



University Policy: Discrimination and Sexual Harassment Policy and Procedures

Policy Category: Institutional Policy and Procedures

Subject: Discrimination, Discriminatory Harassment, Sexual Harassment, Dating and Domestic Violence, Sexual Assault and Stalking

Office Responsible for Review of the Policy: Human Resources, Academic Affairs, Campus Life

Related University Policies: Student Conduct Code, WCL Honor Code, Faculty Manual, Staff Personnel Policies Manual, Reasonable Accommodations Grievance Procedures for Students

Related Local and Federal Laws:

- *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* addresses violent crimes against women.
 - *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 based on age in employment.
 - *Title VII of the Civil Rights Act of 1964* and the *DC Human Rights Act* prohibit discrimination in employment in general.
 - *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.
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I. SCOPE

This policy and procedure document 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")¹. This policy and procedure document 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 and set of procedures is intended to be consistent with applicable local and federal laws and regulations.

¹ **NOTE:** Complaints by students about disability reasonable accommodation are reviewed using the Reasonable Accommodation Grievance Procedures for Students. Appeals by tenure-line and certain multi-year term faculty of unlawful discrimination relating to reappointment, promotion, and tenure are reviewed using the applicable Faculty Manual.

When several processes/procedures may be applicable in resolving a discrimination complaint, the Designated Official (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.

Retaliation

The University prohibits retaliation against a member of the AU Community for filing a complaint of discrimination, assisting in the filing of a complaint, and/or participating in the resolution of a complaint. Retaliation includes, but is not limited to threats, intimidation, and/or adverse actions related to employment or education.

III. DEFINITIONS OF PROHIBITED CONDUCT

- A. **Discrimination.** Discrimination occurs when an individual suffers an adverse employment, academic, or other decision based on an individual's Protected Bases.
- B. **Discriminatory Harassment.** Discriminatory harassment is defined as unwanted verbal, visual, or physical conduct that denigrates or shows hostility against an individual protected by this policy (e.g. race, national origin), when the conditions outlined below in C (1) and/or C (2) are present.
- C. **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 in C (1) and/or C (2) are present.

- (1) 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
- (2) 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:
 - a. The frequency, nature and severity of the conduct;
 - b. Whether the conduct was physically threatening;
 - c. The effect of the conduct on the complainant's mental or emotional state;
 - d. Whether the conduct was directed at more than one person;
 - e. Whether the conduct arose in the context of other discriminatory conduct;
 - f. Whether the conduct unreasonably interfered with the complainant's educational or work performance and/or University programs and activities; and
 - g. 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.

D. Sexual Violence. Sexual violence 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 violence include, but are not limited to, the following:

- (1) **Dating Violence.** Dating violence is defined as violence or abusive behavior against an intimate partner (romantic, dating, or sexual partner) that seeks to control the partner or has caused harm to the partner (the harm may be physical, verbal, emotional, economic, or sexual in nature). The existence of such a relationship shall be determined based on consideration of the following factors:

the length of the relationship, the type of relationship, and the frequency of the interaction between the persons involved in the relationship.

- (2) **Domestic Violence.** Domestic violence is defined as violence or abusive behavior against a roommate, family member, or intimate partner that causes physical or psychological injury, pain, or illness.
- (3) **Rape.** Rape is defined as any act of sexual intercourse or sexual penetration of any orifice of the body with a body part or other object that takes place against a person's will or without consent, or that is accompanied by coercion or the threat of bodily harm.
- (4) **Sexual Assault.** Sexual assault is defined as any intentional sexual touching with any object(s) or body part(s) that is against a person's will or without consent or that is perpetrated through coercion or threat of bodily harm.
- (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.** Stalking is defined as repeated, unwanted contact with any person, including contact by electronic means or by proxy, or the credible threat of repeated contact with the intent to place a reasonable person in fear for his or her safety or the safety of his or her family or close acquaintances or to inflict substantial emotion distress.

IV. POLICY PROCESS & REPORTING

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

- A. **Duty to Report Complaints.** AU Community members employed by the university (including student employees such as teaching assistants, resident assistants, and orientation leaders) have a duty to report Prohibited Conduct to the appropriate Designated Official (See Section IV (E) below for contact information), when they become aware of such conduct. AU Community members who have a duty to report Prohibited Conduct may be subject to discipline or corrective action for failing to fulfill this obligation.

B. Option to Report Complaints. AU students who are not employed by the University are encouraged to report complaints that they are aware of to the appropriate Designated Official or seek support from a Confidential Resource (See Section IV (D) below for contact information), but they do not have a duty to do so.

C. Complaint Resolution. Incidents reported to Designated Officials will be resolved through informal procedures or formal investigations. AU Community members are expected to cooperate in the resolution or investigation of discrimination complaints.

