



ADMINISTRATION

Section 1.20 – Sexual Harassment and Sexual Misconduct Policy

Policy Statement

ACHE prohibits sexual discrimination, sexual harassment, and acts of sexual assault, domestic violence and stalking committed against students, employees, visitors, and other persons who use ACHE facilities. ACHE complies with Title IX of the Education Amendments of 1972 and its implementing regulations, as amended, and Title VII of the Civil Rights Act of 1964, which prohibit discrimination based on sex.

Title IX also prohibits retaliation for asserting claims of sex discrimination.

Application and Purpose

In compliance with Title IX of the Education Amendments of 1972, ACHE prohibits discrimination on the basis of sex or gender in any of ACHE's programs and activities. ACHE will respond to complaints or reports about prohibited conduct with measures designed to stop the behavior, eliminate any such gender discrimination, prevent the recurrence of the prohibited conduct, and remediate any adverse effects of such conduct on campus or in any programs or activities.

This Policy shall not be construed or applied to restrict academic freedom at ACHE, nor shall it be construed to restrict constitutionally protected expression.

Definitions of Prohibited Conduct

Sexual Misconduct Definitions under Title IX of the Educational Amendments of 1972

The following definitions are used for purposes of this policy under *Title IX* of the Educational Amendments of 1972. The definitions provided herein will control to the extent there is a conflict with any other ACHE policy.

Sexual Harassment: Under *Title IX* of the Educational Amendments of 1972, sexual harassment is conduct on the basis of sex that satisfies one of the following:

- “Quid Pro Quo” harassment is harassment by a school employee when the employee conditions an educational benefit or service on an individual's participation in unwelcome sexual conduct.
- Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access.
- Any instance of sexual assault, dating violence, domestic violence, or stalking, as defined by the Clery Act and the Violence Against Women Act, and as defined in this policy.

Sexual harassment may be subtle or overt. Some behavior that is appropriate in a social setting is not appropriate in the workplace or in an academic environment. Regardless of the form, verbal, non-verbal, or physical sexual harassment is inherently destructive, insulting, and demeaning to the recipient and will not be tolerated at ACHE.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the alleged victim and the existence of such relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic Violence: Includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from the person's acts under the domestic or family violence laws of the jurisdiction." (See also, United States Code Annotated, 34 U.S.C.A. § 12291(a)(8)).

Sexual Assault: An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (See also, United States Code Annotated, 20 U.S.C.A. § 1092(f)(6)(A)(v)), including:

1. Sex Offenses, Forcible—Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.
 - Forcible Rape (Except Statutory Rape): The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their temporary or permanent mental or physical incapacity.
 - Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity.
 - Sexual Assault With An Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity.
 - Forcible Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity.
2. Sex Offenses, Nonforcible (Except Prostitution Offenses) - Unlawful, nonforcible sexual intercourse.
 - Incest—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape—Nonforcible sexual intercourse with a person who is under the statutory age of consent.

Stalking: Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

Other Sexual Misconduct Definitions

The following definitions are used for purposes of this policy and for misconduct that does not qualify under the *Title IX* definitions but that define conduct that may otherwise rise to the level of sexual harassment or are relevant to the determination of sexual misconduct (e.g. consent). The definitions provided herein will control to the extent there is a conflict with any other ACHE policy.

Non-Consensual Sexual Contact: Non-consensual sexual contact is any intentional sexual touching, however slight, with any object by a male or female upon a male or a female that is without consent and/or by force. Sexual Contact includes intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

Retaliation: Action taken by an accused individual or by a third party against any person because that person has opposed any practices forbidden under this Policy or because that person has filed a complaint, testified, assisted or participated in any manner in an investigation or proceeding under this Policy. This includes action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment or sexual misconduct. Retaliation includes intimidating, threatening, coercing or in any way discriminating against an individual because of the individual's complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this Policy.

For purposes of this Policy, Consent is defined as follows:

Consent: Consent is a clear, knowing and voluntary decision to engage in sexual activity.

Because consent is voluntary, it is given without coercion, force, threats, or intimidation. It is given with positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will.

Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions consist of an affirmative, unambiguous, conscious decision by each participant to engage in mutually agreed-upon sexual activity.

