

# The University of Scranton

## Non-Discrimination and Anti-Harassment Policy

Executive Sponsor: Provost  
Responsible Office: Office of Equity and Diversity  
Review of this policy on three-year cycle  
Effective Date: June 11, 2020; August 1, 2024  
Emergency Approval: July 18, 2024

\*Matters involving quid pro quo sexual harassment, hostile environment sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence, intimate partner violence, and stalking are processed through the Sexual Harassment and Sexual Misconduct Policy, <https://www.scranton.edu/equity-diversity/docs/sh-sm-policy.pdf>.

### **I. Preface**

As a Catholic, Jesuit institution of higher learning, The University of Scranton recognizes the important contribution a diverse community of students, faculty, and staff makes towards the advancement of its goals and ideals. The University is dedicated to providing a diverse, inclusive, educational, residential, and working environment and prohibits harassment and discrimination of all members of the University community and guests. These protections include, but are not limited to, freedom from unlawful discrimination, harassment, or retaliation of any kind, freedom to be heard without reprisal and the assurance of a prompt and equitable investigation and/or resolution. At the same time, the University is committed to the principles of academic freedom. Vigorous discussion and debate, even of controversial matters, are an integral part of the educational experience.

### **II. Policy Statement**

Members of the University community, applicants for employment or admissions, guests and visitors have the right to file a report of harassment or discrimination based on race, color, creed, religion, ancestry, gender, sex, pregnancy and related conditions, sexual orientation, gender identity or expression, sex characteristics, sex stereotypes, age, disability, genetic information, national origin, ethnicity, family responsibilities, marital status, veteran or military status, citizenship status, or any other status protected by applicable law. This policy provides procedures for reporting violation of on discrimination, harassment, and retaliation. Retaliation is prohibited against any person who reports behavior or files a complaint in good faith, participates in any manner in an investigation or resolution of a report or complaint under this policy. Any violation of this policy will be treated as misconduct and may result in appropriate disciplinary action up to and including dismissal from the University.

### **III. Policy Application**

#### **A. Individuals Covered By This Policy**

This policy applies to all University students, faculty, staff, administrators, applicants for employment or admission, guests, volunteers, visitors, independent contractors, vendors, consultants, and others doing business with the University.

#### **B. Individual Conduct:**

Every University of Scranton student has a responsibility to conduct themselves in accordance with this policy as a condition of enrollment. Every University of Scranton faculty and staff member has a responsibility to conduct themselves in accordance with this policy as a condition of employment.

Every supervisor is required report to the Executive Director for the Office of Equity and Diversity (hereinafter “Executive Director”) or designee complaints of harassment or discrimination that originate in area(s) under their supervision or in their presence in accordance with this policy.

### **C. Activities and Locations Covered By This Policy**

This policy prohibits harassing and/or discriminatory behavior based on a protected class while on University property, at University sponsored activities, events, and off-campus programs including but not limited to, study abroad programs, internships, student teaching, clinical rotations, business travel, University sponsored or sanctioned travel, and athletic events. This policy also applies to behavior that has the effect of creating a hostile, intimidating, or offensive working and/or academic environment; or of interfering or limiting one’s ability to participate in or benefit from an educational program or activity.

### **D. Interaction of This Policy and the University’s Sexual Harassment and Sexual Misconduct Policy.**

The University maintains a separate Sexual Harassment and Sexual Misconduct (“SHSM”) policy in compliance with Title IX and VAWA, <https://www.scranton.edu/equitydiversity/docs/sh-sm-policy.pdf>. If certain conduct occurs that is prohibited by the Sexual Harassment and Sexual Misconduct Policy, then the SHSM Policy shall apply. In the event a complaint or report is received that involves both a potential violation of the SHSM Policy and violations of this policy, the process, inquiry, and, if appropriate, investigation will be governed by the SHSM Policy.

### **E. Website Address for this Policy**

This policy is available on the University’s Policy website, [www.scranton.edu/governance](http://www.scranton.edu/governance) and on the Office of Equity and Diversity website, <https://www.scranton.edu/equity-diversity/non-discrimination.shtml>.

## **IV. Definitions**

Bullying: repeated and/or severe or aggressive behavior that is likely to intimidate or intentionally hurt, control, or physically or mentally dismission a complainant based on their protected characteristic that is not speech or conduct that is otherwise protected by law.

Complainant: any individual(s) filing a complaint who is a University of Scranton employee, student, applicant for admission or employment, or other participant in the University's programs or activities, including vendors, visitors, guests, volunteers or other third parties.

Direct Knowledge: knowledge of an incident attained from directly witnessing that incident.

