

# 2023 Training on Reasonable Accommodations and Title IX



## ALBIZU UNIVERSITY

DEBBIE OSGOOD  
 SHAREHOLDER  
 dlo@hmb.com  
 312-540-4427

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## Albizu University's Nondiscrimination Statement

The University is committed to “ensuring equal employment, educational opportunity, and equal access to services, programs, and activities without regard to an individual's race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status and domestic violence victim status.”

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## Albizu University's Nondiscrimination Statement (continued)

Employees, students, applicants or other members of the University community (including but not limited to vendors, visitors, and guests) may not be subjected to discrimination or harassment that is prohibited by law or treated adversely based upon a protected characteristic.

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## Reasonable Accommodations

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## Key Federal Laws

- **Section 504** of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and implementing regulations at 34 C.F.R. Part 104 (prohibits discrimination on the basis of disability against recipients of Federal financial assistance)
- **Americans with Disabilities, Title III**, 42 U.S.C. § 12182 and implementing regulations at 28 C.F.R. Part 36 (prohibits discrimination on the basis of disability in public accommodations)

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## Applicable Puerto Rico Laws

- Law of Extended Admission, Reasonable Accommodation and Retention for Students with Disabilities or Functional Diversity in the Transition from Secondary School to Post-secondary Grades (Law 171-2016)
- Act to Prohibit Discrimination against Persons with Physical, Mental or Sensory Disabilities (Act No. 44 of 1985, as amended).
- Charter of Rights of Persons with Disabilities (Law 238-2004, as amended)
- Workplace Harassment (Law 90-2020)

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## University's Manual

### Manual of Regulations and Procedures on Reasonable Accommodations

- Posted on Albizu's website under Policies, Procedures and Consumer Information
- <https://link.edgepilot.com/s/a01bf573/MBwhpDtGvEm-5H7bRhpl0A?u=https://www.albizu.edu/about-us/policies-procedures/>

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## What is the University's Obligation?

- To provide “reasonable accommodations” to a student or employee with a disability upon request when necessary
- “Reasonable accommodations” are also referred to as:
  - Reasonable modifications
  - Academic adjustments
  - Policy modifications

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## University's Manual of Regulation and Procedures of Reasonable Accommodations

- Any student with a disability or functional diversity has the right to request reasonable accommodation to participate in a course, program, service, or facility that ensures that a student with a disability or functional diversity is not segregated or excluded.
- These reasonable modifications, which are based on the recommendations of a specialist, provide those students with the opportunity to perform on equal terms as students without disabilities.
- Interactive Process - reasonable accommodations are determined on a case-by-case basis, within reasonable parameters, according to the impediment and individual needs of a student.
- Provided at no extra costs to the student.

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## University's Process

Any student with disabilities who requests reasonable accommodations services shall contact the University's Disabilities Services Coordinator and receive orientation related to his/her rights and available services by contacting the Office of the Dean of Student Affairs:

- San Juan campus – Licensed Professional Counselor
- Miami campus – Coordinator of Student Success

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## Reasonable Accommodations

Reasonable accommodations may include auxiliary aids and services, such as:

- Note-takers
- Readers
- Recording devices
- Sign language interpreters
- Extended time for testing
- Computer screen-reading, voice recognition, or other adaptive software or hardware
- Priority course registration
- Reduced course load
- Course substitution

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## Reasonable Accommodations

Reasonable accommodations may include modifications to academic requirements as necessary to ensure equal educational opportunity, such as:

- Changes in the length of time permitted for completion of degree requirements
- Substitution of specific courses required for completion of degree requirements
- Adaptation of the manner in which specific courses are conducted

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## Reasonable Accommodations

Accommodations are *not* reasonable when:

- The adjustment fundamentally alters the nature of a service, program, or activity.
- The adjustment imposes an undue financial or administrative burden on the institution's operations.

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## University's Process

- Requests must be made at the earliest reasonable opportunity during the start of each academic term.
- Disability Services Coordinator interviews students and is still available for assistance throughout the term.
- Student must complete accommodation request form and request renewal of services every academic term.
- Coordinator may request documentation to support services request.
- For certain disabilities, a medical certificate may be requested.

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## University's Process

- Approval for Reasonable Modification services will be provided to the student.
- Student must give copy to the professor, supervisor or director who will facilitate the accommodation.
- Signed form returned to Coordinator.
- Coordinator shall meet with any faculty member that does not allow approved accommodations.

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## Institutional Admissions Policy

- Alternative admission process for students with disabilities or functional diversity
- Modified evaluation process (differentiated evaluation)
- Sets forth alternative criteria for admission for different degrees – bachelors, masters, Ph.D.
- After admission, reasonable modification services and an individualized transition and retention plan

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## Professor Duties

- Include the University's reasonable accommodations policy in the syllabus of each course offered to the students.
- Understand that reasonable accommodation is *not* at the discretion of the professor. It is the student's right.
- The professor shall consult with the Coordinator about possible alternatives that will enable the student to achieve academic success.
- Contact the Coordinator for additional information about Section 504 and/or the ADA Act.
- Safeguard the confidentiality of the student's medical information to which professors have access.

