



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

**Policy Category:** Community

**Subject:** Discrimination, Harassment, Non-Title IX Sexual Misconduct, Dating and Domestic Violence, Sexual Assault and Stalking

**Responsible Executive:** Vice President of People and External Affairs

**Offices Responsible for Review of the Policy:** Office of Equity and Title IX

**Related Local and Federal Laws:** Related Local and Federal Laws include, but are not limited to:

- *Title VI of the Civil Rights Act of 1964* prohibits discrimination on the basis of race, color, or national origin by recipients of federal financial assistance.
- *Title IX of the Education Amendments of 1972* prohibits sex discrimination by educational institutions (“Title IX”).
- *Violence Against Women Act 2013* requires colleges and universities to address and prevent campus sexual violence.
- *Age Discrimination Act of 1975* prohibits discrimination based on age in programs or activities that receive federal financial assistance.
- *Age Discrimination in Employment Act* prohibits discrimination in employment against people who are age 40 or older.
- *Title VII of the Civil Rights Act of 1964* prohibits discrimination in employment on the basis of race, color, religion, sex (including sexual orientation and gender identity) and national origin.
- *Section 504 of the Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990* prohibit discrimination against individuals with disabilities.
- *Equal Pay Act* prohibits discrimination based on sex in the payment of wages.
- *Genetic Information Nondiscrimination Act of 2008* prohibits discrimination on the basis of genetic information with respect to health insurance and employment.
- *DC Human Rights Law* prohibits discrimination in employment and educational institutions on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, political affiliation, source of income, or disability.

**Related University Policies:** Student Conduct Code, WCL Honor Code, Faculty Manual, WCL Faculty Manual, Staff Personnel Policies Manual

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### I. SCOPE

This Policy covers all faculty, staff, and students of American University, and related third-parties (such as applicants for admission and employment, vendors, guests, and contractors)

(collectively "AU Community")<sup>1</sup>. 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 confusion about parties/facts/procedures, and to prevent duplication of resolution efforts.

## **II. POLICY STATEMENT**

### **Nondiscrimination and Equal Opportunity in Employment and Education**

American University is an equal opportunity, affirmative action institution that operates in compliance with applicable laws and regulations. The University does not discriminate on the basis of race, color, national origin, religion, sex, pregnancy or parenting, age, sexual orientation, disability, marital status, personal appearance, gender identity and expression, family responsibilities, political affiliation, source of income, veteran status, an individual's genetic information or any other bases under applicable federal and local laws and regulations (collectively "Protected Bases") in its programs and activities. The University expressly prohibits any form of discriminatory harassment including sexual harassment, dating and domestic violence, rape, sexual assault, sexual exploitation and stalking.

### **Complaint Resolution**

The University will respond promptly and effectively to reports of discrimination and will take appropriate action to prevent, to correct, and if necessary, to discipline individuals who violate this Policy. Members of the University Community who have relevant information are expected to cooperate with investigations of such misconduct.

The University has a separate policy, Title IX Sexual Harassment Policy, to address sexual misconduct falling within the jurisdiction of Title IX in its education programs and activities that occurs against a person in the United States. An alleged incident of Title IX Sexual Harassment will be governed by the University's Title IX Sexual Harassment Policy. An alleged incident of sexual misconduct that does not fall within the scope of the Title IX Sexual Harassment Policy or an alleged incident of another form of discrimination as defined under this Policy will be governed by this Policy.

### **Retaliation**

The University prohibits retaliation against a member of the AU Community for filing a report or complaint of discrimination or assisting in the filing of a report or complaint of discrimination with

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<sup>1</sup> Students and employees seeking reasonable accommodations for disabilities must follow the processes established by the University for requesting accommodations.

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:
- Epithets, slurs, jokes or negative stereotypes;
  - Written, printed or graphic material that contains offensive, denigrating or demeaning comments or pictures ;
  - Displaying offensive, denigrating or demeaning posters, emails, text messages or cell phone pictures; and
  - Conduct, whether verbal, physical, written or electronic that threatens, intimidates, offends, belittles, denigrates, or shows an aversion toward an individual or group because of their legal protected status.
- C. Sexual Misconduct.** Sexual misconduct includes acts such as rape, dating and domestic violence, sexual assault, sexual exploitation, stalking, and other forms of non-consensual sexual activity; or violence or harassment based on sexual orientation. Categories of sexual misconduct include, but are not limited to, the following:
- (1) **Sexual Harassment.** Sexual harassment is any unwelcome sexual advance, request for sexual favors or other conduct of a sexual nature, whether verbal, graphic, physical, or otherwise, when the conditions outlined below are present.

- (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.

- (5) **Sexual Exploitation.** Sexual Exploitation is taking sexual advantage of another, for one’s own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples include, but are not limited to: recording, photographing or transmitting sexual photos, sounds, images or other information; voyeurism; indecent exposure; prostituting or soliciting another person; inducing incapacitation to commit acts of sexual misconduct; knowingly exposing another person to sexually transmitted infection (STI) or human immunodeficiency virus (HIV).
- (6) **Stalking.** As defined in 34 U.S.C. 12291(a)(30), Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for his or her safety or the safety of others; or (ii) suffer substantial emotional distress.

