| Sanction | A consequence imposed by APSU on a Respondent who is found to have violated this policy. |
| Sexual Harassment | The umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. See Policy on Discriminatory Harassment section, letter b. for details. |
| Title IX Coordinator | The official designated by APSU to ensure compliance with Title IX and APSU’s Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks. |
| Title IX Team | The Title IX Coordinator, Deputy Title IX Coordinator(s), and any member of the Grievance Process Pool. |

Content

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| Applicable Scope | <p>The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to resolution using APSU’s Resolution Process as detailed below.</p> <p>When the Respondent is a member of the APSU community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the APSU community. This community includes, but is not limited to,</p> |
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**The Office of Equity,
Access, & Inclusion**

students,² student organizations, faculty, administrators, staff, and third parties such as sub-contractors, guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, patterns, and/or the campus climate, all of which may be addressed and investigated under this policy as deemed appropriate by APSU.

The Office of Equity, Access, & Inclusion oversees the implementation of APSU's annual Affirmative Action Plan, disability compliance, and APSU's policy on equal opportunity, harassment, and nondiscrimination. The Office of Equity, Access, & Inclusion (OEAI) also has the primary responsibility for coordinating APSU's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

The Director of Equal Opportunity and Affirmative Action has been designated as the Title VI Coordinator and the Equal Employment Opportunity/Affirmative Action (EEO/AA) officer for the University.

LaNeece R. Williams is the Title IX Coordinator for the University. See contact information in the Right to an Advisor section.

**Independence and Conflict-
of-Interest**

The Office of Equity, Access, & Inclusion acts independently and responsibly, free from bias and conflicts of interest. The Chief Diversity Officer/Title IX Coordinator and the Director of Equal Opportunity and Affirmative Action/Deputy Title IX Coordinator oversees all resolutions under this policy and these procedures.

The Title IX Coordinator manages the Title IX Team (e.g., Investigators, Decision-Makers, and Advisors). The members are vetted and trained to ensure they are not biased for or against any party in a specific case or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Chief Diversity Officer/Title IX Coordinator, contact APSU's President at jacksonlp@apsu.edu or (931) 221-7566. To raise any concerns of bias or a potential conflict of interest by the Director of Equal Opportunity and Affirmative Action/Deputy Title IX

² For the purpose of this policy, APSU defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with APSU.

Coordinator or any other Title IX Team member, contact the Chief Diversity Officer/Title IX Coordinator at williamslr@apsu.edu or (931) 221-7267.

Reports of misconduct or discrimination committed by the Director of Equal Opportunity and Affirmative Action/Deputy Title IX Coordinator should be reported to the Chief Diversity Officer/Title IX Coordinator at williamslr@apsu.edu or (931) 221-7267. Reports of misconduct or discrimination committed by the Chief Diversity Officer/Title IX Coordinator should be reported to APSU's President at jacksonlp@apsu.edu or (931) 221-7566.

Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

LaNeeça R. Williams
Chief Diversity Officer
Title IX Coordinator
Office of Equity, Access, & Inclusion
416 College Street, Room 116
(931) 221-7267
Email: williamslr@apsu.edu
Web: <https://apsu.edu/equity-access/index.php>

Sheila M. Bryant
Director of Equal Opportunity & Affirmative Action
ADA/Title VI Coordinator
Deputy Title IX Coordinator
Office of Equity, Access, & Inclusion
416 College Street, Room 121
(931) 221-7267
Email: bryantism@apsu.edu
Web: <https://apsu.edu/equity-access/index.php>

APSU has determined that the following administrators are Officials with Authority to address and correct harassment, discrimination, and/or retaliation. In addition to the administrators listed above, these Officials with Authority listed below may also accept notice or complaints on behalf of Austin Peay State University.

Michael Licari
University President
(931) 221-7571

jacksonlp@apsu.edu

Maria Cronley
Provost and Senior Vice President for Academic Affairs
(931) 221-1016
acadaffairs@apsu.edu

Dannelle Whiteside
Vice-President for Legal Affairs and Organizational Strategy
(931) 221-7580
whitesided@apsu.edu

Gerald Harrison
Vice-President and Director of Athletics
(931) 221-7904
harrisongj@apsu.edu

Greg Singleton
Interim Vice President for Student Affairs/Dean of Students
(931) 221-7341
halliburtonl@apsu.edu

Shahrooz Roohparvar
Vice President for Finance and Administration
(931) 221-7883
financeAdmin@apsu.edu

Niesha Campbell
Deputy Director of Athletics & Senior Woman Administrator
(931) 221-7203
campbelln@apsu.edu

Complaints may also be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Equal Employment Opportunity Commission (EEOC)
Nashville Area Office
220 Athens Way Suite 350

Nashville, TN 37228-9940
Phone: (800) 669-4000
Facsimile: (615) 736-2107
TTY: (800) 669-6820
ASL Video Phone: (844) 234-5122

Tennessee Human Rights Commission
312 Rosa L. Parks Avenue, 23rd Floor
Nashville, TN 37243-1102
Toll Free: (800) 251-3589
Phone: 615-741-5825
Fax Numbers: 615-253-1886 | 615-532-2197
ask.thrc@tn.gov

**Notice/Complaints of
Discrimination,
Harassment, or Retaliation**

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options.

1. File a complaint with, or give verbal notice to, the Chief Diversity Officer/Title IX Coordinator, the Director of Equal Opportunity & Affirmative Action/Deputy Title IX Coordinator, Mandated Reporters, and Officials with Authority. (Please refer to the Right to an Advisor section of this policy for contact information.) Such a report may be made at any time (including during non-business hours) by completing the online complaint form, by using the telephone number or email address, or by mail to the office address listed, or to the office address of any officials listed in Right to an Advisor section.
2. Report online using the reporting form posted at https://cm.maxient.com/reportingform.php?AustinPeayStateUniv&layout_id=64.

Anonymous reports are accepted, but the amount and level of detail may affect APSU's ability to respond. Additionally, APSU tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as APSU respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control. The Complainant should not fear a loss of privacy by making a report that allows APSU to discuss and/or provide supportive measures.

Supportive Measures

Austin Peay State University (APSU) will offer and implement appropriate and reasonable supportive measures to the parties

upon notice of alleged harassment, discrimination, and/or retaliation.

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

The Office of Equity, Access, & Inclusion promptly works to make supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, APSU will inform the Complainant, in writing, that they may file a formal complaint with APSU either at that time or in the future if they have not done so already. The Office of Equity, Access, & Inclusion works with the Complainant to ensure that their wishes are considered concerning the supportive measures that are planned and implemented.

APSU will strive to maintain the privacy of the supportive measures, provided that privacy does not impair APSU's ability to provide the supportive measures. APSU will act to ensure as minimal an academic/occupational impact on the parties as possible. APSU will work to implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties

- Academic support, extensions of deadlines, or another course/program-related adjustments
- Trespass Orders
- Timely Warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no-contact orders will be referred to the appropriate student or employee conduct processes for enforcement.

Emergency Removal

Austin Peay State University can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. The Title IX Coordinator, in conjunction with the CARE Team, using its standard objective violence risk assessment procedures perform this risk analysis.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator or Deputy Title IX Coordinator before such action/removal is imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within seven (7) days, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Chief Diversity Officer/Title IX Coordinator determines it is equitable to do so. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Chief Diversity Officer/Title IX Coordinator or Director of EE/AA Deputy Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal

before the meeting to allow for adequate preparation.

The Office of Equity, Access, & Inclusion, in consultation with Legal Affairs and the appropriate Senior Level Administrator, will determine whether to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

Austin Peay State University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns.

