



## University Policy: Discrimination and Sexual Harassment Policy

**Policy Category:** Institutional Policy

**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:** Disability Grievance Procedures, Student Conduct Code, the WCL Honor Code, Faculty Manual Professional Guidelines, the Faculty Manual Grievance Procedures, Faculty Disciplinary Procedures, Staff Manual Complaint Policy and Procedures, Staff Manual Termination Policy.

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.
  - *The 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.
  - The 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.
  - *The Rehabilitation Act of 1973* and the Americans with Disabilities Act of 1990 prohibit discrimination against individuals with disabilities.
  - *The Equal Pay Act* prohibits discrimination based on sex in the payment of wages.
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### I. SCOPE

This policy covers all faculty, staff, and students of American University, applicants for admission and employment, as well as vendors, guests, and contractors ("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. The policy is intended to be consistent with the provisions of applicable local and federal laws and regulations.

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<sup>1</sup> **NOTE:** Complaints by students of unlawful disability discrimination are reviewed using the Disability Grievance Procedures. Complaints by faculty of unlawful discrimination relating to reappointment, promotion, and tenure are reviewed using the Faculty Manual Tenure-Line Faculty Appeal for Non-Renewal, Non-Promotion, and Tenure Denial.

When several processes/procedures may be applicable in resolving a discrimination complaint, the responsible Title IX Officer will determine which resolution process and procedures will be used for 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 or assisting in the filing of a complaint, 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 verbal, written, visual, or physical conduct that denigrates or shows hostility against an individual protected by this policy, when such conduct has the purpose or effect of: 1) unreasonably interfering with an individual's work or academic performance, or 2) creating an intimidating, hostile, humiliating, or offensive working, living or learning environment.
- C. **Sexual Harassment and Sexual Violence.** Sex discrimination covers sexual harassment including sexual violence. The determination of what constitutes sexual harassment will vary with particular circumstances, but may be described generally as:

unwelcome sexual advances; requests for sexual favors; and other oral, written, or physical conduct of a sexual nature when:

- submission to or rejection of such conduct is made either explicitly or implicitly a term or a condition of education, employment, or participation in other University activities;
- submission to or rejection of such conduct by an individual is used as the basis for evaluation in making academic or personnel decisions affecting that individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's performance, or creating an intimidating, hostile, or offensive work or learning environment.

Sexual violence includes acts such as rape, dating and domestic violence, sexual assault, and other forms of non-consensual sexual activity; or violence or harassment based on sexual orientation. For resources available to victims of sexual violence, please refer to the Office of Advocacy Services for Interpersonal and Sexual Violence (OASIS) or contact the appropriate Office of the Dean of Students.

**D. Dating Violence.** Dating violence is defined as violence or 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.

**E. 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.

**F. 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.

**G. 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.

**H. 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).

- I. **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

The following roles and responsibilities and complaint resolution process is 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 who are aware of or witness Prohibited Conduct must report these matters to the appropriate Responsible Official (see below for contact information). These individuals will resolve these complaints through informal procedures or formal investigation. AU Community members are expected to cooperate in the resolution or investigation of discrimination complaints. Individuals who violate the reporting requirements will be subject to discipline/corrective action.

B. **Support, Medical, and Counseling Resources for Students.** 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 harassment to University officials or to intervene to end the discrimination. 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:

- **Victim Advocates** – Wellness Center, McCabe Hall, 4400 Massachusetts Avenue, NW, Washington, DC 20016; (202) 885-7070; [OASIS@american.edu](mailto:OASIS@american.edu)
- **Professional Counselors** – Counseling Center, 214 Mary Graydon Center, 4400 Massachusetts Avenue, NW, Washington, DC 20016; (202) 885-3500 (including the satellite location in the Washington College of Law)
- **Medical Providers** – Student Health Center, McCabe Hall, 4400 Massachusetts Avenue, NW, Washington, DC 20016; (202) 885-3380
- **Ordained Clergy** – Kay Spiritual Life Center, 4400 Massachusetts Avenue, NW, Washington, DC 20016; (202) 885-3320

