

Number: 017-0010
Title: Grievance Procedure for Allegations of Sexual Harassment Under Title IX
Revision Date: September 7, 2021
Responsible Party: Organizational Effectiveness

Practice Statement: This Grievance Procedure for Allegations of Sexual Harassment Under Title IX of the Educational Amendments of 1972 (“Title IX”) (the “Grievance Procedure”) is intended to provide rules, guidance, and procedures for the Johns Hopkins University Applied Physics Laboratory community for prompt and equitable resolution to allegations of sexual harassment in APL’s education programs and activities. This Grievance Procedure is designed to comply with federal and state laws and rules, and in the event of a disagreement between the law and this Grievance Procedure, the law shall govern.

Persons Affected: All APL Students, Interns, and Staff Members.

Practice

1. Reporting Allegations of Harassment or Sexual Misconduct

Any person may report allegations of sexual harassment in an APL education program or activity in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator as follows: Anisha Vasudeva, Anisha.vasudeva@jhuapl.edu, 240-592-1382

For the purposes of the Grievance Procedure, the following definitions apply:

- a. “Complainant” means any individual who has reported being or is alleged to be the victim of conduct that could constitute sexual harassment as it is defined under Title IX.
- b. “Formal Complaint” means a document, including an electronic submission, filed by a Complainant with a physical or digital signature, or signed by the Title IX Coordinator, alleging sexual harassment against a Respondent about conduct within APL’s education program or activity and requesting initiation of an investigation.
- c. “Respondent” means any individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment as it is defined under Title IX.

Upon receiving a report of alleged sexual harassment, the Title IX Coordinator will promptly and confidentially contact the Complainant to explain the process for filing a Formal Complaint and discuss the availability of supportive measures to include measures such as:

- a. Counseling
- b. Extensions of deadlines or other course-related adjustments
- c. Modifications of work or class schedules
- d. Campus escort services
- e. Mutual restrictions on contact between the parties
- f. Changes in work or housing locations
- g. Leaves of absence
- h. Increased security and monitoring of certain areas of the campus

- i. Other similar measures

In the event that either the Complainant or Respondent in a report of alleged sexual harassment is under the age of 18, the Title IX Coordinator should work with the Office of the General Counsel to ensure that the minor child's parent or guardian is provided with appropriate notification and that APL complies with any additional legal obligations with respect to the receipt of a report of alleged sexual harassment of a minor.

2. Roles in the Grievance Procedure

The Grievance Procedure designates formal roles for APL's Title IX Coordinator, Investigator, Adjudicator, and Appeal Officer, which are required to be filled by separate individuals.

- a. The Title IX Coordinator is responsible for coordinating APL's efforts to comply with Title IX, overseeing the APL's responses to reports of any Title IX violations, and identifying and addressing any pattern or systemic problems. Among other duties, the Title IX Coordinator is responsible for ensuring that those with formal roles in this Grievance Procedure are free from conflicts of interest and bias. In the event that the individual designated in the Grievance Procedure is not appropriate to serve that function under the particular circumstances of a matter, the Title IX Coordinator shall consult with an attorney from the Office of the General Counsel (OGC) to designate an alternative person for the role.
- b. The Investigator is charged with gathering facts related to a Formal Complaint, including interviewing the parties and any witnesses and reviewing any relevant documents or records, as well as drafting an investigative report that fairly summarizes relevant evidence. In order to maintain independence in the process, APL will generally designate outside counsel or an APL employee outside of OGC as the Investigator in the Grievance Procedure.
- c. The Adjudicator is responsible for weighing the evidence presented in the investigative report and any written responses submitted by the parties or any witnesses in the deliberation process. APL designates the EEO Officer/ADA Coordinator to serve as the Adjudicator in the Grievance Procedure.
- d. The Appeal Officer is charged with evaluating any appeals filed by any party and drafting a written determination of that appeal. APL designates the Principal Deputy General Counsel to serve as the Appeal Officer in the Grievance Procedure.

3. Notice of Allegations

Following receipt of a Formal Complaint, the Title IX Coordinator will simultaneously provide written notice to each known Complainant and Respondent that will include the following:

- a. Notice of these Grievance Procedures for Allegations of Sexual Harassment Under Title IX, including any available informal resolution process and a range of possible sanctions associated with the allegations;
- b. Notice of the allegations of Title IX sexual harassment, including: the identities of the parties involved in the incident, if known; the conduct alleged to constitute Title IX sexual harassment; the date, time, and location of the alleged incident(s), if known;

- c. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of any investigation and adjudication process;
- d. Reasonably prompt time frames for the conclusion of the grievance process, including any appeal thereof;
- e. Information regarding the parties' right to an advisor of choice throughout the investigation and adjudication process; and
- f. A statement describing any applicable prohibitions against knowingly making false statements or submitting false information during any investigation, adjudication, or informal resolution process.