Discrimination: Discrimination is different treatment with respect to an individual’s employment or participation in an education program or activity based, in whole or in part, upon the individual’s actual or perceived protected characteristic, which includes, race, color, creed, religion, ancestry, gender, sex, pregnancy and related conditions, sexual orientation, gender identity or expression, sex characteristics, sex stereotypes, age, disability, genetic information, national origin, ethnicity, family responsibilities, marital status, veteran or military status, citizenship status, or any other status protected by applicable law. Discrimination may include:

1. Disparate Treatment Discrimination:

- Any intentional differential treatment of a person or persons that is based on an individual's actual or perceived protected characteristics and that:
    - Excludes an individual from participation in;
    - Denies the individual benefits of; or
    - Otherwise adversely affects a term or condition of an individual's participation in the University program or activity.
2. Disparate Impact Discrimination:
- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:
    - Excludes an individual from participation in;
    - Denies the individual benefits of; or
    - Otherwise adversely affects a term or condition of an individual's participation in a University program or activity.
3. Discriminatory Harassment:
- Unwelcome conduct on the basis of actual or perceived protected characteristics, that
  - Based on the totality of the circumstances
  - Is subjectively and objectively offensive, and
  - Is so severe or pervasive,
  - That it limits or denies a person's ability to participate or benefit from the University's education or activity.

Executive Director: Executive Director for the Office of Equity and Diversity.

Faculty: any member of the University community who teaches on a full-time or part-time.

Indirect knowledge: awareness of a possible incident of discriminatory harassment or discrimination, supported by credible information, attained from learning about the incident from another individual.

Member of the University Community: any person who is a student or a member of the faculty, staff, or administration, or any other person employed or contracted by the University.

Protected Characteristic, Protected Categories, or Protected Class: include but are not limited to, race, color, creed, religion, ancestry, gender, sex, pregnancy and related conditions, sexual orientation, gender identity or expression, age, disability, genetic information, national origin, ethnicity, family responsibilities, marital status, veteran or military status, citizenship status, or any other characteristic protected by applicable law.

Respondent: any individual or group of individuals allegedly violating this policy, against whom a complaint is filed.

Retaliation: threats, intimidation, reprisals, and/or adverse actions related to employment or education taken or threatened against a person who reports or files a complaint of discrimination or discriminatory harassment; participates in any manner in an investigation or resolution of a report or complaint conducted by the University or a government agency, or otherwise opposes discrimination under federal and state laws or this policy.

**Sexual Harassment:** any reports of sexual harassment are reviewed under the Sexual Harassment and Sexual Misconduct Policy, <https://www.scranton.edu/equity-diversity/docs/sh-sm-policy.pdf>.

**Staff:** any employee of the University whose primary responsibility is not teaching.

**Student:** any person accepted to the University of Scranton, either full or part-time, residing on or off-campus, pursuing undergraduate, graduate, or professional studies. References to a student in this policy may also include groups of students, including clubs and other student organizations.

**Supervisor:** any employee of the University, excluding full-time faculty, having authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or having the authority to recommend such actions. Supervisor also includes graduate assistants that supervise other student employees.

**Third Party:** an individual who is not a complainant or respondent who observes, or reports behavior thought to be in violation of this policy.

**Visitor:** any individual who is not a student at or a faculty or staff member of the University, including persons invited by the University or by a member of the University community, including visiting faculty.

### **Examples of Conduct that May Constitute Discrimination or Harassment.**

Discrimination and Harassment are difficult to define and can occur in many different ways. Below are some examples of discriminating and/or harassing behavior.

1. Decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals because of the protected characteristics/protected class.
2. Conduct that may constitute discriminatory harassment or a hostile work environment includes, but is not limited to, unwelcome verbal and/or non-verbal communication and/or conduct, in person, in writing, via text message, e-mail or any form of social media including, but not limited to,
  - a. Epithets, slurs, mocking, disparaging remarks, expressions, jokes, threats, negative stereotyping or other inappropriate communication.
  - b. Threatening, intimidating or hostile acts that are related to a protected category or class.
  - c. Assault, battery, other acts of violence, stalking, physical touch, physically interfering with, blocking or impeding an individual's normal movement.
  - d. Drawings, pictures, cartoons, doodles, derogatory posters, social media posting, other electronic, paper or media posting, placing, sharing, emailing or disseminating on walls, bulletin boards, email or elsewhere written or other graphic material that shows hostility or aversion to an individual or group that related to a protected category or protected class.

### **V. Emergency Service and Immediate Care**

The University's main priority for any individual is personal safety and well-being. The University encourages all individuals to seek immediate assistance from University Police, if applicable, (570)941-7777, the City of Scranton Police Department at 911 and/or a medical facility. This is the

best way to address immediate safety concerns while allowing for the preservation of reporting options.