Consent is revocable, meaning consent can be withdrawn at any time. Thus, consent must be ongoing throughout a sexual encounter. Once consent has been revoked, sexual activity must stop immediately.

Consent can be limited, meaning consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Use of alcohol or other drugs will never function as a defense to a violation of this Policy. Further, previous relationships or prior consent cannot imply consent to future sexual acts.

Consent cannot be given when a person is incapacitated, such as when a person is physically or mentally unable to make informed, rational judgments, or lacks the ability to understand the "who, what, when, where and how" related to the sexual activity. States of incapacitation include, but are not limited to, unconsciousness and sleep. Where alcohol or drugs are involved, incapacitation is determined by how the alcohol or other drugs have impacted a person's decision-making capacity, awareness of consequences, and/or ability to make fully informed judgments.

In sum:

- Silence does not equal consent.
- Lack of verbal resistance does not constitute consent.
- Lack of physical resistance does not constitute consent.
- There is no consent when there is force, coercion, intimidation, threats or duress.
- Consent may be withdrawn at any time, and sexual activity must cease when consent is withdrawn unless or until additional consent is given.
- Consent to one form of sexual activity does not indicate consent to another form of sexual activity.
- A prior sexual relationship does not indicate current or future consent.
- Minors cannot give consent.
- Physically or mentally incapacitated persons cannot give consent.
- Consent may be determined by whether the accused knew, or a reasonable person should have known, that the alleged victim was incapacitated.

Sexual Exploitation: Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of behavior that could rise to the level of sexual exploitation include, but are not limited to:

- invading sexual privacy
- prostituting another person
- non-consensual video or audiotaping of sexual activity
- going beyond the boundaries of consent (e.g., allowing others to watch consensual sex without that party's knowledge or consent)
- engaging in voyeurism
- non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the intent or effect of disparaging, embarrassing, or ostracizing an individual who is the subject of such images or information
- knowingly transmitting a Sexually Transmitted Infection (STI), such as HIV, to another without disclosing STI status
- exposing one's genitals in non-consensual circumstances or inducing another to expose his or her genitals
- possessing, distributing, viewing or forcing others to view illegal pornography
- sexually based stalking and/or bullying may also be forms of sexual exploitation

Sexual Harassment: Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal, non-verbal, or physical contact of a sexual nature. This conduct constitutes unlawful sexual harassment when:

- Submission to this conduct is explicitly or implicitly made a term or condition of an individual's employment or academic success.
- Submission to or rejection of this conduct is used as the basis for an employment or academic decision.
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance by creating an intimidating, hostile, or offensive work environment.

Other forms of harassment may include:

- Verbal: Sexual innuendoes, suggestive comments, joke of a sexual nature, sexual propositions, implied or explicit threats, and offensive or obscene language
- Non-Verbal: Sexually suggestive objects, graffiti, cartoons, posters, calendars, writings, pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, stalking, staring, and making obscene gestures
- Physical: Unwanted or unwelcome physical contact, including touching, pinching, grabbing, holding, hugging, kissing, brushing the body, assault, and rape. While sexual harassment usually involves members of the opposite sex, it also includes same sex harassment (i.e., males harassing males and females harassing females)

Sexual harassment may be subtle or overt. Some behavior that is appropriate in a social setting is not appropriate in the workplace or in an academic environment. Regardless of the form, verbal, non-verbal, or physical sexual harassment is inherently destructive, insulting, and demeaning to the recipient and will not be tolerated at ACHE.

Behavior that constitutes sexual harassment, which is a form of sexual discrimination prohibited by Title IX of the Education Amendments of 1972 and Title VII of the 1964 Civil Rights Act, includes but is not limited to unwanted sexual attention, requests for sexual favors and/or other verbal or physical contact of a sexual nature which negatively affects another person.

Sexual Misconduct: Sexual misconduct includes committing any sexual act or sexual contact without consent, sexual harassment, sexual assault, inducing incapacitation for sexual purposes, sexual exploitation, voyeurism, exhibitionism, and dating and domestic violence.