The Title IX Coordinator may amend or supplement the Notice of Allegations at any time. If, in the course of an investigation, the Investigator decides to investigate new or additional allegations that were not included in the most current Notice of Allegations, the Title IX Coordinator will provide an updated Notice of Allegations to all known parties.

The Title IX Coordinator will also provide the Complainant and Respondent, respectively, a written explanation of their rights, options, and responsibilities under these Procedures, including the availability of interim supportive measures and support resources, information regarding other civil and criminal options, and legal services organizations and referral services available to the party.

4. Dismissal Procedures

Upon reaching a decision that the Formal Complaint or any specific allegation in the Formal Complaint will be dismissed for any of the reasons addressed below, the Title IX Coordinator will promptly send written notice and the reason for the dismissal, simultaneously to the parties. Both the Complainant and Respondent have the right to appeal the dismissal of any Formal Complaint per the procedures identified below in Section H. The Title IX Coordinator shall also refer any dismissed allegation to the Principal Ethics and Compliance Office and/or the EEO Officer for a determination as to whether such allegation should be investigated as a potential violation of any other APL policy, including the Standards of Ethics and Conduct or the Equal Employment Opportunity Policy.

a. Mandatory Dismissal

Because Title IX narrowly defines those allegations which may be investigated and resolved in the Grievance Procedure, the Title IX Coordinator must dismiss a Formal Complaint in the following circumstances:

- 1) The conduct is alleged to have occurred outside the United States;
- 2) The conduct is not alleged to have occurred in the one of APL's education programs or activities; or
- 3) If proven, the alleged conduct would not constitute sexual harassment under Title IX, defined as conduct that is:
 - a) *Quid pro quo* harassment by an APL staff member;

- b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to APL's education program or activity; or
- c) Sexual assault, dating violence, domestic violence, or stalking.

b. Discretionary Dismissal

The Title IX Coordinator may dismiss a Formal Complaint or any allegations within such a Formal Complaint in the following three situations:

- 1) The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations within it;
- 2) The Respondent is no longer participating in an APL education program or activity and/or is no longer employed by APL; or
- 3) Specific circumstances prevent APL from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

5. Investigation of Formal Complaint

a. Referral of Investigation

At the time the Title IX Coordinator provides written Notice of Allegations to all known Complainants and Respondents, the Title IX Coordinator will also refer the investigation of the Formal Complaint to an appropriate internal or external Investigator. The Title IX Coordinator should consult with an attorney in APL's Office of the General Counsel to select an individual who is free of conflicts of interest and has received or will receive the training required under Title IX.

b. Consolidation of Formal Complaints

The Title IX Coordinator may consolidate Formal Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

c. Fact Gathering

During the first phase of its investigation, the Investigator will gather facts related to the allegations of Title IX sexual harassment. The Investigator will gather pertinent documents and other evidence identified by either party or that comes to their attention. The burden of proof and of gathering evidence sufficient to reach a determination regarding responsibility rests on APL and not on the parties. Both the Complainant and Respondent have the right to submit evidence (both inculpatory and exculpatory), present witnesses (including fact and expert witnesses), and/or suggest specific questions to be posed to the other party during the investigation.

d. Investigative Protocols

The Investigator will follow the protocols set forth below:

- 1) *Preservation of Evidence*: The Investigator will request that the APL's Office of the General Counsel issue a Notice of Preservation of Evidence or Memorandum to Request Litigation Hold requiring the Complainant, Respondent, witnesses, and other interested individuals preserve any relevant evidence, including documents, text messages, voice messages, e-mails, and postings on social media.
- 2) *Romantic or Sexual History*:

