

## University of Oregon Policy V.11.02 Discrimination Complaint and Response

### Reason for Policy

This policy outlines the university's discrimination statement, response to discrimination complaints and responsible employee obligations. Formal grievance procedures are set forth in applicable collective bargaining agreements and the university's grievance policy.

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### Entities Affected by this Policy

All members of the UO community.

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### Web Site Address for this Policy

<https://policies.uoregon.edu/vol-5-human-resources/ch-11-human-resources-other/discrimination-complaint-and-response>

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### Responsible Office

For questions about this policy, please contact the Office of Affirmative Action and Equal Opportunity (541-346-3123) or the Title IX Coordinator (541-346-8136).

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### Enactment & Revision History

15 September 2017 - Amended by incorporation with the adoption of UO Policy V.11.0. (Redline amendments available upon request in the UO Policy library.)

18 August 2016 - Enacted by the president as a temporary emergency policy

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### Policy

#### I. Policy Statement

The university is committed to equal access to programs, course offerings, facilities, admission and employment for all of its: (1) employees; (2) students; and (3) campus community members. It is the policy of the university to maintain an environment free of prohibited harassment and discrimination against any person because of:

age  
race

veteran status  
sex

color	sexual orientation
ancestry	gender identity
national or ethnic origin	perceived gender
religion	marital or family status
gender	pregnancy-related conditions
disability	genetic information
service in the uniformed services (as defined in state and federal law)	
the use of leave protected by state or federal law	

Discriminatory harassment, including sexual harassment, regardless of the relative power of the harasser, is disruptive of workplace and campus life, and denies its subject equal opportunity as a student, employee or campus community member. Prohibited Discrimination (as defined in state and federal law), discriminatory harassment, including sexual harassment and retaliation impede the realization of the university's educational mission and shall not be tolerated at the University of Oregon.

## II. Definitions

- A. Prohibited Discrimination** is defined as any act that either in form or operation, and whether intended or unintended, unreasonably discriminates among individuals on the basis of age, race, color, ancestry, national or ethnic origin, religion, service in the uniformed services (as defined in state and federal law), veteran status, sex, sexual orientation, marital or family status, pregnancy, pregnancy-related conditions, disability, gender, perceived gender, gender identity, genetic information or the use of leave protected by state or federal law. "Unintentional discrimination" is a concept applicable only to situations where a policy, requirement, or regularized practice, although neutral on its face, can be shown to have disparately impacted members of a protected class. The concept is inapplicable to sexual or other forms of harassment which, by definition, result from volitional actions.
- B. Discriminatory Harassment** is defined as any conduct that either in form or operation unreasonably discriminates among individuals on the basis of age, race, color, ancestry, national or ethnic origin, religion, service in the uniformed services (as defined in state and federal law), veteran status, sex, sexual orientation, marital or family status, pregnancy, pregnancy-related conditions, physical or mental disability, gender, perceived gender, gender identity, genetic information or the use of leave protected by state or federal law and that is sufficiently severe or pervasive that it interferes with work or participation in any university program or activity, including academic activities because it creates an intimidating, hostile, or degrading working or university environment for the individual who is the subject of such conduct, and where the conduct would have such an effect on a reasonable person who is similarly situated.
- C. Sexual Harassment** is a type of sex discrimination which is defined as any sexual advance, any request for sexual favors, or other verbal or physical conduct of a sexual nature when:
1. Submission to such advances, requests, or conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic experience or participation in any university program or activity;

2. Submission to or rejection of such advances, requests, or conduct by an individual is used as a basis or condition for employment, participation in any university program or activity or academic experience; or
3. Such conduct is unwelcome and sufficiently severe or pervasive that it interferes with work, participation in any university program or activity and/or academic experience because it creates an intimidating, hostile, or offensive working, university or academic environment for the individual who is the subject of such conduct, and where the conduct would have such an effect on a reasonable person who is similarly situated.