Procedures

General Responsibilities

1. It is the responsibility of the Title IX Coordinator to coordinate dissemination of information and education and training programs to:
 - a. assist members of the ACHE community in understanding that sex discrimination and sexual harassment are prohibited by this policy;
 - b. inform students, employees, and applicants for admission and employment of their contact information;
 - c. ensure that investigators are trained to respond to and investigate complaints of sex discrimination and sexual harassment;
 - d. ensure that employees and students are aware of the procedures for reporting and addressing complaints of sex discrimination and sexual harassment; and
 - e. implement the Complaint Resolution Procedures, or to designate appropriate persons for implementing the Complaint Resolution Procedures.
2. All Allegations of sexual misconduct and/or sexual harassment involving students must be reported to the Title IX Coordinator. Allegations of sexual misconduct and/or sexual harassment involving complaints by ACHE students against employees of ACHE will be forwarded to the Vice President of Human Resources after being received and reviewed by the Title IX Coordinator. Allegations of sexual harassment involving only employees and not involving any ACHE student, should be simultaneously reported to both the Title IX Coordinator and Vice President of Human Resources.
3. It is the responsibility of administrators, deans, department chairs, and other managers (i.e., those that formally supervise other employees) to:

- a. Inform employees under their direction or supervision of this policy
 - b. Work with the Title IX coordinator to implement education and training programs for employees and students
 - c. Implement any corrective actions that are imposed as a result of findings of a violation of this policy
4. When ACHE is made aware that a member of the ACHE community may have been subjected to or may have been affected by conduct that violates this Policy, ACHE will take prompt action including a review of the matter and, if necessary, conduct an investigation carefully taking appropriate steps to stop and remedy the discrimination or harassment. ACHE will act in accordance with its Complaint Resolution Procedures.

Responsible Employees

1. ACHE has designated the following faculty and staff members as “Responsible Employees”, as defined by Title IX, who are required to report complaints to the Title IX Coordinator or other appropriate ACHE officials:
 - Any employee who has the authority to take action to redress sexual violence;
 - Any employee who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or
 - Any employee whom a student could reasonably believe has this authority or duty.
2. The Responsible Employee designation applies to most ACHE employees, including, but not limited to, those with supervisory responsibilities, professors and other faculty, deans and department heads, Student Affairs personnel, ACHE Police Department personnel, and any other employee who meets any of the three elements above.
3. Employees who hold a position not listed here should assume that he or she is a Responsible Employee and have a mandatory duty to report sexual misconduct, absent explicit instruction to the contrary from his or her supervisor. Any employee who is unsure whether he or she is a Responsible Employee should contact the Title IX Coordinator.
4. Any responsible employee who fails to promptly report a matter to the Title IX Coordinator, or other appropriate ACHE official, may be subject to discipline or personal liability for failing to do so.

Complaint Resolution Procedures

1. Informal Resolution Process

In recognition that a wide spectrum of behaviors can constitute violations of ACHE policies, ACHE may resolve reports informally and appropriately, based on the circumstances. Informal resolutions generally are pursued when the complainant, having been fully informed of all available options, has explicitly and independently made that choice without input from ACHE personnel. An informal resolution process is voluntary, but both parties must agree to pursue the informal resolution process. A Complainant or Respondent may ask to end the informal resolution process at any time before its completion. If an informal resolution process is ended by request, any information obtained may be used in a subsequent formal resolution process and hearing. Once a Complaint has been resolved through an informal resolution process, the matter will be closed.

For some limited types of alleged violations of this policy an informal resolution may include mediation. Mediation is not an appropriate option for cases involving a complaint of sexual assault and/or relationship and interpersonal violence, nor for circumstances involving severe misconduct behavior.

In all cases, the Title IX Coordinator will have discretion to determine whether or not informal resolution or mediation is appropriate to the circumstances. **The informal resolution process is not available for complaints of misconduct under this policy brought by students against employees.**

2. **Formal Resolution Process**²

Students and employees who are found responsible for violating this Policy may be subject to disciplinary action. According to the circumstances of the case, possible sanctions for students may range from education to dismissal from ACHE and, for employees, from formal reprimand up to termination of employment.

a. ***Investigation and Adjudication Process for Title IX Complaints***³.

This process pertains to alleged acts of Prohibited Conduct under *this Policy* by any member of the ACHE community, when the conduct occurs in ACHE's education program or activity against a person in the United States. ACHE's education program or activity includes locations, events, or circumstances over which ACHE exercises substantial control over both the potential Respondent and the context in which the sexual harassment occurred. This includes programs and activities that occur both on and off-campus, and includes any building owned or controlled by a student organization that is officially recognized by ACHE.

