

DISCRIMINATION, HARASSMENT AND RETALIATION

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BACKGROUND AND PURPOSE

Associated Students, Incorporated (ASI) provides equal opportunity for all persons regardless of race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, and veteran status. With respect to employees, this policy extends to all employment practices, including recruitment, selection, hiring, promotion, training, compensation, benefits, transfer, separation, and other terms, conditions, or privileges of employment. It also includes full and equal accommodations, advantages, facilities, privileges and services for all participants in ASI program and services, as well as third parties as defined below.

ASI provides reasonable accommodation to qualified persons with disabilities unless doing so would impose an undue hardship. ASI will determine reasonable accommodation through an interactive process with the complainant to identify the nature and extent of the complainant’s restrictions and the appropriate reasonable accommodation.

ASI is also committed to maintaining an inclusive organization that values diversity and fosters tolerance and mutual respect. Through this policy, ASI reaffirms its commitment to providing equal opportunities and maintaining an environment free of discrimination, harassment and retaliation in accordance with applicable state and federal laws.

This policy statement brings together in one document ASI's nondiscrimination, anti-harassment, and anti-retaliation policies and procedures. It also covers employee and third party discrimination, harassment and retaliation complaints and training requirements for all employees.

This policy supersedes all previous discrimination, harassment and retaliation policies and/or procedures.

POLICY STATEMENT

It is the policy of the Associated Students, Incorporated to prohibit all forms of unlawful discrimination, harassment and retaliation. This policy is established in compliance with Title VII of the Civil Rights Act of 1964, Section 503 of the Rehabilitation Act of 1973, Title I of the Americans with Disabilities Act of 1990, the ADA Amendments Act of 2008, the Age Discrimination Act of 1975, Title II of the Genetic Information Nondiscrimination Act of 2008, the Vietnam-Era Veterans Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the California Fair Employment and Housing Act (Cal. Govt. Code §12940 et seq.) and Unruh Civil Rights Act (Cal. Govt. Code §51 et seq.), among other applicable laws and policies.

Except in the case of a privilege recognized under California law, any employee who knows of, or has reason to know of, allegations or acts that violate this policy, must promptly inform the ASI Human Resources Manager.

Employees who violate this policy may be subject to disciplinary action up to and including termination. If discipline is appropriate, it will be administered in a manner consistent with applicable ASI policies and legal requirements.

WHO SHOULD KNOW THIS POLICY

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Budget Area Administrators | <input checked="" type="checkbox"/> Elected/Appointed Officers | <input checked="" type="checkbox"/> Grant Recipients | <input checked="" type="checkbox"/> Management |
| <input checked="" type="checkbox"/> Program Advisors | <input checked="" type="checkbox"/> Staff | <input checked="" type="checkbox"/> Supervisors | <input checked="" type="checkbox"/> Volunteers |

DEFINITIONS

For purposes of this policy, the terms used are defined as follows:

Term	Definition
Adverse Action	An action that has a substantial and material adverse effect on the complainant's employment or ability to participate in an ASI program or activity free from discrimination, harassment or retaliation. Minor or trivial actions or conduct not reasonably likely to do more than anger or upset a complainant do not constitute an Adverse Action.

Term	Definition
Advisor	A person accompanying the Complainant and/or the Respondent to any meeting or interview regarding the allegations. The advisor may be anyone, provided the advisor is not a person with information relevant to the allegations who may be interviewed by the investigator during the investigation. The advisor may not answer questions for the complainant or the Respondent. However, the advisor may observe and consult with the Complainant or the Respondent and take actions to ensure that the investigation does not violate applicable laws or policies.
Affirmative Consent	Informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that Affirmative Consent to engage in the sexual activity has been obtained from the other participant(s). Lack of protest or resistance does not mean consent nor does silence mean consent. Affirmative Consent can be withdrawn or revoked, cannot be given by a person who is incapacitated or has a medical or mental Disability, or by a minor.
Age	With respect to employment discrimination, Age refers to the chronological age of any complainant who has reached his or her 40th birthday.
ASI Executive Officers	ASI President, Vice President and Treasurer
Complainant	An individual who reports being subjected to discrimination, harassment or retaliation. It also includes the alleged victim of discrimination, harassment or retaliation in cases where some other person has made a report on his/her behalf.
Complaint	A written communication alleging discrimination, harassment or retaliation
Dating Violence	Abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim. This may include someone the victim just met; i.e., at a party, introduced through a friend, or on a social networking website. For purposes of this definition, "abuse" means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to self, or another. Abuse does not include non-physical, emotional distress or injury.
Disability	Having a physical or mental condition that limits a major life activity; or Having a known history of a qualifying impairment; or Being regarded or treated as having or having had a qualifying impairment; or Being regarded or treated as having or having had such an impairment that has no presently disabling effects but may become a qualifying impairment in the future.
Discrimination	Adverse Action taken by ASI or an ASI employee against an Employee, volunteer or third party because of a protected status