As determined by the Office of Equity, Access, & Inclusion and the appropriate Senior Level Administrator, these actions could include, but are not limited to:

- removing a student from a residence hall,
- temporarily re-assigning an employee,
- restricting a student's or employee's access to or use of facilities or equipment,
- allowing a student to withdraw or take grades of incomplete without financial penalty,
- authorizing an administrative leave (student or employee),
- and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

As determined by the Office of Equity, Access, & Inclusion in consultation with the Division of Academic Affairs, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Where the Respondent is an employee, existing provisions for Interim Actions are applicable.

Promptness

All allegations are acted upon promptly by APSU once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but APSU will try to avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in APSU's procedures will be delayed, APSU will provide written notice to the parties of the delay, the cause of the delay, and an

estimate of the anticipated additional time that will be needed as a result of the delay.

Privacy

Every effort is made by APSU to preserve the privacy of reports.³ APSU will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation, Complainant, any individual who has been reported to be the perpetrator of sex discrimination, Respondent, or any witness, except as permitted or required by law including but not limited to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, 34 CFR part 99; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

Austin Peay State University reserves the right to designate which APSU officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to:

- Office of Equity, Access, & Inclusion
- Office of Legal Affairs
- Office of Human Resources (if employees are involved)
- Division of Student Affairs (if a student is involved)
- Supervisors and Senior Level Administrators (employees)
- Office of Student Counseling Services

³ For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of APSU's employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the University's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"). The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. APSU has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see page 31. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

- Campus Police (as appropriate)
- CARE TEAM (as appropriate)

Information will be shared with Investigators, Hearing Panel Members/Decision Makers, witnesses, and the parties. The circle of people with this knowledge will be limited to preserve the parties' rights and privacy.

Jurisdiction

This policy applies to the education program and activities of Austin Peay State University, to conduct that takes place on the campus or on property owned or controlled by APSU, at APSU's sponsored events, or in buildings owned or controlled by APSU's recognized student organizations. The Respondent must be a member of APSU's community for its policies to apply.

This policy can also apply to the effects of off-campus misconduct that effectively deprive someone of access to APSU's educational program. The University may also extend jurisdiction to off-campus and/or to online conduct when the Chief Diversity Officer Title IX Coordinator or Director of Equal Opportunity & AA/Deputy Title IX Coordinator determines that the conduct affects a substantial University interest.

Regardless of where the conduct occurred, APSU will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial University interest includes but is not limited to:

1. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
2. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
3. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
4. Any situation that is detrimental to the educational interests or mission of the University.

If the Respondent is unknown or is not a member of the APSU community, the Office of Equity, Access, & Inclusion will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the APSU's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Office of Access, Equity, & Inclusion.

In addition, the University may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from APSU's property and/or events.

All vendors serving APSU through third-party contracts are subject to these policies and procedures.

When the Respondent is enrolled in or employed by another institution, the Office of Equity, Access, & Inclusion (OEAI) can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, OEAI may be able to advocate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or another environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Office of Equity, Access, & Inclusion (OEAI), with exception of complaints filed under Title VI. However, if the Respondent is no longer subject to the University's jurisdiction and/or a significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Office of Equity, Access, & Inclusion in consultation with the Office of Legal Affairs, who may document allegations for future reference, offer supportive

measures and/or remedies, and/or engage in informal or formal action, as appropriate.

Complaints under Title VI of the Civil Rights Act of 1964, as amended (i.e., prohibits discrimination and harassment based on race, color, or national origin,) must be brought within 180 days of the last incident of discrimination or harassment.

When notice/complaint is affected by significant time delay, Austin Peay State University will typically apply the policy at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

Online Harassment and Misconduct

The policies of Austin Peay State University are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on Austin Peay State University's education program and activities or use of University networks, technology, or equipment.

Although APSU may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to APSU, APSU endeavors to engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content social media, unwelcome sexual based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the APSU community.

Any online postings or other electronic communication by students and employees, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of APSU's control (e.g., not on the University networks, websites, or between University email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption.

Policy on Nondiscrimination

Austin Peay State University adheres to all federal and state civil rights laws and regulations prohibiting discrimination in public institutions of higher education.

Austin Peay State University does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of:

- Age
- Color
- Creed
- Disability Status
- Ethnicity
- Gender Expression
- Gender Identity
- National Origin
- Pregnancy
- Race
- Religion
- Sex
- Sexual Orientation
- Veteran Status
- 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, with the Equal Employment Opportunity Commission, or other human rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the APSU community whose acts deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of the University community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of APSU's policy on nondiscrimination.

When brought to the attention of APSU, any such discrimination will be promptly and fairly addressed and remedied by the University according to the grievance process described below.

**Policy on Disability
Discrimination and
Accommodation**

Austin Peay State University is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the University, 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.

The Director of Equal Opportunity and Affirmative Action has been designated as Austin Peay State ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status and/or accommodations will be addressed using the procedures below. For details relating to disability accommodations in APSU's resolution process, see Resolution Process For Alleged Violations of The Policy on Equal Opportunity, Harassment, and Nondiscrimination, letter NN.

a. Students with Disabilities

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

All accommodations are made on an individualized basis. A student requesting any accommodation should contact the Office of Disability Services (ODS) at (931) 221-6230 or Disabilityservices@apsu.edu. ODS coordinates all services for students with disabilities.

ODS reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s).

b. Employees with Disabilities

Pursuant to the ADA, APSU will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to the University.

An employee with a disability is responsible for submitting a request for an accommodation to the Director of Equal Opportunity and Affirmative Action/ADA/504 Coordinator and providing necessary documentation. The Director of Equal Opportunity and Affirmative Action/ADA/504 Coordinator will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties. For details in reference to this interactive process, please see the following website: <https://apsu.edu/equity-access/disabilities/index.php>.

Policy on Discriminatory Harassment

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. Austin Peay State University's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under APSU policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of University policy, though supportive measures may be offered to those impacted. All policies encompass actual or attempted offenses.

A. Discriminatory Harassment

Discriminatory harassment constitutes a form of discrimination that is prohibited by Austin Peay State University policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

APSU does not tolerate discriminatory harassment of any employee, student, applicant, contractor, sub-contractor, visitor, or guest. APSU will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment." A hostile environment is one

that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.⁴ This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive *and* objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, APSU may also impose sanctions on the Respondent through application of the grievance process below.

Austin Peay State University reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under APSU policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternate Resolution, and/or other informal resolution mechanisms.

B. Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Tennessee regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Austin Peay State University has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community.

Pursuant to T.C.A. § 49-7-2406, for purposes of allegations of sexual harassment where both the accused and the accuser are students, sexual harassment is defined as unwelcome conduct directed toward a person on the basis of sex that is so severe pervasive and objectively offensive that it effectively bars the accuser's access to an educational opportunity or benefit.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

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

⁴ This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: [Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students At Educational Recipients Investigative Guidance.](#)

Conduct on the basis of sex that satisfies one or more of the following:

1. Quid Pro Quo:
 - a. an employee or student of APSU,
 - b. conditions the provision of an aid, benefit, or service of APSU,
 - c. on an individual's participation in unwelcome sexual conduct; and/or

2. Sexual Harassment:
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, and
 - d. pervasive, and,
 - e. objectively offensive,
 - f. that it effectively denies a person equal access to APSU's education program or activity.⁵

3. Sexual assault, defined as:
 - a. Sex Offenses, Forcible:
 - Any sexual act directed against another person,
 - without the consent of the Complainant,
 - including instances in which the Complainant is incapable of giving consent.
 - b. Sex Offenses, Non-forcible
 - Incest
 - Statutory Rape

Sex Offences, Forcible include:

Forcible Rape:

- Penetration, no matter how slight,
- of the vagina or anus with any body part or object, or
- oral penetration of or by a sex organ of another person,
- without the consent of the Complainant.