## **VI. Reporting:**

### **A. Generally:**

1. The procedures set forth below are internal administrative procedures of the University. As to those forms of discrimination or harassment that violate state or federal law, an aggrieved party may also file a complaint with appropriate local, state or federal agency, or court, or University or local police.

2. An individual who reports non-compliance or violation of this policy, whether a complainant or witness, can be assured that all reports will be taken seriously, and that each individual will be treated equitably. Similarly, all participants in the process, including respondent, can also expect to be treated equitably.

3. The University reviews allegations of discrimination under this policy except for allegations of sexual harassment, which are managed under the SHSM Policy, and strives to remedy its effects. All reports under this policy should be made as soon as possible after the alleged conduct occurs. Prompt reporting enables the University to investigate the facts, determine the issues, and provide an appropriate remedy or disciplinary/corrective action, if applicable. At the time a complaint is filed, the complainant will be provided with a copy of this policy, an explanation of the timeframe, procedures, options for resolution, privacy and confidentiality, and standard of proof, which is the preponderance of the evidence standard, for a finding a violation of this policy.

4. The University cannot take appropriate action unless it is informed of the noncompliance or violation of this policy. No student or employee should assume that the University already knows about a particular situation or event.

### **B. Mandated Reporters under This Policy Only:**

1. The individuals serving in supervisory rolls are mandated reporters under this policy. Supervisor roles include the following:

President, Provost, Vice Presidents, Associate Provosts, Deans, Department, Chairs, Administrators, Managers, and Supervisors.

Reports must be made writing within three (3) business days to the Executive Director or designee the Office of Equity and Diversity. The report must include the name of the complainant, the name of the respondent, and a brief written statement of the alleged conduct, if available. This duty to report applies even when the intention is to resolve the situation through voluntary resolution procedures.

2. All non-supervisory members of the University community are encouraged to report incidents of discrimination and discriminatory harassment to the Executive Director or designee.

### **3. Reporting Location and Contact information:**

Office of Equity and Diversity  
Institute of Molecular Biology and Medicine, Suite 315  
Phone: (570) 941-6645

E-mail: [Elizabeth.garcia2@scranton.edu](mailto:Elizabeth.garcia2@scranton.edu) or [diana.collinsgilmore@scranton.edu](mailto:diana.collinsgilmore@scranton.edu)

#### 4. *Online Reporting*

The Office of Equity and Diversity reporting program allows students, employees or other third parties to file reports on-line. *Website:* <https://scranton.i-sight.com/external-capture> Emergency or crisis reports should be made to law enforcement as this website is NOT monitored 24 hours a day.

Anyone, except mandated reporters can make an anonymous report through the online reporting program at any time. Depending on the nature of the information provided, the University's ability to respond may be limited. For example, if the Complainant is not identified in the report, it may not be possible to contact the Complainant to offer supportive measures and to explain the Complainant's process options.

### **VII. Privacy and Confidentiality**

The University encourages the reporting of all incidents under this policy and is committed to protecting the privacy of all individuals involved in the investigation and resolution of a report. The University also is committed to providing assistance to help individuals make informed choices. With respect to any report under this Policy, the University will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal laws, while balancing the need to gather information to assess the report and to take legally-allowable steps to eliminate prohibited conduct, prevent its recurrence, and remedy its effects.

Privacy and confidentiality have distinct meanings under this Policy:

**Privacy:** Privacy means that information will be shared only with University employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. Further, the University will maintain as private any accommodations or supportive measures provided to the extent that maintaining such privacy would not impair the University's ability to provide the accommodations or supportive measures. For example, the existence of an academic accommodation must be revealed to a faculty member who must implement the accommodation.

**Confidentiality:** Confidentiality exists in the context of laws that protect certain relationships, including with legal, medical, and clinical care providers, mental health providers, and ordained clergy in their pastoral capacity, all of whom may engage in confidential communications under Pennsylvania law. The University has designated individuals who have the ability to have privileged communications as "Confidential Employees". When information is shared by an individual with a Confidential Employee, the Confidential Employee will not reveal the information except when an applicable law or a court order requires or permits disclosure of such information, or when a student requests assistance from the Confidential Employee in making a report. For example, information may be disclosed when an individual gives written consent for its disclosure or there is a concern that the individual will likely cause serious physical harm to them self or to others or, in the case of suspected abuse or neglect of a minor under the age of 18, where the law obligates the otherwise Confidential Employee to report to the proper authorities. However, when that information is shared with a faculty member who may have access to those legal protections as a result of their professional background, but who is employed as a faculty member, that faculty member cannot guarantee confidentiality.

## **VIII. Resource and Supportive Measures**

Various resources are available for individuals who have experienced discrimination. Regardless of which resource(s) an individual chooses to access, the situation will be handled with sensitivity and care to protect the privacy of the individual(s) involved.