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## Effectiveness of Academic Adjustment

- The student should let the University know as soon as he or she becomes aware that the academic adjustment is not working (i.e., the results are not what the student expected.)
- The student and the University should work together to resolve the problem.

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## Possible Requests – What Would You Do?

- Student asks for virtual access to an in-person course.
- Student asks for a personal tutor for a course.
- Student asks to be excused from course exams.
- Student asks to be excused from an academic requirement of a degree program.
- Student asks for room layout changes to aid their mobility during on-site practicum activities.
- Student asks to have clinical components waived because they are unable to complete clinical tasks in-person.

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## Title IX

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## What is Title IX?

Title IX is a federal statute that **prohibits sex discrimination** in education programs and activities that receive federal financial assistance.



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## Title IX: University Policy

### NOTICE OF NON-DISCRIMINATION

Albizu University is a specialized, nonprofit university. Albizu University will not tolerate discrimination or harassment based on race, color, religious belief, national origin, sex, sexual orientation, pregnancy, marital status, gender, gender identity, social condition, political ideas, status as victim of domestic violence, disability, veteran status, genetic information, age, or any other characteristic protected by federal, state or local law in its programs, services and activities. This prohibition applies to all University programs, services or activities, including but not limited to admissions and employment.

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## Title IX: University Policy

### NOTICE OF NON-DISCRIMINATION

Inquiries regarding the application of Title IX and other laws, regulations and policies prohibiting discrimination may be directed to:

- Title IX Coordinator: Dr. Berta Rios
- Deputy Coordinators:
  - Puerto Rico: Carmen Rivera Laboy; Patricia Toro
  - Miami: Dr. Floralba Arbelo; Nancy Gonzalez, Esq.

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## Title IX: University Policy



### Albizu University's Discrimination and Harassment Policy and Grievance Procedures

- Broadly prohibits all forms of discrimination, harassment and retaliation

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## Who Does the Policy Apply To?



- Applies to employees, applicants, and students
- Applies to certain non-employees, such as guests and visitors

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## Where Does the Policy Apply?



- Applies to all education programs and activities and locations of the University
- Cyber harassment included
- On campus (Title IX) and off campus ("Non-Title IX" Sexual Harassment)
- Title IX does not apply to alleged sexual harassment against a person located outside of the United States

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## Prohibited Conduct: Sexual Harassment

- “Non-Title IX” Sexual Harassment
  - Quid Pro Quo
  - Hostile Environment
- Title IX Sexual Harassment
  - Quid Pro Quo Harassment
  - Hostile Environment
  - Dating Violence
  - Domestic Violence
  - Sexual Assault
  - Stalking

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## What Are *Your* Responsibilities?

- Don't engage in sexual harassment!
- Report sexual harassment!
  - **All employees are *mandatory reporters* and must report sexual harassment and other prohibited conduct.**
  - Certain employees (the Title IX Coordinator, senior University officials, and **all employees in supervisory positions**) are “officials with authority,” recognized as having the authority to take corrective action on behalf of the University in response to actual notice of possible violations of the Policy.

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## Where to Report Sexual Harassment

- Title IX Coordinator
- Deputy Title IX Coordinators
- Dean of Students (students)
- Academic Counselor (students)
- Human Resources (employees)
- Clinic Director

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## Prohibited Conduct: Quid Pro Quo

### “This for that”

Submission to or rejection of sexual harassment is made, either explicitly or implicitly, a term or condition of an individual’s employment, academic standing, or participation in any aspect of the University’s program, service or activity or is used as the basis for the University’s decisions affecting the individual.

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## Prohibited Conduct: Hostile Environment

- “Non-Title IX” Hostile Environment: Exists when the conduct is sufficiently severe, pervasive, or persistent that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University’s education or employment programs and/or activities.
- Title IX Hostile Environment: Unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity.

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## Other Categories of Prohibited Conduct

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

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## Prohibited Conduct: Retaliation

Intimidation threats, coercion, adverse actions or discrimination taken against an individual:

- because the individual has made a report or complaint, testified, provided information, or participated or refused to participate in any manner in an investigation, proceeding or hearing under the policy, or
- for the purpose of interfering with a right or privilege secured by the policy or applicable civil rights law.