⁵ Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

- including instances in which the Complainant is incapable of giving consent.

Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly, and/or against that person's will (non-consensually), or
- not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age⁶ or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate, however slightly,
- the genital or anal opening of the body of another person,
- forcibly, and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Forcible Fondling:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly, and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sex Offenses, Non-forcible include:

Incest:

- Non-forcible sexual intercourse,
- between persons who are related to each other,

⁶ Per state law.

- within the degrees wherein marriage is prohibited by Tennessee law.

Statutory Rape:

- Non-forcible sexual intercourse,
- with a **child** who is between the ages of 13 and 18-years-old by someone who is at least four years older. This is the case even if both people are willing participants in the interaction as the legal age for consent in the state is 18-years-old. TCA 39-13-506

4. Dating Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - The existence of such a relationship shall be determined based on consideration of the following factors: 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.

5. Domestic Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or

- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Tennessee or
- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Tennessee.

***To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- 6. Stalking, defined as:
 - a. engaging in a course of conduct,
 - b. on the basis of sex,
 - c. directed at a specific person, that
 - 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 conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

C. Consensual Relationship

Intimate relationships between supervisors and their subordinates and between faculty [or staff members with direct or indirect authority of perceived authority over](#) ~~and a~~ [students create a](#)

~~conflict of interest are strongly discouraged~~ due to the inherent inequality of power in such situations. These relationships could lead to undue favoritism or the perception of undue favoritism, abuse of power, compromised judgment, or impaired objectivity.

Nothing in this policy should be construed as prohibiting the spouse of a faculty or staff member from enrolling as a student. Nothing in this policy should be construed as prohibiting the spouse of a student from accepting employment as a faculty or staff member. Graduate students may be considered staff members when acting in their role as employees.

Undergraduate and Graduate Students:

Any sexual or amorous relationship between a student (undergraduate or graduate) and a ~~Engaging in a consensual relationship with a student over whom the~~ faculty or staff member with direct or indirect authority or perceived authority, including ~~has either~~ grading, supervisory, or other evaluative authority (i.e., member of dissertation committee, thesis director, etc.), ~~constitutes a conflict of interest over that student is prohibited at~~ Austin Peay State University. The faculty or staff member must take steps to remove the conflict by assigning a different supervisor to the student; resigning from the student's academic committees; or by terminating the relationship, at least while the student is in his/her class.

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Relationships Between Employees:

~~Likewise, i~~It is a conflict of interest for a supervisor to engage in a consensual relationship with a subordinate over whom he/she has evaluative or supervisory authority. The supervisor must take action to resolve the conflict of interest by, for example, assigning another individual to supervise and/or evaluate the subordinate.

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Violation of Policy:

APSU reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy or provision.

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D. Force, Coercion, Consent, and Incapacitation⁷

⁷ Incapacitation" means that a person lacks the ability to actively agree to sexual activity because the person is asleep, unconscious, under the influence of an anesthetizing or intoxicating substance such that the person does not have control over their body, is otherwise unaware that sexual activity is occurring, or their mental, physical, or developmental abilities renders them incapable of making a rational informed judgment. Incapacitation is not the same as legal intoxication. A person violates this Policy when they engage in sexual activity with another person

As used in the offenses above, the following definitions and understandings apply:

Force:

Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion:

Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent is:

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

Individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

who is Incapacitated under circumstances in which a reasonable person would have known the other person to be Incapacitated.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on APSU to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM⁸ or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so APSU’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known”

⁸ Bondage, discipline/dominance, submission/sadism, and masochism.

is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they cannot give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

E. Other Civil Rights Offenses

Austin Peay State University additionally prohibits the following offenses as forms of discrimination when the act is based upon the Complainant’s actual or perceived membership in a protected class.

1. Sexual Exploitation, as defined: as taking nonconsensual or abusive sexual advantage of another for their benefit or the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy.
2. 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.
3. Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
4. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
5. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the APSU community, when related to admission, initiation, pledging, joining, or any other group-affiliation activity.

Retaliation

Protected activity under this policy includes but may not be limited to reporting an incident that may implicate this policy, participating in a grievance process, supporting a Complainant or

Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Office of Equity, Access, & Inclusion and will be promptly investigated and, if applicable, go through the appropriate grievance process. APSU is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

APSU and any member of APSU's community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual to interfere with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

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

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

Mandated Reporting

All Austin Peay State employees (faculty, staff, and administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions.

To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them

with resources to report crimes and/or policy violations, and these employees should immediately pass reports to the Office of Equity, Access, & Inclusion (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

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

a. Confidential Resources

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- On-campus Victim Advocates
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination
- Off-campus (non-employees):
 - Licensed professional counselors and other medical providers
 - Local rape crisis counselors
 - Domestic violence resources
 - Local or state assistance agencies
 - Clergy/Chaplains
 - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of the immediacy of threat or danger or abuse of a minor or when required to disclose by law or court order.

Campus counselors (for students) and the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

APSU employees who are confidential resources will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

b. **Mandated Reporters and Formal Notice/Complaints**

All employees of Austin Peay State University, except those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Office of Equity, Access, & Inclusion all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Office of Equity, Access, & Inclusion.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by employees unless the Complainant indicates that they desire a report to be made or a seek a specific response from APSU. Supportive measures may be offered as the result of such disclosures without formal University action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of University policy and can be subject to disciplinary action for failure to comply.

Finally, it is important to clarify that a Mandated Reporter who is a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Office of Equity, Access, & Inclusion. The request will be evaluated in light of the duty to ensure the safety of the campus and to comply with state or federal law.

In consultation with Legal Affairs, the Office of Equity, Access, & Inclusion will determine whether the University will proceed when the Complainant does not wish to do so, and the Chief Diversity Officer/Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The decision will be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors and/or elderly, use of weapons, and/or violence. APSU may be compelled to act on alleged employee or student misconduct irrespective of a Complainant's wishes.

The Chief Diversity Officer/Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a Formal Grievance Process fairly and effectively.

When the Chief Diversity Officer/Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When the University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

Note that the University's ability to remedy and respond to notice may be limited if the Complainant does not want APSU to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible while balancing the University's obligation to protect its community.

**Federal Timely Warning
Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery

Act, Austin Peay State University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

Austin Peay State University will ensure that a Complainant's name and other identifying information are not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

False Allegations and Evidence

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under APSU policy.

Amnesty for Complainants and Witnesses

The Austin Peay State University community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to University officials or participate in grievance processes because they fear that they may violate certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the University community that Complainants choose to report misconduct to University officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Austin Peay State University maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident. Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution.

Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities – must report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias-motivated primary crime, larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA⁹-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include student affairs/student conduct staff, campus law enforcement/public safety/security, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

Preservation of Evidence

The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders, and is particularly time-sensitive. Austin Peay State University will inform the Complainant of the importance of preserving evidence by taking the following actions:

- a. Seek forensic medical assistance at Tennova Healthcare - Clarksville, ideally within 120 hours of the incident (sooner is better).
- b. Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- c. Try not to urinate.

⁹ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

- d. If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing your teeth.
- e. If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence).
- f. Seeking medical treatment can be essential even if it is not to collect forensic evidence.

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

**Resolution Process for
Alleged Violations of The
Policy on Equal
Opportunity, Harassment,
And Nondiscrimination**

A. Overview

Austin Peay State University will act on any formal or informal notice/complaint of a violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination (“the Policy”) that is received by the Office of Equity, Access, & Inclusion, a trained designee or any Official with Authority by applying the appropriate procedures outlined in this policy.