### ***A. CONFIDENTIAL RESOURCES AND SUPPORT SERVICES***

An individual who desires confidentiality needs to make contact with one of the confidential resources listed below. Information shared with a confidential resource does not have to be reported to the Office of Equity and Diversity.

**The University of Scranton Counseling Center** (570-941-7620) provides confidential counseling services to University students and is located on the 6th floor of O'Hara Hall, at the corner of Linden and Jefferson. Upon request, the Counseling Center will provide counseling as well as referrals to agencies off-campus.

**Student Health Services** (570-941-7667) provides confidential medical support and assistance to University students. Student Health Services is located at the corner of North Webster Avenue and Mulberry Street in the Roche Wellness Center.

**The Employee Assistance Program (EAP)**, (1-800-EAP-CALL (1-800-327-2255) NextGen offers professional counselor services to employees, including confidential counseling in-person or over the phone for a variety of stressful issues including sexual harassment and misconduct. Contact with NextGen can also be made at [www.nexgeneap.com](http://www.nexgeneap.com). Member and group numbers may be found by visiting [www.scranton.edu/hr](http://www.scranton.edu/hr).

### ***B. PRIVATE RESOURCES AND SUPPORT SERVICES***

Regardless of which resource(s) an individual chooses to access, the situation will be handled with sensitivity and care to protect the privacy of the individual(s) involved.

**Campus Ministries** (570-941-7419) is located in the DeNaples Center, Suite 200 and offers pastoral support for students. Although Campus Ministries staff are not a confidential resource, ordained priests *acting in their pastoral capacity* are confidential and do not report.

**The Multicultural Center** (570-941-6194) is located in the DeNaples Center. The Center is a comfortable gathering place for students that also provides educational programming, leadership development, resources, and referrals.

**Jane Kopas Women's Center** (570-941-6194) is located in the DeNaples Center, Suite 205. The Center is a comfortable gathering place for students of all genders that also provides educational programming, leadership development, resources, and referrals.

**Office of Equity and Diversity** (570-941-6645) is located in the Office of Equity and Diversity in the Molecular Biology Institute, Room 315, and provides programs, resources, and support. They are available to discuss any questions regarding the Policy, to assist individuals in accessing resources and supportive services, and to facilitate investigations and resolution of reports of conduct.

**University Police** (570-941-7777) are available to coordinate with various resources to provide for

the safety and well-being of the individuals. The services include organizing transportation for a student, faculty, or staff member to a hospital for medical care, assisting in obtaining a Protection from Abuse Order from the local court, and/or coordinating with appropriate legal authorities including the Lackawanna County District Attorney's Office and the Victim/ Witness Unit.

**The Dean of Students** (570-941-7680), Lauren Rivera is located in the DeNaples Student Center, Suite 201. The Dean of Students (or designee) meets with students to offer support and resource information, safeguard the larger University community, discuss reporting options, and review the Title IX investigation process.

### ***C. SUPPORTIVE MEASURES***

Supportive measures are available to a Complainant and Respondent with or without a complaint. Supportive measures may be implemented at any time to ensure the preservation of the Complainant's and Respondent's educational experience and the overall University environment. Supportive measures will be kept private to the extent that maintaining the privacy would not impair the ability of the University to provide supportive measures.

### ***D. RANGE OF SUPPORTIVE MEASURES***

Supportive measures are designed to restore or preserve equal access to the University's programs or activities. Supportive measures will be implemented at the discretion Executive Director for the Office of Equity and Diversity. University employees, when called upon, are required to assist the Office of Equity and Diversity with implementing effective supportive measures. Potential supportive measures, which may be applied to the Complainant and/or the Respondent, include but are not limited to:

- Instituting an Administrative Directive for No-Contact between involved parties.
- Limiting an individual's access to certain facilities or activities pending resolution.
- Providing referrals to counseling and health services.
- Referring to the Employee Assistance Program.
- Altering the housing situation of the reporting.
- Offering adjustments to academic deadlines, course schedules, etc.
- Offering adjustments to extracurricular activities or other activities.
- Altering work arrangements for employees.
- Instituting administrative leaves of absence for employees or students.
- Providing campus escorts.
- Providing any other measure which can be tailored to the involved parties to achieve the goals of the University's policy.

## **IX. IMPARTIALITY AND CONFLICT OF INTEREST**

Members of the Office of Equity and Diversity act with independence and authority and without bias and conflicts of interest. They will vet the assigned Investigator(s), informal facilitators, and decision makers to ensure impartiality and that there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest.

## **X. Privileged Information and Previous Sexual History for Sex Based Matters**

The sexual history of a Complainant or Respondent cannot be used as evidence of their character or reputation. An investigation may consider prior or subsequent sexual history, if it is offered, to provide evidence that someone other than the Respondent committed the alleged conduct, or if the evidence concerns specific incidents of the Complainant's sexual history with respect to the Respondent and is offered to prove consent.

