

**APEX TECHNICAL SCHOOL  
TITLE IX  
POLICIES AND PROCEDURES**

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**I - TITLE IX POLICIES AND PROCEDURES**

Title IX of the Education Amendments of 1972 ("Title IX") protects people from discrimination based on sex in education programs or activities which receive Federal financial assistance. Title IX states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Apex Technical School is committed to maintaining a safe and healthy educational and work environment in which no member of the School community is, on the basis of sex, sexual orientation, or gender identity, excluded from participation in, denied the benefits of, or subjected to discrimination in any School program or activity. Gender-based and sexual harassment, including sexual violence, are forms of sex discrimination in that they deny or limit an individual's ability to participate in or benefit from the Schools programs or activities.

This Policy is designed to ensure a safe and non-discriminatory educational and work environment and to meet legal requirements, including: Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in the University's programs or activities; relevant sections of the Violence Against Women Reauthorization Act; Title VII of

the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex in employment; and New York laws that prohibit discrimination on the basis of sex, sexual orientation, and gender identity. It does not preclude application or enforcement of other School policies.

It is the policy of Apex Technical School to provide educational, preventative and training programs regarding sexual or gender-based harassment; to encourage reporting of incidents; to prevent incidents of sexual and gender-based harassment from denying or limiting an individual's ability to participate in or benefit from the Schools programs; to make available timely services for those who have been affected by discrimination; and to provide prompt and equitable methods of investigation and resolution to stop discrimination, remedy any harm, and prevent its recurrence. Violations of this Policy may result in the imposition of sanctions up to, and including, termination, dismissal, or expulsion, as determined by the appropriate officials at the School or unit.

Retaliation against an individual for raising an allegation of sexual or gender-based harassment, for cooperating in an investigation of such a complaint, or for opposing discriminatory practices is prohibited. Submitting a complaint that is not in good faith or providing false or misleading information in any investigation of complaints is also prohibited.

## **DISCRIMINATION**

Apex Technical School prohibits discrimination and harassment based on race, color, creed, religion, sex, gender, national origin, citizenship, ethnicity, marital status, age, disability, sexual orientation, gender identity and gender expression, genetic information, veteran status, or any other status protected by applicable law to the extent prohibited by law.

## **SEXUAL HARASSMENT**

Apex Technical School defines sexual harassment as unwelcome behavior of a sexual nature that relates to the gender or sexual identity of an individual and that has the purpose or effect of creating an intimidating, offensive or hostile environment for study. This policy applies to all interactions between students and Apex Technical School faculty members, staff, administrative personnel, other students and visitors.

Conduct alleged to be sexual harassment will be evaluated by considering the totality of the particular circumstances, including the nature, frequency, intensity, location, context, and duration of the questioned behavior. Repeated incidents or a pattern of harassing behavior may be cause for serious corrective action. However, a more serious incident, even if isolated, may be sufficient cause for action under this policy including referral to law enforcement when applicable.

Quid pro quo sexual harassment can occur whether a person resists and suffers the threatened harm, or the person submits and avoids the threatened harm. Both situations could constitute discrimination on the basis of sex. A hostile environment can be created by persistent or pervasive conduct or by a single severe episode. The more severe the conduct, the less need

there is to show a repetitive series of incidents to prove a hostile environment. Sexual violence, including rape, sexual assault, and domestic and dating violence, is a form of sexual harassment. In addition, the following conduct may violate this Policy:

1. Observing, photographing, videotaping, or making other visual or auditory records of sexual activity or nudity, where there is a reasonable expectation of privacy, without the knowledge and consent of all parties.
2. Sharing visual or auditory records of sexual activity or nudity without the knowledge and consent of all recorded parties and recipients.
3. Sexual advances, whether or not they involve physical touching.
4. Commenting about or inappropriately touching an individual's body.
5. Requests for sexual favors in exchange for actual or promised job benefits, such as favorable reviews, salary increases, promotions, increased benefits, or continued employment.
6. Lewd or sexually suggestive comments, jokes, innuendos, or gestures.
7. Stalking

Other verbal, nonverbal, graphic, or physical conduct may create a hostile environment if the conduct is sufficiently persistent, pervasive, or severe so as to deny a person equal access to the School programs or activities. Whether the conduct creates a hostile environment may depend on a variety of factors, including: the degree to which the conduct affected one or more person's education or employment; the type, frequency, and duration of the conduct; the relationship between the parties; the number of people involved; and the context in which the conduct occurred.