Term	Definition
Employee	A person legally holding a position in ASI. This term includes full-time, part-time, probationary, temporary, intermittent, casual, and per-diem positions. This term does not include other third parties.
Gender	A person's sex, gender identity, or gender expression.
Gender expression	A person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.
Gender identity	Gender Identity means a person's identification as male, female, a gender different from the person's sex at birth, or transgender.
Genetic information	<p>Information about any of the following with respect to any person:</p> <ul style="list-style-type: none"> The person's genetic tests. The genetic tests of family members of the person. The manifestation of a disease or disorder in family members of the person. Any request for, or receipt of genetic services, or participation in clinical research that includes genetic services, by a person or any family member of the person. Genetic information does not include information about the sex or age of any person
Harassment	<p>Unwelcome conduct engaged in because of a Complainant's Protected Status and:</p> <ul style="list-style-type: none"> Submission to, or rejection or, the conduct is made a term or condition of the complainant's employment; or Submission to rejection of such conduct by the Complainant is used as the basis or threatened to be used as the basis for employment actions or decision affecting the Complainant; or The conduct is sufficiently severe or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Complainant, and is in fact considered by the Complainant, as intimidating, hostile or offensive. <p>Harassment includes, but is not limited to, verbal harassment, physical harassment, and visual forms of harassment.</p>
Investigator	The person tasked with investigating a complaint provided that they are an MPP Employee or an outside consultant.
Marital Status	An individual's state of marriage, non-marriage, divorce or dissolution, separation, widowhood, annulment or other marital state.

Term	Definition
Medical Condition	<p>A health impairment associated with a diagnosis or history of cancer; or</p> <p>A gene or chromosome that is a known cause of a disease or disorder in a person or the person's offspring, or that is associated with an increased risk of developing a disease or disorder although there are no present symptoms of the disease or disorder.</p>
Parties	Complainant(s) and the Respondent(s) to a given Complaint.
Preponderance of the evidence	<p>The greater weight of the evidence; i.e., that the evidence on one side outweighs, preponderates over, or is more than the evidence on the other side. The preponderance of the evidence is the applicable standard for demonstrating facts in an investigation conducted pursuant to this policy.</p>
Protected status	Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran status.
Race or Ethnicity	Ancestry, color, ethnic group identification, and ethnic background.
Religion	All aspects of religious belief, observance, and practice, including agnosticism and atheism. Religious dress and grooming practices, such as wearing religious clothing, head or face covering, jewelry, and artifacts, are part of a complainant's religious observance or belief.
Remedies	Action(s) taken to correct a violation of the prohibitions against discrimination, harassment and retaliation set forth in this policy. Interim remedies are those that may be offered prior to conclusion of informal resolution and/or an investigation in order to stop the alleged wrongdoing and/or reduce or eliminate negative impact, when appropriate. Examples may include offering the complainant the option of psychological counseling services, changes to work area, work assignments, or supervisory reporting relationship, or any measure as appropriate to stop further alleged discrimination, harassment or retaliation until an investigation or informal resolution is completed.
Respondent	An employee, volunteer, or third party against whom an allegation of discrimination, harassment or retaliation has been made.
Sex	Includes but is not limited to gender, pregnancy, childbirth or medical condition(s) related to pregnancy or childbirth.
Sexual Orientation	The direction of an individual's emotional, physical, and sexual attraction to others, which may be toward the same gender (homosexual), the "opposite" gender (heterosexual), or "both"/multiple genders (bisexual/pansexual).

Term	Definition
Sexual Harassment	<p>A form of Sex Discrimination, Sexual harassment is unwelcome verbal, nonverbal or physical conduct of a sexual nature that includes but is not limited to sexual advances, requests for sexual favors, any other conduct of a sexual nature, offering employment benefits or giving preferential treatment in exchange for sexual favors, or indecent exposure, where:</p> <p>Submission to, or rejection of, the conduct by the Complainant is explicitly or implicitly used as the basis for any decision affecting a term or condition of the Complainant’s employment, or an employment decision; or</p> <p>The conduct is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable in the shoes of the Complainant, and is in fact considered by the complainant, as creating an intimidating, hostile or offensive environment.</p>
Sexual Misconduct	Engaging in sexual activity without first obtaining Affirmative Consent to the specific activity, whether or not the conduct violates any civil or criminal law
Student	An applicant for admission to CSULB, an admitted CSULB student, an enrolled CSULB student, a CSULB extended education student, a CSULB student between academic terms, a CSULB graduate awaiting a degree, and a CSULB student who withdraws from school while a disciplinary matter is pending.
Third party	A person other than an employee or a student. Examples include volunteers, independent contractors, vendors and their employees, and visitors.
Working days	Monday through Friday, excluding all official holidays or Corporate Holidays.

