

University Policy: Discrimination and Non-Title IX Sexual Misconduct Policy

(collectively "AU Community")¹. This Policy applies to all University programs and activities. The University will address complaints related to an AU Community member's participation in those programs and activities, regardless of whether the offending conduct occurred on or off campus.

This Policy addresses the procedures for reporting and responding to incidents of discrimination, harassment, and sexual misconduct that falls outside the scope or jurisdiction of the Title IX Sexual Harassment Policy. This Policy is intended to be consistent with applicable local and federal laws and regulations.

When several processes/procedures may be applicable in resolving a discrimination complaint, the Assistant Vice President for Equity and Title IX Coordinator (See Section IV (E) below for contact information) will determine which process will be used for resolving the complaint. This is to avoid

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the University under this policy, or with an external agency, opposing in a reasonable manner an action or policy believed to be a violation of this policy, and/or participating in investigations, compliance reviews, disciplinary proceedings and/or other resolution of a complaint. Retaliation includes, but is not limited to threats, intimidation, and/or adverse actions related to employment or education.

III. DEFINITIONS

- A. **Discrimination.** Discrimination is different treatment based on a legally protected status that is sufficiently serious to unreasonably interfere with or limit an individual's opportunity to participate in or benefit from a University program or activity, or that otherwise adversely affects a term or condition of the individual's employment or education. Discrimination may also occur when policies, practices, rules or other systems that appear to be neutral result in a disproportionate impact on a protected group. Discrimination also includes failure to provide reasonable accommodations for a person's disability or religion as required by law, or any other violation of a disabled person's rights under applicable anti-discrimination laws.
- B. **Harassment.** Harassment is a form of discrimination that encompasses unwelcome conduct based on a person's legally protected status. Harassment is unwelcome verbal or physical conduct directed toward, or differential treatment of, an individual because of their membership or perceived membership in any protected group when the conduct is sufficiently severe or pervasive to have the effect of unreasonably interfering with an individual's educational experience, working conditions or living conditions. Harassment in violation of this Policy depends on the totality of the circumstances, including the nature, frequency, and duration of the conduct in question, the location and context in which it occurs, and the status of the individuals involved. Examples of conduct that can constitute harassment if based on an individual's legally protected category includes but is not limited to:

- (a) Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's education, employment or participation in other University programs and/or activities or is used as the basis for University decisions affecting the individual (often known as "*quid pro quo*" harassment); or
- (b) Such conduct creates a hostile environment. A "hostile environment" exists when the conduct is sufficiently severe, persistent, or pervasive 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. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. When evaluation whether a hostile environment exists, the University will consider the totality of known circumstances, including but not limited to:
 - i. The frequency, nature and severity of the conduct;
 - ii. Whether the conduct was physically threatening;
 - iii. The effect of the conduct on the complainant's mental or emotional state;
 - iv. Whether the conduct was directed at more than one person;
 - v. Whether the conduct arose in the context of other discriminatory conduct;
 - vi. Whether the conduct unreasonably interfered with the complainant's educational or work performance and/or University programs and activities; and
 - vii. Whether the conduct implicates concerns related to academic freedom or protected speech.

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of Sexual Assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

- (2) **Dating Violence.** As defined in 34 U.S.C. § 12291(a)(1), Dating Violence is defined as violence committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the other person; and (ii) where existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- (3) **Domestic Violence.** As defined in 34 U.S.C. § 12291(a)(8), Domestic Violence is violence committed by a current or former spouse or intimate partner of the person, by an individual with whom the person shares a child in common, by an individual who is cohabitating with or has cohabitated with the person as a spouse or intimate partner, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction in which the crime

of violence occurred, or by any individual against the person who is protected from that individual's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

- (4) **Sexual Assault.** As defined in 20 U.S.C. § 1092(f)(6)(A)(v), Sexual Assault constitutes any sexual act directed against another person, without consent of the person, including instances in which the person is incapable of giving consent. Sexual Assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (FBI).

The following are types of Sexual Assault under the FBI's National Incident-Based Reporting System ("NIBRS") uniform crime reporting system:

- (a) Rape. As defined in NIBRS, Rape is the carnal knowledge of a person, without the consent of the person, including instances where the person is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- (b) Sodomy. As defined in NIBRS, Sodomy is the oral or anal sexual intercourse with another person, without the consent of the person, including instances where the person is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- (c) Sexual Assault with an Object. As defined in NIBRS, Sexual Assault with an object is the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the person, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- (d) Fondling. As defined in NIBRS, Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the person, including instances where the person is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- (e) Incest. As defined in NIBRS, Incest is nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- (f) Statutory Rape. As defined in NIBRS, Statutory Rape is nonforcible sexual intercourse with a person who is under the statutory age of consent.