## **UNWELCOME CONDUCT**

Conduct is unwelcome if a person did not request or invite it and regarded the unrequested or uninvited conduct as undesirable or offensive. That a person welcomes some sexual contact does not necessarily mean that person welcomes other sexual contact. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion.

Whether conduct is unwelcome is determined based on the totality of the circumstances, including various objective and subjective factors. The following types of information may be helpful in making that determination: statements by any witnesses to the alleged incident; information about the relative credibility of the parties and witnesses; the detail and consistency of each person's account; the absence of corroborating information where it should logically exist; information that the Respondent has been found to have harassed others; information that the Complainant has been found to have made false allegations against others; information about the Complainant's reaction or behavior after the alleged incident; and information about any actions the parties took immediately following the incident, including reporting the matter to others.

In addition, when a person is so impaired or incapacitated as to be incapable of requesting or inviting the conduct, conduct of a sexual nature is deemed unwelcome, provided that the Respondent knew or reasonably should have known of the person's impairment or incapacity.

The person may be impaired or incapacitated as a result of drugs or alcohol or for some other reason, such as sleep or unconsciousness.

A Respondent's impairment at the time of the incident as a result of drugs or alcohol does not, however, diminish the Respondent's responsibility for sexual or gender-based harassment under this Policy.

## **GENDER-BASED HARASSMENT**

Gender-based harassment is verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on sex, sex-stereotyping, sexual orientation or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the Schools education or work programs or activities. For example, persistent disparagement of a person based on a perceived lack of stereotypical masculinity or femininity or exclusion from an activity based on sexual orientation or gender identity also may violate this Policy.

## **II – COMPLAINTS AND GRIEVANCES**

Apex Technical School will take appropriate action (i.e., an investigation, adjudication and disciplinary and remedial/corrective steps) in response to a complaint made pursuant to the complaint policies and procedures. The School will make every effort to handle complaints and investigations with sensitivity to both the rights of the person who complains and the rights of the accused.

The School handles complaints discreetly and attempts to maintain privacy throughout the investigatory process, to the extent practicable and appropriate under the circumstances. However, in order to conduct an investigation, it is generally necessary to discuss the allegations with the accused and other potential witnesses. Additionally, the School may have legal obligations to disclose information to law enforcement or in the context of legal proceedings.

Complaints may be made anonymously. While the School endeavors to investigate all complaints, including anonymous complaints, the nature of anonymous complaints makes investigation, determination, and remediation more difficult and, at times, impossible. Further, while the School attempts to protect the identity of complainants who do not wish to be identified, this may not always be possible.

In appropriate cases as determined by the School, conflict resolution for student on student complaints may be possible. This is permitted only where both the complainant and accused voluntarily agree to participate, and either party may terminate informal resolution attempts and commence formal Grievance procedures at any time prior to reaching a mutually acceptable resolution. Depending on the circumstances, a mediated resolution may not necessarily involve face-to-face discussions between the complainant and the accused. Certain cases are not appropriate for conflict resolution, such as complaints of particularly egregious sexual harassment or cases involving sexual assault or violence. Occasionally, an individual makes a complaint and later wishes to revoke or discontinue the investigation or adjudication process. Similarly, it may occur that someone other than the victim reports an incident, and the victim declines to participate in the investigation or adjudication process. In other instances, complaints may be received anonymously and/or the victim may not wish to be personally identified. The

School endeavors to respect the wishes of a victim to either not be identified and/or not participate in the process. In these situations, the School attempts to investigate and address complaints in accordance with the victim's wishes.

If a victim wishes to talk about an incident with the assurance that the discussion will be confidential and will not result in an investigation or follow up action, the School can offer referrals to confidential resources. Contact with the confidential resources does not result in a complaint being filed with the School or result in action being taken by the School. Anyone wishing to have an incident investigated, mediated or adjudicated must make a complaint either orally or in writing according to the policies and procedures.

In determining whether sex discrimination, sexual harassment or sexual misconduct occurred, the School does not apply the criminal standard of "beyond a reasonable doubt," nor do formal court rules of evidence apply. Instead, the School uses a "preponderance of the evidence" standard, and the School may consider any evidence it deems relevant. A "preponderance of the evidence" means the evidence which is of greater weight or is more convincing than opposing evidence such that it is "more likely than not" that an act occurred.