Both the alleged victim and the Respondent may be accompanied by one advisor/support person to assist them throughout the Investigation and Adjudication process. It is the party's responsibility to request and obtain the services of an advisor/support person. However, if during the live hearing, the party does not have an advisor, ACHE will provide one for the party free of charge. The advisor will be permitted to speak on behalf of the party during the hearing including for purposes of cross-examination.

I. **Preliminary Investigation Process**

Upon receiving a report of a possible violation of this Policy, the Title IX Coordinator (and/or his or her designee) will first make an initial assessment of the reported information and to respond to any immediate health or safety concerns raised by the report. In this initial assessment, the Title IX Coordinator (and/or his or her designee) will:

- i. Assess the Complainant's safety and well-being and ensure that immediate support and assistance is offered;
- ii. Inform the Complainant of the right to contact law enforcement, if applicable;
- iii. Inform the Complainant about ACHE and community resources, the right to seek appropriate and available supportive measures, including changes in academic or living arrangements and/or No Contact Orders, and how to request those resources and measures;
- iv. Inform the Complainant of the right to file a Complaint under these procedures, including the right to pursue an informal resolution;
- v. Explain the prohibition against Retaliation and that ACHE will take prompt action in response to Retaliation;

² Any potential action taken by the ACHE Student Progress Committee will be stayed pending formal resolution under this Policy.

³ This process will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

- vi. Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any third part with knowledge of the reported incident;
- vii. Communicate with the appropriate ACHE officials to determine what additional resources and support may need to be provided (referral to Student Affairs) or whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or issuance of a timely warning.
- viii. Ensure that the Complainant receives a written explanation of all available resources and options and is offered the opportunity to meet those resources and options. When a decision is reached to initiate an investigation or take any other action under these procedures that impacts a Respondent, the Title IX Coordinator will ensure that the Respondent is notified, receives a written explanation of all available resources and options, and is offered the opportunity to meet to discuss those resources and options., including but not limited to: mental health counseling services, academic or living arrangement changes, and/or No Contact Orders, and other available supportive measures.

A. *Initial Assessment*

If the Title IX Coordinator (and/or his or her designee) determines that the report does not indicate a possible violation of this Policy, the matter will be documented and dismissed with any necessary referrals made to the appropriate ACHE officials. The Title IX Coordinator will send written notice of the dismissal and the reason for the dismissal to both parties. Both parties have the right to appeal a dismissal if one of the bases for appeal is met. If the Title IX Coordinator (and/or designee) determines in the initial assessment, that that the report implicates a possible violation of this Policy, the Title IX Coordinator (and/or his or her designee) or another appropriately trained individual will conduct an intake meeting with the complainant and/or the alleged victim (if different from the complainant).

B. *Requests for Confidentiality, investigation not be pursued, or no action be taken*

If during the Complainant/alleged victim intake, the Complainant requests confidentiality or that no further action be taken and/or that no complaint be pursued, the Title IX Coordinator (and/or his or her designee) will inform the Complainant retaliation is prohibited and that honoring the Complainant's (or alleged victim's) request may limit the ability to fully respond to the incident. In the event the complainant (or alleged victim, if different from the complainant) stands firm on their request that no further action be taken, the Title IX Coordinator will evaluate whether the request can be honored while still providing a safe and non-discriminatory environment for all.

When the Title IX Coordinator determines that a Complainant's request for confidentiality, that an investigation not be pursued, and/or no disciplinary action be taken can be honored, ACHE may still take other appropriate steps designed to eliminate the reported conduct, prevent its reoccurrence, and remedy its effects on the complainant and/or the campus community.

When the Title IX Coordinator determines that a Complainant's request for confidentiality, that an investigation not be pursued, and/or that no action be taken cannot be honored, the Title IX Coordinator may initiate a formal investigation and resolution process, although ACHE's ability to investigate and respond to a report may be limited. The Title IX Coordinator will make reasonable efforts to protect the identity of the Complainant. However, actions that may be required as part of the

investigation will involve speaking to the Respondent and others who may have relevant information, in which case the Complainant's identity may have to be disclosed.

