

# PROCEDURE MANUAL

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## PURPOSE

The Grievance Procedure for Specified Civil Rights Grievances is to afford all students and employees an opportunity to resolve grievances.

## PROCEDURE

### 1. Definitions

- 1.1 *Grievance* is a complaint by an Arizona Western College student or employee alleging any action, policy, procedure, or practice which would be prohibited by one or more of the following:
  - 1.1.1 Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 34 Code of Federal Regulation (CFR), Part 104 (discrimination based on disability).
  - 1.1.2 Title II of the Americans with Disabilities Act of 1990, and its implementing regulations at 28 CFR, Part 35 (discrimination based on disability).
  - 1.1.3 Title IX of the Education Amendments of 1972, and its implementing regulations at 34 CFR, Part 106 (discrimination based on sex).
  - 1.1.4 Title VI of the Civil Rights Act of 1964, and its implementing regulations at 34 CFR, part 100 (discrimination based on race, color or national origin).
  - 1.1.5 The Age Discrimination Act of 1975, and its implementing regulations at 34 CFR, part 110 (discrimination based on age).
  - 1.1.6 Title VII of the Civil Rights Act of 1964, and its implementing regulations at 29 CFR, parts 1602-1608 (employment discrimination based on race, color, national origin, sex or religion).
- 1.2 *Grievant* is a student or employee of Arizona Western College who, on his or her own behalf, submits a grievance claiming violation of any of the laws or regulations referenced above.
- 1.3 *Arizona Western College* is any reference to College or AWC, including any department, subunit, or program operated by Arizona Western College.
- 1.4 *Program Coordinator* is the Vice President for Business and Administrative Services who also serves as the AWC Compliance Officer for federal programs and coordinates Arizona Western College's efforts to comply with and carry out its responsibilities under the laws and regulations mentioned above.
- 1.5 *Grievance Representative* is any person designated by the Program Coordinator as a person with whom grievances under this procedure may be filed. A Grievance Representative may be delegated other tasks by the Program Coordinator, including tasks referenced by this procedure as ones to be accomplished by the Program Coordinator.

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- 1.6 *Respondent* is a person(s) alleged to be responsible, or who may be responsible, for the violations(s) alleged in a grievance. The term may be used to designate person(s) with direct responsibility for a particular action or those person(s) with supervisory responsibility for policies and procedures at issue in a grievance.
  - 1.7 *Administrative Representative* is the administrator that the College may, in its discretion, at any stage of the grievance, appoint to attend any grievance hearing to represent the interests of the College if the Respondent in a particular grievance is not a College administrator. In such cases, all rights in this policy afforded to the Respondent, and all documents provided to the Respondent, shall also be provided to the Administrative Representative. The rights of an Administrative Representative include, but are not limited to, the right to submit a grievance answer, to appeal a grievance hearing, etc. The Administrative Representative shall not be a supervisor of any Hearing Officer involved in the grievance.
  - 1.8 *Hearing Officer* is the representative of Arizona Western College who is delegated authority for hearing and resolving a grievance at a specified level of this grievance procedure.
  - 1.9 *Grievance Answer* is the written statement of the Respondent regarding the grievance allegation and possible corrective action.
  - 1.10 *Grievance Decision* is the written statement of a Hearing Officer containing his or her findings regarding the validity of the grievance allegation and appropriate action to be taken, if any.
  - 1.11 *Calculation of time* is the calculation of days in grievance processing and shall exclude Fridays, Saturdays, Sundays, College holidays and summer vacation periods. Any time limits set by this procedure may be extended (1) by mutual consent of the Grievant and the Respondent or (2) by decision of the Hearing Officer for good cause.
  - 1.12 *Corrective action* is the action to be taken by Arizona Western College or the Respondent, or both, to eliminate or modify any policy, procedure, or practice found to be in violation of any of the laws or regulations mentioned above.
2. Filing of Grievances
    - 2.1 Eligibility for Filing

Any student or employee may file a grievance covered under this procedure with the Program Coordinator or any Grievance Representative.
    - 2.2 Pregrievance Meetings

Prior to the filing of a written grievance, the Grievant may request a meeting with the Respondent. The Respondent shall make reasonable efforts to meet with any student or employee to discuss matters that the student or employee may wish to bring to his or her attention. Such a meeting shall be at the option of the Grievant and shall not be a precondition for the submission of a written grievance.

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## 2.3 Grievance Filing

Grievances shall be written, be filed with the Program Coordinator or a Grievance Representative, and provide the following information: name and address of Grievant, nature and date of alleged violation, the name of the person the Grievant claims is responsible for the alleged violation (where known), requested relief or corrective action (specification of desired relief shall be at the option of the Grievant), and any background information the Grievant believes to be relevant (for example, names of other persons affected by the violation).