The appropriate procedures below apply to all allegations of harassment or discrimination based on protected class status involving students, staff, administrators, faculty members, applicants, and contractors.

Complaints of sexual harassment that fall under Title IX should be addressed using procedures first outlined in this policy. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations will proceed using the Process B grievance procedures, clarifying which policies above are applicable.

When a person reports sex discrimination, as opposed to sexual harassment, APSU will follow the grievance Process B procedures. Where a person alleges both sex discrimination and sexual harassment committed against a person in the US, APSU will follow its procedures and policies for responding to a formal complaint of sexual harassment using the Title IX procedures. If the formal complaint is dismissed at any point in the process, APSU may follow its grievance Process B procedures.

The applicable Process B procedures below may be used to address collateral misconduct arising from the

investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the student handbook, in faculty disciplinary policy, and in staff disciplinary policy as appropriate.

The University Attorney shall always be consulted before and throughout the resolution process. The resolution process will be under the auspices of the Office of Legal Affairs.

B. Notice/Complaint

Upon receipt of a complaint or notice of an alleged violation of the Policy, Austin Peay State University initiates a prompt initial assessment to determine the next steps the University needs to take.

Austin Peay State University will initiate at least one of three responses:

- Offering supportive measures because the Complainant does not want to proceed formally; and/or
- An informal resolution; and/or
- A Formal Grievance Process including an investigation and a hearing.

The investigation and grievance process will determine whether or not the Policy has been violated. If so, APSU will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, its potential recurrence, its effects.

C. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator/Deputy Title IX Coordinator¹⁰ engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

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

- If notice is given, the Chief Diversity Officer/Title IX Coordinator or the Director of Equal Opportunity & Affirmative Action/Deputy Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
 - If they do not wish to do so, the Chief Diversity Officer/Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Office of Equity, Access, & Inclusion will assess its sufficiency and work with the Complainant to make sure it is correctly completed.
- The Chief Diversity Officer/Title IX Coordinator or Designee reaches out to the Complainant to offer supportive measures.
- The Chief Diversity Officer/Title IX Coordinator or Designee works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Chief Diversity Officer/Title IX Coordinator or the Director of Equal Opportunity & AA/Deputy Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
 - If a supportive and remedial response is preferred, the Chief Diversity Officer/Title IX Coordinator or Designee works with the Complainant to identify their wishes and then seeks to facilitate implementation. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later if desired.
 - If an informal resolution option is preferred, in consultation with the University Attorney, the Chief Diversity Officer/Title IX Coordinator or the Director of Equal Opportunity & AA/Deputy Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may seek to determine if the

Respondent is also willing to engage in informal resolution.

- If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX.
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate issue, based on the nature of the complaint.
 - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policy or policies to apply, and proceed to process the complaint under the University’s resolution process.

1. Violence Risk Assessment

In many cases, the Title IX Coordinator/Deputy Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the CARE Team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent based on immediate threat to physical health/safety;
- Whether the Chief Diversity Officer/Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of the incident and/or pattern and/or climate;

- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal from the university by the Respondent;
- Whether to impose transcript notation or communicate with a transfer University about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning/Trespass order is needed.

A VRA authorized by the Title IX Coordinator/Deputy Title IX Coordinator should occur in collaboration with the CARE Team. Where a VRA is required by the Title IX Coordinator/Deputy Title IX Coordinator, a Respondent's refusal to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

2. Dismissal (Mandatory and Discretionary)¹¹

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

- The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
- The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student

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

- organizations), and/or the University does not have control of the Respondent; and/or
- The conduct did not occur against a person in the United States; and/or
 - At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the University.

Austin Peay State University may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- A Complainant notifies the Office of Equity, Access, & Inclusion in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- The Respondent is no longer enrolled in or employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

D. Counterclaims

Austin Peay State University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, also made for purposes of

retaliation, instead. Counterclaims made with retaliatory intent will not be permitted.

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

Counterclaims may also be resolved through the same investigation as the underlying allegation, after consultation with the Office of Legal Affairs. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

E. Right to an Advisor

The parties may each have an Advisor¹² of their choice present with them for all meetings and interviews within the resolution process if they so choose. The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.¹³

Choosing an Advisor who is also a witness in the process creates the potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Decision-makers.

1. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the University community.

The Office of Equity, Access, & Inclusion 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 the University, the Advisor will be trained by the University, and be familiar with

¹² This could include an attorney, advocate, or support person. The law permits one Advisor for each party.

¹³ “Available” means the party cannot insist on an Advisor who simply doesn’t have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

the University resolution process.

If the parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with the universities resolution process.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, before a hearing.

2. Advisor's Role in Meetings and Interviews

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Austin Peay State University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney.

The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-makers except during a hearing proceeding, or during cross-examination. The Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview.

3. Advisors in Hearings/University-Appointed Advisor

Under U.S. Department of Education regulations applicable to Title IX, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, Austin Peay State University will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

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

4. Pre-Interview Meeting

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Austin Peay State University's policies and procedures.

5. Advisor Violations of University Policy

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-makers except during a hearing proceeding, or during cross-examination.

The parties are expected to ask and respond to questions on their behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for a private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Chief Diversity Officer/Title IX

Coordinator will determine how to address the Advisor's non-compliance and future role.

6. Sharing information with the Advisor

Austin Peay State University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

The University also provides a consent form that authorizes the University to share such information directly with its Advisor. The parties must either complete and submit this form to the Office of Equity, Access, & Inclusion or provide similar documentation demonstrating consent to a release of information to the Advisor before APSU can share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, the University will comply with that request as directed by the Office of Legal Affairs.

7. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Austin Peay State University. The University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

8. Expectations of an Advisor

Austin Peay State University generally expects an Advisor to adjust their schedule to allow them to attend University meetings when planned but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The University may also make reasonable provisions to allow an Advisor who cannot attend in person to

attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

9. Expectations of the Parties respect concerning Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Office of Equity, Access, & Inclusion if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Office of Equity, Access, & Inclusion of the identity of their hearing Advisor at least two (2) business days before the hearing.

F. Title IX Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings by Austin Peay State University policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their knowledge and evidence with others if they so choose except information the parties agree not to disclose related to Informal Resolution, discussed below. The University encourages parties to discuss any sharing of information with their Advisors before doing so.

1. Informal Resolution

Austin Peay State University does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

An informal resolution process will not be offered unless a formal complaint is filed.

Informal Resolution can include three different approaches:

- When the Office of Equity, Access, & Inclusion can resolve the matter informally by providing supportive measures to remedy the situation.
- When the parties agree to resolve the matter through an alternate resolution mechanism usually before a formal investigation takes place or at any time before reaching a determination regarding responsibility.
- When the Respondent accepts responsibility for violating policy and desires to accept a sanction and end the resolution process.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above, and to indicate that they would like to do so. If a Respondent wishes to initiate Informal Resolution, they should contact the Office of Equity, Access, & Inclusion to indicate that they would like to do so.

It is not necessary to pursue Informal Resolution first to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Before implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University.

Under the direction of the Office of Legal Affairs, the Office of Equity, Access, & Inclusion will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

2. Alternate Resolution Mechanism

Alternate Resolution is an informal mechanism, by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution Mechanism.

In consultation with the Office of Legal Affairs, The Office of Equity, Access, & Inclusion may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Cleared violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of complaint;
- Complaint complexity;
- Emotional investment/intelligence of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether an Alternate Resolution is available or could be successful is to be made by the Office of Equity, Access, & Inclusion in consultation with the Office of Legal Affairs. The Office of Equity, Access, & Inclusion maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

3. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Office of Equity, Access, & Inclusion will determine

whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, in consultation with the Office of Legal Affairs, the Office of Equity Access, & Inclusion will determine whether all parties and Austin Peay State University can agree on responsibility, sanctions, and/or remedies. If so, the Office of Equity, Access, & Inclusion implements the accepted finding that the Respondent violates University policy and implements agreed-upon sanctions and/or remedies, in coordination with another appropriate administrator (s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed-upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

4. Negotiated Resolution

Austin Peay State University with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the University. Negotiated Resolutions are not appealable.

