

**SEXUAL ASSAULT/HARRASSMENT/Title IX** 9/6/18 av

Avera Sacred Heart Hospital School of Radiologic Technology (**ASHHSRT**) is concerned with the personal safety of students, faculty and staff as well as aiding a person's ability to be responsible for their own safety. This mission is carried out by providing awareness of and educational opportunities about sexual misconduct and harassment during Program Orientation each fall. Several resources are utilized to provide educational information and/or organized education to assist in this programming.

If you are a victim of sexual assault at this institution, your first priority should be to get to a place of safety. You should then obtain necessary medical treatment. The Program strongly recommends that a victim of sexual assault report the incident in a timely manner. Time is a critical factor for evidence collection and preservation. An assault can be reported directly to any of the following resources:

1. Avera Program Director, 605-668-8158
2. Avera Sacred Heart Hospital Emergency Department, 605-668-8000
3. Avera Sacred Heart Hospital Human Resource, 605-668-8331
4. Avera Sacred Heart Hospital Pastoral Care, 605-668-8368
5. National Domestic Violence Hotline, 1-800-799-SAFE (7233)
6. Yankton County Veteran's Office, 605-665-4696, 605-260-4400
7. Yankton Police Department, 911 or 605-668-5210
8. Yankton Women's Shelter, 605-665-1448

A report of sexual harassment, assault or violence will be taken seriously, promptly investigated and addressed. While respecting the rights of all parties involved, the safety and well-being of the victim and ASHHSRT's campus community are the Program's primary concern. Appropriate action will be taken to discipline an offending party. Avera Sacred Heart Hospital School of Radiologic Technology maintains a record on sexual offenses, a commitment to investigation, support and protection of any involved parties, annually published security reports, as well as sexual assault prevention initiatives.

In the event the accused is another student and found in violation, the entire range of policies outlined in the Student Handbook may be considered, including, but not limited to, Annual Security Report, Disciplinary Action, Drug Free Campus, Fair Treatment, Sexual Assault/Harassment/Title IX and Student Performance and Conduct. The entire range of sanctions in the Student Handbook may also be considered, including, but not limited to, verbal/written warning, probation, suspension or dismissal from Avera Sacred Heart Hospital School of Radiologic Technology.

Title IX of the Education Amendments prohibits discrimination on the basis of sex, race, color, creed, religion, national origin, ancestry, citizenship, gender, gender identity, transgender, sexual orientation, age, disability, genetic information, veteran status or harassment on any other status that may become protected under law against discrimination or on any other grounds.

For more information please refer to the following web sites per the US Department of Education:

<https://www.notalone.gov/assets/report.pdf>

<http://www2.ed.gov/about/offices/list/ocr/docs/ga-201404-title-ix.pdf>

<http://www.ed.gov/news/press-releases/vice-president-biden-announces-new-administration-effort-help-nations-schools-ad>

<https://www.notalone.gov/>

<http://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201404-title-ix.pdf>

### **Title IX Grievance Procedure**

Upon receipt of an oral or written complaint regarding Sex Discrimination, the Title IX Grievance Procedure will be implemented. **The Title IX Grievance Procedure** is as follows:

Title IX Coordinator: Anessa Van Osdel, Program Director for Avera Sacred Heart Hospital School of Radiologic Technology (**ASHHSRT**), has been designated ASHHSRT's Title IX Coordinator by the Avera Health Attorney and the Human Resource Officer at Avera Sacred Heart Hospital. Any ASHHSRT employee who has questions about the Title IX policy, or believes that the individual or any other member of ASHHSRT has been the victim of Sex Discrimination, should contact the Title IX Coordinator immediately.