STANDARDS AND PROCEDURES

1.0 PROHIBITED CONDUCT

ASI prohibits:

1. Discrimination, including harassment, because of any Protected Status: i.e., Age, Disability (physical or mental), Gender (or sex), Gender Identity (including transgender), Gender Expression, Genetic Information, Marital Status, Medical Condition, Nationality, Race or Ethnicity (including color or ancestry), Religion (or Religious Creed), Sexual Orientation, sex stereotype, and Veteran or Military Status;
2. Retaliation for exercising rights under this policy, opposing Discrimination or Harassment because of a Protected Status, or for participating in any manner in any related investigation or proceeding;
3. Dating and Domestic Violence, and Stalking between members of the ASI community; and
4. Sexual Misconduct of any kind, which includes sexual activity engaged in without Affirmative Consent between members of the ASI community.

1.1 DISCRIMINATION

Discrimination is defined as an action taken by ASI or an ASI employee against an individual based on their protected status in which the action has a substantial and material adverse effect on the complainant's employment or ability to participate in an ASI program or activity.

ASI prohibits Discrimination based on the following protected statuses: Age, Disability (physical or mental), Gender (or sex), Gender Identity (including transgender), Gender Expression, Genetic Information, Marital Status, Medical Condition, Nationality, Race or Ethnicity (including color or ancestry), Religion (or Religious Creed), Sexual Orientation, sex stereotype, and Veteran or Military Status.

The following are examples of behavior that could be interpreted as prohibited Discrimination. These examples are meant to be illustrative only and are not an inclusive list.

- Denying access or equally effective access to student programs or information technology;
- Verbiage that could be interpreted as being offensive, such as comments about someone's race, sex, gender/gender identity, ancestry, color, age, physical or mental disability, mental status, religion, sexual preference, or veteran status;
- Not allowing an employee the time away from work to observe a religious holiday, or not allowing him or her to make up the time of work lost due to observance of religious holiday;
- Screening a person out of a job on the basis of age;
- Treating a student or employee differently because of their race;
- Constantly commenting or kidding about someone's ancestry;
- Not providing assistance to an employee or student because of a physical or mental disability when you provide this assistance to everyone else;
- Not being sensitive to others' needs because of their gender identity;
- Not listening to, or not taking seriously, suggestions or ideas from someone because of their gender;
- Not giving credit to someone for a well-done effort because of their race; or
- Not considering someone for a position because of their covered military service

Minor or trivial actions or conduct not reasonably likely to do more than anger or upset a complainant do not constitute an Adverse Action.

1.2 HARASSMENT

Under state and federal law, harassment is defined as unwelcome conduct committed against a complainant based on their protected status in which:

- Submission to, or rejection of, such conduct is made a term or condition of employment; or

- Submission to or rejection of such conduct by the complainant is used as the basis, or threatened to be used as the basis, for employment actions or decisions affecting the complainant; or
- The conduct is sufficiently severe or pervasive that its effect, whether or not intended, could be considered intimidating, hostile or offensive by a reasonable person in the shoes of the complainant, and is in fact considered such by the complainant.

Harassment includes, but is not limited to, verbal harassment (e.g., epithets, derogatory comments, or slurs), physical harassment (e.g., assault, impeding or blocking movement, or any physical interference with normal work or movement), and visual forms of harassment (e.g., derogatory posters, cartoons, drawings, symbols, or gestures).

The following are examples of behavior that could be interpreted as harassment. These examples are meant to be illustrative only and are not an inclusive list.

- Written communications, such as sending inappropriate jokes or comments in print or electronically;
- Verbal communications, such as making graphic or degrading comments about an individual and/or his/her body or personal characteristics, or using epithets, derogatory comments or slurs;
- Physical acts, such as unwanted touching, physical interference, or event assault;
- Visual acts or displays, such as derogatory cartoons, drawings, or posters, or inappropriate gestures;
- Making unwelcome sexual advances or propositions, or offering benefits or giving preferential treatment in exchange for sexual favors; or
- Making or threatening reprisals after a negative response to unwelcome conduct.

1.2.1 SEXUAL HARASSMENT

Sexual harassment is defined as non-sexual conduct based on sex or sex-stereotyping as well as conduct that is sexual in nature. It includes unwelcome sexual advances or propositions, offering employment benefits or giving preferential treatment in exchange for sexual favors, and other verbal, visual, or physical conduct of a sexual nature where:

- Submission to, or rejection of, the conduct by the complainant is explicitly or implicitly used as the basis for any decision affecting a term or condition of the complainant's employment; or
- Submission to or rejection of such conduct by the complainant is used as the basis, or threatened to be used as the basis, for employment decisions or actions affecting the complainant; or
- The conduct is sufficiently severe or pervasive that its effect, whether or not intended, could be considered intimidating, hostile or offensive by a reasonable person in the shoes of the complainant, and is in fact considered such by the complainant.

1.2.2 DOMESTIC VIOLENCE

Domestic violence is defined as abuse committed against someone who is a current or former spouse; current or former cohabitant; someone with whom the abuser has a child; someone with whom the abuser has or had a dating or engagement relationship; or a person similarly situated under California domestic or family violence law. Cohabitant means two unrelated persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to:

- Sexual relations between the parties while sharing the same living quarters;
- Sharing of income or expenses;
- Joint use or ownership of property;
- Whether the parties hold themselves out as husband and wife
- The continuity of the relationship; or
- The length of the relationship.