G. Title IX Grievance Process Pool

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

1. Pool Member Roles

Members of the Pool are trained annually, and can serve in the following roles:

- To provide an appropriate intake of and initial

- guidance about complaints
- To act as an Advisor to the parties
- To perform or assist with an initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-Maker regarding the complaint
- To serve as an Appeal Decision-Makers

2. Pool Member Training

The Pool members receive annual training based on their respective roles. This training includes, but is not limited to:

- The scope of Austin Peay State University Discrimination and Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct the questioning
- How to assess the credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the University concerning consent (or the absence or negation of consent) consistently, impartially, and by policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes

- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of the relevance of questions and evidence
- Issues of relevance to creating an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions about all forms of harassment, discrimination, and/or retaliation allegations

Specific training is also provided for Appeal Decision-makers, Intake Personnel, Advisors (who are University employees), and Chairs. All Pool members are required to attend these training annually. The materials used to train all members of the Pool are publicly posted here: <https://apsu.edu/equity-access/titleix/index.php>.

H. Title IX Formal Grievance Process: Notice of Investigation and Allegations

The Office of Equity, Access, & Inclusion will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of the allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that Austin Peay State University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made after the process and that the parties will

be allowed to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,

- A statement about the University's policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that Austin Peay State University Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to the University's VAWA Brochure,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Office of Equity, Access, & Inclusion of any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official University records, or emailed to the parties' University-issued email. Once mailed, emailed, and/or received in person, notice will be presumptively delivered.

I. Resolution Timeline

Austin Peay State University will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Office of Equity, Access, & Inclusion (OEAI). The OEAI will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate

of how much additional time will be needed to complete the process.

J. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Office of Equity, Access, & Inclusion appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that, an investigation should proceed.

K. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process [including the Title IX Coordinator, Investigator(s), and Decision-maker(s)] may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Office of Equity, Access, & Inclusion will vet the assigned Investigator(s) in an attempt to ensure there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Office of Equity, Access, & Inclusion will determine whether the concern is reasonable and supportable. If the alleged conflict of interest is determined reasonable and supportable, another Pool member may be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is employees (other than the Chief Diversity Officer/Title IX Coordinator) in the Office of Equity, Access, & Inclusion, concerns should be raised with the Chief Diversity Officer/Title IX Coordinator. If the source of the conflict of interest or bias is the Chief Diversity Officer/Title IX Coordinator, concerns should be raised with the University President.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

Austin Peay State University operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the preponderance of evidence standard of proof.

L. Investigation Timeline

Investigations are completed expeditiously, normally within sixty-to-ninety (60-90) business days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

APSU must notify the Tennessee Human Rights Commission (THRC) of investigations commenced from complaints filed under Title VI of the Civil Rights Act of 1964, as amended, within ten days of receipt of any such complaint. The investigation summary must be submitted to the THRC by the 75th day of receipt of the complaint. The THRC will return the investigation summary by the 85th day of receipt of the complaint. Investigations are normally closed within ninety (90) days.

Austin Peay State University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

M. Delays in the Investigation Process and Interactions with Law Enforcement

Austin Peay State University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

Austin Peay State University will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the University will implement

supportive measures as deemed appropriate.

Austin Peay State University action(s) are not typically altered or precluded because civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

N. Steps in the Title IX Investigation Process

Investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

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

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

- Determine the identity and contact information of the Complainant;
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures;
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated;
- Assist with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation;
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties;
- Meet with the Complainant to finalize their interview/statement, if necessary;
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations;
 - Notice should inform the parties of their right to have the assistance of an Advisor, who could

be a member of the Pool or an Advisor of their choosing, present for all meetings attended by the party

- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings;
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible;
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose;
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary;
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions;
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation;
- Before the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included;
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report;
- Before the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the

evidence obtained as part of the investigation that is directly related to the reported misconduct, including the evidence upon which Austin Peay State University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared should be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor);

- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses;
- The Investigator(s) should incorporate relevant elements of the parties' written responses into the final investigation report, including any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period;
- The Investigator(s) shares the report with the Office of Equity, Access, & Inclusion and the Office of Legal Affairs for review and feedback;
- The Investigator will incorporate any relevant feedback, and the final report is then shared with the parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days before a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report;

O. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees or students of Austin Peay State University are expected to cooperate with and participate in the University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed

remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictates a need for remote interviewing. Austin Peay State University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

P. Recording of Interviews

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

Q. Evidentiary Considerations in the Investigation

The investigation does not consider:

- incidents not directly related to the possible violation, unless they evidence a pattern;
- questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior concerning the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is factual evidence or relates to a pattern of conduct.

R. Title IX Process: Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Office of Equity, Access, & Inclusion will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Chief Diversity Officer/Title IX Coordinator will select appropriate Decision-makers from the Pool depending on whether the Respondent is an employee or a student.

S. Hearing Decision-makers Composition

Austin Peay State University will designate a three-member panel from the Pool, at the discretion of the Office of Equity, Access, & Inclusion. One of the three members will be appointed as Chair by the Office of Equity, Access, & Inclusion.

The Decision-makers will not have had any previous involvement with the investigation. The Chief Diversity Officer/Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the resolution process if a substitute is needed for any reason.

Those who have served as Investigators in the case may be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter does not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

T. Evidentiary Considerations in the Hearing

Any evidence that the Decision-makers determine is relevant and credible may be considered. The hearing does not consider:

- incidents not directly related to the possible violation, unless they evidence a pattern;
- questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's

prior sexual behavior concerning the Respondent and are offered to prove consent.

Within the boundaries stated above, the hearing board can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is factual evidence or relates to a pattern of conduct.

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

The parties may each submit a written impact statement before the hearing for the consideration of the Decision-makers at the sanction stage of the process when a determination of responsibility is reached.

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

U. Notice of Hearing

No less than ten (10) business days before the hearing, the Chief Diversity Officer/Title IX Coordinator or the Director of Equal Opportunity & Affirmative Action/Deputy Title IX Coordinator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-makers and

parties to see and hear a party or witness answering questions. Such a request must be raised with the Chief Diversity Officer/Title IX Coordinator at least five (5) business days before the hearing.

- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker based on demonstrated bias. This must be raised with the Chief Diversity Officer/Title IX Coordinator at least two (2) business days before the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given before the hearing will not be considered by the Decision-makers. For compelling reasons, the Office of Equity, Access, & Inclusion may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Office of Equity, Access, & Inclusion if they do not have an Advisor, and the University will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-makers about the matter, unless they have been provided already.¹⁴
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-makers will review during any sanction determination.
- An invitation to contact the ADA Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days before the hearing.
- Notification that Parties can bring phones/mobile devices and that they will be collected when the meeting begins and returned to respective parties when the meeting ends.
- Additionally, for cases involving charges of sexual

¹⁴ The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

misconduct, at least seventy-two (72) hours before the hearing, APSU will provide a student accused of sexual misconduct with notice of the following:

- The time, place, date of the hearing, and electronic access information, if applicable;
- The name of each witness APSU expects to present at the hearing and those APSU may present if the need arises;
- The right to request a copy of the investigative file; The right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that APSU has in its possession, custody, or control and may use to support claims or defenses.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved before the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 60-90 business day goal for a resolution to the hearing.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

V. Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Office of Equity, Access, & Inclusion at least five (5) business days before the hearing.