#### Title IX Coordinator Contact

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The Title IX Coordinator will work with all parties involved to implement appropriate interim measures or accommodations that are reasonably available to protect the safety and well-being of the Complainant (person who was subjected to Sex Discrimination), witnesses and the campus community. Remedies may include counseling services, no contact orders, provision of escorts, residence modifications (ASHHSRT has no dormitory facilities), and academic and campus work accommodations. In addition, the Title IX Coordinator may, at her discretion, impose an interim suspension or leave of absence in cases where she believes there is risk of harm to others. All interim steps or accommodations will be taken in a manner that minimizes the burden on the Complainant to the extent possible. All parties will be informed that ASHHSRT prohibits any retaliation against parties involved in reporting or witnessing allegations of Sex Discrimination and that retaliation is grounds for disciplinary action.

Any individual involved with a Title IX complaint who has an actual or perceived conflict of interest may be asked by the Title IX Coordinator or a party to excuse himself/herself from the process. All requests by a party to remove an individual from the process due to a conflict of interest shall be submitted to the Title IX Coordinator, who shall determine if a conflict of interest is present. If a conflict of interest is determined to exist, the excused individual shall be replaced and shall not have access to any of the materials for the case from which the individual is excused.

The Title IX Coordinator shall permanently retain all written documents concerning complaints filed and resolved under this procedure, including but not limited to, all reports of the investigator and findings by any adjudicator, the grievance committee, or the President. These reports shall be confidential and not disclosed unless required by law.

Privacy & Confidentiality: ASHHSRT recognizes the sensitive nature of Sex Discrimination allegations. ASHHSRT is committed to protecting the privacy of individuals who report incidents of Sex Discrimination to the extent that doing so is permitted by law and consistent with ASHHSRT's need to protect the safety of its Program. As noted below, different ASHHSRT officials and personnel are able to offer varying levels of privacy and confidentiality protections to recipients of Sex Discrimination. The individual who was the subject of the Sex Discrimination may choose whether to participate in the investigation; however, ASHHSRT may proceed with the investigation without the individual's participation if ASHHSRT deems it is in the interest of the community to do so.

Information that is private and information that is confidential are not the same. **"Private" information** means information that will only be shared with a limited circle of individuals on a "need to know" basis to allow active review, investigation, or resolution of the complaint. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

**"Confidential" information** will not be shared by the receiving party with any other party. Confidential conversations are protected and will not be reported to the Title IX Coordinator without consent. Students, faculty, and staff may speak confidentially about any allegations concerning Sex Discrimination with:

1. ASHH Pastoral Care Coordinator Chaplain Tweeter Henseler, 605-660-2294, [tweeter.henseler@avera.org](mailto:tweeter.henseler@avera.org)
2. ASHH Staff Chaplain Barb Tieszen, 605-668-8432, [barb.tieszen@avera.org](mailto:barb.tieszen@avera.org)

All other ASHHSRT employees are mandatory reporters, (they must report any information they receive about Sex Discrimination) whether involving students, staff, faculty, or third parties, to the Title IX Coordinator. Thus, any information shared with these individuals will be kept private, but will not be confidential. This reporting obligation includes information learned by a faculty member or staff member via third parties or through social media. Students, faculty, and staff may speak **privately** about any allegations concerning Sex Discrimination with:

1. ASHH HR Officer Jane Miller, 605-668-8331, [jane.miller@avera.org](mailto:jane.miller@avera.org)
2. Avera Employee Assistance Program (EAP), 605-322-4069, 1-800-527-9394, [eapquestions@avera.org](mailto:eapquestions@avera.org)
3. Sexual Assault Response Team (SART), <http://www.yanktonsart.com/>
4. Lewis & Clark Behavioral Health, 605-665-4606
5. National Domestic Violence Hotline, 1-800-799-SAFE (7233)
6. River City Domestic Violence Crisis Line (24 hour), 605-665-1488
7. Yankton County Veteran's Office, 605-665-4696, 605-260-4400

Once information is reported to the Title IX Coordinator regarding Sex Discrimination, the Complainant may ask the Title IX Coordinator to withhold his or her name or other identifiable information from the accused party. The