#### C. **Responsible University Officials & Contact Information**

##### 1. **Title IX Officer, Section 504 and Equal Employment Opportunity Officers**

Under Title IX of the Education Amendment of 1972 and Section 504 of the Rehabilitation Act, the University is required to designate individuals responsible for the University's compliance efforts to provide a work and learning environment free of sexual harassment, discrimination, discriminatory harassment, dating and domestic violence, rape, sexual assault and stalking. These individuals are:

- Title IX Program Officer – Office of Campus Life, American University, Butler Pavilion 400, 4400
- Massachusetts Avenue, NW, Washington DC, 20016; (202) 885-3310; TitleIX@american.edu
- Deputy Title IX Officer (for student matters) – Dean of Students, American University, Butler Pavilion 408, 4400 Massachusetts Avenue, NW, Washington, DC, 20016; (202) 885-3300; dos@american.edu
- Deputy Title IX Officer (for WCL student matters) – WCL Dean of Student Affairs, 4801 Massachusetts Avenue, NW, Washington DC 20016 (202) 274-4052, djaffe@wcl.american.edu
- Section 504 Officer (for student matters)<sup>2</sup> – Director of Student Conduct and Conflict Resolution Services, Butler Pavilion 408, American University, 4400 Massachusetts Avenue, NW, Washington DC, 20016; (202)885-3328; conduct@american.edu
- Deputy Title IX/ EEO & Section 504 Officer (for staff matters) – Assistant Vice President of Human Resources, American University, 3201 New Mexico Avenue, Suite 350, NW, Washington DC, 20016; (202)885-2591, employeerelations@american.edu
- Deputy Title IX/EEO & Section 504 Officer (for faculty matters) – Dean of Academic Affairs, American University, Leonard Hall Lower Level, 4400 Massachusetts Avenue, NW, Washington DC, 20016; (202)885-2125, deanofacademicaffairs@american.edu

The Title IX Program Officer is responsible for monitoring and oversight of overall compliance with Title IX for the University. The Title IX Program Officer and the Deputy Title IX /EEO & 504 Officers or their designees (collectively “Responsible Officials”) are jointly responsible for the following:

- a. Investigating Title IX and other discrimination complaints.
- b. Coordinating, planning, and managing 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; providing 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.
- c. Developing and implementing consistent procedures to provide for prompt and effective response to reports of discrimination in accordance with this policy.
- d. Coordinating 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.

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<sup>2</sup> The University's Disability Grievance Procedure for students is separate from this policy and is published on the University's webpage.

- e. Identifying and addressing patterns or systemic problems of discrimination.
- f. Being available to meet with students, employees, and others about this policy.
- g. Submitting 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.
- h. Conducting periodic campus climate surveys.

Questions about the overall compliance with applicable laws and regulations related to discrimination may be directed to the Title IX Program Officer identified above, or searched by visiting the U.S. Department of Education, Office for Civil Rights ("OCR") website at <http://www2.ed.gov/about/offices/list/ocr/index.html> for more information and additional contact information

2. **Sexual and Discriminatory Harassment Prevention Project Team.** A Sexual and Discriminatory Harassment Prevention Project Team has been established to assist in advising the Responsible Officials and University in addressing problems of sexual and discriminatory harassment campus-wide; to provide information and education on sexual and discriminatory harassment and related University policies and complaint procedures to members of the campus community; and to develop and review educational and informational materials regarding sexual and discriminatory harassment.

## **D. INITIATING A COMPLAINT**

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

Notify the appropriate Responsible Official as quickly as possible of violations of this policy and within one (1) year of the alleged violation. Complaints filed after the (1) year period may be considered by the Responsible Official, when requested in writing and there are extenuating circumstances. A complaint under this Policy must be filed with the office having disciplinary jurisdiction over the accused person ("Respondent"). Therefore, complaints should be reported to the following offices:

- a. **Complaints against Students.** A complaint against a student is reported to the Title IX Program Officer.
- b. **Complaints against Law Students.** A complaint against a law student is reported to the WCL Dean of Student Affairs.
- c. **Complaints against Staff, University Administrators, University Guests or Contractors.**  
A complaint against a staff member, University administrator, vendor or guest is reported to the Assistant Vice President of Human Resources.
- d. **Complaints against a Faculty Member, Faculty Administrator, or an Individual Carrying Out Teaching Responsibilities.** A complaint against faculty member or faculty administrator (e.g. Dean, Chair) is reported to the Dean of Academic Affairs.
- e. **Complaints against the President or a Member of the University's Cabinet.** A complaint against a member of the University President's Cabinet is reported to the University President (Presidents Building, 202-885-2121), and a complaint against the University President is reported to the Chairman of the Board of Trustees (c/o

Secretary of the Board of Trustees, President's Office Building, 4400 Massachusetts Avenue, NW, Washington, DC 20016).