The Office of Equity, Access, & Inclusion can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Office of Equity, Access, & Inclusion know at least five (5) business days before the hearing so that appropriate arrangements can be made.

W. Pre-Hearing Preparation

The Chair, after any necessary consultation with the parties, Investigator(s), and/or the Office of Equity, Access, & Inclusion, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days before the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair will delay the hearing and instruct that the investigation needs to be reopened to consider that evidence.

The parties will be given a list of the names of the Decision-makers at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Office of Equity, Access, & Inclusion (OEAI) as soon as possible and no later than three (3) business days before the hearing. Decision-makers will only be removed if the OEAI concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Office of Equity, Access, & Inclusion will give the Decision-makers a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Office of Equity, Access, & Inclusion as soon as possible.

During the ten (10) business day period before the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or the

hearing and will be exchanged between each party by the Chair.

X. Pre-Hearing Meetings

The Chair may convene a pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions or topics they (the parties and their Advisors) wish to ask or discuss at the hearing so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

The Chair, **only** with the full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties before the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded.

Y. Title IX Hearing Procedures

At the hearing, the Decision-makers have the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not

specifically fall within the policy on Equal Opportunity, Harassment, and Nondiscrimination.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, and called witnesses, a representative from the Office of Equity, Access, & Inclusion, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their behalf. The Chair will allow witnesses who have relevant information to appear at a portion of the hearing to respond to specific questions from the Decision-makers and the parties and will then be excused.

Z. Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly. In joint hearings, separate determinations of responsibility will be made for each Respondent concerning each alleged policy violation.

However, the Chief Diversity Officer/Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so.

AA. The Order of the Title IX Hearing – Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) of based on bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the representative from the Office of Equity, Access, & Inclusion will review and decide the challenge.

At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other

administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Chief Diversity Officer/Title IX Coordinator. The hearing facilitator may attend to the logistics of rooms for various parties/witnesses as they wait; the flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

BB. Investigator Presents the Final Investigation Report

The Investigator(s) may then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-makers should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

CC. Testimony and Questioning

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-makers and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive

statements regarding relevance with the Advisors if the Chair so chooses. The Chair should then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair should explain any decision to exclude a question as not relevant or to reframe it for relevance.

The Chair may limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has the final say on all questions and determinations of relevance, subject to any appeal. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain arguments from the advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Chief Diversity Officer/Title IX Coordinator, and/or preserve them for appeal. If bias is not an issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

DD. Refusal to Submit to Cross-Examination and Inferences

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

Cross-examination is an all-or-nothing proposition, meaning that if any question is refused, no statements of that party or witness are admissible. Only if a party or witness is willing to submit to cross-examination, and answers all questions, will their statement before or at the hearing be fully admissible. If a party or witness chooses

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

Whether a party or witness does or does not answer questions from the Decision-makers, their statements will be admissible as long as they are willing to submit to cross-examination questions, even if they are not asked such questions. The Decision-makers may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

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

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

EE. Recording Hearings

Hearings (but not deliberations) are recorded by Austin Peay State University for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-makers, the Parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Office of Equity, Access,

& Inclusion. No person will be given or be allowed to make a copy of the recording without permission of the Chief Diversity Officer/Title IX Coordinator.

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

The Decision-makers will deliberate in a closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used.

When there is a finding of responsibility on one or more of the allegations, the Decision-makers may then consider the previously submitted party impact statements in determining the appropriate sanction(s).

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

The Decision-makers will review the statements and any pertinent conduct history provided by the Division of Student Affairs, Office of Human Resources, or the Office of Equity, Access, & Inclusion and will determine the appropriate sanction(s) in consultation with the appropriate Senior Level Administrator.

The Chair will then prepare a written deliberation statement and deliver it to the Office of Equity, Access, & Inclusion, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions.

This report typically should be submitted to the Office of Equity, Access, & Inclusion within two (2) business days of the end of deliberations, unless the Chief Diversity Officer/Title IX Coordinator grants an extension. If an extension is granted, the Office of Equity, Access, & Inclusion will notify the parties.

GG. Notice of Outcome

Using the deliberation statement, the Office of Equity, Access, & Inclusion will work with the Chair to prepare a

Notice of Outcome. After the Office of Legal Affairs reviews the Notice of Outcome, the Office of Equity Access, & Inclusion will share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within seven (7) business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official University records, or emailed to the parties' University-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, notice will be presumptively delivered.

The Notice of Outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by Austin Peay State University from the receipt of the misconduct report to the determination. This includes all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify:

- the finding on each alleged policy violation;
- the findings of fact that support the determination;
- conclusions regarding the application of the relevant policy to the facts at issue;
- a statement of, and rationale for, the result of each allegation to the extent Austin Peay State University is permitted to share such information under state or federal law;
- any sanctions issued which the University is permitted to share according to state or federal law;
- and any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).
- The Notice of Outcome will also include information on

when the results are considered by the University to be final, any changes that occur before finalization, and the relevant procedures and bases for any available appeal options.

HH. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-makers

The sanctions will be implemented as soon as feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of and may be in addition to, other actions taken or sanctions imposed by external authorities.

1. Student Sanctions

Please refer to the Student Code of Conduct for possible sanctions that Decision-makers may impose on students and/or student organizations.

2. Employee Sanctions

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Oversight or Supervisory Responsibility*

- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, Austin Peay State University may assign any other sanctions as deemed appropriate

II. Withdrawal or Resignation While Charge(s) Pending Students:

If a student has an allegation pending for violation of the Policy on Equal Opportunity, Harassment, and Nondiscrimination, Austin Peay State University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

However, Austin Peay State University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University until after submitting the process. The such exclusion applies to all campuses of Austin Peay State University. A hold will be placed on their ability to be readmitted. They may also be barred from University property and/or events.

During the resolution process, the University may put a hold on a responding student's enrollment due to a pending disciplinary matter.

Employees:

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as Austin Peay State University no longer has disciplinary jurisdiction over the resigned employee.

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

The employee who resigns with unresolved allegations pending is not eligible for rehire with the University, and

the records retained by the Office of Equity, Access, & Inclusion will reflect that status.

JJ. Title IX Appeals

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Chief Diversity Officer/Title IX Coordinator or the Director of Equal Opportunity & AA/Deputy Title IX Coordinator within ten (10) business days of the delivery of the Notice of Outcome.

The Chief Diversity Officer / Title IX Coordinator will designate a three-member appeal panel chosen from the Pool. No appeal panelist will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. A voting Chair of the Appeal Panel will be designated.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

1. Grounds for Appeal

Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Chief Diversity Officer/Title IX Coordinator, Director Equal Opportunity & Affirmative Action/Deputy Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Chair, and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Chief Diversity Officer/Title IX Coordinator, and/or the Director of Equal Opportunity & Affirmative Action/Deputy Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-makers.

The other party(ies) and their Advisors, the Chief Diversity Officer/Title IX Coordinator or Director of Equal Opportunity & AA, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given ten (10) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

Neither party may submit any new requests for appeal after this period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses will be shared with the Appeal Panel, and the Panel will render a decision in no more than seven (7) business days, barring exigent circumstances. All decisions are by majority vote and apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and the rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration,

any sanctions that may result which Austin Peay State University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' University-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, notice will be presumptively delivered.

2. Sanctions Status During the Appeal

Any sanctions imposed because of the hearing stay during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

If the original sanctions include separation in any form, Austin Peay State University may place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal. The Respondent may request a stay of these holds from the Office of Equity, Access, & Inclusion within two (2) business days of the notice of the sanctions. The request will be evaluated and the determination communicated to the Respondent.