Sexual harassment includes sex and gender-based stalking, sex and gender-based harassment and bullying, dating violence, and domestic violence, defined as follows:

- i. *Sex and gender based stalking* occurs when, based on a person's sex or gender: (1) a person knowingly alarms or coerces another person or a member of that person's immediate family or household by engaging in repeated and unwanted contact with the other person; (2) it is objectively reasonable for a person in the complainant's situation to have been alarmed or coerced by the contact; and (3) the repeated and unwanted contact causes the complainant reasonable apprehension regarding the personal safety of the complainant or a member of the complainant's immediate family or household.
- ii. *Sex and gender-based harassment and bullying* means any act that: (1) Substantially interferes with work or academic performance; (2) Has the effect of: a. Physically harming a student or employee or damaging their property; b. Knowingly placing a person in reasonable fear of physical harm to the person or damages the person's property; or c. Creating a hostile environment, including interfering with the psychological well-being of a person; and (3) May be based on, but not be limited to, the sex, sexual orientation, or gender identity of the person. Gender-based harassment and bullying includes cyberbullying, which means the use of any electronic communication device to perform gender-based harassment or bullying.
- iii. *Dating Violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of the interaction between the persons involved in the relationship. For the purpose of this definition: (1) Dating violence includes, but is not limited to, causing or attempting to cause sexual or physical abuse, placing another in fear of imminent sexual or physical abuse or the threat of such abuse; and (2) Dating violence does not include acts covered under the definition of Domestic Violence.
- iv. *Domestic Violence* means violence between family or household members. Family or household members means: Spouses or former spouses;

adults related by blood, marriage or adoption; persons cohabitating or who have cohabitated; persons in a past or present sexually intimate relationship; unmarried parents of a child. Abuse means: The occurrence of one or more of the following acts within a domestic or dating relationship: a. Attempting to cause or intentionally, knowingly or recklessly causing bodily injury. b. Intentionally, knowingly or recklessly placing another in fear of imminent bodily injury. c. Causing another to engage in involuntary sexual relations by force or threat of force.

- D. Responsible Employee:** University employees are responsible employees, with the following exceptions:
1. Confidential employees;
  2. Student Employees, as that term is defined by this policy; and
  3. Exempt Employees.
- E. Retaliation:** Retaliation means an adverse action taken against a Student, Employee or Campus Community Member because the individual engaged in a protected activity. Adverse action means any action that is reasonably likely to deter a person from engaging in a protected activity. Adverse action does not include petty slights or trivial annoyances. Protected activity means: (1) fulfilling the responsible employee obligations described in this policy; (2) filing a good faith Prohibited Discrimination (including harassment and sexual harassment) complaint with the university or with an outside agency; (3) participating as a witness, advisor, etc., in the university's resolution process or an outside agency's resolution process; or (4) participating in the university's reasonable accommodation processes.
- F. Student Employee:** Student Employee means an enrolled student employed by the university whose employment is contingent on their student status. For purposes of this policy, the term Student Employee does not include Residential Advisors and graduate students with GTF appointments or other student employees who supervise two or more employees. Although student employees are not required by university policy to report, a student employee's supervisor may set expectations for a position that include reporting obligations. Further, student employees are encouraged to report as outlined below.
- G. Confidential Employee:** The following employees are confidential employees, meaning that in most instances, they will not share information disclosed to them with the university at large:
1. Health care professionals working at the University Counseling and Testing Center (available to students);
  2. Health care professionals working at the University Health Center (available to students);
  3. Office of Crisis Intervention and Sexual Violence Support Services employees (available to students); and
  4. The university's Ombudsperson (available to students and employees).

- H. Credible Evidence:** Credible Evidence is evidence of the kind that prudent people would rely on in making personal or business decisions, which is **not** obtained: (1) during public awareness events (For example, “Take Back the Night,” and “survivor speak outs”); (2) as part of an Institutional Review Board-approved human subjects research protocol focused on Prohibited Discrimination; or (3) in the context of a required classroom assignment. (Note: If a faculty member believes that a classroom assignment may elicit a disclosure that would trigger obligations under this policy, the faculty member should make clear to students that an account provided in response to a classroom assignment, without more information, will not result in the university taking any action in response to the disclosure. This means that the university will not investigate the incident, offer interim measures or otherwise take step to remediate the behavior.)

Please note that credible evidence also *excludes* information obtained during a conversation that is otherwise privileged or confidential under state or federal law. Examples of this exclusion include, but are not limited to: attorneys, who are not required to disclose information covered by the attorney client privilege; union stewards and union representatives, who are not required to disclose information obtained during a conversation with a member regarding workplace issues (including grievances); and licensed mental health professionals (counselors, psychologists, etc.), who are not required to disclose information covered by an applicable privilege.