D. Confidential Support, Medical, and Counseling Resources for Students (“Confidential Resources”). Students are encouraged to utilize the following resources for confidential discussion and support related to sexual harassment or other illegal discrimination and its effects. Because of the confidentiality afforded to these relationships, however, students 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, students must report the unlawful discrimination through either the informal or formal reporting process, as detailed in this policy. Confidential Resources include:

- (1) **Victim Advocates** and all full-time Wellness Center staff – Office of Advocacy Services for Interpersonal and Sexual Violence (OASIS), Wellness Center; (202) 885-7070; OASIS@american.edu; www.american.edu/ocl/OASIS
- (2) **Professional Counselors** – Counseling Center; (202) 885-3500 (including the satellite location in the Washington College of Law); www.american.edu/ocl/counseling
- (3) **Medical Providers** – Student Health Center; (202) 885-3380; shc@american.edu; www.american.edu/ocl/heathcenter
- (4) **Ordained Clergy** – Kay Spiritual Life Center; (202) 885-3320; kslc@american.edu; www.american.edu/ocl/kay

E. Designated Officials and Where to File a Complaint. The below University officers are charged with resolving discrimination complaints and ensuring the University’s compliance with this policy and civil rights laws related to Title IX, equal opportunity, and non-discrimination.

| Responsibilities – Type of Complaints Handled by Designated Official | Designated Officials – Where to File a Complaint |
|--|---|
| <ul style="list-style-type: none"> • Resolves Title IX complaints filed against students (including WCL) • Oversees the University’s Title IX compliance <p><i>Title IX covers sex- and gender-based discrimination, sexual harassment, and all forms of sexual violence</i></p> | <p>Regina Curran, Title IX Program Officer Office of Campus Life, American University www.american.edu/titleix Phone (202) 885-3310 or (202) 885-3373 Email TitleIX@american.edu</p> |

| Responsibilities – Type of Complaints Handled by Designated Official | Designated Officials – Where to File a Complaint |
|---|--|
| <ul style="list-style-type: none"> Resolves non-Title IX discrimination complaints filed against students Serves as Deputy Title IX Program Officer for student matters | <p>Rob Hradsky, Dean of Students Office of Campus Life, American University www.american.edu/ocl/dos Phone (202) 885-3300 Email dos@american.edu</p> |
| <ul style="list-style-type: none"> Serves as Deputy Title IX Program Officer and 504 Coordinator for WCL student matters | <p>David Jaffe, WCL Dean of Students Washington College of Law, American University www.wcl.american.edu Phone (202) 274-4052 Email djaffe@wcl.american.edu</p> |
| <ul style="list-style-type: none"> Resolves discrimination complaints against staff, university administrators (including University President and other executive staff), university guests or contractors Serves as Deputy Title IX Program Officer, EEO Officer and 504 Coordinator for staff matters. | <p>Beth Muha, Assistant Vice President, Office of Human Resources, American University www.american.edu/hr Phone (202) 885-2591 Email employeerelations@american.edu</p> |
| <ul style="list-style-type: none"> Resolves discrimination complaints against faculty members, faculty administrators, or individuals carrying out teaching responsibilities Serves as Deputy Title IX Program Officer, EEO Officer and 504 Coordinator for faculty matters | <p>Mary Clark, Dean of Academic Affairs Office of the Provost, American University www.american.edu/provost/academicaffairs Phone (202) 885-2125 Email deanofacademicaffairs@american.edu</p> |
| <ul style="list-style-type: none"> Resolves disability reasonable accommodation complaints filed by students (these complaints will be resolved by using the Reasonable Accommodation Grievance Procedures for Students (which is separate from this Policy)). Serves as the University’s 504 Coordinator for student matters. Oversees the University’s compliance with local and federal laws related to the protection of persons with a disability | <p>Katie Porras, Director of Student Conduct and Conflict Resolution Services Office of Campus Life, American University www.american.edu/ocl/sccrs Phone (202) 885-3328 or (202) 885-3300 Email conduct@american.edu</p> |

In addition to the above duties, the Designated Officials will:

- (1) Investigate Title IX and/or other discrimination complaints.
- (2) Coordinate, plan, and manage the discrimination, discriminatory harassment, sexual harassment, dating and domestic violence, rape, sexual assault and stalking education and training programs, including bystander intervention. The 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.
- (3) Develop and implement consistent procedures to provide for prompt and effective response to reports of discrimination in accordance with this policy.
- (4) 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.
- (5) Identify and address patterns or systemic problems of discrimination.
- (6) Answer questions and be available to meet with students, employees, and others about this policy.
- (7) Submit a confidential annual report to the Office of the President on aggregate data of discrimination complaint activity during the preceding academic year that comports with the confidentiality requirements of this policy.
- (8) Conduct periodic campus climate surveys.
- (9) Receive periodic training on issues related to Prohibited Conduct 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>.