- a) The Investigator will not solicit or consider information about the Complainant's sexual predisposition or prior sexual behavior, unless such information is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the information concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is offered to prove consent.
 - b) The Investigator will not solicit or consider information concerning the romantic or sexual history of the Respondent other than (1) information concerning the parties' shared romantic or sexual history that is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; (2) information concerning specific incidents of the Respondent's prior sexual behavior with respect to the Complainant that is offered to prove consent; or (3) information concerning the Respondent's prior sexual history with someone other than the Complainant if deemed relevant to prove the source of injury or prior sexual misconduct, to show that an individual has an ulterior motive, or to impeach the Respondent's credibility after the Respondent has put their own prior sexual conduct at issue.
- 3) *Prior Conduct Violations*: The Investigator will generally not consider evidence of any prior incident, but the Investigator has discretion to consider evidence of any prior incident(s) that involved conduct substantially similar to the allegation(s) being investigated or demonstrates a common pattern of behavior.
 - 4) *Mental Health Conditions*: The Investigator will not solicit or consider information concerning a party's mental health history, including any mental health diagnosis, counseling, or treatment, unless the party consents to the use of such information.
 - 5) *Medical Records*: The Investigator cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless APL obtains that party's voluntary, written consent to do so.
 - 6) *Law Enforcement Investigations*: If APL's investigation is delayed during the evidence-gathering stage of a concurrent law enforcement investigation, APL's investigation will resume promptly thereafter.
 - 7) *Access to Party Advisor*: The Complainant and Respondent have equal access to advisors and support persons; any restrictions on advisor participation will be applied equally. Throughout the investigation and resolution process, each party has the right to choose and consult with an advisor, who may be any person, including an attorney. The parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation and resolution of a report under the grievance process. While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties, submit written statements not attributed to the party, or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings. APL will not unduly

delay the scheduling of meetings or proceedings based on the advisor's unavailability.

e. Party Review of Evidence File

After the fact-gathering process is complete, both parties will have an equal opportunity to review the evidence file, which includes any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint. This includes evidence upon which the Investigator does not intend to rely in reaching a recommendation regarding responsibility, as well as inculpatory and exculpatory evidence obtained from a party or other source.

Prior to the completion of the investigative report, the Investigator will provide each party and any party advisor with electronic access to review and inspect the above-referenced evidence file. The parties will have ten (10) calendar days to submit a written response to the Investigator, if they choose. Any response to the evidence file submitted by a party will be made available to the other party and will become part of the evidence file unless the response is not directly related to the allegations raised in the Formal Complaint and the Investigator will consider the response(s) prior to completing the investigative report

f. Investigative Report

Upon completion of the fact-gathering process and consideration of any response to the evidence file review, the Investigator will consider all relevant evidence and prepare a report that fairly summarizes relevant evidence. The report will include the Investigator's recommended findings of fact, an assessment of credibility of the information provided, and a recommended determination as to whether the Respondent is responsible for the alleged violation(s) by a preponderance of the evidence.

At least ten (10) days prior to the Adjudicator's determination of responsibility, the Complainant and Respondent and any party advisor will be notified in writing of their right to review the investigative report and submit written comments to the Adjudicator. If either party chooses to submit written comments to the Adjudicator, these comments will be provided in full to the other party along with the final investigative report.

When the investigative report is submitted to the parties, the names and identifying information of other students/individuals will be redacted to the extent possible to protect privileged and confidential information. Once the Investigator determines that an investigation is complete, the Investigator will transmit the investigative report and the evidence file to the Adjudicator.

6. Determination Regarding Responsibility

a. Submission of Relevant Questions

Before reaching a determination regarding responsibility, the Adjudicator must afford each party the opportunity to submit relevant written questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. The Adjudicator must review all proposed questions and explain to the party proposing the questions any decision to exclude a question as

not relevant. In so doing, the Adjudicator will adhere to the same principles concerning relevance of prior sexual or romantic history as noted above in the Investigative Protocols.

b. Written Determination Regarding Responsibility

The Adjudicator will issue a written determination regarding responsibility applying the preponderance of the evidence standard. The written determination will be issued simultaneously to both parties and will include:

- 1) Identification of the allegations of Title IX sexual harassment;
- 2) A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
- 3) Findings of fact supporting the determination;
- 4) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether APL will provide to the Complainant remedies designed to restore or preserve equal access to its education programs and activities, which may be disciplinary or punitive toward to the Respondent; and
- 5) Information about procedures and permissible bases for the Complainant and Respondent to appeal.

c. Imposition of Sanctions and Recommendation of Additional Remedies

The Adjudicator is responsible for sanctioning Respondents found responsible for engaging in Title IX Sexual Harassment, in which the Adjudicator may consider the following factors:

- 1) The specific misconduct at issue;
- 2) The circumstances accompanying any lack of consent (e.g., force, threat, coercion, intentional incapacitation, etc.);
- 3) The Respondent's state of mind (bias-motivated, reckless, negligent, etc.);
- 4) The Respondent's prior disciplinary history;
- 5) The safety of the APL community;
- 6) Any impact or mitigation statement by one or both parties;
- 7) The Respondent's conduct during the investigation and resolution process; and
- 8) Such other factors as the Adjudicator deems appropriate.