- I. Student:** For purposes of this policy, the term Student has the meaning set forth in the Student Conduct Code.
- J. Employee:** A person in an employment relationship with the university.
- K. Campus Community Member:** Campus Community Member means a person participating in a university-sponsored program or activity, attending or wanting to attend an event on university owned or leased property, an independent contractor or vendor, a volunteer, a person applying for admissions, a person applying for employment, or a campus visitor or a person living on university-owned property. The term Campus Community Member excludes Employees and Students.
- L. Exempt Employees:** Exempt employees are those employees who are certified as such by the Title IX Coordinator and who: (1) pass annual training requirements approved by the Title IX Coordinator; (2) provide students who they interact with a notice approved by the Title IX Coordinator relating to their status as an exempt employee and their privacy practices. The Title IX Coordinator may decline to certify as exempt those employees whose duties or other reporting obligations make exemption inappropriate due to their role as supervisors or others deemed campus security authorities or individuals with a role in investigation or responding to incidents of sexual misconduct.

Exempt employees are not required to report instances of Prohibited Discrimination relating to students; however, exempt employees are encouraged to report all instances of Prohibited Discrimination in the manner described in this policy. If a student shares information regarding Prohibited Discrimination with an exempt employee, the employee is required to provide that

individual with information regarding available resources, reporting options, including confidential reporting options, the university's complaint process and the university's policy regarding retaliation. Such information will be provided to exempt employees during their annual training. Exempt employees are also required to consult confidentially with the Crisis Intervention and Sexual Violence Support Services Program after receiving a report. Exempt employees who fail to comply with these requirements may be subject to discipline up to and including a letter for reprimand.

### **III. Responsible Employees Reporting Obligations**

Except as provided for in the Student Sexual and Gender-Based Harassment and Violence Complaint Response (Student Complaint Response Policy), Responsible Employees who receive Credible Evidence of Prohibited Discrimination, Harassment or Sexual Harassment involving an Employee, Student or Campus Community Member are required to promptly report that information as follows:

- A. If the Credible Evidence relates to Sex Discrimination of a Student, Responsible Employees should report any information received to the Title IX Coordinator or to the Office of Crisis Intervention and Sexual Violence Support Services. (Note: The Student Complaint Response Policy applies to information disclosed by a student reporting sex discrimination and sexual harassment, including sexual violence. That policy may provide for different reporting obligations depending on the status of the employee receiving the report. **Employees who receive reports of sex discrimination (including sexual harassment and sexual violence) against a student should reference the Student Complaint and Response Policy in order to determine their reporting obligations.**)
- B. In all other instances, Responsible Employees should report any information received to the Office of Affirmative Action and Equal Opportunity (AAEO).

Employees should be aware that AAEO is tasked with ensuring compliance with this policy and state and federal law. Therefore, while AAEO will work with employees, students and campus community members to ensure that they understand their complaint options, are protected from retaliation and are provided with interim measures as appropriate, AAEO employees are not advocates for individuals participating in the process.

**Note:** The Student Complaint and Response Policy provides for different reporting obligations in the context of students experiencing sexual and gender-based harassment and violence. That policy should be referenced when determining an employee's reporting obligations in the context of students experiencing sexual and gender-based harassment and violence.

### **IV. Confidential Employees**

Students and Employees have the option to share their experience with a Confidential Employee. However, it is important to understand that in most instances, Confidential Employees will not report the underlying actions to the university at large, which means that the university will not take action to stop the discrimination or harassment, remedy its effects or prevent future instances of discrimination and harassment. Further, Students and Employees who report to Confidential Employees always retain the choice to make a complaint, as outlined below. Students, Employees and Campus Community

Members with questions regarding the university's processes are encouraged to contact the Title IX Coordinator or AAEO. For further information regarding Confidential Employees' privacy practices, please visit the website referenced below.

We recognize that employees who experience Prohibited Discrimination, Harassment or Sexual Harassment within departments, institutes, or programs face unique obstacles. Rather than reporting to other employees who are Responsible Employees, and who may have conflicts of interest based on existing relationships within those units, we encourage employees experiencing Prohibited Discrimination, Harassment or Sexual Harassment to utilize the confidential resources available to them in order to explore forms of support and protection and to fully understand their options relating to filing a complaint.

**Note:** Except as provided for the Student Complaint and Response Policy, information reported by Responsible Employees to the Office of Crisis Intervention and Sexual Violence Support Services will be passed on to the Title IX Coordinator. The Student Complaint and Response Policy provides for different reporting and disclosure obligations in the context of students experiencing sexual and gender-based harassment and violence. That policy should be referenced when determining an employee's reporting obligations in the context of students experiencing sexual and gender-based harassment and violence.

## **V. Prohibited Discrimination Complaints**

Students, Employees and Campus Community Members who have been subject to Prohibited Discrimination, Harassment, Sexual Harassment or Retaliation are encouraged to file complaints with the university as set forth below. Individuals may also exercise applicable grievance rights, which are referenced below. Complaints should generally be filed within 365 days of the date the person knew or should have known of the underlying conduct.