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## State Law Prohibition: Workplace Harassment

Malicious, unwanted, repetitive and abusive behavior; arbitrary, unreasonable and/or capricious; verbal, written and/or physical; repeatedly by the employer, its agents, supervisors or employees, outside the legitimate interests of the employer's business, unwanted by the person, which infringes on protected constitutional rights (e.g., the dignity of the person, protection against abusive attacks on one's honor, reputation and private or family life, and the protection of the worker against risks to his or her health or personal integrity in work or employment).

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## Consent and Incapacitation

- “Consent” means “words or actions demonstrating a knowing, willful, unambiguous, and voluntary agreement to engage in mutually agreed-upon sexual activity. Consent is determined based on the totality of the circumstances.”
- “Incapacitation” is a state where an individual lacks the physical and/or mental ability to make informed, rational judgments and decisions (e.g., to understand the “who, what, when, where, why, or how” of her/his sexual interaction). Incapacity could result from mental disability, involuntary physical restraint, and/or from the consumption of alcohol or other incapacitating drugs. A person can be intoxicated without being incapacitated.

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## Grievance Procedures

- University employees involved in the investigation and resolution process may not have a personal bias or conflict of interest
- Privacy and confidentiality
- Complaint dismissals under certain circumstances
- Separate Grievance Procedures for:
  - Discrimination or Harassment (“Non-Title IX” Sexual Harassment)
  - Title IX Sexual Harassment

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## Reporting

- Making a complaint
  - Can be made at any time by phone or email or mail
  - May also make complaint to law enforcement
  - Anonymous reports permitted
  - Confidential Resources: on-campus victim advocate, counselors or health center staff or off campus resources

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## Supportive Measures

- To be offered upon receipt of a report or complaint
- Non-disciplinary, non-punitive, individualized and free services
- Designed to restore or preserve equal access to the University's programs and/ or activities without unreasonably burdening the other party
- Protect the safety of all parties or educational environment
- Deter discrimination or harassment
- Examples: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, changes in work or housing locations, mutual no-contact orders, and/or leaves of absence

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## Supportive Measures: Emergency Removal and Administrative Leave

- Individualized safety and risk analysis to determine whether there is an immediate threat to the physical health or safety of any student, employee, or other individual arising from the allegations that would justify a Respondent's removal.
- For students, this may be denied access to campus, facilities or events. For employees, this may be unpaid leave or leave pending resolution of the matter.
- Respondent will be provided with written notice of an opportunity to appeal the decision.

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## Informal Resolution

- Available at any time prior to reaching a determination regarding responsibility and after the filing of a complaint
- Voluntary, structured interaction between or among the parties that is designed to reach an effective resolution (parties will submit written consent to initiate this process)
  - Examples: mediation, counseling, and/or any other means of resolving a complaint other than a formal resolution process.
- Complainant and Respondent can request to end informal resolution and pursue an investigation at any time
- **Not available in Title IX- sexual harassment allegations of student by employee**

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## Initial Determination

- The Coordinator will make an initial determination as to whether the reported conduct, if true, could constitute a violation of the Policy, based on information in the Report or Complaint as well as information provided by the potential Complainant during the intake meeting(s).
  - Proceeds to an investigation if the reported conduct alleges a violation of the Policy.
  - Will be closed or dismissed if the reported conduct does not appear to allege a violation of the Policy.



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## Formal Investigation and Resolution

- Preponderance of the evidence standard
- Notice to the parties
- Investigation
- Investigation Report
- Title IX Sexual Harassment cases only
  - Opportunity for parties to review and respond to evidence and Preliminary Investigation Report
  - Hearing
  - Written Determination
  - Appeal
- Sanctions/Disciplinary Actions and Remedies



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## Proposed Title IX Regulations

- Expected this spring/summer
- Would no longer *require* hearing
- Hostile environment standard: Severe or pervasive
- On and off campus harassment covered
- Codifies prohibition of discrimination on the basis of sexual orientation or gender identity

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## Pregnant and Parenting Students

### Current Title IX requirements:

- must not apply any rule, relating to potential parental, family, or marital status of a student or applicant that treats individuals differently based on sex.
- must not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery.
- must treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery in the same manner and under the same policies as any other temporary disability or physical condition.

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## Pregnant and Parenting Students

### Proposed Title IX requirements:

- must not discriminate based on a student's current, potential, or past pregnancy or related conditions.
- must make reasonable modifications to policies, practices, and procedures
- when an employee is informed of a student's pregnancy or related conditions, the employee must promptly inform the student (or individual with the legal right to act on behalf of the student) of how they can notify and contact the Title IX Coordinator for assistance, unless the employee reasonably believes that the Title IX Coordinator is already aware.

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## Questions?



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**HMBR.COM**  
CHICAGO • NEW YORK  
ATTORNEYS AT LAW

**DEBBIE OSGOOD**  
SHAREHOLDER  
**dlo@hmb.com**  
**312-540-4427**

161 North Clark Street  
Suite 1700  
Chicago, IL 60601