For purposes of this definition, “abuse” means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to themselves or others. Abuse does not include non-physical, emotional distress or injury.

1.2.3 DATING VIOLENCE

Dating violence is defined as abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim. This may include someone the victim just met; i.e., at a party, introduced through a friend, or on a social networking website.

For purposes of this definition, “abuse” means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to themselves or others. Abuse does not include non-physical, emotional distress or injury.

1.2.4 STALKING

Stalking is defined as engaging in a repeated Course of Conduct directed at a specific person that would cause a Reasonable Person to fear for their own or others' safety, or to suffer Substantial Emotional Distress. For purposes of this definition:

- Course of Conduct means two or more acts, including but not limited to, acts in which the stalker 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 the same Protected Status(es) as 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.

1.2.5 SEXUAL MISCONDUCT

All sexual activity between members of the ASI community must be based on Affirmative Consent. Engaging in any sexual activity without first obtaining Affirmative Consent to the specific activity constitutes Sexual Misconduct and is a violation of this policy, whether or not the conduct violates any civil or criminal law.

Sexual Misconduct is a form of Sexual Harassment and may create a sexually hostile environment that affects access to or participation in ASI programs and activities. ASI prohibits all such conduct whether or not it also amounts to Sexual Harassment.

Sexual activity includes but is not limited to kissing, touching intimate body parts, fondling, intercourse, penetration of any body part, and oral sex.

Affirmative Consent means an informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure Affirmative Consent has been obtained from the other participant(s) to engage in the sexual activity. Lack of protest or resistance does not mean Affirmative Consent, nor does silence mean Affirmative Consent. Affirmative Consent must be voluntary and given without coercion, force, threats or intimidation.

The existence of a dating or social relationship between those involved, or the fact of past sexual activities between them, should never by itself be assumed to be an indicator of Affirmative Consent. A request for someone to use a condom or birth control does not, in and of itself, constitute Affirmative Consent.

Affirmative Consent can be withdrawn or revoked. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity. Consent given to sexual activity on one occasion does not constitute consent on another occasion. There must always be mutual and Affirmative Consent to engage in sexual activity. Consent must be ongoing throughout a sexual activity and can be revoked at any time, including after penetration. Once consent is withdrawn or revoked, the sexual activity must stop immediately.

Affirmative Consent cannot be given by a person who is incapacitated. A person is unable to consent when asleep, unconscious or incapacitated due to the influence of drugs, alcohol or medication so that the person could not understand the fact, nature or extent of the sexual activity. A person is incapacitated if the person lacks the physical and/or mental ability to make informed, rational decisions.

Whether an intoxicated person (as a result of using alcohol or other drugs) is incapacitated depends on the extent to which the alcohol or other drugs impact the person's decision-making ability, awareness of consequences, and ability to make informed judgments. A person's own intoxication or incapacitation from drugs or alcohol does not diminish that person's responsibility to obtain Affirmative Consent before engaging in sexual activity.

A person with a medical or mental disability may also lack the capacity to give consent.

Sexual activity with a minor (a person under 18 years old) is not consensual, because a minor is considered incapable of giving consent due to age.

It shall not be a valid excuse that a person affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the person was unable to consent to the sexual activity under any of the following circumstances:

- The person was asleep or unconscious;
- The person was incapacitated due to the influence of drugs, alcohol or medication so that the person could not understand the fact, nature or extent of the sexual activity;
- The person was unable to communicate due to a mental or physical condition.
- It shall not be a valid excuse that the Respondent believed that the person consented to the sexual activity under either of the following circumstances:
 - The Respondent’s belief in Affirmative Consent arose from the intoxication or recklessness of the Respondent;
 - The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the person affirmatively consented.

1.3 RETALIATION

Retaliation is defined as any Adverse Action taken against a person because they have or is believed to have:

1. Exercised rights under this Policy;
2. Reported or opposed conduct which they reasonably and in good faith believe is in violation of this Policy;
3. Participated in a policy-related investigation/proceeding regardless of whether the Complainant was substantiated; or
4. Assisted someone in reporting or opposing a violation of this Policy.

No employee shall be subject to any form of retaliation for reporting any violation or participating in any investigation under this Policy truthfully and in good faith. Employees who believe they have been retaliated against in violation of this Policy may utilize the above procedure.

In addition, the Fair Employment and Housing Act prohibits retaliation against employees because they have filed a complaint with the DFEH or FEHC, participated in an investigation, proceeding, or hearing with either agency, or opposed any practice made unlawful by the FEHA.

2.0 COMPLAINT PROCEDURES

2.1 PERSONS ELIGIBLE TO USE THIS PROCEDURE

The individuals listed below may use the procedure in this policy to address discrimination, harassment or retaliation. Whenever the Human Resources Office determines that a complaint is outside the scope of this policy, they will promptly notify the Complainant of such in writing.