## 2.4 Grievance Forms

A grievance form shall be prepared by the Program Coordinator to facilitate the filing of a grievance. These forms may be obtained from the Program Coordinator or from any Grievance Representative.

## 2.5 Time Limit for Grievance Filing

A grievance must be filed within sixty (60) days of the occurrence of the alleged discriminatory action.

## 3. Initial Processing of Grievances

### 3.1 Notification of Respondent

Within five (5) days of the filing of a grievance, the Program Coordinator or designated Grievance Representative shall notify the Respondent of the grievance and of his or her responsibility for submission of a written grievance answer within five (5) days after receipt of such notification. If the grievance is filed with a Grievance Representative, the Grievance Representative shall immediately forward the grievance to the Program Coordinator so that the notice required by this section can be timely given.

### 3.2 Respondent's Grievance Answer

The Respondent, upon receiving a copy of a grievance shall, within five (5) days, submit a written grievance answer to the Grievant and the Program Coordinator. Such answer shall (1) confirm or deny each fact alleged in the grievance, (2) indicate the extent to which the grievance has merit, and (3) indicate acceptance or rejection of any desired corrective action requested by the Grievant, or outline an alternative proposal for redress.

### 3.3 Levels of Grievance Hearing and Initiation of Grievance at Level I or Level II

There are three levels of grievance hearings, Level I, Level II, Level III. Grievances may be processed initially at either Level I or Level II, as determined by the Program Coordinator. Generally, grievances shall be processed initially at Level I. At the discretion of the Program Coordinator, however, grievances involving a College-wide policy or practice affecting a class of employees or students may be processed initially at Level II.

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### 3.4 Referral of Grievance and Grievance Answer to Appropriate Processing Level

3.4.1 Within five (5) days after receipt of the Respondent's written grievance answer, the Program Coordinator shall determine whether the grievance should commence at Level I or Level II and shall refer the grievance and the grievance answer to an appropriate Hearing Officer at the appropriate level.

3.4.2 The Hearing Officer shall be selected by the Program Coordinator from a list of available Hearing Officers.

3.4.3 If no grievance answer has been received on the fifth day after notification of the Respondent, the Program Coordinator shall notify the Respondent of that fact in writing. If no answer is received within five (5) days after issuance of this latter notice, the Program Coordinator shall refer the grievance to the Appropriate Hearing Officer with copies of the notices sent to the Respondent. The Grievant shall be sent copies of the notices at the same time.

### 4. Processing Level I Grievance and Rules

4.1 The Hearing Officer to whom a Level I grievance is sent for initial consideration shall, within ten (10) days of such referral, submit a written grievance decision to the Grievant, the Respondent, and the Program Coordinator. The decision shall contain the Hearing Officer's determinations concerning the three response items references in 3.2 above or indicate in the alternative that the Hearing Officer desires to conduct an informal hearing on the grievance before rendering a decision.

4.2 If the initial decision rendered by the Hearing Officer is not accepted by the Grievant or the Respondent, he or she will notify the Program Coordinator of such fact in writing with five (5) days of receipt of the grievance decision, and state his or her request for a Level I hearing. If within five (5) days of the issuance of the written grievance decision, no written request for an informal Level I hearing has been received by the Program Coordinator from either the Grievant or Respondent, any corrective action specified in the decision shall be implemented, and the grievance shall be considered closed.

#### 4.3 Level I Informal Hearing

4.3.1 Within five (5) days of receipt of a written request for an informal hearing from either a Grievant or Respondent, or within five (5) days after the Level I Hearing Officer indicates a desire to conduct an informal hearing prior to rendering a decision, whichever is applicable, the Program Coordinator shall schedule a hearing. The informal hearing shall be scheduled at a designated location and at a date and time certain not to exceed twenty (20) days after the request for such hearing is received.

4.3.2 Persons present at the informal hearing shall include the Grievant, Respondent and the Level I Hearing Officer. In certain cases, an Administrative

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Representative may also be present. Refer to 1.7 above. The Program Coordinator may be present to act as a moderator if requested by the Level I Hearing Officer.

- 4.3.3 The Program Coordinator and the Level I Hearing Officer shall notify the Grievant and Respondent of any procedures established governing the conduct of the informal hearing. Formal rules of evidence shall not apply at the hearing. A Level I grievance hearing is intended to be very informal in nature allowing the option, but not imposing any requirement, for a party to present nonparty witnesses. To promote the informal nature of such hearings, legal representation (or other representation) shall not be permitted at Level I grievance hearings. A party shall be afforded the right, at his or her own cost, to assisted by legal counsel at any Level II and/or Level III grievance hearing.
- 4.3.4 Within five (5) days after the conclusion of the informal hearing, the Level I Hearing Officer shall issue a written hearing decision following the formal references in 3.2 above, along with a summary of the reasons on which the decision is based. Copies of the decision shall be sent to the Grievant, Respondent, and Program Coordinator.
- 4.3.5 If either the Grievant or Respondent is dissatisfied with the Level I hearing decision, he or she must so notify the Program Coordinator in writing ten (10) days of receipt of the written decision, and request an appeal of the decision to Level II. If no such notification is received by the Program Coordinator within this time period, any corrective action contained in the Hearing Officer's decision shall be implemented and the grievance will be recorded by the Program Coordinator.

