



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

**Policy Category:** Community

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

**Offices Responsible for Review of the Policy:** Human Resources, Dean of Faculty, Campus Life

**Supplemental Documents:** 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.

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

---

### 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, discriminatory harassment, and sexual misconduct that falls outside the scope or

---

<sup>1</sup> **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.

jurisdiction of Title IX. Some of the Prohibited Conduct covered by this Policy is also listed as prohibited in the University's Title IX Sexual Harassment Policy, but such conduct nevertheless falls outside the scope or jurisdiction of Title IX if (1) it is not so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; (2) it does not occur in the University education programs and activities; or (3) it does not occur in the United States. 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 Officer (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 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

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 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.

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) **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.
  
- (2) **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.
  
- (3) **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.

(3) **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).

(4) **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, discriminatory 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 covered by the University's Out-of-State Staffing Policy have a duty to report Prohibited Conduct 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 who have a duty to report Prohibited Conduct 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 complaints 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. 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, 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, students must report the discrimination through either the informal or formal reporting process, as detailed in this Policy. 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** – 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; **Professional Counselors – Faculty and Staff Assistance Program (FSAP)**; (202) 885-2593; fsap@american.edu; <https://www.american.edu/hr/worklife/fsap.cfm>
- d) **Ordained Clergy** – Kay Spiritual Life Center; (202) 885-3320; kslc@american.edu; [www.american.edu/ocl/kay](http://www.american.edu/ocl/kay)

*Faculty/ Staff Confidential Resources*

- 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 Officer is charged with resolving complaints and ensuring the University’s compliance with this Policy and civil rights laws, equal opportunity, and non-discrimination. The following is where to file complaints under this Policy:

**Assistant Vice President for Equity and Title IX Officer  
Office of Equity and Title IX  
4400 Massachusetts Avenue, NW  
Washington, DC 20016  
Phone: 202-885-8080  
Email: [TitleIX@american.edu](mailto:TitleIX@american.edu) for complaints and reports for sexual misconduct; and  
[equityoffice@american.edu](mailto:equityoffice@american.edu) for complaints and reports for other discrimination.**

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

- a) Coordinate, plan, and manage the discrimination, discriminatory harassment, sexual harassment, sexual misconduct, 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.

- 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) Conduct periodic campus climate surveys.
- h) 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>.

## **6. 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 following the alleged Prohibited 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.

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)<sup>2</sup> but all referenced procedures, whether for students, staff, or faculty, generally follow STEP ONE, STEP TWO, AND STEP THREE described below.

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

---

<sup>2</sup> 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.

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 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 Assistant Vice President for Equity or designee 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 stalking, domestic violence, dating violence and sexual assault, 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 Assistant Vice President for Equity or designee.

**Request for Disability Accommodations.** A party may contact the Assistant Vice President for Equity to request an accommodation for a disability to participate in the grievance process. A request for an accommodation will be 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.

**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 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 90-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 and provide an anticipated completion date. The 90-day time frame 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; 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 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 Complainant, or the Respondent, a formal complaint may be filed with the Assistant Vice President for Equity 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 Assistant Vice President for Equity or designee may consider.

**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 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.

## **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 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.

## **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 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 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. 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.

#### **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. 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 14, 2020.

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.