1. **Duty to Report Complaints.** AU Community members employed by the university (including student employees such as teaching assistants, resident assistants, and orientation leaders) and individuals who provide services to the University through an employer-of-record agreement have a duty to report conduct that might be a violation of the policy to the Assistant Vice President for Equity (See Section IV (E) below for contact information), when they become aware of such conduct. AU Community members and other individuals who have a duty to report potential violations of this policy may be subject to discipline or corrective action for failing to fulfill this obligation.
2. **Option to Report Complaints.** AU students who are not employed by the University are highly encouraged to report conduct that might be a violation of the policy that they are aware of to the Assistant Vice President for Equity or seek support from a Confidential Resource (See Section IV (A)(4) below for contact information), but they do not have a duty to do so.
3. **Complaint Resolution.** Incidents reported to the Assistant Vice President for Equity will be resolved through informal procedures or formal investigations, as appropriate. AU Community members are expected to cooperate in the resolution or investigation of complaints.
4. **Confidential Support, Medical, and Counseling Resources for Students (“Confidential Resources”).** Community Members are encouraged to utilize the following resources for confidential discussion and support related to discrimination or discriminatory harassment and its effects. Because of the confidentiality affor(f)76 (i)3dolrca Tc 0 Tw 8.82 0(e)-3 (s)-5 (a)-4 (t)2 (e)-3 (ons)T24

- a) **Professional Counselors – Faculty and Staff Assistance Program (FSAP)**; (202) 885-2593; fsap@american.edu; <https://www.american.edu/hr/worklife/fsap.cfm>
5. **Where to File a Complaint.** The Assistant Vice President for Equity and Title IX Coordinator is charged with resolving complaints and ensuring the University's compliance with this Policy and civil rights laws, equal opportunity, and non-discrimination. Complaints under this Policy may be submitted using the online reporting form that can be found at american.edu/equity-title-ix. The following is the contact information for the Office of Equity and Title IX:

In addition to the above duties, the Assistant Vice President for Equity will:

- a) Coordinate, plan, and manage education and training programs to ensure compliance with this Policy. The education and training programs will include wide dissemination of this Policy to the University community; provide educational materials to promote compliance with the Policy and familiarity with reporting procedures; and training University employees responsible for reporting or responding to reports of discrimination, harassment and sexual misconduct.
- b) Develop and implement consistent procedures to provide for prompt and effective response to reports of discrimination in accordance with this Policy.
- c) Coordinate the maintenance of records of reports of discrimination complaints and actions taken in response to reports, including records of investigations, voluntary resolutions, and disciplinary action, as appropriate.
- d) Identify and address patterns or systemic problems of discrimination.
- e) Answer questions and be available to meet with students, employees, and others about this Policy.
- f) Submit a confidential annual report to the Office of the President on aggregate data of complaint activity during the preceding academic year that comports with the confidentiality requirements of this Policy.
- g) Support and collaborate with campus partners on the implementation of periodic campus climate surveys, as deemed appropriate.
- h) Receive periodic training on discrimination, harassment and sexual misconduct, and how to conduct an investigation process that promotes accountability, equity and fairness.

6. INITIATING A COMPLAINT & COMPLAINT PROCEDURES

Community members who feel that they have been subjected to conduct that violates this policy (“Complainant”) may file a complaint with the University as described below. A complaint should be filed as soon as possible following the alleged conduct. Timely complaint filing gives the University the best chance to resolve the problem. A delay in filing a complaint may severely limit available remedies. If the respondent is no longer affiliated with the University (e.g., former student or former employee), the University will take appropriate action within its authority, including referring the Complainant to external reporting options.

Written complaints are encouraged, but not required. If a verbal complaint is made, the Office of Equity and Title IX will prepare a written summary of the allegations and the Complainant will be required to acknowledge its accuracy in writing. The Office of Equity and Title IX will then conduct an initial assessment of the complaint to determine whether the Office of Equity and Title IX has jurisdiction over the alleged conduct and the Respondent; whether the complaint is suitable for informal

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Advisors. The Complainant and the Respondent may be advised and accompanied by advisors of their choice during any meeting related to the complaint. While the advisor may accompany the party to meetings, the advisor may not speak on behalf of the party, communicate in any way, either orally or in writing, with the Office of Equity and Title IX on behalf of the party, or contact the Assistant Vice President for Equity or designee on behalf of the party.

Request for Disability-Related Accommodations. A party may contact the Assistant Vice President for Equity to request a disability-related reasonable accommodation to participate in the complaint process. A request for a reasonable accommodation will be referred to the

appropriate for complaints of Sexual Assault, Dating Violence, Domestic Violence, Sexual Exploitation, or Stalking.

- c) ***STEP THREE (Formal Resolution)***. If informal resolution is unsuccessful or not appropriate as determined by the Assistant Vice President for Equity or designee, the Assistant Vice President for Equity or designee may determine that an investigation is appropriate. If it is determined that an investigation should be conducted, a Notice of Investigation will be issued which identifies the investigator and provides the Complainant and Respondent written notice of the allegations that will be investigated.

