

## POLICY CONCERNING HARASSMENT

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### PURPOSE

It is the policy of the Associated Students, Inc., California State University, Fullerton (ASI) to maintain a work environment free from sexual harassment, as well as other unlawful harassment based on such factors as gender (or sex), race or ethnicity (including color, caste, or ancestry), religion (or religious creed), nationality, disability (physical or mental), medical condition, age, sexual orientation, gender identity (including nonbinary and transgender), gender expression, genetic information, pregnancy, marital status, covered veterans status, or any other basis protected by federal, state or local law or regulation. The ASI maintains a strict policy that prohibits unlawful harassment by managers, supervisors, co-workers, or unlawful harassment of students by any ASI employee. Visitors to the campus, and workers employed by the University, by other auxiliaries, or by other public or private organizations engaged in business with the ASI, are expected to comply with this policy. This policy familiarizes ASI's employees with the definition of unlawful harassment and discrimination and the forms it can take. This policy confirms that unlawful harassment and discrimination will not be tolerated and is contrary to the standards of conduct expected and required of the ASI's employees.

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### WHO SHOULD KNOW THIS POLICY

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|------------------------------|--------------------|
| ■ Budget Area Administrators | ■ Volunteers       |
| ■ Management Personnel       | ■ Grant Recipients |
| ■ Supervisors                | ■ Staff            |
| ■ Elected/Appointed Officers | ■ Students         |

## DEFINITIONS

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

Terms	Definitions
<b>Complainant</b>	A person alleged to have been subjected to conduct that could constitute a violation of this policy. It also includes any person who is reported to have been impacted by a violation of this policy in cases where some other person has made a report on that person's behalf (this person may be referred to as the "Impacted Party"). A Complainant may also be called a Party to the Complaint.
<b>Respondent</b>	A person who is alleged to have violated this policy
<b>Discrimination</b>	Conduct that causes harm to a Complainant based on their actual or perceived Protected Status within the CSU's educational programs, activities, or employment which results in the denial or limitation of services, benefits, or opportunities provided by the CSU. Under this Nondiscrimination Policy, the definition of Discrimination includes:
<b>Harassment</b>	Conduct that is pervasive, repetitive, and that is sufficiently severe to alter the conditions of an employee's employment or a student's education or employment.
<b>Sexual Harassment</b>	Includes, but are not limited to, the following: unwanted flirtations, advances and/or propositions of a sexual nature; deprecating remarks, insults, humor, jokes and/or anecdotes that belittle or demean an individual's body or clothing; unwelcome and/or offensive displays of sexually suggestive objects or pictures; unwelcome and offensive touching, such as patting, pinching, hugging or repeated brushing against an individual's body; sexual assault; and or/or suggestions that submission to or rejection of sexual advances will affect decision regarding such matters as an individual's work assignments, status, salary, benefits or other terms or conditions of employment.
<b>Quid Pro Quo Harassment</b>	Latin phrase translates to "something for something" or "this for that". It occurs when a supervisor or manager demands unwelcome sexual advances or favors in exchange for a job benefit (like a promotion or raise) or to avoid a negative consequence (like termination).
<b>Hostile Work Environment Harassment</b>	This occurs when conduct creates an offensive, hostile, or intimidating atmosphere that interferes with an employee's ability to do their job.
<b>Unlawful Harassment</b>	Harassment on the job that is in fact prohibited by provisions of state or federal law applicable to the ASI at the time the harassment occurs. This can include unwanted, unwarranted, or unsolicited physical, or visual conduct that unreasonably interferes with an employee's performance or that creates an intimidating, offensive, or hostile working environment.
<b>Protected Status</b>	Legal term that refers to characteristics of a person that are protected from discrimination and harassment including: Age, Disability (physical or mental), Gender, Gender Identity (including Nonbinary or Transgender), Gender Expression, Genetic Information, Marital Status, Medical Condition, Nationality, Pregnancy or related conditions, Race or Ethnicity (including color, caste, or ancestry), Religion or Religious Creed, Sex (including Sex Stereotyping or Sex Characteristics), Sexual Orientation, and Veteran or Military Status.