Complainant may also ask that ASHHSRT take no action regarding the complaint but there is no guaranty ASHHSRT can grant the request. In that case, the Title IX Coordinator will balance the confidentiality request with ASHHSRT's obligations to provide a safe and non-discriminatory environment for all ASHHSRT students, faculty, and staff. ASHHSRT must also follow principles of fundamental fairness that require notice and an opportunity to respond to any accused party. Thus, in most cases, names of the complaining party and witnesses and specific information concerning the allegation cannot be withheld from the accused party. In determining how and to what extent a request for confidentiality during an investigation can be honored, the Title IX Coordinator will consider, among other factors, whether the complaining party requested confidentiality, whether the complaining party agrees to participate in the investigation, the severity and impact of the misconduct, the ages of the parties, whether the accused party has admitted the misconduct, whether the accused party has a pattern of misconduct, the existence of independent evidence, and the extent of prior remedial methods taken with the respondent. If ASHHSRT is unable to honor the complaining party's request for confidentiality, the Title IX Coordinator will communicate that decision to the complaining party.

Definition of Sex Discrimination: Discrimination on the basis of sex or gender includes any action that denies or limits an individual's access to, or the benefits of, any program, activity, or employment opportunity of Avera Sacred Heart Hospital School of Radiologic Technology, on the basis of gender. Sex Discrimination may take many forms as described below. Please note that conduct not specifically described below may still constitute unlawful Sex Discrimination if it denies or limits an individual's access to, or the benefits of, any program or activity or employment opportunity of ASHHSRT on the basis of gender.

Sex Discrimination Includes:

1. Sexual harassment refers to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
  - a. submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment or status in a program, course, or activity
  - b. submission to or rejection of the conduct by an individual is used as the basis for employment or educational decisions affecting an individual
  - c. the conduct is sufficiently pervasive, offensive or abusive to have the purpose or reasonable effect of interfering with an individual's work or educational performance, or creating an intimidating, hostile, or offensive work or educational environment.

**Examples of sexual harassment** include, but are not limited to:

- a. physical assault
- b. unwanted sexual advances, requests for sexual favors or propositions of a sexual nature
- c. direct or implied threats that submission to sexual advances is a condition of employment, promotion, good grades, recommendations, etc.

- d. unwelcome verbal or physical conduct of a sexual nature which an individual regards as undesirable or offensive, including sexually explicit jokes, statements and questions or remarks about sexual activity or experience.
2. Sexual violence/assault refers to physical sexual acts perpetrated against a person's will, or when a person is incapable of giving consent. A person is not capable of giving consent in many circumstances, including, but not limited to, when the person is:
    - a. asleep or unconscious
    - b. physically helpless
    - c. under the influence of drugs or alcohol
    - d. unable to give consent due to an intellectual or other disability.

It is important to recognize that past consent to sexual activity does not imply future consent, and that consent can be withdrawn at any time. Sexual violence includes, but is not limited to, rape and sexual abuse.

3. Consent is defined as clear, knowing and voluntary agreement by an individual of legal age. Silence, on its own, cannot be interpreted as consent. Neither relationship nor prior permission implies future consent.
4. Force may include, but is not limited to, the use or display of a weapon, physical immobilization, threats, intimidation or coercion. Another example of force is psychological pressuring or any attempt to take advantage sexually of an individual under duress or incapable of making a decision on their own. This includes situations in which an individual is under the influence of alcohol, drugs, or otherwise physically incapacitated.
5. Rape is the carnal knowledge of a person forcibly and/or against that person's will, or not forcibly or against that person's will if the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity. If a person engages in non-consensual sexual intercourse due to physical force, coercion or threat (actual or implied) the act is considered rape.
6. Sexual abuse is any actual or attempted non-consensual sexual activity, including, but not limited to attempted intercourse, sexual touching and certain forms of exhibitionism.
7. Stalking is a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that makes that person afraid or concerned for his or her safety. Stalking occurs by frightening, unwanted communication by any means, including by phone, mail or e-mail, or internet social networks. Threats may be direct or indirect, and conduct may include following or writing to a victim.
8. Domestic violence is a pattern of abusive behavior, usually involving an intimate relationship that is used by one partner to gain or maintain control over another partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound the other partner. Domestic violence may include dating violence based on the type and frequency of interaction of the relationship.