Moreover, any records that are made or maintained by a medical professional or and records recognized by Federal or State law as privileged may not be used as evidence unless the University obtains the person's voluntary and written consent.

## **XI. The University of Scranton as Complainant**

There are instances when a member of the University community observes (has direct knowledge) or is told of (has indirect knowledge) of behavior in violation of this policy. In those situations or where the individual complainant refuses to pursue the complaint, and the seriousness of the allegation requires further action, the University shall serve as complainant, and the Executive Director or designee will investigate or appoint an investigator. If there is an allegation that the President, Executive Director, or a member of the Board of Trustees be alleged to be in violation of this policy, the Executive Director will request the University's General Counsel to engage independent legal counsel to investigate the allegation.

## **XII. Procedures for Review, Voluntary Resolution and Investigation of Complaints under the Non-discrimination and Anti-harassment Policy are contained in Appendix D and E.**

## **XIII. Knowingly False or Malicious Complaints**

If, after the investigation, it is discovered that the complaint was knowingly false or filed with malicious intent, the complainant will be referred to the appropriate University office for disciplinary review.

## **XIV. Non-Retaliation Statement**

Retaliation against anyone reporting or thought to have reported harassing or discriminatory behaviors or who has participated in a University or external investigative process in relation to such a report is strictly prohibited. Such retaliation shall be considered a violation of this policy, independent of whether a complaint of harassment or discrimination has been substantiated. Anyone who believes they have been retaliated against for participating in this process in any capacity should report the matter promptly to the Executive Director or designee. Reports and complaints of retaliation will be investigated and dealt with as any other report and complaint brought under this policy.

## **XV. Complaints against Guests, Visitors or Other Non-University Employees or Non-University Students:**

All reported violations attributed to visitors, guests or other non-university employees or non-university students will be reviewed by the Executive Director or designee, who will determine if any remedy is appropriate. In situations when the accused is on campus as a result of their employment with a third party, their employer will be notified. The University will notify the educational institution of any student visitor accused of violating this policy.

## **XVI. Filing Complaints with External Agencies**

Complaints of harassment or discrimination may also be filed with the appropriate state or federal

agency having jurisdiction over the subject matter. Individuals seeking to file such a complaint should familiarize themselves with filing deadlines and procedures by contacting the appropriate agency. These agencies include:

The Pennsylvania Human Relations Commission <http://www.phrc.state.pa.us>

The Equal Employment Opportunity Commission <http://www.eeoc.gov>

The Office of Civil Rights-Department of Education <http://www2.ed.gov>.

Although not required, members of the University community who wish to file a complaint with an external agency are encouraged to contact the Office of Equity and Diversity prior to filing a complaint in order to allow the University the opportunity to investigate allegations of discriminatory and/or harassing behavior, and attempt to remedy the situation and provide disciplinary/corrective action in a timely manner.

## **XVII. Records and Files**

The results of a complaint, investigation, or resolution processes, if sanctions are imposed, will be placed in the respondent's file. In the case of employees, this will be their official personnel file and in the Office of Equity and Diversity. In the case of students, this will be their disciplinary record. If no sanctions are imposed, a record of the complaint and disposition will be kept in the confidential files of the Office of Equity and Diversity in accordance with the University of Scranton Records and Retention Policy.

## **XVIII. Related Documents, Forms, and Tools**

### **University Policies:**

The Student Handbook: <https://catalog.scranton.edu/index.php?catoid=45>

The Student Code of Conduct:

<https://www.scranton.edu/studentlife/studentaffairs/studentconduct/standardsofconduct.shtml>

Staff and Administrator Handbook: <https://www.scranton.edu/hr/employee-handbook-and-policies.shtml>

The Faculty Handbook: [https://www.scranton.edu/academics/provost/FAC/fac\\_handbook.shtml](https://www.scranton.edu/academics/provost/FAC/fac_handbook.shtml)

### **Federal and State Laws and Regulations:**

Title VI and VII of the Civil Rights Act of 1964

Age Discrimination in Employment Act of 1967 (ADEA)

Title IX of the Education Amendments of 1972 as amended

Americans with Disabilities Act of 1990, (ADA), as amended

Uniformed Services Employment

and Reemployment Rights Act of 1994 (USERRA)

Title II of the Genetic Information Nondiscrimination Act of 2008

Pennsylvania Human Relations Act of 1955, as amended (PHRA)

## **XIX. Appendices**

Appendix A: Statement of Consensual Relationships

Appendix B: Statement on Academic Freedom

Appendix C: Rights of Complainants and Respondents

Appendix D: Procedures for Review and Investigation of Complaints Under the Non-Discrimination and Anti-Harassment Policy