<b>Retaliation</b>	Retaliation includes any adverse action taken against an employee for filing a complaint or supporting another employee's complaint under a variety of laws.
<b>Corrective Action</b>	Actions that are reasonably calculated to stop harassment.

## REGULATIONS

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### 1. HARASSMENT VS. DISCRIMINATION

Sexual Harassment is defined as unwelcome conduct of a sexual nature or negative remarks based on an individual's sex, gender, gender identity, or sexual orientation. This includes, but is not limited to, the following examples:

- **Unwanted sexual advances** or requests for sexual favors.
- **Physical conduct** such as unwanted touching, hugging, or brushing against another's body.
- **Verbal conduct** such as making sexual jokes, comments, or innuendos.
- **Nonverbal conduct** such as displaying inappropriate pictures, sending sexually explicit messages, or unwelcome whistling or leering.

Conduct constitutes harassment when it explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive working environment. The perception of the recipient determines whether the behavior is unwelcome, regardless of the perpetrator's intent.

Employees who experience or witness conduct that may constitute sexual harassment are required and strongly encouraged to report the incident immediately through the established reporting procedure so that it may be promptly and effectively addressed.

Under most circumstances, harassment refers to the type of conduct that is pervasive, repetitive, and that is sufficiently severe to alter the conditions of an employee's employment or a student's education or employment. It also may refer to a single incident that is sufficiently outrageous or harmful, in and of itself, that it substantially alters the conditions of an employee's employment or interferes with that individual's ability to perform job related responsibilities.

Employees also should not confuse harassment with supervision. Supervisors have the right and responsibility to define the job that they want an employee to perform, as well as the manner in which an employee must perform that job. Thus, close supervision of an employee (which includes, but is not limited to, counseling and warnings about job performance, inappropriate conduct, or other performance issues) is not considered to be an example of unlawful harassment. However, a supervisor or manager cannot condition receipt of work hours, wages, salary or income, or your continued employment on submission to sexual advances or to any sexual or other offensive activity.

Discrimination is adverse action against an employee because of their protected status.

- Adverse Action means an action engaged in by the Respondent that has a substantial and material adverse effect on the individual filing the complaint's ability to participate in a university program, activity, or employment. Minor or trivial actions or conduct are not reasonably likely to do more than anger or upset an individual does not constitute an Adverse Action. An adverse employment action is any conduct or employment action that is reasonably likely to impair an employee's job performance or prospects for advancement or promotion.
- If Adverse Action is taken because of an individual's Protected Status, that means that the individual filing the complaint's Protected Status is a substantial motivating reason (but not necessarily the only reason) for Adverse Action.

- An allegation that an employee is receiving unequal pay because of their Protected Status (for example, under the California Equal Pay Act) constitutes a Discrimination Complaint under this anti-discrimination Policy.

## **2. REPORTING AND COMPLAINT PROCESS**

Employees are encouraged to report incidents of inappropriate or unwelcome conduct whenever it occurs. Employees and students are not required to wait for the conduct to be repeated or to worsen. Any incident of unlawful harassment, discrimination, and/or retaliation, by any ASI employee or any other person conducting business with ASI, should be reported promptly to the employee's supervisor or manager and/or to the Human Resources Director, who will arrange for an investigation of the matter. Managers who receive complaints or who observe harassing conduct are required to immediately inform the Human Resources Director. An employee may contact Human Resources directly and is not required to complain first to their supervisor.

### **Investigation and Confidentiality**

All reports of harassment will be taken seriously, investigated promptly, and handled with the highest degree of confidentiality possible. Information will only be disclosed on a "need-to-know" basis to facilitate the investigation and implement necessary corrective action.

### **Non-Retaliation**

ASI strictly prohibits and will not tolerate any form of retaliation against an employee for making a good-faith report of harassment or for participating in an investigation. Any employee found to have engaged in retaliation will be subject to disciplinary action, up to and including termination of employment.

ASI full-time employees are categorized as Responsible Employees on the CSUF campus by the Office of Civil Rights and Equity. As Responsible Employees in regard to reporting allegations involving student employees, they have a duty to report to the Office for Civil Rights and Equity when they know or have reason to know of allegations and/or acts that may violate the CSU Nondiscrimination Policy including Discrimination and Harassment based on any Protected Status, Sexual Harassment, Sexual Misconduct, Sexual Exploitation, Dating or Domestic Violence, Stalking, or related Retaliation.