**D. Consent.** Consent is defined as words or conduct indicating a freely given agreement to have sexual intercourse or to participate in sexual activities. Silence or lack of resistance does not imply consent. Consent for one sexual act does not imply consent for any subsequent sexual act and consent must be on-going. Sexual contact will be considered “without consent” if no clear consent, verbal or non-verbal is given; if inflicted through force, threat of force, or coercion; or if inflicted upon a person who is unconscious or who otherwise reasonably appears to be without the mental or physical capacity to consent.

- (1) **Age of Consent.** The age of consent in the District of Columbia is sixteen (16) years of age. Individuals younger than 16 years of age are legally incapable of giving consent to sexual activity with an individual who is four or more years older.
- (2) **Coerce.** Coerce is to force one to act based on fear of harm to self or others. Means of coercion may include, but are not limited to, pressure, expressed or implied threats, intimidation, or the threat or use of physical force. Coercion also includes forcing a person to act by impairing the faculties of that person through the administration of a substance.
- (3) **Incapacitation.** Incapacitation is defined as a temporary or permanent state in which an individual is unable to give consent to sexual contact due to mental, developmental, or physical impairment, to include incapacitation voluntarily or involuntarily, from alcohol or drug use. States of incapacitation include but are not limited to: sleep, unconsciousness, intermittent consciousness, or any other state where an individual is unaware that sexual contact is occurring. Where alcohol or drug use is involved, incapacitation is a state beyond mere intoxication, or impairment of judgment.

## **IV. POLICY**

### **A. PROCESS & REPORTING**

The following roles and responsibilities and complaint resolution process have been established to assist the University in ensuring an educational environment and workplace free from discrimination, harassment, and sexual misconduct.

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 afforded to these relationships, however, AU community members should know that these confidential resource persons are not in a position to report the discrimination to University officials or to intervene to end the misconduct. To ensure University involvement in addressing the matter, the discrimination must be reported to the Office of Equity and Title IX, or to an AU community member who is employed by the University and has a duty to report. Confidential Resources include:

*Student Confidential Resources*

- a) **Victim Advocates** and all full-time Health Promotion & Advocacy Center staff – Office of Advocacy Services for Interpersonal and Sexual Violence (OASIS), Health Promotion & Advocacy Center; (202) 885-7070; OASIS@american.edu;  
[www.american.edu/ocl/OASIS](http://www.american.edu/ocl/OASIS)
- b) **Professional Counselors for Students** – Counseling Center; (202) 885-3500 (including the satellite location in the Washington College of Law);  
[www.american.edu/ocl/counseling](http://www.american.edu/ocl/counseling)
- c) **Medical Providers** – Student Health Center; (202) 885-3380; shc@american.edu;
- d) **Ordained Clergy** – Kay Spiritual Life Center; (202) 885-3320; kslc@american.edu;  
[www.american.edu/ocl/kay](http://www.american.edu/ocl/kay)

- 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](http://american.edu/equity-title-ix). The following is the contact information for the Office of Equity and Title IX:

<p><b>Office of Equity and Title IX</b> 4400 Massachusetts Avenue, NW Washington, DC 20016 Phone: 202-885-8080 Email: <a href="mailto:equityoffice@american.edu">equityoffice@american.edu</a></p>
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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.

Additional information about civil rights laws pertaining to education and employment are available on the website of the U.S. Department of Education, Office for Civil Rights ("OCR") at <http://www2.ed.gov/about/offices/list/ocr/index.html>, the Equal Employment Opportunity Commission at <https://www.eeoc.gov/eeoc/>, and the DC Office of Human Rights at <https://ohr.dc.gov/page/about-ohr>.



## 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 resolution; whether the complaint has previously been filed under another University policy; and whether the allegations, if true, would constitute a Policy violation. The Complainant will be informed of the results of this initial assessment and their options. A complaint regarding allegations that are not within the jurisdiction of the Office of Equity and Title IX will be referred to the appropriate University office for handling.

The specific procedures for reporting, investigating, and resolving complaints generally follow STEP ONE, STEP TWO, AND STEP THREE described below.

Formal investigations are thorough and impartial and afford all parties notice and opportunity to present evidence in determining whether a policy violation has occurred. The University applies the preponderance of evidence standard in determining whether this Policy has been violated. Preponderance of evidence means it is more likely than not that a policy violation occurred.

a) ***STEP ONE (Where to File/Report a Complaint and Estimated Resolution Timelines).***

**Notify Designated Official.** Notify the Assistant Vice President for Equity as quickly as possible of potential violations of this Policy.

**Option to File a Criminal Report.** Simultaneous to pursuing resolution through the University’s internal process, the Complainant may also file a criminal report with the Metropolitan Police Department or the appropriate law enforcement agency for any criminal conduct. The University will not delay its investigation if criminal charges are filed. At the request of law enforcement authorities, however, the University may postpone the University investigation and proceeding while the authorities gather evidence.