9. Dating violence is abusive behavior, usually but not always involving an intimate relationship, that is used by one partner to gain or maintain control over another partner. Dating violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound the other person. The definition, protocols, and practices of dating vary; however, for the purposes of these grievance procedures dating is defined as people engaged in activities as a form of courtship. Whether there was such a relationship will be gauged by its length, type, and frequency of interaction.
10. Gender harassment is discrimination or verbal/physical harassment, which is based on the person's gender, but which is not sexual in nature.

Mandatory Reporting: As noted above, ASHHSRT requires all of its administrators, faculty, and other employees (with the exception of Chaplain Tweeter Henseler and Chaplain Barb Tieszen) to report allegations of or situations suggesting Sex Discrimination to the Title IX Coordinator. ASHHSRT expects its administrators, faculty, and staff to treat information concerning incidents of reported Sex Discrimination with as much respect and as much privacy as possible. ASHHSRT employees must share such information only with those ASHHSRT officials who must be informed of the information pursuant to ASHHSRT policy. Failure by an ASHHSRT employee to maintain privacy in accordance with ASHHSRT policy will be grounds for discipline.

Investigation Procedures & Report to Title IX Coordinator: An individual who believes that he or she has been subjected to Sex Discrimination is encouraged to report the information to the Title IX Coordinator. Third parties who wish to report allegations of Sex Discrimination on behalf of another individual, as well as ASHHSRT faculty, administrators, and staff who are required to report Sex Discrimination should report the information to the Title IX Coordinator as well. In cases where Sex Discrimination is reported by someone who is not the recipient of the alleged conduct, the recipient of the alleged conduct (the "Complainant") will be contacted by the Title IX Coordinator and notified that the report has been received. ASHHSRT will respond, to the greatest extent possible, to reports of Sex Discrimination brought anonymously or brought by third parties not directly impacted. However, the response to such reports may be limited if information about the alleged Sex Discrimination cannot be verified by independent facts.

The Complainant may file a written complaint with the Title IX Coordinator. The written complaint should set forth in reasonably sufficient detail

1. the nature of the alleged discrimination
2. the individual(s) against whom the complaint is made (i.e., the "Respondent")
3. the names of any witnesses
4. any available evidence or sources of evidence
5. how the alleged discrimination denies or limits access to, or the benefits of, any program, activity, or employment opportunity of ASHH.

Upon receipt of a written or oral complaint, the Title IX Coordinator will contact the Complainant and fully discuss

1. the options afforded to him/her
2. the rights and responsibilities of all parties

3. the formal and informal resolution process
4. the prohibition against retaliation
5. the need to preserve any relevant evidence or documentation in the case, not only for use in the grievance procedure, but also for use in other proceedings, including criminal matters, civil proceedings, and protection order proceedings
6. the availability of interim measures and accommodations
7. possible remedies and outcomes.

The Complainant may file a formal complaint, request any form of resolution, or participate in an investigation as the Complainant determines appropriate. Nonetheless, ASHHSRT may, under certain circumstances, be required to report and/or file a complaint to external authorities, and it may elect to conduct its own investigation when ASHHSRT deems it is in the interest of the Program to do so even if no formal complaint is filed. The Title IX Coordinator will maintain a written summary of all such meetings.