II. Filing a Formal Complaint

Upon receiving a formal written complaint, the Title IX Coordinator (and/or his or her designee) will be responsible for determining if 1) the Respondent is a person covered under this Policy and 2) whether the facts as set forth by the potential Complainant, if substantiated, would constitute a violation of this Policy.

The Title IX Coordinator will provide the Complainant with a list of available remedies, including a list of potential sanctions against the Respondent, including: probation, restriction or revocation of privileges, fines, restitution, and dismissal. If during the initial meeting, the Complainant (or alleged victim, if different from the complainant) states a desire to file a formal written complaint, or if the Title IX Coordinator determines (based on the information gathered) that additional steps should be taken in the interest of providing a safe and non-discriminatory environment for all and that the matter should move forward, The Title IX Coordinator or designee will provide notice to both the Complainant and the Respondent that the matter has been referred to a full comprehensive investigation and identify potential violations of this Policy. This notice must inform the Respondent that he or she is presumed innocent throughout the grievance process, so that any finding of responsibility only comes at the conclusion of the grievance process. After the parties have had sufficient time to review the notice and prepare, the Title IX Coordinator (and/or his or her designee) will next conduct an intake meeting with the Respondent.

At the conclusion of the preliminary investigation, if the Title IX Coordinator or designee determines that a potential violation of this Policy may have occurred, at their discretion, the Title IX Coordinator will request another appropriate designee for a full comprehensive investigation.

III. Investigation.

The Title IX Coordinator or trained investigator will provide status updates, including written notice of any investigative interviews, meetings, or hearings, to the Complainant and Respondent during the investigation, as appropriate or requested by either party.

The role of the investigator will be to gather additional information through interviews of the Complainant, Respondent, and witnesses and synthesize the information in a report that will be provided to the Title IX Hearing Officer. The Investigator has the discretion to determine the relevance of any witness or evidence and may exclude information in preparing reports if the information is irrelevant, immaterial, or more prejudicial than informative. Both the Complainant and Respondent are permitted to provide names of potential witnesses to the Investigator. The Investigator will determine which of those potential witnesses, or other persons, may have relevant information.

At the conclusion of the investigation, the Investigator will prepare a Draft Investigation Report summarizing the information gathered. The Complainant and Respondent will have an opportunity to review the Draft Investigation Report of at least 10 days and if they choose, meet with the Investigator, submit additional comments and information to the Investigator, and identify any additional relevant witnesses or evidence for the Investigator to pursue. The Investigator will designate a reasonable time for this review and responsible by the parties, which will be at least 10 days.

Unless there are significant investigative steps either requested by the parties or at the discretion of the Investigator within five (5) days after receipt and consideration of any additional comments, questions, and/or information submitted by the parties, the Investigator

will prepare a Final Investigation Report, which will include a summary of the relevant evidence. The parties will have at least 10 days to review the Final Investigation Report before any next steps.

The Complainant may request to withdraw a Complaint at any time. ACHE reserves the right to approve or deny this request but will strongly consider the Complainant's wishes.

i. *Title IX Hearing*

The purpose of the Title IX Hearing is to review the information presented in the investigation report and determine if an individual or individuals violated this Policy in a live-hearing format.

The ACHE President/CEO will appoint a standing pool of trained members of the ACHE community and, at the discretion of the ACHE President/CEO, trained external professionals. The Title IX Coordinator will select a Hearing Officer from this pool to oversee the hearing and make a determination. Only individuals who have participated in in-person Title IX hearing panel training conducted by ACHE's Office of General Counsel, or comparable in-depth panel training will be permitted to serve as a Title IX Hearing Officer. Students are not permitted to serve as Hearing Officers.

The Hearing Officer is responsible for the administration of the hearing, including procedural matters and decisions leading up to the hearing, determinations about information that will be considered or not, appropriate and inappropriate lines of questioning, and overall decorum and conduct of the proceedings.

ii. *Selection of the Hearing Officer*

At the conclusion of the Comprehensive Investigation, the Title IX Investigator will provide the Final Investigation Report to the Title IX Coordinator. The Title IX Coordinator will select the Hearing Officer from the trained pool and will provide a copy of the Investigative Report to the selected Hearing Officer in advance.

