

# Emergency Removals

## TITLE IX-BASED EMERGENCY REMOVALS

### THE BASICS

Central Arizona College (CAC) can act to remove, on an emergency basis, a Title IX Respondent entirely, or partially, from its education program or employment activities, when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any individual justifies such a removal.

An emergency removal is not tantamount to a determination of responsibility or a sanction. CAC may remove a Respondent on an emergency basis whether a grievance process is underway or not.

For students who are removed on an emergency basis, alternative coursework options should be pursued to ensure as minimal an academic impact as possible on the removed party.

The College will implement the least restrictive emergency actions possible in light of the circumstances and individual safety concerns. As determined by the Title IX Coordinator, these actions could include a variety of supportive measures. Examples of supportive measures include, but are not limited to:

- temporarily re-assigning an employee,
- restricting a student's or employee's access to or use of facilities or equipment,
- allowing a student to withdraw or take grades of incomplete, without financial or grade penalty,
- altering campus housing assignments,
- authorizing an administrative leave,
- suspending a student's participation in extracurricular activities,
- suspending a student's employment,
- suspending a student's participation in student organizational leadership, or
- suspending a student's participation in intercollegiate/intramural athletics.

If the least restrictive emergency action is removal from the campus, the Title IX Coordinator must initiate an individualized safety and risk analysis.

## **RISK ANALYSIS**

This risk analysis is performed by the Title IX Coordinator, in conjunction with the College Behavioral Intervention Team.

For situations where the Respondent is an employee, the Title IX Coordinator will consult with Talent Development in completing the individualized safety and risk analysis.

The risk analysis must follow the five-step process for evaluating the necessity of and implementation of an emergency removal.

### **Step ONE: Conduct a prompt individualized safety and risk analysis.**

- The analysis must be individualized and not based on upon generalized, hypothetical or speculative beliefs or assumptions that a Respondent could pose a risk to someone's physical health or safety.
- The analysis must focus upon the particular Respondent and examines the specific circumstances "arising from the allegations of sexual harassment" posing an immediate threat to a person's (not always the Complainant's) physical health or safety.

### **Step TWO: Make the required findings of "immediate threat" "to the physical health or safety of any student or other individual" "arising from the allegations of sexual harassment."**

"Immediate threat"

1. There must be an immediate threat that justifies and compels the emergency removal.
2. Ask: What significance and weight should be applied to a Complainant's subjective fear of a threat versus an objective reasonable person standard?
3. Ask: What is the Respondent's propensity, opportunity, and ability to effectuate a stated or potential threat.
4. Ask: Would supportive measures be more appropriate and a less restrictive means to negate or sufficiently minimize the likelihood of a threat's occurrence?

“To the physical health or safety of any student or other individual”

1. The immediate threat must be to the “physical health or safety” of one or more individuals, who may be the Respondent, the Complainant, or any other individual (such as a third-party witness).” We are not talking about threat to emotional health. If the threat is simply to the emotional health and well-being, initiate supportive measures only.

“Arising from the allegations of sexual harassment.”

1. The emergency situation must specifically arise from the allegations of sexual harassment.
2. A Respondent’s threat of physical self-harm after being accused of sexual harassment could justify an emergency removal.

**Step THREE: Evaluate the applicability of disability laws to the removal decision.**

1. A Respondent may not be subject to an emergency removal without full and appropriate consideration of applicable disability laws.
2. If a Respondent identifies him/herself as having a disability, consult with the DRS office (for students) and HR-Talent Development (for employees) to make the required consideration regarding disability laws.

**Step FOUR: Consider the appropriateness of supportive measures in lieu of an emergency removal.**

1. Before imposing a Respondent’s emergency removal, CAC must ensure that its action does not equate to or effectuate an improper bypassing of the prohibitions in §§ 106.44(a) and 106.45(b)(1)(i) against imposition of sanctions or other actions that are not supportive measures without first following the § 106.45 grievance process.
2. In assessing an emergency removal, an institution should consider the anticipated timing to complete an investigation and hearing, as a removal will vary in its length and impacts based upon the duration of the grievance process.

## **Step FIVE: Provide the Respondent with notice and an “immediate” opportunity to challenge the emergency removal**

In all cases where an emergency removal is imposed, the Respondent (regardless of status as either student or employee) will be issued a Notice of Removal letter.

Upon receiving the Notice of Removal letter, the Respondent may request to meet with the Title IX Coordinator as soon as reasonably possible after the emergency removal is imposed to show cause why the action/removal should not be implemented or should be modified. This meeting is called a Show Cause meeting.

### **SHOW CAUSE MEETING**

Requesting a Show Cause meeting with the Title IX Coordinator must be made within three (3) days of the Respondent’s receipt of the Notice of Removal. If no meeting is scheduled within the three (3) day time period, objections to the emergency removal will be deemed waived and the emergency removal will be imposed.

This Show Cause meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate.

At the Show Cause meeting, the Respondent may be accompanied by the Advisor of his/her/their choosing.

A Complainant and their Advisor may be permitted to participate in the Show Cause meeting.

At the Show Cause meeting, the Respondent will be allowed to present their position regarding why they believe the emergency action/removal should not be implemented or should be modified.

The Title IX Coordinator must prepare a written determination/response to the Show Cause meeting within two (2) days of the meeting taking place.

The Title IX Coordinator’s decision is final.

### **VIOLATION OF EMERGENCY REMOVAL**

Violation of an emergency removal under this policy will be grounds for separate discipline, which may include actions up to or including expulsion from school or termination from employment.