Notification of Respondent: As soon as practicable after a complaint is received, the Title IX Coordinator will notify the Respondent (i.e., the accused individual) that a complaint alleging Sex Discrimination has been made. The Respondent will receive information in the same manner as the Complainant concerning the options afforded to him/her, the rights and responsibilities of all parties, the formal and informal resolution process, the prohibition against retaliation, the need to preserve any relevant evidence or documentation in the case, and the availability of interim measures, accommodations and remedies.

Investigation Procedure: The Title IX Coordinator will determine if the complaint states sufficient facts to believe that Sex Discrimination may have occurred and will notify the parties in writing of her decision within three business days. If the Title IX Coordinator determines that there is potential that Sex Discrimination has occurred, or if the Respondent has accepted responsibility for the alleged conduct, the Title IX Coordinator will initiate and coordinate a Title IX investigation as soon as practical by appointing one or more campus officials (the "Investigator(s)") to review the allegations. All Investigators will receive annual training on sexual violence and on how to conduct investigations in a manner that protects the safety of the Complainant and promotes accountability.

The investigation will be done in a prompt, thorough, impartial, and fair manner. All parties involved, including witnesses, will be treated with respect and with sensitivity. The investigation of any suspected or alleged discrimination will be completed within 30 days of the filing of a complaint or the date on which ASHHSRT becomes aware of a suspected or alleged discrimination unless the Title IX Coordinator determines that additional time is required. The Title IX Coordinator will inform the parties if additional time is required. The Title IX Coordinator will provide the parties with periodic updates as she deems appropriate regarding the status of the process.

The nature and extent of the investigation will vary depending upon whether the matter is eligible for informal resolution, whether the parties are amenable to pursuing an informal resolution, whether the Complainant has asked for confidentiality, and whether the Respondent has taken responsibility for the alleged conduct. The Investigator will objectively gather and consider

relevant facts. The Investigator will interview the Complainant and the Respondent, as well as any witnesses. If either the Complainant or Respondent or any witnesses refuse to cooperate, the Investigator will note that in the report. Complainant and Respondent may each have a support person present at all interviews in which they participate but the support person will not be permitted to actively participate in the interview. A "support person" may be a friend, parent, trusted adult, or an attorney as the Complainant feels appropriate. The Investigator will ensure that all interviews are properly documented and that the investigation is conducted in a thorough, objective manner that is considerate of all parties involved. To help ensure a prompt and thorough investigation, Complainants are asked to provide as much information as possible, including the following:

1. The name, department, and position of the person or persons allegedly causing the prohibited discrimination
2. A description of any relevant incident(s), including the date(s), location(s), and the presence of any witnesses
3. The alleged effect of the incident(s) on the complainant's opportunity to benefit from ASHHSRT's programs or activities (ASHHSRT does not have activities)
4. The names of other individuals who might have been subject to the same or similar acts of discrimination
5. Although it is not required, any steps the Complainant has taken to try to stop the discrimination or sexual misconduct
6. Any other information the Complainant believes to be relevant to the alleged discrimination

The Respondent is also expected to provide as much information as possible in connection with the investigation.

Investigator's Report: Upon conclusion of the investigation, the investigator(s) will produce a report that:

1. summarizes and analyzes the relevant facts and any supporting documentation (which may include statements by the parties, third-party witnesses, or others with information and any physical, written, or electronic or other evidence)
2. provides findings of whether Sex Discrimination occurred based on a preponderance of the evidence standard
3. makes recommendations for action and sanctions. "Preponderance of the evidence" means that the investigator(s) are convinced based on the greater weight of the evidence that Sex Discrimination occurred. This is a lower quantum of proof than "proof beyond a reasonable doubt" and requires the Investigator to determine that it is more likely than not that Sex Discrimination occurred. The report shall be provided to the Title IX Coordinator and will be used in either an informal or formal resolution procedure, as appropriate and as outlined below. The results of the report will be communicated to the Complainant and the Respondent, consistent with ASHHSRT's obligations under state and federal law.