1. Employees may use the procedure described in this policy to address discrimination, harassment or retaliation by ASI, another ASI employee, or a third party. As used in this section, the term “employee” includes former employees.

2. Applicants for employment may use the procedure outlined in this policy to address discrimination, harassment or retaliation that occurred during their application process.
3. Student-employees. At times, a person may be employed by ASI and also be a student at CSULB. If an allegation of discrimination, harassment or retaliation arose out of the person's status as a student and not their status as an employee, the allegation will be handled under Executive Order 1097 (Policy Prohibiting Discrimination, Harassment and Retaliation Against Students and Systemwide Procedure for Handling Discrimination, Harassment and Retaliation Complaints by Students) or a superseding policy. An allegation arising out of the person's work environment (while they are acting as an employee) will be handled under this policy.
4. Allegations of discrimination, harassment, or retaliation by third parties against an ASI employee will be investigated and resolved in accordance with the procedure outlined in this Policy.

2.2 EARLY RESOLUTION

A Complainant who believes they may have been subjected to discrimination, harassment, retaliation, sexual misconduct, dating or domestic violence, or stalking may initiate the Early Resolution process prior to, or instead of, filing a Formal Complaint. The purpose of the Early Resolution process is to explore whether the Complainant's concern(s) can be resolved by ASI without an investigation. However, at no time will ASI require the Complainant to "work out the problem" directly with the Respondent; and in no event should any meeting between the Complainant and the Respondent be directed to occur without appropriate involvement by the Human Resources Manager. Mediation cannot be used, even on a voluntary basis to resolve sexual misconduct, dating or domestic violence, or stalking complaints. The Complainant, the Respondent or ASI may at any time elect to terminate the Informal Resolution process.

The Complainant will be notified in writing of the following:

1. Their concerns are being handled pursuant to the Early Resolution process;
2. They may end the Informal Resolution at any time

2.2.1 INITIATING THE EARLY RESOLUTION PROCESS

To initiate the Early Resolution process, the Complainant should contact the Human Resources Manager. Upon receipt of the Complainant's concern(s), the Human Resources Manager will promptly meet with the Complainant to discuss the concern(s). The Human Resources Manager will also discuss reasonable interim remedies with the Complainant, as appropriate.

In cases where Sexual Misconduct, Dating or Domestic Violence, or Stalking is alleged, the Complainant will also be advised to file immediately a Formal Complaint. Early Resolution is not appropriate for such allegations.

2.2.2 PARTICIPATION IN THE EARLY RESOLUTION PROCESS

Participation in the Early Resolution process is strictly voluntary. It may include an inquiry into the facts, but does not include an investigation. The Human Resources Office will attempt to resolve the Complainant's concern(s) promptly and effectively.

The Human Resources Office will meet with the Complainant, the Respondent, and any other person(s) or witness(es) determined to be necessary for a resolution, to review the allegations and any responses. Early Resolution may take the form of a negotiated resolution facilitated by the Human Resources Office, subject to the approval of the Executive Director.

2.2.3 FINAL EARLY RESOLUTION

If Early Resolution is reached, a written record of the resolution will be signed by the Complainant and maintained in accordance with applicable recordkeeping policies. The matter will be considered closed and the Complainant is precluded from filing a Formal Complaint concerning the same incident, except where the terms of the informal resolution have been violated or have been ineffective in stopping the alleged discrimination, harassment, or retaliation.

Where the Respondent is a student, the Human Resources Manager shall inform the Director of the Office of Student Conduct and Ethical Development of the outcome of the Early Resolution process, including any interim remedies afforded to the Complainant.

If resolution is not reached, the Human Resources Office will promptly notify the Complainant, the Respondent, and their advisors (if any) in writing that the Early Resolution process is terminated, and the effective date of the termination. The Human Resources Manager shall also determine whether the matter is appropriate for investigation, and so notify the parties in the writing. The Complainant will be provided written notification about how to file a Formal Complaint and the timeline for doing so.

2.2.4 CONFIDENTIALITY

Both the Complainant and the Respondent will keep the details of the Early Resolution process confidential until the process is concluded. If the matter is not resolved and an investigation is conducted, the Complainant and the Respondent will maintain confidentiality until the conclusion of the Formal Complaint process and CO Appeal Review process, if any.

2.2.5 TERMINATION OF THE EARLY RESOLUTION PROCESS

The Complainant shall be notified that the Complainant or ASI may elect at any time to terminate the Early Resolution process. In that event, the Human Resources Manager shall promptly notify the Complainant and the Respondent in writing that the Early Resolution process has been terminated, the effective date thereof, and inform the Complainant to file a Formal Complaint pursuant to this policy. The Human Resources Manager shall also determine whether the matter is appropriate for investigation, and so notify the parties in writing.

2.3 FORMAL COMPLAINTS

ASI will investigate Complaints of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic violence, stalking unless an early resolution is reached, regardless of whether or not a written Complaint is submitted.