Appendix E: Voluntary Resolution Process

## **Appendix A: Consensual Relationship:**

Because the relationship between student and teacher, and supervisor and employee, are central to the mission of the University and to the sense of community, even an apparently consensual sexual relationship may lead to sexual harassment or other breaches of professional obligations. These situations often create a conflict of interest and can easily lead to abuse of power. In addition, such relationships carry the appearance of bias or preferential treatment. Of greatest concern are those romantic and/or sexual relationships between teacher and student, or between supervisor and employee. This includes but is not limited to any teacher, graduate student, administrator, coach, program director, advisor, counselor, or residence-life staff member who has supervisory responsibility for students or employees. Romantic and/or sexual relationships that might be acceptable in other circumstances always pose inherent risks that they will result in sexual harassment when they occur between members of the University community where a significant power or status differential between the parties exists.

Voluntary consent by a student or a subordinate in a dating relationship, even if present, is always suspect, given the fundamentally asymmetrical nature of status and power. This is true even when the parties are not in a direct supervisory/subordinate situation. Professionalism is threatened by any relationship where one party has professional responsibility for the other; such relationships place, or seem to place, the person with the power or status advantage in a position to favor or advance the other party's interests at the expense of others and implicitly make, or seem to make, obtaining benefits contingent on amorous or sexual favors. Professionalism within the University demands that those with authority not abuse, nor seem to abuse, the power with which they are entrusted.

The University prohibits all faculty and staff, including graduate assistants, from pursuing or engaging in dating or sexual relationships with students and co-workers whom they are supervising, mentoring, or teaching.

Anyone involved in or who commences a dating or sexual relationship with someone over whom he or she has supervisory power (employment or academic) must immediately disclose the existence of the relationship to Vice President for Human Resources or to the Office of Equity and Diversity. The individuals involved in the dating or sexual relationship will be required to meet with the Vice President for Human Resources and/or the Executive Director or designee, wherein they will be provided with a copy and be trained on the Sexual Harassment and Sexual Misconduct Policy. The Vice President for Human Resources and/or the Executive Director for the Office of Equity and Diversity may require that the individuals involved in the dating or sexual relationship no longer work in the same department. In the event, one or both employees cannot be moved to another position within the University, at least one individual may be required to give up their employment with the University. In the case of student and teacher, the student must withdraw from the class.

Anyone involved in or who commences a dating or sexual relationship with someone over whom he or she has actual or perceived supervisory power or authority (employment or academic) cannot participate in any decisions that affect the compensation, evaluation, employment conditions, instruction, and/or the academic status of the subordinate involved.

**Appendix B: Statement on Academic Freedom with Respect to The University's Nondiscrimination and Anti-Harassment Policy**

In recognition and support of academic freedom for faculty in the pursuit of teaching, in accordance with paragraph 5.3 of the Faculty Handbook, academic freedom shall be considered in investigating and reviewing complaints and reports of discrimination and/or harassment. However, academic freedom will not excuse behavior that constitutes a violation of the law or this policy, when that behavior is reasonably regarded as offensive and substantially impedes a student's ability to learn, or otherwise impairs the academic or work opportunity of students, or of colleagues or co-workers.

## **Appendix C: Rights of Complainants and Respondents**

The law requires that complainants and respondents be treated equally. Any complainant alleging a violation of this policy, and any individual who is accused of violating this policy has the following rights during conduct proceedings conducted by the University.

1. The right to be informed of and to have access to available University resources (e.g., EAP for employees, Counseling Center for students, etc.)
2. The right to be presumed not responsible for violating the policy
3. The right to an explanation of the allegation(s)
4. The right not to be harassed or retaliated by the respondent, the respondent's acquaintances, or supporters
5. The right not to be harassed or retaliated by the complainant, the complainant's acquaintances, or supporters
6. The right to an explanation of the University's formal and voluntary resolution process pursuant to this policy
7. The right to have a support person throughout the intake, investigatory and hearing process. The support person acts in a support role only, and not as an advocate or spokesperson. The advisor has the same obligations of confidentiality as all other participants in the proceedings
8. In the case of faculty respondent, to have a FAC officer present at any meeting, inquiry, investigation or hearing at which sanctions are or could be imposed
9. The right to a hearing without unnecessary delay once the investigation is completed
10. The right to speak on their own behalf
11. The right to present witnesses who can speak to the charges
12. The right to be informed of the outcome of the investigation

## **Appendix D: Procedures for Review and Investigation of Complaints under the Non-Discrimination and Anti-Harassment Policy**

### **A. Preliminary Review:**

1. Upon the receipt of a report, the Office of Equity and Diversity will e-mail the complainant and invite them to meet upon receipt of a report to review the policy, resources and supportive measures, and the options of a voluntary resolution and/or formal investigation process.