**Supportive Measures.** Once a complaint has been reported and until the resolution of the matter, the Assistant Vice President for Equity or designee may take supportive measures to ensure safety and non-retaliation for all parties, as well as measures designed to ensure the ability of the parties to continue their participation in the University’s programs or activities. Examples of supportive measures include separation of the parties, no-contact directives, barring individuals from campus, and alternative academic, work or housing arrangements.

**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 and reviewed by the appropriate University office that handles accommodation requests and evaluated pursuant to the applicable office's reasonable accommodation procedures. Generally, a party should make a request promptly and in advance of when the accommodation is needed to allow a reasonable amount of time to review the request. However, a response to an immediate need for accommodation will be considered to the fullest extent possible.

**A. Estimated Timeline for Resolution for Complaints.** At the initial meeting with the Complainant, the Assistant Vice President for Equity or designee will explain the resolution procedures that are identified below. The University strives to complete resolution of complaints within 90 calendar days from when the Office of Equity and Title IX has notice of the complaint for informal resolution, or 90 calendar days from initiation of the investigation for formal resolution. Calendar day is defined as every day of the month, excluding weekends and university holidays, in which the University is open to the public for conducting business. Additionally, during winter breaks and summer sessions, when witnesses may not be available or disciplinary panels cannot be convened, the case is complex, or other similar situations, the 90-calendar day timeframe may be adjusted to accommodate these circumstances. Where the estimated timeline cannot be adhered to, the Assistant Vice President for Equity or designee will notify the parties. The 90-calendar day timeframe does not include the time needed for the University to process appeals.

**b) *STEP TWO (Informal Resolution)*.** The University encourages, but does not require, informal resolution when possible. The Assistant Vice President for Equity or designee may elect to bypass the informal procedures because of the severity of the allegation or complexity of the complaint.

**Informal Resolution.** The goal of informal resolution is to resolve concerns at the earliest stage possible, with the cooperation of all parties involved. Informal resolution may include inquiry into the facts, but typically does not include a formal investigation. These informal efforts may include addressing the Respondent directly; participating in a facilitated meeting with the appropriate University official; or participating in mediation. The informal resolution could include by way of example: separating the parties; mandating targeted educational and training programs; or providing remedies for the individual harmed by the alleged discrimination. If the matter is resolved informally, the Assistant Vice President for Equity or designee shall maintain a record of the complaint and its resolution. Informal resolution is not

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.**

Sanctions for students and staff will be determined by a Sanctioning Panel comprised of three (3) members selected by the Assistant Vice President for Equity or designee. The composition of the Sanctioning Panel will depend on the status of the Respondent.

If the Respondent is a student, then the Sanctioning Panel will be comprised of three (3) members of the Student Conduct Council (one (1) student and two (2) faculty/staff members). If the Respondent is a staff member or related third party, then the Sanctioning Panel will be comprised of three (3) members of the Staff Personnel Review Board.

The Sanctioning Panel must be impartial and free from bias or conflict of interest. If a member of the Sanctioning Panel has a concern that they cannot conduct a fair or unbiased review, they may report those concerns directly to the Assistant Vice President for Equity and a different Sanctioning Panelist will be assigned. The Sanctioning Panel will review the findings and determine the appropriate sanction(s). Both the Complainant and the Respondent may submit a written statement to the Sanctioning Panel, expressing a preference about the sanction(s) and/or mitigating factors that should be considered. However, the parties and their advisors are excluded from the Sanctioning Panel deliberations.

The sanctions determined by the Sanctioning Panel are recommendations to the appropriate university administrator. If the Respondent is a student, then the Dean of Students or designee will render a final decision regarding sanctions. If the Respondent is a staff or related third party, then the Assistant Vice President of Human Resources or designee will render the final

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-keeping policies, the disciplinary authority shall also provide a copy of the disciplinary record to the Office of Equity and Title IX.

The Office of Equity and Title IX will provide the results of its investigation to Human Resources, the Provost's Office, or Student Conduct & Conflict Resolution Services, depending on the status of the respondent, if at the conclusion of the investigation the conduct did not rise to the level of violating this Policy, but may have been inappropriate and/or unprofessional conduct that merits consideration of discipline or other appropriate action under another University policy.

**Appeals.** The process for appeals is dependent on the status of the Respondent. If the Respondent is a student, the parties may appeal the determination of responsibility and/or the sanction. The appeal must be submitted, in writing, to the Vice President of Campus Life or their designee within seven (7) calendar days after written notice of the outcome. The other party will be provided with the appeal submission and will have seven (7) calendar days to submit a response.

The parties may appeal the outcome on one or more of the following grounds:

- 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 determination about whether action on a report must be taken by the University.

## **D. RECORDS**

Records of informal and formal complaints will be maintained by the Assistant Vice President for Equity. Complaints against faculty, staff, or students that result in a personnel or disciplinary action will also be a part of the respondent's personnel or disciplinary record. The responsible disciplinary authority shall provide a copy of disciplinary records to the Office of Equity and Title IX. All records are confidential with access only to individuals with a legitimate need to know. Records of complaints will be kept on file in accordance with the University's Records Retention and Disposal Policy.

## **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.