The Human Resources Manager will determine whether to open an investigation after making a preliminary inquiry into the allegations. An investigation may not be warranted where the reported information is insufficient. These determinations will be documented by the Human Resources Manager and maintained in accordance with CSU systemwide records retention policies.

In cases where the Complainant does not want to pursue an investigation, the Human Resources Manager should inform the Complainant that the ability to take corrective action may be limited. ASI may determine that circumstances warrant an investigation even if a Complaint has not been filed, and the investigation is independent of the intent or wishes of the Complainant.

In cases involving sexual misconduct, dating or domestic violence, or stalking, when determining whether to go forward with an investigation, the Human Resources Manager should consider the seriousness of the allegation(s), the age of the Complainant, whether there have been other Complaints against the Respondent, and the risk to the organization and greater campus community if the Respondent's alleged conduct remains addressed. These determinations will be documented in writing by the Human Resources Manager and maintained in accordance appropriate records retention policies.

2.3.1 FILING A COMPLAINT

A Formal Complaint must be submitted in writing to the Human Resources Manager. The date of receipt will be deemed to be the complaint filing date. The Human Resources Manager will offer reasonable accommodation to Complainants who are unable to submit a written complaint because of a disability.

2.3.2 COMPLAINT REQUIREMENTS

The Complainant should complete the "Complaint Form for Discrimination, Harassment, or Retaliation Complaints" or, in the alternative, the Complainant will submit a written signed statement containing the following information:

1. The Complainant's full name, relationship to ASI, phone number, and e-mail address;
2. The name of the Respondent and relationship to ASI, if known;
3. The protected status that is the basis for the alleged discrimination or harassment, the Complainant's activity that is the basis for the alleged retaliation, or whether dating or domestic violence, or stalking is alleged;
4. A clear, concise statement of the facts that constitute the allegations, including pertinent date(s) and sufficient information to identify any individuals who may provide relevant information during the course of any investigation;
5. A statement verifying that the information provided is true and accurate to the best of the Complainant's knowledge;
6. The full name and contact information of the Complainant's and Respondent's advisor, if any;
7. The specific harm resulting from the alleged discrimination, harassment, retaliation, sexual misconduct, dating or domestic violence, or stalking;
8. The specific remedy sought;
9. The Complainant's signature; and
10. The date on which the Complaint is submitted.

2.3.3 INTAKE INTERVIEW

The Human Resources Manager will meet with the Complainant as soon as possible after receiving the complaint, but no later than 10 Working Days after the Complaint was received. The Complainant will make themselves available for this meeting. The meeting will serve as the initial intake interview and will:

- Acquaint the Complainant with the investigation procedure and timelines; inform the Complainant of their rights (including having an Advisor);
- Provide the opportunity for the Complainant to complete and sign a complaint form, if not already done;
- Discuss reasonable interim remedies, as appropriate.

In cases alleging sexual misconduct, dating or domestic violence, or stalking, the Human Resources Manager shall also:

- Inform the Complainant of the right to file a criminal complaint and offer to assist the Complainant with filing of such a complaint;
- Assure the Complainant that such filing will not significantly delay the ASI investigation;
- Advise the Complainant of available resources such as Campus Police, Campus Sexual Assault Victim's Advocate, Student Health Services, or Counseling and Psychological Services; and
- Provide written information, as directed under CSU Executive Order 1095 to the Complainant.

Prior to or during the initial interview with the Respondent, the Human Resources Manager will:

- Explain the investigation procedure and timelines and answer any questions about them;
- acquaint the Respondent with the investigation procedure and timelines; inform the Complainant of their rights (including having an Advisor);
- Provide the Respondent with a copy of this policy.
- Provide the Respondent with a description of the Complainant's allegations against the Respondent;
- Provide the Respondent a full opportunity to respond the allegations, including schedule other meeting(s), accepting documentary evidence, and accepting Respondent's list of potential witnesses; and
- Discuss any interim remedies, as appropriate.

2.3.4 ADVISOR

The Complainant and Respondent may elect to be accompanied by an Advisor to any meeting or interview regarding the Complaint.

2.3.5 CONFIDENTIALITY

Information regarding the Complaint will be shared with other ASI employees and legal counsel exclusively on a "need to know" basis. ASI employees will endeavor to honor any Complainant's request for confidentiality;

however, ASI must also weigh requests for confidentiality against its duty to provide a safe and nondiscriminatory work environment. Confidentiality, therefore, cannot be ensured.

2.3.6 COMPLAINT ACCEPTED FOR INVESTIGATION

The Human Resources Manager will review all written complaints and the information received during the intake interview with the Complainant. If the Human Resources Manager determines that the Complaint falls within the scope of this Policy, the Complainant will be notified within 10 Working Days that the Complaint has been accepted for investigation and the timeline for completion of the investigation.

If the Human Resources Manager determines that Complainant has failed to state a Complaint within the scope of this Policy, the Complainant will be provided with written notice of this determination within 10 Working Days. The Human Resources Manager will also inform the Complainant that if additional information is provided, the complaint will be reviewed again. The Human Resources Manager will maintain a record of the Complaint and the reasons the Complaint was deemed not within the scope of this Policy.