Resolution Process: After reviewing the investigator's report, the Title IX Coordinator will determine whether an informal resolution process or formal resolution process is appropriate. The informal resolution process is not available for cases involving supported allegations of sexual assault or sexual violence. However, other alleged discrimination, including some



allegations of sexual harassment, may be resolved using an informal resolution process if:

1. the Title IX Coordinator determines, in her discretion, that such a process would be appropriate **and**
2. all parties agree to participate.

#### Informal Process

If the Title IX Coordinator determines that the **informal process** may be helpful, she will contact Complainant and Respondent to determine whether both are amenable to proceeding with the informal process. If one is not willing to do so, no informal process will be conducted.

The parties to the informal process will not be required to deal directly with one another unless both parties agree. Instead, either the Title IX Coordinator or a Program representative appointed by the Title IX Coordinator will act as mediator who will share the results of the investigation with the parties, meet with the parties either jointly or separately, and make recommendations for resolution of the complaint. The Complainant and the Respondent may each have a support person present at all meetings in which they participate. The mediator does not have the authority to impose a resolution on the parties but will attempt to reach a satisfactory resolution of the complaint. Steps taken by the mediator to help the parties achieve informal resolution, and the results of the mediation will be documented and provided to the Title IX Coordinator. The Title IX Coordinator will contact the Complainant and Respondent to determine whether the informal resolution has adequately resolved the Complaint.

Any party may request that the informal resolution process be terminated at any time. Upon termination, either party may proceed with the formal process set forth below. In addition, any party can pursue formal resolution if he or she is dissatisfied with a proposed informal resolution.

#### Formal Process

If the informal resolution procedure is not used or does not resolve the complaint, the Title IX Coordinator will provide a copy of the investigative report and materials to an Adjudicator selected by the Title IX Coordinator to initiate the formal process. Any Adjudicator appointed by the Title IX Coordinator will be trained on sexual violence and how to adjudicate complaints in a manner that protects the safety of the Complainant and promotes accountability.

The Adjudicator will review the investigative report and materials and determine, based on the preponderance of the evidence, whether or not Sex Discrimination has occurred. The Adjudicator can accept or reject the findings and/or recommendations of the investigative report using the preponderance of the evidence standard. If the Adjudicator requires clarification on any of the materials, the Investigator and/or Title IX Coordinator will assist the Adjudicator in obtaining clarification. Though it is typically not necessary, the Adjudicator may consult with the Title IX Coordinator to request to meet with the Complainant, Respondent, and/or any of the witnesses to clarify information. Any meetings will be done separately to protect the privacy of those involved. However, if the Adjudicator requests to meet with either the

Complainant or the Respondent, the other party will also be given an opportunity to meet with the Adjudicator. The Adjudicator will render a written decision of whether a violation occurred within ten business days following the Adjudicator's receipt of the investigative materials. The Adjudicator will provide the decision to the Title IX Coordinator who will communicate the results of the decision in writing to the appropriate ASHHSRT authorities, to the Complainant, and to the Respondent consistent with ASHHSRT's obligations under state and federal law.

If the Adjudicator determines that Sex Discrimination occurred, the Adjudicator will assess appropriate sanctions. Faculty and staff who violate this policy are subject to disciplinary action, including discharge. Students are subject to disciplinary action, including suspension or expulsion. Guests and other third parties who are found to violate this policy are subject to corrective action, which may include removal from campus and termination of contractual agreements. Third party contractors will be notified if any of their employees are found to have violated this policy and ASHHSRT may ban those employees from campus and events.

The Adjudicator has wide discretion to sanction conduct that violates this policy, and may consider the nature and circumstances surrounding the violation, prior violations, precedent cases, Program safety concerns, and any other information deemed relevant by the Adjudicator. The Adjudicator will render a written sanctioning decision within five business days of the date the Adjudicator's decision on whether a violation has occurred is rendered. The Adjudicator will provide the sanctioning decision to the Title IX Coordinator, who will communicate the results of the decision in writing to the appropriate ASHHSRT authorities, to the Complainant, and to the Respondent consistent with ASHHSRT's obligations under state and federal law. The Title IX Coordinator will also provide the Complainant and the Respondent with written notice of their right to appeal the Adjudicator's decision. Sanctions imposed by the Adjudicator are generally effective immediately and remain in effect during the pendency of an appeal. ASHH's President may, but is not required to suspend the imposition of any sanction pending appeal.