Promptly after the selection of the Hearing Officer, the Title IX Coordinator or designee will provide concurrent written notice to the Complainant and the Respondent of the name of the Hearing Officer. The parties may challenge the participation of the Hearing Officer by submitting a written objection to the Title IX Coordinator or designee within three (3) days of receipt of the notice of the selection of the Hearing Officer. Any objection must state the specific reason(s) for the objection. Failure to submit a timely and proper objection will constitute a waiver of any right of objection to the selection of the Hearing Officer. Any changes in the selection of the Hearing Officer will be provided in writing to both parties prior to the date of the hearing.

iii. *The Hearing Procedure*

The Hearing Officer will receive the Final Investigation Report at least five (5) days in advance of the Hearing. The Title IX Hearing Officer will hold a live hearing to determine if there is sufficient evidence to find the Respondent violated this Policy by a Preponderance of the Evidence and if applicable, determine any appropriate sanction(s) under this Policy.

The Hearing is an opportunity for the parties to address the Title IX Hearing Officer, in person, about issues relevant to the determination of the panel. The parties may address any information in the Final Investigation Report, supplemental statements submitted in response to the Final Investigation Report, and any impact or mitigation statements.

In determining the appropriate remedy and/or sanction, the Title IX Hearing Officer will act to end the discrimination, harassment, retaliation or sexual misconduct, prevent its

recurrence and remedy its effects on the victim and/or ACHE community. Sanctions will depend upon the nature and gravity of the misconduct, any record of prior discipline for a violation(s) of any campus policy, or both. Sanctions may include, without limitation, written reprimand, conduct probation, suspension or expulsion from ACHE, expulsion from campus housing, mandated counseling and/or other educational sanctions as deemed appropriate. Imposition of the appropriate remedy and/or sanction will be imposed only after all appeals have been exhausted.

Each party has the opportunity to be heard, to identify witnesses for the Hearing Panel's consideration, and to respond to any questions of the Hearing Panel.

A typical hearing may include a brief opening statement by the Complainant and/or Respondent, with follow-up questions posed by the Hearing Officer; information presented by the parties or witnesses deemed relevant by the Hearing Officer, with follow-up questions by the Hearing Officer; cross-examination of parties and witnesses by the parties' advisors with questions deemed relevant by the Hearing Officer; and brief concluding remarks by the Complainant and/or Respondent. The Hearing Officer has the discretion to determine the specific Hearing format.

Except as compelled by law or in the interest of fairness, just resolution or health and safety considerations, disclosure of information contained in Complaints, their substance, procedures and the results of investigations will be limited to the immediate parties, witnesses and other appropriate officials. Limited disclosure may also be necessary to conduct a full and impartial investigation.

- A. Standard of Review. ACHE will apply the preponderance of the evidence standard (more likely than not) when determining whether this Policy was violated.
- B. Timing of the Hearing. A hearing will be scheduled as soon as reasonably possible, but not sooner than 10 days after the conclusion of the investigative process.
- C. Investigator or other witnesses. The Hearing Officer may request the presence of the Investigator or any other witness it deems necessary to its determination. The parties may also request the presence of any witness they deem relevant to the Hearing Officer's determination.
- D. Advisors/Support Persons. Both the Complainant and the Respondent must be accompanied at the Hearing by one advisor of their choosing. The advisor may be anyone, including an attorney, who is not otherwise a party or witness. If a party does not have an advisor present at the Hearing, ACHE will provide an advisor to that party free of charge. The Hearing Officer may disallow the attendance of any support person if they are also a witness or if, in the discretion of the Hearing Officer, such person's presence would be disruptive or hinder the orderly conduct of the hearing or otherwise warrant removal. All support persons must agree to keep any and all information presented in the hearing confidential in order to attend. Absent accommodation for disability, the parties may not be accompanied by any other individual (other than their support person) during the hearing process except as set forth in this Policy.
- E. Failure to Appear. If any party fails to appear before the Hearing Officer if requested to do so, and such party was provided proper notice of the hearing as set forth above, then absent extenuating circumstances, the Hearing Officer will proceed to determine the resolution of the Complaint. However, the Hearing Officer will exclude all of that party's or witness's statements in its determination of the resolution of the Complaint.
- F. Procedural Questions. The Hearing Officer will resolve all questions concerning

procedure or the admission of evidence or testimony, including the relevancy and reliability of the evidence and testimony. ACHE officials, including the Hearing Officer members, may seek advice from ACHE's Office of General Counsel on questions of law and procedure at any time during the process, including assistance regarding the relevancy and admissibility of information.