The Human Resources Manager shall determine whether the complaint should be processed through another Campus office or University procedure available to the Complainant. If appropriate, the Human Resources Manager shall direct the Complainant to that procedure as soon as possible.

2.3.7 INVESTIGATION PROCEDURE

The Human Resources Manager will promptly investigate the Complaint or assign this task to another MPP-level employee or outside consultant on a case-by-case basis.

In cases where allegations of discrimination, harassment or retaliation are made against ASI executive employees, the Human Resources Manager will delegate the investigation to the University office that investigates Complaints pursuant to Executive Order 1096. For the purposes of this policy, "ASI executive employee" includes ASI Executive Officers, the ASI Executive Director, all staff that report directly to the Executive Director, and the Human Resources Manager.

An Investigator will have relevant experience or will receive appropriate training regarding such issues as the investigatory process and the laws governing discrimination, harassment and retaliation. If delegated, the Human Resources Manager will oversee the investigation to ensure that it is conducted in accordance with the standards, procedures and timelines set forth herein.

The Complainant and the Respondent shall have equal opportunities to present relevant witnesses and evidence in connection with the investigation. Upon inquiry, the Complainant and Respondent shall be advised of the status of the investigation.

Before reaching a final conclusion or issuing a final investigation report, the Investigator shall have:

1. Advised the Parties or have offered to do so, verbally or in writing, of any evidence upon which the findings will be based; and,
2. Given the Parties an opportunity to respond to the evidence, including presenting further relevant evidence, information or arguments that could affect the outcome.

The Investigator will not reach a final conclusion or issue an investigation report until giving careful consideration to any such relevant evidence, information or arguments provided by the Parties. The Investigator retains discretion and authority to determine relevance.

The investigation will be completed no later than 60 Working Days after receiving the Formal Complaint, unless the timeline has been extended pursuant to Section 3.4, E or F.

On occasion, a criminal investigation may be initiated by a law enforcement agency over the same allegations that are reported in a Complaint filed under this Policy. A pending (Campus or local) police investigation is a separate investigation and it does not relieve ASI of its responsibility to handle complaints under this Policy. Thus, ASI may not wait until the conclusion of a police investigation to commence its own investigation under this Policy. Although it may be necessary to temporarily delay the fact-finding portion of an investigation while the police are gathering evidence, once notified that the police have completed the fact-gathering portion of their investigation, ASI must promptly resume and complete its own investigation.

2.3.8 INVESTIGATIVE REPORT

Within the investigation period stated above, the investigator will prepare an investigative report. The report will include a summary of the allegations, the investigative process, the Preponderance of the Evidence standard, the evidence considered, the findings of fact, and a determination as to whether this policy was violated. Relevant exhibits and documents, if any, shall be attached to the written report.

If the Human Resources Manager investigates the Complaint, the completed report will be promptly provided to the ASI Executive Director. If delegated to a university office or outside consultant, the report will be promptly provided to the Human Resources Manager or the ASI employee tasked with overseeing the investigation.

2.3.9 NOTICE OF INVESTIGATION OUTCOME

If the Human Resources Manager performed the investigation, they will notify the Complainant and Respondent in writing of the investigation outcome within 10 Working Days of completing the report. Otherwise, within 10 working days of receiving the report, the Human Resources Manager will review the report and notify the Complainant in writing of the outcome of the investigation. The Notice shall include a summary of the allegations, the investigative process, the Preponderance of Evidence standard, the evidence considered, the findings of fact, a determination as to whether this Policy was violated, and if so, any Remedies to be afforded to the Complainant. If the outcome is that this policy was not violated, the notice will inform the Complainant of their right to pursue remedies with outside government agencies. A copy of the notice will be provided to the parties' respective advisors.

All written notices to the Parties shall be hand-delivered or sent electronically.

2.4 GENERAL PROVISIONS FOR INVESTIGATION/REVIEW OF COMPLAINTS

- A. All investigations and reviews will be conducted impartially and in good faith.
- B. All persons—including the Complainant, the Respondent, and witnesses, both students and employees—are required to cooperate with the investigation and other processes set forth in this Policy, including but not limited to attending meetings, being forthright and honest during the process, and keeping confidential the existence and details of the investigation/review. If any person refuses to cooperate, ASI

may draw all reasonable inferences and conclusions on the basis of all available evidence and conclude the investigation/review.