3. Appeal Considerations

- Appeal decisions are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the

allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-makers merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Panel may consult with the Office of Equity, Access, & Inclusion on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultations will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-makers for reconsideration. Other appeals may be remanded at the discretion of the Chief Diversity Officer/Title IX Coordinator or, in limited circumstances, decided on appeal.
- 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).
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-makers (as in cases of bias), the appeal may order a new hearing with new Decision-makers.
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to Austin Peay State University 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.

KK. Long Term Remedies/Other Actions

Following the conclusion of the resolution process, and in

In addition to any sanctions implemented, the Chief Diversity Officer/Title IX Coordinator may implement additional long-term remedies or actions concerning the parties and/or the campus community that is intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the Individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

Certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Chief Diversity Officer/Title IX Coordinator will address any remedies owed by Austin Peay State University to the Respondent to ensure no effective denial of educational access.

The University will work to maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the University's ability to provide these services.

LL. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-makers (including the Appeal Chair/Panel). Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other

reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from Austin Peay State University and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the University.

MM. Recordkeeping

Austin Peay State University will maintain for a period of at least seven years records of:

1. Sexual harassment and other protected class status investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. Austin Peay State University will make these training materials publicly available on the University website.
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - The basis for all conclusions is that the response was not deliberately indifferent.
 - Any measures designed to restore or preserve equal access to the University's education program or activity; and
 - If no supportive measures were provided to the Complainant, document the reasons why such a response was not unreasonable in light of the known circumstances.

Austin Peay State University will also maintain any records by state and federal laws.

NN. Disabilities Accommodations in the Resolution Process

Austin Peay State University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's resolution process.

Anyone needing such accommodations or support should contact the Director of Disability Services (student) or the ADA Coordinator (employee) who will review the request and, in consultation with the person requesting the accommodation and the Office of Equity, Access, & Inclusion, determine which accommodations are appropriate and necessary for full participation in the process.

OO. Process B: Grievance Process

For alleged violations of the equal opportunity, harassment, and nondiscrimination policy that do not fall under Title IX

Process B

- Process B is applicable when the Title IX Coordinator determines that Title IX is inapplicable, or offenses subject to Title IX have been dismissed.
- If Title IX is applicable, the above outlined Title IX process must be applied in lieu of Process B.

Austin Peay State University's Office of Equity, Access, and Inclusion will act on any formal or informal allegation or notice of violation of the Equal Opportunity, Harassment and Nondiscrimination Policy that is received by the Chief Diversity Officer/Title IX Coordinator or a member of the administration, faculty, or another employee, apart from confidential resources, as articulated in the Policy above.

The procedures described below apply to all allegations of harassment, discrimination, and/or retaliation based on protected characteristic status that do not fall under Title IX or have been removed from the Title IX process involving students, staff, faculty members, or third parties.

These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing, discriminatory, or retaliatory conduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this Policy will

be addressed through the procedures elaborated in the respective student, faculty, and staff handbooks.

1. Resolution Process B Pool

Members of the Pool are trained annually in all aspects of the Resolution Process and can serve in any of the following roles, at the direction of the Chief Diversity Officer/Title IX Coordinator:

- To provide sensitive intake for and initial advice pertaining to the allegations
- To act as optional process Advisors to the parties
- To facilitate Informal Resolution
- To investigate allegations
- To serve as a Decision-maker
- To serve as an Appeal Decision-maker

The Chief Diversity Officer/Title IX Coordinator [in consultation with the President] carefully vets Pool members for potential conflicts of interest or disqualifying biases and appoints the Pool, which acts with independence and impartiality.

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

The Pool members receive annual training [jointly OR specific to their role]. This training includes, but is not limited to:

- The scope of the Recipient's Equal Opportunity, Harassment, and Nondiscrimination Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents and promote accountability
- Implicit bias
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies

- How to investigate in a thorough, reliable, timely, and impartial manner
- How to conduct a sexual harassment investigation
- Trauma-informed practices pertaining to investigations and Resolution Processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- Types of evidence
- Deliberation
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the institution with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with Policy
- How to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution Processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Any technology to be used
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and discrimination allegations

The Resolution Process Pool includes:

- 2 or more chairs: who respectively chair Appeal Panel hearings for allegations involving student and employee Respondents
- At least 3 members of the Academic Affairs Administration
- At least 3 members of the administration/staff
- At least 1 representative from Campus Safety
- At least 1 representative from Human Resources
- At least 1 representative from Athletics

Pool members are usually appointed to three-year terms. Individuals who are interested in serving in the Pool are encouraged to contact the Chief Diversity Officer/Title IX Coordinator. At least 3-5 pool members must be present for any hearing, appeals, or informal processes.

2. Informal Resolution

Informal Resolution is applicable when the parties voluntarily agree to resolve the matter through Alternative Resolution [mediation, restorative practices, facilitated dialogue, etc.], when the Respondent accepts responsibility for violating Policy, or when the Chief Diversity Officer/Title IX Coordinator can resolve the matter informally by providing remedies to resolve the situation. The Chief Diversity Officer/Title IX Coordinator has the discretion to determine if an investigation will be paused during Informal Resolution, it will be limited, or will continue during the Informal Resolution process.

It is not necessary to pursue Informal Resolution first in order to pursue Administrative Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Administrative Resolution process. Further, if an Informal Resolution fails after the resolution is finalized, an Administrative Resolution may be pursued.

a. Alternative Resolution

Alternative Resolution is an informal process, such as mediation or restorative practices, by which the parties mutually agree to resolve an allegation. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Administrative Resolution process (described below) to resolve conflicts, as appropriate. The parties must consent to the use of Alternative Resolution.

The Chief Diversity Officer/Title IX Coordinator determines if Alternative Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternative Resolution.

In an Alternative Resolution, a trained administrator or third party facilitates communication among with the parties to an effective resolution, if possible. Institutionally imposed sanctions are not possible as the result of an Alternative Resolution process, though

the parties may agree to accept sanctions and/or appropriate remedies.

The Chief Diversity Officer/Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

Alternative Resolution is not typically the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though similarly structured conversations may be made available after the Administrative Resolution process is completed should the parties and the Chief Diversity Officer/Title IX Coordinator believe it could be beneficial. The results of Alternative Resolution are not appealable.

b. Respondent Accepts
Responsibility for Alleged
Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent accepts responsibility, the Chief Diversity Officer/Title IX Coordinator determines that the individual is in violation of Recipient policy.

The Chief Diversity Officer/Title IX Coordinator then determines appropriate sanction(s) or responsive actions, which are promptly implemented to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

If the Respondent accepts responsibility for all of the alleged policy violations and the Chief Diversity Officer/Title IX Coordinator or designee has determined appropriate sanction(s) or responsive actions, to which the Respondent agrees, and which are promptly implemented, the process concludes. The Complainant may be consulted on and will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged policy violations and the Chief Diversity Officer/Title IX Coordinator has determined appropriate sanction(s) or responsive actions, to which the Respondent agrees, and which are promptly implemented for those violations, then the remaining allegations will continue to be investigated and resolved through Administrative Resolution. The parties will be informed of this

outcome. The parties are still able to seek Alternative Resolution on the remaining allegations, subject to the stipulations above.

3. Administrative Resolution via a Process B Investigation and Hearing

Administrative Resolution can be pursued at any time during the process for any behavior for which the Respondent has not accepted responsibility that would constitute conduct covered by the Equal Opportunity, Harassment, and Nondiscrimination Policy if proven. Administrative Resolution starts with a thorough, reliable, and impartial investigation.

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

Notification will include a meaningful summary of the allegations, will be made in writing, and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Recipient records, or emailed to the parties' Recipient-issued or designated email account.