Specifically, when the complaint involves two students who are also employees, a student employee and a student at large, or a student employee who is acting in their role of a student and not necessarily as an employee, the information will be reported to the Office of Civil Rights and Equity. The Human Resources Director and the Office of Civil Rights and Equity will work together if the investigation includes activities where the student is acting in their role as an employee. Managers should report to the Human Resources Director all complaints and the Human Resources Director will refer to Office of Civil Rights and Equity as needed. All complaints of unlawful harassment are taken seriously and are promptly and objectively investigated. If ASI begins an investigation, we will endeavor to keep the investigation confidential to the extent possible, including the names of complaining employees and witnesses. In the same way, anyone involved in an investigation of harassment has an obligation to keep all information about the investigation confidential. This is why ASI will only share information about a complaint of harassment with those who need to know about it. Failure to keep information about an investigation confidential may result in disciplinary action.

When the investigation has been completed, ASI will normally communicate the results of the investigation to the complaining employee, to the alleged harasser and, if appropriate, to others who are directly involved. If ASI's policy against harassment is found to have been violated, appropriate correcting action, up to and including termination, will be taken against the harasser so that further

harassment will be prevented. Both the rights of the alleged harasser and the complainant will be considered in any investigation and subsequent action.

**Timelines for the Formal Complaint Resolution Process**

ASI will follow the timelines outlined in the CSU Interim CSU Nondiscrimination Policy – Student Respondent Procedures and Interim CSU Nondiscrimination Policy – Employee and Third-Party Respondent Procedures. These timeframes are as follows:

<b>Stage</b>	<b>Timeframe</b>
Complaint accepted or not accepted for investigation	Within 10 Working Days of the date of the intake or receipt of a written request for investigation (whichever is later)
Investigation – Review of Evidence Response Submission	10 Working Days from the date Preliminary Investigation Report sent to Parties
Investigation – Final Investigation Report	100 Working Days from the date the Notice of Investigation is sent to Parties
Appeal Submission	10 Working Days from date Notice of Investigation Outcome is sent to the Parties
Appeal Determination	30 Working Days after receipt of the written appeal

**No Retaliation**

It is the obligation of all employees to cooperate fully in the investigation process. In addition, disciplinary action may be taken against any employee who is uncooperative or who attempts to discourage or prevent an employee from using the ASI's complaint procedure to report unlawful harassment. Retaliation by an ASI employee against any individual who makes a complaint of unlawful harassment is strictly prohibited. Similarly, any person who participates or cooperates in any manner in an investigation or any other aspect of the process described herein shall not be retaliated against. Retaliation itself is a violation of this policy and is a serious offense. Complaints regarding allegations of reprisal should be immediately brought to the attention of the Human Resources Director.

**Supportive Measures**

ASI will offer and coordinate Supportive Measures as appropriate for the Complainant and/or Respondent to restore or preserve that person's access to employment or to provide support during ASI's formal complaint resolution process or during the informal resolution process. Supportive Measures may include but are not limited to referrals to counseling; changes to employee reporting line; campus escort services; restrictions on contact applied to one or more Parties; leaves of absence; changes in work, regardless of whether there is or is not a comparable alternative; and training and education programs related to prohibited conduct.

The HR Director will describe and offer Supportive Measures to Complainants during the initial assessment (even if no Complaint is made or the Complaint is ultimately not investigated), and to Respondents during an initial meeting.

The HR Director and The Title IX Coordinator/DHR Administrator (for student investigations) is

responsible for coordinating the effective implementation of Supportive Measures if requested and reasonably available.

### **3. CORRECTIVE ACTION**

If unlawful harassment of, or by, an ASI employee is established, ASI will take action that is reasonably calculated to stop the harassment. In cases in which the alleged harasser is not an employee, ASI will take action to minimize the recurrence of any unlawful behavior.

Discipline that ASI or the University may impose on an employee's behavior that violates this policy (or for other unprofessional conduct by an ASI employee) will follow the policy concerning performance management. Unlawful harassment by non-employees may result in restricting the harasser's access to ASI facilities and activities.

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**DATE APPROVED: 05/09/2017**

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