- G. Evidentiary Matters. The Complainant and the Respondent will have an equal opportunity to present evidence during their hearing. Formal rules of evidence will not be observed during the hearings.
- H. Prior Sexual Conduct. Evidence of the prior sexual conduct of the Complainant and the Respondent with others will not be permitted at the hearings, with the following exceptions:
 - Evidence is offered to prove that someone other than the Respondent committed the alleged sexual harassment.
 - Evidence relates to sexual behavior between the Complainant and the Respondent and is offered to prove consent.
- I. Cross-Examination. The parties may not directly question or cross-examine one another or any witness. The parties' advisors may directly question or cross-examine the other party or witnesses, provided the Hearing Officer deems the question(s) relevant.
- J. Participation by Parties. Live hearings may be conducted with all parties physically present in the same geographic location or, at ACHE's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. At the request of either party, ACHE must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other. Any party may choose not to testify or appear before the Hearing Officer; however, their exercise of that option will not preclude the Hearing Officer from making a determination regarding the Complaint filed against the Respondent.
- K. Record of Hearing. ACHE will provide an audio or audiovisual recording or transcript of any live hearing and make it available to the parties for inspection and review.

iv. *Decision of the Hearing Officer:*

Following the conclusion of the hearing, the Hearing Officer will deliberate and determine whether the evidence (including the information provided in and by the Investigative Report, the parties' written statements, if any, the evidence presented at the hearings, and the testimony of the parties and witnesses) establishes that it is more likely than not that the Respondent committed a violation of this policy. If the Hearing Officer determines that it is more likely than not the Respondent committed a violation of this policy, the Hearing Officer will assign sanctions.

The Hearing Officer shall consider the following facts in determining the appropriate sanction:

- A. Whether or not the circumstances suggest there is an increased risk of the Respondent committing additional acts of sexual violence or other violence or whether there have been other sexual violence complaints about the same respondent, whether the respondent has a history of violence, whether the respondent threatened further sexual violence or other violence;
- B. Whether or not the circumstances suggest there is an increased risk of future acts of

sexual violence under similar circumstances;

- C. Whether or not the sexual violence was perpetrated with a weapon or had other aggravating considerations;
- D. Whether the Respondent upon return to campus would be likely to pose a threat to safety and/or well-being of the Complainant and/or the ACHE community generally and, if so, the nature and extent of the threat and step to effectively mitigate the impact;
- E. the Impact of the conduct on the Complainant;
- F. the impact of the conduct on the ACHE community, and the need for any sanction or remedies to eliminate, prevent, or address the existence of any hostile environment caused in the ACHE community or to maintain a safe and respectful environment conducive to learning, working and living; and
- G. Any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in the case.

v. *Outcome Letter:*

The Hearing Officer shall notify the Complainant and Respondent of the outcome (including the rationale) simultaneously, within 5 days of the hearing, or as soon as possible thereafter. Any sanction will be set to take effect upon the exhaustion of the appeal eligibility period.

IV. Appeal

Once the Hearing Officer has rendered a final determination of responsibility and provided the Outcome Letter to both parties, the Complainant and/or the Respondent may be permitted the opportunity to file a written request to appeal the Hearing Officer's decision, within five (5) business days. The parties may only appeal for one of the following reasons:

- A procedural irregularity affected the outcome of the matter.
- New evidence has been discovered that was not reasonably available at the time of the determination of responsibility.
- A conflict of interest on the part of the Title IX Coordinator, an investigator who compiled evidence, or a member of the Hearing Officer, and the conflict of interest affected the outcome.

Any appeal will be decided by the ACHE President/CEO. If either party appeals, ACHE will notify the parties in writing that the appellate process is moving forward. Both parties will have an equal opportunity to submit a written statement supporting or challenging the dismissal or the outcome of the Hearing Officer within five (5) business days of receiving the notice of the appeal.