- C. A Complainant will proceed with a complaint in good faith. Any Complainant or individual who knowingly and intentionally files a false Complaint or knowingly gives false statements will be subject to disciplinary action in accordance with applicable ASI policies and legal requirements. Such disciplinary action will not be deemed to be Retaliation.
- D. Both the Complainant and Respondent will have the right to identify witnesses and other evidence for consideration; however, ASI will decide what evidence (if any) is relevant and significant to the issues raised.
- E. If the Complainant, the Respondent, a witness, the investigator, or other necessary person involved in the Complaint process is unavailable due to any reason deemed to be legitimate by the investigator, the timelines stated herein will be automatically adjusted by the length of time the person is unavailable. The Complainant and Respondent will be provided written notification of any period of extension.
- F. Timelines set forth herein may also be extended by mutual agreement between the investigator and the Complainant for a reasonable time period. If ASI requests a time extension in order to conduct an effective investigation or review, and the Complainant does not agree or does not respond to ASI's request, ASI will respond to the complaint within the timelines set forth herein. Any such response will be interim in nature, as it will be based upon the information available at the time. The interim response will note that the investigation or review is continuing. The interim response will include a summary of the allegations, a description of the investigative or review process, and will also provide the Complainant with an anticipated date of completion. The investigation or review will continue until ASI is satisfied that its duty to respond to the Complaint has been appropriately discharged, provided the investigation or review is completed no later than an additional 60 working days.
- G. In the event that ASI determines an investigation is not warranted, the reasons for that decision shall be reduced to writing and retained by ASI to appropriate record retention policies.
- H. Taking into account operational needs, ASI may provide the Complainant and advisor, if any, three Working Days off for preparing and presenting the initial complaint upon their request.
- I. Where it is necessary for the Complainant or their advisor to have access to specific information for the purpose of filing a complaint, the Complainant or their advisor will make a written request for such information to the Human Resources Office. The Complainant or their advisor will have access to information within the policies and procedures and laws governing confidentiality and privacy that are relevant to any issue raised in the complaint. This provision does not authorize a Complainant access to the personnel files of another without the written consent of that person.

2.5 EXTERNAL COMPLAINTS

A Complainant may choose to pursue remedies with outside government agencies at any time without waiting for the conclusion of the ASI complaint process under this Policy.

The California Fair Employment and Housing Act (FEHA) (California Government Code Sections 12940 et seq.) prohibits unlawful sexual harassment, as well as other forms of discrimination. Employees may file external complaints about sexual harassment or other illegal employment discrimination with:

California Department of Fair Employment and Housing

www.dfeh.ca.gov

Los Angeles Office

320 West 4th Street, 10th Floor

Los Angeles, CA 90013

Telephone 213-439-6799

Additional information:

TTY (800) 700-2320, or call toll free at (800) 884-1684

The Department of Fair Employment and Housing is authorized to accept and investigate complaints of discrimination, and to mediate settlements. The Fair Employment and Housing Commission has authority to issue accusations against employers, conduct formal hearings, and award reinstatement, back pay, damages, and other affirmative relief. The ASI will not tolerate any unlawful harassment or discrimination in employment. Violation of this policy can result in immediate termination of employment.

3.0 POLICY IMPLEMENTATION AND COMMUNICATION

The ASI Human Resources Manager will be responsible for the implementation of, and compliance with, this Policy. They are responsible for publicizing this Policy, developing training policies, conducting training, and establishing an administrative structure that facilitates the prevention and elimination of discrimination, harassment and retaliation. Their contact information will be made available to employees as well as third parties and will be updated, as necessary.

3.1 TRAINING

To prevent discrimination, harassment and retaliation, and to encourage reporting of such conduct, training will be provided to all employees, including student assistants. Such training will be provided within 12 months of the effective date of this Policy, and on a two-year basis thereafter.

New employees will receive training within six months of their initial hiring. Such training will explain, but not be limited to:

- What constitutes discrimination, harassment and retaliation under applicable law;
- The rights and responsibilities of each employee relating to workplace discrimination, harassment and retaliation;
- The protection against retaliation for employees who report discrimination, harassment or retaliation;
- The procedure provided in this policy for filing, investigating and resolving a complaint; and

- The option and method for filing a harassment complaint with external government agencies such as the Department of Fair Employment and Housing (DFEH) and the Equal Employment Opportunity Commission (EEOC).

Supervisory employees will be provided with at least two hours of interactive sexual harassment training within six months of the Employee’s assignment to a supervisory position and every two years thereafter. The Human Resources Office will maintain documentation of the delivery and completion of these trainings.

The Human Resources Office will distribute a copy of the following documents to all Employees:

1. The Department of Fair Employment and Housing (DFEH) information sheet on sexual harassment (Form DFEH-185, or any superseding document); and
2. This Policy

In addition, the Human Resources Office will post the DFEH poster on employment discrimination (Form DFEH-162, or any superseding document) in prominent and accessible locations where other employment notices regarding rules, regulations and procedures are posted.

ADMINISTRATION

The Human Resources Manager and the Director of ASI Administrative Services are responsible for the administration, revision, interpretation, and application of this policy. The policy will be reviewed no less than every three years and revised as needed, unless earlier revisions are necessitated by changes in state or federal law or the regulations of CSULB or the California State University Office of the Chancellor.

FORMS

The following forms are to be used in the execution of this policy.

Form Name	Purpose	Responsible Office	Approved By	Timeline for Submission
Discriminatory Harassment Complaint Form	To file a formal complaint of discrimination, harassment, or retaliation in violation of this policy	Human Resources Office	N/A	N/A