**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. The University will not delay its investigation if criminal charges are filed. At the request of law enforcement authorities, however, the University may briefly 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 Responsible 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 sexual harassment, dating and domestic violence, rape, sexual assault, sexual exploitation and stalking, the Complainant and the Respondent may be advised and accompanied by advisors of their choice during any meeting related to the complaint. The role of the advisor is limited to a support role. The advisor may not participate directly in any meeting or contact the Responsible Official.

**Estimated Timeline for Resolution.** At the initial meeting with the Complainant, the Responsible Official will explain the informal and formal 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 Responsible 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 University 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 Responsible Official shall maintain a record of the complaint and its resolution. In formal resolution is not possible, the University will proceed to Step Three for formal resolution of the complaint.

3. ***STEP THREE (Formal Resolution)***. In formal resolution is unsuccessful, or if the University considers informal resolution inappropriate (e.g. when facts are in serious dispute, reports involve a pattern of behavior, or reports allege serious misconduct such as a sexual assault), or if the Complainant prefers a formal procedure, a formal complaint may be filed with the Responsible Official.

**Reporting.** A written complaint should include a detailed description of the conduct that the reporting party alleges to be discriminatory and supporting evidence (if any); name(s) and contact information of the Respondent; and the name(s) and contact information of witnesses (if any).

**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 Responsible Official may consider. The Responsible Official will use a preponderance of the evidence standard when evaluating the allegations and formulating the outcomes of the investigation and any related disciplinary proceedings. To the extent that a related disciplinary proceeding has a different standard of proof for findings of responsibility, the preponderance of the evidence standard in this policy will be used instead.

**Resolution.** At the conclusion of the investigation, the Responsible Official will issue simultaneous, written notifications of the outcome of the investigation to the concerned parties, including referral to the appropriate disciplinary procedures.

- a. **Student Respondent.** The student disciplinary procedure, including appeal process, is outlined in the Student Conduct Code. The range of sanctions under the Code includes, but is not limited to a written censure, a ban from specific areas of campus, loss of specific student privileges, community service, transfer or loss of on-campus housing privileges, disciplinary probation, disciplinary suspension, or permanent dismissal. Complainants may elect to file charges through the student disciplinary procedures at any time within one (1) year of the alleged incident.
- b. **Staff Respondent.** Human Resources will take action in accordance with the Staff Personnel Policies Manual Disciplinary Policy. The range of staff sanctions includes, but is not limited to verbal or written warning, mandatory counseling, mandatory training, suspension, and termination.
- c. **Faculty Respondent.** The Provost's Office will take action in accordance with the Faculty Manual Disciplinary Procedures. The range of faculty sanctions includes, but is not limited to written warning, mandatory counseling, mandatory training, suspension, and termination.

## V. **FALSE OR FRIVOLOUS CHARGES**

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.



## **VI. CONFIDENTIALITY & THE UNIVERSITY'S OBLIGATION TO RESPOND TO COMPLAINTS**

All parties engaged in the complaint process are expected to maintain confidentiality. Failure to do so may result in disciplinary sanctions. All reports or complaints of discrimination or harassment will be kept confidential, except that individuals with a legitimate need to know will be informed of the complaint in order for the University to respond effectively to each complaint.

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 Deputy Title IX Officer (in consultation with the Title IX Program Officer) 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 will impede its ability to provide a safe and nondiscriminatory environment for all students.

## **VII. RECORDS**

Records of informal and formal complaints will be maintained by the Responsible 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 and retention policy.

## **VIII. EFFECTIVE DATE**

This Policy was approved August 1, 2011 and amended August 1, 2014 and August 31, 2015. 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 Bass**  
**Provost**

**Gail Hanson**  
**Vice President of Campus Life**

**Beth Muha**  
**Assistant Vice President of Human Resources**

**on November 18, 2015**