## 5. Processing Level II Grievance and Rules

- 5.1 A Level II hearing will be scheduled following appeal of a Level I grievance decision or initial referral of a grievance to Level II. Refer to 3.4 above.
- 5.2 The Program Coordinator shall arrange a place, date and time for the Level II hearing, select an appropriate Hearing Officer, and notify in writing the Grievant, the Respondent, and the Level II Hearing Officer of the place, time and date of the hearing and the identity of the Hearing Officer. The hearing shall be held within twenty (20) days after the appeal or referral of the grievance to Level II. Copies of any materials transmitted to the Level II Hearing Officer by the Program Coordinator shall also be provided to the Grievant and the Respondent.
- 5.3 Persons present at the Level II informal hearing shall include the same persons as described in 4.3.2 of this procedure. In addition, any party, at his or her own cost, may be represented by counsel. Any party who intends to be represented by counsel at a

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grievance hearing shall inform the Hearing Officer and the other parties of such fact not less than two (2) days prior to the hearing at which legal counsel will be present.

- 5.4 The Level II Hearing Officer, who shall be selected by the Program Coordinator, shall neither be someone who is supervised by the Level I Hearing Officer nor shall he or she be employed in an administrative position of significantly lower level than the Level I Hearing Officer. The Level II Hearing Officer may be a College administrator or a person not otherwise employed by the College. The Program Coordinator may himself and herself act as the Level II Hearing Officer.
- 5.5 The duration of the hearing shall be allocated in approximately equal parts to the Grievant and the Respondent; however, each party shall not be charged with time spent in responding to questions posed by the Hearing Officer or adverse party. The Program Coordinator or his or her designee shall moderate the usage of time. Formal rules of evidence shall not apply at a Level II hearing.
- 5.6 Both the Grievant and the Respondent shall have the right to present such witnesses as they deem necessary to develop the facts pertinent to the grievance.
- 5.7 Level II Hearing Decision
  - 5.7.1 Within five (5) days after the Level II hearing, the Hearing Officer shall issue a written decision that includes a statement regarding the validity of the grievance allegation and a specification of any corrective action to be taken. The decision shall also specify the reasons on which the decision is based. Copies of the decision shall be sent to the Grievant, the Respondent and the Program Coordinator.
  - 5.7.2 If either the Grievant or the Respondent is dissatisfied with the Level II hearing decision, he or she shall, with ten (10) days of its receipt, notify the Program Coordinator in writing of intent to appeal the decision to Level III. If no such notification is received by the Program Coordinator within this time period, corrective action specified in the Level II hearing decision, if any, shall be implemented, and the grievance will be recorded as closed by the Program Coordinator.

## 6. Processing Level III Grievance and Rules

- 6.1 For any grievance appealed to Level III, the grievance hearing may be conducted by the College President or the President may delegate authority to either an individual Hearing Officer or panel of Hearing Officers (Hearing Panel) to conduct the hearing and make a recommendation for final decision to the College President.
- 6.2 The President shall notify the Program Coordinator, Grievant and Respondent in writing within twenty (20) days of his or her receipt of an appeal of a grievance to Level III as to which Hearing Officer alternative described in 6.1 above the President

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intends to utilize. If one or more Hearing Officers are to be appointed they shall be designated by name by the President in the notice.

- 6.3 Within five (5) days of receipt of this information, the Program Coordinator shall arrange a place, date and time for the hearing and notify the Grievant, the Respondent and the Hearing Officer (or Hearing Panel) in writing of these details. Copies of any written materials or records pertinent to the hearing provided to the Hearing Officer(s) by the Program Coordinator shall also be provided to the Grievant and the Respondent. The Level III hearing shall be conducted within thirty (30) days from the date of notification issued by the Program Coordinator.
- 6.4 Persons present at the Level III hearing shall include the same persons as referenced in Section 5.3 above relating to a Level II hearing, including the right of a party, at his or her own expense, to be represented by legal counsel upon two (2) days notice to the Hearing Officer and other parties.
- 6.5 During the hearing, a party shall not be permitted to introduce information not presented at the Level II hearing unless good cause is shown as determined by the Hearing Officer or Hearing Panel. If a Hearing Panel is used, the President shall designate a member of the Hearing Panel to chair the Panel during the Level III hearing process. The formal rules of evidence shall not apply at the hearing.
- 6.6 Issuance of Level III Hearing Decision
  - 6.6.1 Within ten (10) days of the conclusion of the Level III hearing, the Hearing Officer or Hearing Panel, as appropriate, shall issue a written decision and/or recommendation regarding the validity of the grievance and any corrective action to be taken. If a Hearing Panel is used, all findings and recommendations of the Hearing Panel shall be determined by majority vote. Any Hearing Panel member who disagrees with the majority shall have the option to prepare a dissenting opinion for inclusion within the final recommendation.
  - 6.6.2 The final decision in any Level III grievance shall be issued by the College President. If the College President did not preside at the hearing, the President's decision shall be based on the basic facts found by the Hearing Officer or Hearing Panel. The College President retains the power to disagree with and modify any conclusions, recommendations or determinations concerning appropriate corrective action specified by the Hearing Officer or Hearing Panel. If the President rejects any conclusion, recommendation, or specification of appropriate corrective action of the Hearing Panel or Hearing Officer, the President's decision shall include a statement of his or her reasons for such rejection. The President's decision is final.