Investigation. Depending on the nature of the allegations, the investigation could include interviews with the Complainant, the Respondent and/or witnesses; review of written documentation and relevant policies; review of evidence; and any other steps necessary to thoroughly investigate the allegations. During the investigation, the Complainant and Respondent will have an equal opportunity to identify witnesses and evidence that the Assistant Vice President for Equity or designee may consider. Potential violations of other University policies discovered during the investigation will be referred to the appropriate University office for handling.

Resolution. At the conclusion of the investigation, the Assistant Vice President for Equity or designee will issue simultaneous, written notifications of the outcome of the investigation to the concerned parties, including referral to the appropriate disciplinary authorities, if there is a finding of a violation of the Policy.

Sanctioning for responsible findings for allegations of sexual misconduct.

decision on sanctions. The recommendation of sanction(s) to the appropriate University administrator will be made by majority vote of the Sanctioning Panel. A copy of the sanctions issued shall be provided to the Assistant Vice President for Equity or designee.

Sanctions for faculty members who have been found responsible for allegations of sexual misconduct under this policy will be determined in accordance with the processes provided for in the Faculty Manual. A copy of the sanctions determined and issued shall be provided to the Assistant Vice President for Equity or designee.

Sanctioning for responsible findings for allegations of discrimination and/or harassment.

The sanctions for responsible findings for allegations of discrimination or harassment will depend on the status of the Respondent. If the Respondent is a student, the Dean of Students or designee will review the findings and determine the appropriate sanction(s). Both the Complainant and the Respondent may submit a written statement to the Dean of Students, expressing a preference about the sanction(s) and/or mitigating factors that should be considered. If the Respondent is a staff or related third party, the Assistant Vice President of Human Resources or designee will render a decision regarding sanctions, in accordance with the Staff Personnel Manual. If the Respondent is a faculty member, a decision regarding sanctions shall be made in accordance with the Faculty Manual. The appropriate sanctioning University administrator will consult with the Assistant Vice President for Equity, and other relevant administrators, as needed to determine the appropriate discipline.

The range of sanctions for policy violations includes, but is not limited to a written censure, a ban from specific areas of campus, loss of specific privileges, community service, transfer or loss of on-campus housing privileges, disciplinary probation, mandatory training, suspension, dismissal and disciplinary action up to and including termination from employment. While the appropriate disciplinary authority will implement discipline and maintain any disciplinary records in accordance with the University's record-

- a) new information that becomes available that could not have been discovered by a properly diligent student before or during the original proceeding that significantly alters the finding of fact;
- b) specified procedural error that was so substantial that it affected the outcome; or
- c) insufficient/excessive sanctions that were substantially disproportionate to the offense.

The Vice President of Campus Life or their designee will review the appeal within ten (10) business days of the submission of the appeal and issue a final written decision that includes a rationale, that either affirms the decision, modifies the decision, or rejects the decision.

Appeals for faculty respondents are governed by the Faculty Manual and appeals for staff are governed by the Staff Personnel Manual.

B. FALSE OR FRIVOLOUS CHARGES

The University encourages good faith reporting of violations of this Policy. This Policy shall not be used to bring false or frivolous allegations against students, faculty, or staff. Those bringing such charges may be subject to disciplinary action. Failure to prove a complaint, does not itself constitute a false or frivolous complaint.

C. CONFIDENTIALITY & THE UNIVERSITY'S OBLIGATION TO RESPOND TO COMPLAINTS

The University will maintain the confidentiality of information shared throughout the complaint process. However, disclosures may be required for the purpose of fact-finding or efforts to resolve the complaint. In the limited instances where disclosures must be made by the University, disclosures will be limited to those persons necessary to proceed in the fact-finding process or to otherwise address the grievance. All persons involved in the complaint process will be advised of the importance of confidentiality throughout the process.

In some cases, Complainants may request that their names be kept confidential and that the University take no action on their report ("confidential reporting"). The Assistant Vice President for Equity or designee will evaluate each request and advise the Complainant that "confidential reporting" will limit the University's ability to respond fully to the matter, including pursuing disciplinary action against the Respondent. While, in most instances, the University will honor such confidentiality requests unless to do so would impede its ability to provide a safe and nondiscriminatory environment for the AU Community, the Assistant Vice President for Equity or designee makes the final

V. EFFECTIVE DATE AND REVISIONS

This Policy is revised effective August 24, 2021.

This Policy was approved August 1, 2011 and amended August 1, 2014, August 31, 2015,

August 31, 2017, March 19, 2018, August 28, 2019, and August 14, 2020. Replaces Faculty Sexual Harassment Policy, Student Sexual Harassment Policy, Staff EEO Policy, Staff Sexual Harassment Policy, University-Wide Discrimination and Discriminatory Harassment Policy.