Right to Appeal: The Respondent or Complainant may appeal the Adjudicator's decision and/or sanction assessment to a special Grievance Committee made up of three individuals appointed by the Title IX Coordinator on a case-by-case basis. All members of the Grievance Committee will be specifically trained regarding sexual violence and in adjudicating Sex Discrimination cases in a manner that protects the safety of the Complainant and promotes accountability. The Grievance Committee shall appoint its chair from within its membership.

The request for an appeal, including the grounds upon which the request is based, should be submitted in writing to the Title IX Coordinator within five business days of the date the party is informed of the sanctioning decision. The Title IX Coordinator will provide a copy of the appeal request to the non-appealing party who will have five business days to respond if he or she so chooses. If a request for appeal is filed, a hearing will take place before the Grievance Committee within fifteen days after the Title IX Coordinator receives the request for appeal and any response to the same. Extensions of time may be granted by the Title IX Coordinator for good cause at the request

of either party, or for good cause as requested by the Grievance Committee. The hearing is not a formal process such as criminal or civil proceedings.

The Complainant or Respondent may challenge any member of the Grievance Committee on grounds of prejudice or conflict of interest. Any challenge, including the reasons for the challenge, must be submitted in writing to the Title IX Coordinator at least five days prior the hearing. If a conflict of interest or prejudice is found to exist by the Title IX Coordinator, the Title IX Coordinator will select a qualified replacement.

Hearing Process: Prior to the hearing, the Title IX Coordinator will provide the Grievance Committee with the investigative report and investigative materials, as well as the prior decision and sanctions of the Adjudicator. The Grievance Committee may take these materials into account when rendering a decision.

Both the Complainant and the Respondent may have a support person present. It is the party's responsibility to obtain a support person if they choose to do so. The support person may advise the party on the preparation and presentation of the case and accompany the party to the hearing but may not actively participate in the questioning of witnesses. Only the Complainant, Respondent, their support persons, the Title IX Coordinator, the Grievance Committee, and any legal advisor to the Grievance Committee may be present at the hearing. Hearings are closed to the ASHHSRT community and to the public.

The Grievance Committee chair (who will be selected by the Grievance Committee members) shall inform the parties of the hearing procedures and answer any questions the parties may have regarding those procedures. The Complainant shall present their case first, followed by the Respondent. Witnesses shall only be present while presenting testimony except with the consent of both parties. Only members of the Grievance Committee may ask questions of hearing participants. The Complainant and the Respondent may ask the chair to pose additional questions or inquire further into specific matters by submitting these requests in writing. If necessary, a brief recess may be granted to allow both parties an opportunity to prepare and submit requests. The strict rules of evidence shall not apply and the chair may allow introduction of any relevant evidence bearing upon the issues which is not inherently untrustworthy.

Both the Complainant and Respondent may present witnesses at the hearing. It is the responsibility of each party to request that their witnesses attend the hearing. The parties must notify the Title IX Coordinator and the other party of the witness names at least five business days prior to the hearing date. Each side shall also provide the Title IX Coordinator and the other party a copy of all written evidence it intends to introduce at the hearing at least two business days prior to the hearing.

After submission of all of the evidence, the Complainant may make a final argument, which shall address itself both to the substantive issues and to the question of the appropriate sanction should the Committee find that a violation has occurred. The Respondent will be given a like opportunity to make a similar argument to the Committee. The Complainant may make a second argument limited to matters of rebuttal.