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## 7. General Provisions

### 7.1 Right to Information

A Grievant or Respondent may request access to information and records in the possession of the College that are reasonably relevant to the grievance. If such requested information would require an unreasonable expenditure of resources by the College, such request may be refused provided that this refusal may be considered during the grievance hearing. In order to protect the privacy of persons not directly involved in the grievance proceeding, the College reserves the right to expunge names and identifying information not directly relevant to the substance of the grievance from any information or records supplied to the Grievant or Respondent.

### 7.2 Right to Representation

Both the Grievant and the Respondent have the right to be represented by legal counsel of their own selection, at personal expense, at any point during the initiation, filing, or processing of a grievance. Note, however, that legal counsel may be in attendance only at the Level II and Level III Grievance Process.

### 7.3 Training of Grievance Hearing Officers

All persons designated as grievance Hearing Officers shall receive a minimum of two (2) hours training regarding Section 504, Title II/ADA, Title IX, Title VI and Age Discrimination regulatory requirements as well as training in the basic principles and operation of this grievance procedure. This training shall be arranged by the Program Coordinator. The Program Coordinator shall also provide continuing consultation to Hearing Officers regarding the regulatory requirements and this procedure.

### 7.4 Confidentiality of Grievance Handling

A Grievant shall have the right to determine whether or not his or her grievance record shall be open or closed to the public, subject to the right of the Hearing Officer, in situations, (1) to open a grievance hearing that the Grievant desires closed if the Hearing Officer determines that the grievance will necessarily affect a significant number of other employees or students; and (2) to close any hearing or portion of a hearing or direct the parties to refer to one or more persons in a manner so as to prevent identification of such person or persons (for example, student A, employee B, etc.) if the Hearing Officer believes such action is needed to protect reasonably the privacy interests of such person or persons. No record of the grievance shall be entered in the personal file of any student or employee.

### 7.5 Recording of Grievance Records

Any Grievant or Respondent may, at his or her personal expense, record any grievance hearing or proceeding on a tape recorder or similar device. Level II and Level III grievance hearings shall be recorded on recording devices supplied by the College. Such recordings shall be made available to the Grievant and the Respondent at their

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request. If either party desires a transcription of the recording, that party shall pay the full cost thereof. Such recordings shall be maintained for a period of three (3) years after resolution of the grievance.

## 7.6 Maintenance of Written Grievance Records

7.6.1 Records shall be kept of each grievance for a period of no less than three years. These shall include, at a minimum, the name of the Grievant and his or her position at the College; date of grievance filing; the specific allegation made in the grievance and any corrective action requested; the names of the Respondents; the levels of processing and the resolution, date, and Hearing Officer(s) at each level; a summary of the evidence presented by each party to the grievance; and a statement of the final resolution and the nature and date of any corrective action taken. To the extent permitted by law, these records shall be maintained on a confidential basis unless otherwise specified by the Grievant.

7.6.2 A separate file may be maintained for purposes of dissemination of grievance precedents. This file shall indicate only the subject matter of each grievance, a summary of the resolution of each grievance, and the date of resolution. These records shall not refer to any specific individuals and they shall be open to the public.

## 7.7 Prohibition of Harassment

Except as provided below, no person shall be subject to discharge, suspension, discipline, harassment, or any form of discrimination for having utilized or having assisted others in the utilization of the grievance process. Notwithstanding the above, a student or employee may be subject to discipline, termination or suspension, if it is determined by clear and convincing evidence that such person (1) knowingly used the grievance process without reasonable justification and solely for harassment purposes or (2) knowingly provided false information of a material nature to a Hearing Officer.

## 7.8 Role of the Program Coordinator

It is the primary responsibility of the Program Coordinator to ensure the effective installation, maintenance, processing, recordkeeping, and notification required by the grievance procedure.