After consulting with APL's Office of Advising and Counseling, the Adjudicator will impose sanctions that are fair and appropriate, consistent with APL's handling of similar cases, adequate to protect the safety of the campus community, and reflective of the seriousness of the misconduct at issue. With any necessary assistance from the Respondent's supervisor, the Adjudicator may impose any one or more of the following sanctions on a Respondent found responsible for sexual misconduct, or other such appropriate sanction as the circumstances may dictate:

- 1) Written warning;
- 2) Changing the Respondent's academic or employment schedule;
- 3) Probation and/or suspension;

- 4) Revocation of any honors or awards;
- 5) Loss of privileges;
- 6) Imposition of conditions of employment;
- 7) Restricting or prohibiting access to APL facilities, activities, or APL-sponsored events;
- 8) Mandatory training;
- 9) Alcohol and/or drug assessment or counseling;
- 10) Issuing a "no contact" order to the Respondent or requiring that an existing order remain in place;
- 11) Termination from APL employment;
- 12) Making an APL employee or student (including those expelled or terminated pursuant to these sanctions) ineligible for hire or rehire by APL;
- 13) Demotion or other removal from a management, supervisory or leadership role(s); or
- 14) Expulsion from APL educational program or activity.

The Adjudicator must inform the Title IX Coordinator promptly of the decision and any sanctions. The Adjudicator may recommend, and the Title IX Coordinator may implement, additional measures to remedy the effects of the sexual misconduct on the Complainant, designed to restore or preserve equal access to APL's education program or activity. These include but are not limited to: providing an escort for passage between classes and activities; ensuring the Complainant and Respondent do not share classes or extracurricular activities; providing victim-focused services including medical, counseling and academic support services, such as tutoring; and arranging for the Complainant to have extra time to complete or re-take a class or withdraw from a class.

The Adjudicator may also recommend, and the Title IX Coordinator may implement, additional measures that are designed to prevent the recurrence of sexual misconduct or respond to the effects of the sexual misconduct on the APL community that may include, but are not limited to: increased monitoring, supervision, or security at locations or activities where the sexual misconduct occurred; additional training and/or educational materials for students or groups; revision of any applicable APL policy or procedure; and campus climate surveys.

7. Appeals

Both parties have the right to appeal the Adjudicator's determination regarding responsibility or the Title IX Coordinator's dismissal of a Formal Complaint or any allegations in a Formal Complaint on the following bases:

- a. A procedural irregularity that affected the outcome of the matter;
- b. New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- c. The Title IX Coordinator, Investigator, or Adjudicator had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

A party has ten (10) calendar days from receipt of the determination or dismissal notification to appeal. Any appeal must be filed in writing with the Adjudicator, who will then promptly forward the written appeal to the Appeal Officer. The Appeal Officer will notify both parties in writing that the appeal has been received and is under consideration. After receiving this notification, both parties have ten (10) calendar days to submit a written statement in support of, or opposing, the outcome under appeal.

The Appeal Officer:

- a. Will be formally trained, as required by law;
- b. Will implement appeal procedures equally for both parties;
- c. Will have access to the evidence file, the investigative report, any written submissions by the parties, the Adjudicator's written determination, and appellate submissions of the parties;
- d. Will not have a conflict of interest or bias against Complainants or Respondents generally or individually as to the specific matter; and
- e. Will not be the same person as the Title IX Coordinator, the Investigator, or the Adjudicator that reached the determination regarding responsibility or dismissal.

If the Appeal Officer concludes that a change in the determination of responsibility or sanctioning determination is warranted, they may (1) enter a revised written determination; (2) remand the matter to the Adjudicator to reconsider a determination or sanction; or (3) remand the matter for further investigation by the Investigator. The Appeal Officer will simultaneously send the written appeal determination, including a description of the result of the appeal and the rationale for the result, to the Complainant and Respondent, with a copy to the Title IX Coordinator. No further appeals are permitted under the Grievance Procedure.

Revision Log		
Date	By	Description
9/7/2021	A. Vasudeva	Initial policy release; to be released on External Policies website