2. The complainant will be requested to put the complaint in writing if they wish to proceed with the voluntary resolution process or the formal investigation process. The failure of the complainant to put the complaint in writing does not relieve the University from its obligation to act in accordance with legal requirements in response to the information provided by the complainant.

3. Upon receipt of the written complaint, the Executive Director or designee will make a preliminary determination as to whether the allegations in the complaint, if sustained, would violate the Non-Discrimination and Anti-Harassment Policy (the “policy”). If it does, the Executive Director or designee will draft a Notice of Allegations and Investigation. The Notice will be emailed to both the Complainant and Respondent via email. The Respondent will be asked to come to the Office of Equity and Diversity to review the policy, process, and supportive measures.

4. If it is determined that the alleged conduct would not violate the policy, if sustained, a summary for not proceeding with a Notice of Allegations and Investigation will be drafted for the file, and will be shared with Complainant and Respondent, if the Respondent is notified of the allegations.

### **B. Notice of Allegations and Investigation:**

1. The Notice of Allegations and Investigation must contain the following information:

- Notice of the University’s formal or voluntary resolution processes.
- Notice of the allegations, including the definitions of the policy implicated and details known at the time.
- The identities of the parties involved in the incident, if known.
- The conduct allegedly constituting discrimination.
- Statement that the Respondent is presumed not responsible for the alleged conduct until the conclusion of the process.
- Notice that the parties may have an Advisor of their choice.
- Notice that the parties may inspect and review evidence.
- Non-retaliation notice
- Notice that knowingly making false statements or knowingly submitting false information during the process may result in disciplinary action.

***If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the Notice, the University will provide notice of additional allegations to the parties whose identity is known.***

2. The University may choose not to move forward with a Notice of Allegations and Investigation in the following instances:

- The University is unable to identify the respondent after taking reasonable steps to identify the respondent.
- The Respondent is not participating in or attempting to participate in an education program or activity of the University or is no longer employed at the University.
- The Complainant voluntarily withdraws any or all allegations relating to their matter.
- The University determines the conduct alleged in the complaint even if proven does not constitute discrimination or harassment, after taking reasonable efforts to clarify the allegations with the complainant.

### C. Formal Investigation Process<sup>1</sup>

#### 1. Investigation Stage-Overview of the Investigation

The Executive Director or designee will initiate an investigation once a Notice of Allegation and Investigation is provided to the Parties. The investigation is designed to provide a fair, objective, and reliable gathering of the facts. The investigator, who may be a trained member of the University or an outside investigator will be impartial, and fair, and all individuals will be treated with appropriate sensitivity and respect. As described in the Privacy and Confidentiality section, the investigation will be conducted in a manner that is respectful of individual privacy concerns.

#### 2. Time Frame for Resolution

The University will make every effort to resolve all reports within 90 calendar days from the issuance of a Notice of Allegation and Investigation. Any time period expressed in this policy, including the 90 calendar days, may be extended for good cause and with written notice to the parties of the delay and the reason for the delay. Good cause may exist due to a variety of factors, including the complexity of the circumstances of each case, the integrity and completeness of the investigation, to provide the Respondent with every opportunity to be interviewed, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for University breaks or vacations or periods of time when the University is not in session, or the Complainant or Respondent are abroad, the need to obtain translators, accommodations for disabilities, or to address other good cause reasons.

#### 3. Notification

The following individuals may be notified in writing when a formal process is initiated:

- Respondent's respective vice president, if the respondent is a member of the staff or administration.
- Dean of the College and Provost, if the respondent is a faculty member.
- If the respondent is a full-time faculty member, the Faculty Affairs Council Chair will be notified that a complaint has been filed against a Faculty member but shall not name the complainant or respondent.
- Vice President of Student Life or designees, if the respondent is a student. If the student is also an employee who oversees other student employees, both the Vice President of Student

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<sup>1</sup> For information on the voluntary resolution process see appendix E.

Life and the Vice President for Human Resources may be notified.

The Executive Director or designee will inform the parties and any witnesses that retaliation against any person who makes a complaint of discrimination or harassment or participates in an investigation is a separate violation of the policy and will not be tolerated.

#### 4. Investigator(s)

The Executive Director or designee will designate an Investigator(s). The Investigator(s) may be a trained employee of the University or an external investigator engaged by the University, or both. The investigator will conduct the investigation with the presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the process.

#### 5. Investigative Steps

The Investigator(s) will coordinate the gathering information and evidence from the Complainant, the Respondent, and any other individuals who may have information relevant to the matter. Investigative interviews may be audio, or video recorded or transcribed. Complainant and Respondent will be asked to identify witnesses with relevant information or evidence, and to provide documents, records and other information, including electronic and social media. Support persons can be present during any interview or meeting with the Complainant and Respondent.