The hearing shall be recorded by means of electronic audio recording. Either side may have the proceedings recorded by a reporter at his/her own expense. Both the Complainant and Respondent shall have the right, upon request, to listen to the recording in the presence of the Title IX Coordinator.

Decision by Grievance Committee: The Grievance Committee shall make a decision on a *de novo* basis (i.e., without deferring to the Adjudicator's decision), using the evidence presented at the hearing as well as the record provided to it. After hearing the evidence, the Grievance Committee shall deliberate in private and make written findings on the issues. The Grievance Committee shall determine based on the preponderance of the evidence whether Sex Discrimination has occurred. If a finding is made that a violation has been proven, the Grievance Committee shall impose appropriate sanctions. All decisions of the Grievance Committee shall be made by a majority vote. The findings and decision of the Grievance Committee shall be forwarded to the Title IX Coordinator who will communicate the results of the decision in writing to the appropriate ASHHSRT authorities and to the Complainant and the Respondent consistent with ASHHSRT's obligations under state and federal law. The Title IX Coordinator will also provide the Complainant and the Respondent with written notice of their right to appeal the Committee's decision to ASHH's President.

Appeal to ASHH's President: Either party may appeal the Grievance Committee's decision to ASHH President. The request for an appeal, including the grounds upon which the request is based, should be submitted in writing to the Title IX Coordinator within ten calendar days of the date the party is informed of the Grievance Committee's decision. The appeal is limited, and may only be made on the following grounds:

1. procedural irregularities
2. newly discovered evidence or additional information not available at the grievance hearing which could alter the outcome of the case
3. the sanction imposed was too severe or not severe enough.

The Title IX Coordinator will provide a copy of the appeal to the non-appealing party who will have five business days to respond if the non-appealing party elects to do so.

The Title IX Coordinator shall provide the President with a copy of the Investigator's report, the Adjudicator's decision, and the Grievance Committee's decision within two business days of receipt of a party's notice of appeal and the non-appealing party's response (if any). These documents constitute the "appeal record." The President shall review the appeal petition, any response to that petition, and the appeal record. The President may conduct an additional interview of the Complainant and Respondent, provided, however, if the President interviews either party the President shall also interview the other party. In the case of an interview, both the Complainant and Respondent shall be entitled to have a support person with them during the interview process.

The President may:

1. affirm the Grievance Committee's decision and sanctions
2. affirm the Grievance Committee's decision and modify the sanction(s) which shall be effective on the date specified by the President

3. remand the case to the Grievance Committee if proper procedures were not followed
4. reverse the Grievance Committee's decision based on new information.

The President shall provide his/her written decision to the Title IX Coordinator within twenty business days after the President receives the appeal record. The results of the President's decision will be communicated in writing to the appropriate ASHHSRT authorities, to the Complainant, and to the Respondent consistent with ASHHSRT's obligations under state and federal law. The President's decision is final.

Additional Resources: There are many community resources available to victims of sexual violence, stalking, dating violence, and other conduct that may violate Title IX. Victims are encouraged to report crimes to the Yankton Police Department by dialing 911 or 605-668-5210. ASHH campus safety contacts are:

1. Communications operator, 605-668-8000
2. Environment of Care Director (EOC), Randy Bylander, 605-668-8602, [randy.bylander@avera.org](mailto:randy.bylander@avera.org)
3. Safety Officer, Mark Mauch, 605-660-4524, [mark.mauch@avera.org](mailto:mark.mauch@avera.org)

ASHHSRT provides support services for persons who have been victims of sexual violence. Victims may also seek assistance from any of the following agencies. The Title IX Coordinator can assist individuals in contacting any of the agencies.

1. Avera Sacred Heart Emergency Room, 605-668-8100
2. Lewis and Clark Behavioral Health Service Crisis Line, 605-665-4606
3. Yankton 24 Hour Domestic Violence Crisis Line, 605-665-1488
4. National Domestic Violence Hotline, 1-800-799-SAFE (7233)