The President/CEO will consider the parties' written statements for the appeal. After consideration, the President/CEO will send written notice of their decision to the parties. In all other situations, the President/CEO's decision on appeal is final.

b. ***Complaint and Investigation Procedure for Claims of Other Employee Sexual Harassment or Sexual Misconduct.***

All employees must avoid any action that might be viewed as discriminatory harassment, whether sexual harassment or other. Approval of, participation in, acquiescence in, or failure to report conduct constituting such harassment is a violation of this policy. Employees may be disciplined for behavior which is not so severe as to independently violate this policy, or constitute a form of

discriminatory harassment, but which is nonetheless offensive.

ACHE employees have the responsibility to bring any form of discrimination or harassment they experience, witness, or suspect to the immediate attention of their supervisor. Individuals should not first complain to the offending person. All complaints or reports of discriminatory harassment, including sexual harassment, must be direct to the Vice President of Human Resources.

A prompt, thorough, and fair investigation will be conducted based on the individual's statement of what has occurred. In an effort to protect the individual who reports or complains of discrimination or harassment, to encourage prompt reporting, and to protect the accused's interest during the pendency of an investigation, access to information related to the investigation will be maintained according to a strict, "need-to-know" basis.

ACHE will retain confidential documentation of all allegations and investigations and will take appropriate correct action, including interim actions, to remedy all alleged violations of ACHE Policy.

The Vice President of Human Resources or their designee will oversee the investigation into allegations of employee discrimination or harassment. Investigations will normally include conferring with the parties involved and any named or apparent witnesses. Signed statements from the parties and witnesses will be requested. ACHE will ensure that all complainants and witnesses will be protected from coercion, intimidation, retaliation, interference, or discrimination for raising a complaint or properly assisting in an administrative investigation. If after a preliminary investigation, a valid complaint of discrimination or harassment is raised, prompt and appropriate correction action, designed to stop the discrimination or harassment, remedy its effects, and prevent its recurrence will be taken. While the Vice President of Human Resources is in charge of the complaint and reporting procedure, they may submit a full disclosure of facts along with a recommendation for resolution and corrective action, if any, to the appropriate supervisor, Vice President, college Dean, or the President/CEO for approval.

ACHE recognizes that false accusations of sexual or other discriminatory harassment can have serious effects on innocent individuals. Therefore, if after investigating any complaint or report, ACHE determines the complaint or report is not legitimate and/or was made in bad faith or for an improper purpose or motive or that the employee has provided false or misleading information regarding a complaint or investigation, disciplinary action up to and including termination or suspension may be taken against the individual who filed the complaint or who gave false information.

Retaliation against any complaining individual, any witness, or anyone involved in a complaint is strictly prohibited. ACHE will follow up any complaint or investigation as appropriate to ensure that no retaliation occurs. Employees should immediately report any perceived retaliation to the Vice President of Human Resources. Whether a particular act or incident produces a discriminatory employment or academic effect or amounts to harassment, or whether it otherwise violates this policy, requires a factual determination based on all the facts and circumstances.

ACHE trusts and expects that all employees will act responsibly and maintain a pleasant, professional, and respectful working environment, free of discrimination or harassment, for all faculty, staff, and students. ACHE has a zero-tolerance policy for sexual or other discriminatory harassment. Thus, employees are subject to discipline for any inappropriate behavior.

Questions or concerns about this policy, and how it relates to employees, or the complaint and reporting procedure should be directed to the Vice President of Human Resources.

c. ***Consensual Relationships***

ACHE prohibits intimate relationships between a faculty member and a student whose academic

work, teaching, or research is being supervised or evaluated by the faculty member. "Faculty member" refers to anyone appointed by ACHE as a teacher, professor, instructor, researcher, or academic administrator, including graduate and undergraduate students so appointed; "intimate" is defined as **sexual** and/or **romantic**.

If an intimate relationship should exist or develop between a faculty member and a student, ACHE requires the faculty member to remove himself/herself from all supervisory, evaluative, and/or formal advisory roles with respect to the student. Failure to do so may subject the faculty member to disciplinary action.

Related References

Response to Harassment or Discrimination Policy
Filing a Complaint
Grievance Policy
Misconduct Policy
Domestic Violence, Dating Violence, Sexual Assault, Stalking Prevention Policy

Review by Counsel: Approved by the Office of General Counsel

Policy Owner: The Office of the President and CEO

Approved: 07.23.2021	Revised: 07.01.2021
Effective: 07.01.2023	Next review due: 06.30.2024