Once mailed, emailed, and/or received in person, notice will be presumptively delivered. The notification will include the policies allegedly violated if known at the time. Alternatively, the policies allegedly violated can be provided later, in writing, as the investigation progresses, and details become clearer.

The Recipient aims to complete all investigations within a sixty (60) business-day time period, which can be extended as necessary for appropriate cause by the Chief Diversity Officer/Title IX Coordinator. If an extension is granted, notice may be provided to the parties as appropriate. Investigations can take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Once the decision is made to commence an investigation, the Chief Diversity Officer/Title IX Coordinator appoints

investigators, usually within two (2) business days of determining that an investigation should proceed, to conduct the investigation (typically using a team of two Investigators).

The Chief Diversity Officer/Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias.

The parties may, at any time during the Resolution Process, raise a concern regarding bias or conflict of interest, and the Chief Diversity Officer/Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the Chief Diversity Officer/Title IX Coordinator, concerns should be raised with the University President.

The investigators will make a good faith effort to complete the investigation as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

The Office of Equity, Access, and Inclusion may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke Austin Peay State University's Resolution Process are being investigated by law enforcement. The office of Equity, Access, and Inclusion will promptly resume its investigation and Resolution Process once notified by law enforcement that the initial evidence collection process is complete.

APSU's action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

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

4. Process B Investigation

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

- Determine the identity and contact information of the Complainant
- In coordination with institutional partners (e.g., Chief Diversity Officer/Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct
- Assist the Chief Diversity Officer/Title IX Coordinator with conducting an initial assessment to determine if there is reasonable cause to believe the Respondent has violated policy
- If there is insufficient evidence to support reasonable cause, the process is closed with no further action
- Commence a thorough, reliable, and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all parties and witnesses
- Meet with the Complainant to finalize their statement, if necessary
- Prepare the initial Notice of Investigation and Allegations (NOIA) on the basis of the initial assessment. Notice may be one step or multiple steps, depending on how the investigation unfolds, and potential policy violations may be added or dropped as more is learned. Investigators will update the NOIA accordingly and provide it to the parties.
- Notice should inform the parties of their right to have the assistance of a Pool member as a process Advisor appointed by the Recipient or an Advisor of their choosing present for all meetings attended by the advisee
- When formal notice is given, it should provide the parties with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result
- Give an instruction to the parties to preserve any evidence that is directly related to the allegations
- Provide the parties and witnesses with an opportunity to review and verify the Investigator's summary notes from interviews and meetings with that specific party or witness

- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible
- Interview all relevant individuals and conduct follow-up interviews as necessary.
- Allow each party the opportunity to suggest questions they wish for the Investigator(s) to ask the other party and witnesses
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, summarize for the parties the list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation and all evidence
- Provide the parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, credibility assessments, and recommended finding(s)
- Provide each party with a full and fair opportunity to respond to the report in writing within [7 business days] and incorporate that response, if any, into the report
- Investigators may choose to respond in writing in the report to the responses of the parties, and/or to share the responses between the parties for their responses, while also ensuring that they do not create a never-ending feedback loop
- Share the report with the Chief Diversity Officer/Title IX Coordinator and legal counsel for review and feedback. Provide the final report to the Chief Diversity Officer/Title IX Coordinator with one of two options:
 1. In the report, include a recommended determination, based on a preponderance of the evidence, whether a policy violation is more likely than not to have occurred, OR
 2. Gather, assess, and synthesize evidence without making a finding, conclusion, determination, or recommendation.

5. Process B Determination

Within two to three (2-3) business days of receiving the Investigator's recommendation, the Chief Diversity Officer/Title IX Coordinator or a trained, designated Decision-maker from the Pool reviews the report and all responses and then makes the final determination on the basis of the preponderance of the evidence.

If the record is incomplete, the Chief Diversity Officer/Title IX Coordinator/Decision-maker may direct a re-opening of the investigation or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed.

The investigation recommendation, if any, should be strongly considered but is not binding on the Chief Diversity Officer/Title IX Coordinator/Decision-Maker. The Chief Diversity Officer/Title IX Coordinator or Decision-maker may invite and consider the impact and/or mitigation statements from the parties if and when determining the appropriate sanction(s), if any.

6. Process B Appeals

All requests for appeal consideration must be submitted in writing to the Chief Diversity Officer/Title IX Coordinator within 7 business days of the delivery of the written finding of the Chief Diversity Officer/Title IX Coordinator or Decision-maker.

A three-member Appeal Panel OR An Appeal Decision-maker chosen from the Pool will be designated by the Chief Diversity Officer/Title IX Coordinator from those who have not previously been involved in the process. One member of the Appeal Panel will be designated as the Chair. Any party may appeal, but appeals are limited to the following grounds:

- 1) A procedural error or omission occurred that significantly impacted the outcome (e.g., substantiated bias, material deviation from established procedures, failure to correctly apply the evidentiary standard).
- 2) To consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included in the appeal.
- 3) The sanctions-imposed fall outside the range of sanctions the Recipient has designated for the violation(s) and the cumulative disciplinary record of the Respondent.

When any party requests an appeal, the Chief Diversity Officer/Title IX Coordinator will share the appeal request with all other parties or other appropriate persons such as the Investigator(s), who may file a response within three (3) business days of receiving notice of the appeal request. Another party may also bring their own appeal on separate grounds.

If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within 7 business days. These responses or appeal requests will be shared with each party. The Appeal Chair/Panel will review the appeal request(s) within 7 business days of completing the pre-appeal exchange of materials. If grounds are not sufficient for an appeal, or the appeal is not timely, the Appeal Chair/Panel dismisses the appeal.

When the Appeal Chair/Panel finds that at least one of the grounds is met by at least one party, additional principles governing the review of appeals include the following:

- Decisions by the Appeal Chair/Panel are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the investigation and pertinent documentation regarding the grounds for appeal.
- An appeal is not an opportunity for the Appeal Chair/Panel to substitute their judgment for that of the original Investigator(s) or Chief Diversity Officer/Title IX Coordinator/Decision-maker merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence should normally be remanded to the Investigator(s) for reconsideration. Other appeals should be remanded at the discretion of the Appeal Chair/Panel.
- Sanctions imposed as the result of the Administrative Resolution are implemented immediately unless the Chief Diversity Officer/Title IX Coordinator stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- For students: Graduation, study abroad, internships/externships, etc., do NOT in and of themselves

constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.

- All parties will be informed in writing within 7 business days of the outcome of the appeal without significant time delay between notifications, and in accordance with the standards for Notice of Outcome as defined above.
- Once an appeal is decided, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand.

Option: When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above, and in accordance with these procedures.

- In rare cases when a procedural [or substantive] error cannot be cured by the original Investigator(s) and/or Decision-maker or the Chief Diversity Officer/Title IX Coordinator (as in cases of bias), the Appeal Chair/Panel may recommend a new investigation and/or Administrative Resolution process, including a new Decision-maker.
- The results of a new Administrative Resolution process can be appealed once, on any of the three applicable grounds for appeals.
- In cases in which the appeal results in Respondent's reinstatement to the Recipient 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.

Revision of this Policy and Procedures This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation and should be reviewed and updated annually by the Chief Diversity Officer/Title IX Coordinator. Austin Peay State University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Office of Equity, Access, & Inclusion may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

Revision Dates

[APSU Policy 6:001 – Issued:](#)

APSU Policy 6:001 – Issued: February 28, 2023

APSU Policy 6:001 – Issued: November 19, 2020

Subject Areas:

| Academic | Finance | General | Human Resources | Information Technology | Student Affairs |
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| | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> |

Approved

President: signature on file

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