A full-time faculty member is permitted a FAC officer during any meeting with OED or an investigator.

#### D. Investigation Report:

The investigator will complete a written preliminary report at the conclusion of the investigation. The investigator's report shall address facts and issues related to the complaint, which may include, but are not limited to:

- (1) the allegations of discrimination or harassment and/or a summary of any other suspected violations that arose during the investigation;
- (2) summaries of interviews with the Complainant, Respondent and witnesses;
- (3) the procedural steps taken from the receipt of Notice of Allegation and Investigation through the completion of the investigation (including notifications to the parties); and
- (4) a list of all documents and other relevant evidence (including but not limited to electronic records, photographs, social media posts, videos, emails, etc.) and of any other information gathered, including both inculpatory<sup>2</sup> and exculpatory<sup>3</sup>.

#### E. Review of Investigation Report

Upon completion of the preliminary report, the Complainant and Respondent will be given the opportunity to review the information (the preliminary report and evidence) that will be used in

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<sup>2</sup> Inculpatory information is information that shows or tends to show a person's involvement in an act, or information to that may show responsibility.

<sup>3</sup> Exculpatory information is information that tend to excuse, justify, or can assist in a finding of non-responsible.

reaching a determination of whether the policy has been violated. The Executive Director or designee will provide each party with access to the report, in a view only format, via an online website that will allow all parties to review all material collected by the investigator, and the investigator's report. Parties will not be able to print or download the material and are prohibited from photographing or otherwise duplicating or disseminate the report or evidence.

The Complainant and Respondent may submit any additional evidence and/or a written submission to the Investigator(s) within seven (7) calendar days of being notified of the opportunity to review the preliminary report. Upon receipt of any additional information from the Complainant or Respondent, or after the seven (7) calendar day comment period has lapsed without comment, the Investigator(s) will prepare the final investigation report.

The final investigation report will be sent to the Complainant and Respondent and include the following additional information:

1. The additional information provided by the parties, if any;
2. findings of fact;
3. credibility determinations;
4. the investigator's determination of whether the policy has been violated based on the preponderance of the evidence standard; and
5. the recommended sanctions and remedies.

If the investigator determines that the conduct does not violate the policy, they may make recommendations for education and training as appropriate to correct any actions that might lead to future violations of the policy if continued

F. Notice of Investigation Outcome:

The Executive Director or designee shall provide a "Summary Report" containing a short statement to:

- Respondent's respective Vice President and the Vice President for Human Resources, if the respondent is a member of the staff or administration.
- Provost and the Vice President for Human Resources, if the respondent is a faculty member.
- Vice President for Student Life, if the respondent is a student. If the Student is also an employee that supervises other student employees, Vice President for Human Resources will also be provided with a copy of the report.

## Appendix E. Voluntary Resolution Process

In certain circumstances, a voluntary resolution may be available if both the complainant and the respondent agree to move forward with a voluntary resolution process. Below are some voluntary resolution processes that may be utilized to address conduct that may or may not violate the policy.

A voluntary resolution may include, but is not limited to, the inappropriate conduct being brought to the attention of the respondent, an agreement to cease and not repeat specific conduct, an apology, participation in education, training, counseling, medication etc. or a combination thereof. A voluntary resolution will not include any sanction against the respondent; however, the voluntary resolution will be noted in the complainant and respondent's Office of Equity and Diversity file.

All resolutions resulting in an agreement between the complainant and respondent must be agreed to, and signed by both parties. Any breach of the terms of an agreement may result in disciplinary action or the commencement of a formal process.

If a voluntary resolution cannot be reached during the voluntary resolution process, any statements made during the voluntary process may not be used in the formal investigation process, and the person facilitating the voluntary process cannot be interviewed as a witness during a formal investigation.

### *Mediation:*

- A complainant may request mediation as part of the voluntary process. The Executive Director or designee will designate a person who is to serve as mediator, if appropriate. Care should be taken that the mediator role not be compromised by existing relationships between the mediator and either of the parties and the mediator be trained in this role and its responsibilities. The respondent may object to mediation in writing at least 48 hours before the mediation.

- If the respondent agrees to participate in mediation, the mediator will contact each party for a pre-mediation meeting. The meetings are confidential and are designed to help clear the way for communication and resolution during mediation.

- Mediation will be conducted in OED or in another mutually agreed upon location.

- If the parties reach a resolution, then the mediator will write a Resolution Agreement, which both parties shall sign. Even when mediation is successful, the University may still have an obligation to conduct an investigation under other University policies.

- If the parties cannot reach an agreement, or one or both parties refuse to sign a Voluntary Resolution Agreement, the complainant or the respondent may request that the Executive Director or designee conduct an investigation through the formal process.