If the applicable investigatory or adjudicatory process allows for parties to offer witnesses and evidence, the complainant and the accused will have an equal opportunity to do so. The complainant and the accused will be informed in writing of the outcome of the complaint, to the extent permitted by law. An accused who is a student may appeal the outcome to an impartial decision maker employed by the School, other than the initial decision maker(s). To file an appeal you should contact the Title IX Coordinator or Assistant Title IX Coordinator. An employee who is deemed guilty shall have whatever rights are granted by law and School employment policy.

The School endeavors to resolve complaints promptly. Ordinarily, the investigative stage will take no longer than 60 calendar days from the time the complaint is received. In exceptional circumstances (including but not limited to especially complex cases or when the School is not in session), it may be necessary to extend these timelines. If that occurs, the parties will be informed of the expected timeline for completion.

The School prohibits retaliation against any individual who in good faith makes a complaint of sex discrimination, sexual harassment, or sexual misconduct or participates as a witness in a proceeding under this or any other School policy. Retaliation is also unlawful pursuant to Title IX and other laws.

To file a complaint and grievance, contact the Title IX Coordinator or the Assistant Title IX Coordinator:

**Title IX Coordinator**

**Stuart Markowitz**

Apex Technical School  
24-02 Queens Plaza South  
Long Island City, NY 11101  
(212) 645-3300 ext. 3090/3056

**Assistant Title IX Coordinator**

**Zelda Cuesta**

Apex Technical School  
24-02 Queens Plaza South  
Long Island City, NY 11101  
(212) 645-3300 ext. 3013

### III - INVESTIGATING TITLE IX COMPLAINTS

A complaint that a student, staff or faculty member has committed sexual harassment or engaged in non-consensual sexual activity may be made to the Title IX Compliance Officer, or a staff or faculty member. The School will conduct an investigation, as appropriate under the circumstances.

The investigatory process involves interviewing the parties involved and any witnesses while gathering documentary or other evidence. In cases involving alleged criminal conduct, the complainant may file a criminal complaint with the local police department. A complainant need not pursue a criminal complaint in order to seek or to hold the accused responsible through the Schools Code of Conduct. As soon as possible, the complainant and the accused will be offered appropriate assistance, and our Program Support Department, in conjunction with the School Director, will be contacted if course adjustments are required.

Based on the outcome of the investigation, the Title IX Officer or their designee will determine if there is sufficient cause to proceed with the complaint. If so, the Title IX Officer or their designee will arrange for an informal resolution conference with the accused. (Complainants do not attend informal resolution meetings but are apprised of the meeting's outcome.) If the accused does not accept responsibility for the allegations and/or the proposed sanction, the Title IX Officer or their designee will determine if the evidence warrants a formal hearing before the Grievance Committee.

The exact nature of the responsive action depends on the circumstances, but may include discipline up to and including suspension or dismissal from the School for a student, staff or faculty who is found to have violated School policies.

### IV – DISSEMINATION

The Apex Technical School Title IX Policies and Procedures is posted on the Schools website at [apexschool.com](http://apexschool.com), included in the Schools catalog and distributed to all employees and staff.

## V – CONTACTS

### **Title IX Coordinator:**

Mr. Stuart Markowitz  
School Director  
Apex Technical School  
24-02 Queens Plaza South  
Long Island City, NY 11101  
(212) 645-3300

### **Assistant Title IX Coordinator:**

Zelda Cuesta

### **Investigators\*:**

Stuart Markowitz  
Barry Burkan  
Zelda Cuesta

### **Decision Makers\*:**

Diana De Arce  
Thomas Tanski  
Iain Fraser  
Jesse Poe

### **Advisors\*:**

Stuart Markowitz  
Barry Burkan  
Zelda Cuesta

### **Informal Resolution Facilitators\*:**

Stuart Markowitz  
Barry Burkan  
Zelda Cuesta

\* In order to allow a fair and impartial process, prior to the onset of the investigation, Apex Technical School reserves the right to alternate the roles of the Investigators, Decision Makers and Advisors.

## VI – COMPLIANCE TRAINING

Thompson Coburn Title IX training series for institutions of Higher Education:

<https://www.youtube.com/playlist?list=PLYrJQ3qn6Pn15VmKJDQ0ICDJeNLXhL4bm>

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