F. INITIATING A COMPLAINT & COMPLAINT PROCEDURES

Community members who feel that they have been subjected to Prohibited Conduct ("Complainant") may file a complaint with the University as described below. A complaint should be filed as soon as possible, but no later than one year after the date the alleged discrimination occurred. Timely complaint filing gives the University the best chance to resolve the problem. A delay in filing a complaint may severely limit available remedies. The University may extend this time frame for good cause, such as illness, incapacity, or other circumstances beyond a Complainant's control.

The specific procedures for reporting, investigating, and resolving Prohibited Conduct are based upon the nature of the Respondent's (the individual accused of violating this Policy) relationship to the University (student, staff, or faculty)² but all referenced procedures, whether for students, staff, or faculty, generally follow STEP ONE, STEP TWO, AND STEP THREE described below.

² For students, all procedures, including sanctions and appeal, are detailed in the [Student Conduct Code](#). For staff, Human Resources will take action in accordance with the [Staff Personnel Policies Manual](#) Disciplinary Policy. For Faculty, the Provost's Office will take action in accordance with the [Faculty Manual](#) Disciplinary Procedures.

The procedures provide for a thorough and impartial investigation that 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.

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

Notify Designated Official. Notify the appropriate [Designated Official](#) (listed above) as quickly as possible of 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.

Interim Measures. Once a complaint has been reported and until the resolution of the matter, the Designated Official may take interim measures to ensure safety and non-retaliation for all parties. Examples of interim measures include separation of the parties, no-contact directives, and alternative academic or housing arrangements.

Advisors. In cases of sex- and gender-based discrimination, sexual harassment, and sexual violence, the Complainant and the Respondent may be advised and accompanied by advisors of their choice during any meeting related to the complaint. In all other cases, advisors are allowed in accordance with the relevant procedures. The advisor may not participate directly in any meeting or contact the Designated Official.

Estimated Timeline for Resolution for Title IX Complaints. At the initial meeting with the Complainant, the Designated Official will explain the resolution procedures that are identified below. The University strives to complete resolution of complaints within 60 days from when the University has notice of the grievance. However, during winter breaks and summer sessions, when witnesses may not be available or disciplinary panels cannot be convened, the case is complex, or other comparable situations, the 60-day timeframe may be adjusted to accommodate these circumstances. Where the estimated timeline cannot be adhered to, the Designated Official will notify the parties and provide an anticipated completion date. The 60-day time frame does not include the time needed for the University to process appeals.

2. *STEP TWO (Informal Resolution).* The University encourages, but does not require, informal resolution when possible. The Designated Official 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; referring the parties to counseling; conducting targeted educational and training programs; or providing remedies for the individual harmed by the alleged discrimination. If the matter is resolved informally to the satisfaction of all parties, the Designated Official shall maintain a record of the complaint and its resolution. Informal resolution is not appropriate for complaints of sexual violence.

3. ***STEP THREE (Formal Resolution)***. If informal resolution is unsuccessful or not appropriate as determined by the Designated Official, the Complainant, or the Respondent, a formal complaint may be filed with the Designated Official for investigation.

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 Designated Official (or designee) may consider.

Resolution. At the conclusion of the investigation, the Designated Official will issue simultaneous, written notifications of the outcome of the investigation to the concerned parties, including referral to the appropriate disciplinary procedures. The range of sanctions 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.

V. 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 charges 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.

VI. 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 grievance 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 discrimination report (“confidential reporting”). The relevant

Designated Official 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. Nevertheless, 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.

VII. RECORDS

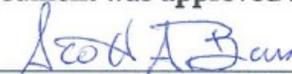
Records of informal and formal complaints will be maintained by the Designated Official who received and handled the complaint. Complaints against faculty, staff, or students that result in a personnel or disciplinary action will also be a part of the respondent’s personnel or disciplinary record. All 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.

VIII. EFFECTIVE DATE

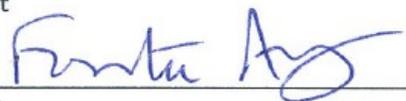
This Policy was approved August 1, 2011 and amended August 1, 2014, August 31, 2015 and August 31, 2017. Replaces Faculty Sexual Harassment Policy, Student Sexual Harassment Policy, Staff EEO Policy, Staff Sexual Harassment Policy, University-Wide Discrimination and Discriminatory Harassment Policy.

IX. SIGNATURE, TITLE AND DATE APPROVED

This document was approved and signed by



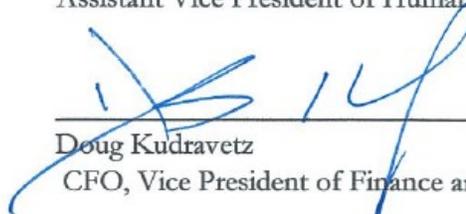
Scott A. Bass
Provost



Fanta Aw
Vice President of Campus Life



Beth Muha
Assistant Vice President of Human Resources



Doug Kudravetz
CFO, Vice President of Finance and Treasurer

On September 1, 2017