- A. **Student complaints relating to Sex Discrimination or Retaliation:** Students may file a complaint relating to Sex Discrimination, including Sexual Harassment, or Retaliation relating to Sex Discrimination or Sexual Harassment with the Title IX Coordinator or AAEO. Complaints can be made by e-mailing, calling or visiting any one of these two offices. Students may also discuss their options with a Confidential Employee.
  
- B. **All other complaints (including Employee and Campus Community Member complaints):** All other complaints of Prohibited Discrimination including Harassment, Sexual harassment or Retaliation, may be filed with AAEO. Complaints may be made by e-mailing, calling or visiting AAEO's office. Employees and students are encouraged to discuss their options for filing complaints with a Confidential Employee.

## **VI. University's Response**

The university will take prompt and equitable corrective measures to stop Prohibited Discrimination or Harassment, to remedy the effects of Prohibited Discrimination or Harassment, and to prevent future instances of Prohibited Discrimination, Harassment and Retaliation. If the university initiates an investigation, it will be impartial. In responding to incidents of Prohibited Discrimination, the university

will follow state and federal law, university policies and any applicable collective bargaining agreements. Employees and Students may also choose to exercise applicable formal grievance rights. A complaining party's options will be explained to that person by AAEO or the Title IX Coordinator, as appropriate.

- A. **Against a Student:** If the underlying incident involves Sex Discrimination, Sexual Harassment or Retaliation arising out of an act of Sex Discrimination against a Student, meaning that the Student is the alleged bad actor, the university will follow the process outlined in the student conduct standard operating procedures, referenced below. If it relates to other forms of Prohibited Discrimination, Harassment or Retaliation against a Student, the University will follow the process outlined in the Student Conduct Code or the standard operation procedures, as applicable.
  
- B. **Against an Employee or Campus Community Member:** If the underlying action involves Prohibited Discrimination, Harassment, Sexual Harassment or Retaliation against an Employee or Campus Community Member, meaning that the Employee or Campus Community Member is the alleged bad actor, the university will generally follow: (1) The discrimination complaint process for complaints made by Employees and Campus Community Members; or (2) The Student discrimination complaint process for complaints made by Students. Both of these processes are referenced below.

## **VII. Interim Measures**

Regardless of whether an investigation or university process is initiated, the university will provide interim measures as appropriate, which for Students may include academic accommodations, housing accommodations, workplace or transportation accommodations, reasonable protective measures, health and counseling services, financial aid, visa and immigration assistance, safety planning, legal support options and information regarding other on and off-campus resources and for employees may include change of employment conditions, information and assistance regarding employee resources and other reasonable measures. In deciding which interim measures to implement, the university will attempt to mitigate the impact on affected parties, while also balancing the rights of the alleged wrongdoer.

## **VIII. Confidentiality**

To the extent possible, the university will protect the confidentiality of Responsible Employees, complainants, witnesses and accused parties and, if information is disclosed, will disclose it on a need to know basis. However, it is important to understand that: (1) in order to investigate the matter and provide the other party with notice of the underlying allegations and an opportunity to respond, the university may need to reveal the identity of the complaining party, the Responsible Employee and relevant witnesses; and (2) Employees and Students have rights under federal or state law or pursuant to applicable bargaining agreements to review and inspect records relating to an investigation. That being said, for purposes of public records requests and to the extent allowed by law, the university will treat all materials submitted during an investigation relating to a report or a complaint of Prohibited Discrimination as submitted in confidence, unless otherwise noted.

## **IX. Free Expression and Academic Freedom**

In all its actions, the university will respect the rights of freedom of expression and academic expression, as set forth in university policies and applicable bargaining agreements.

## **X. External Complaints**

The university encourages all individuals with a pertinent complaint to follow the process in this policy. However, individuals may always choose to make a discrimination complaint directly with outside agencies or law enforcement, including, but not limited to, the Office for Civil Rights of the U.S. Department of Education and the U.S. Equal Employment Opportunity Commission, the Educational Opportunities Section of the Civil Rights Division of the U.S. Department of Justice. Contact information for these agencies can be found on AAEO's website.

## **XI. Corrective Action**

If the university finds that an Employee, Student or Campus Community Member has engaged in Prohibited Discrimination, it will take immediate and appropriate corrective action. This means that Employees who have engaged in Prohibited Discrimination or Retaliation may face discipline up to and including termination. Students who have engaged in Prohibited discrimination may face sanctions up to and including suspension or expulsion. Individuals who make bad-faith complaints may be subject to disciplinary action, student conduct code violations or other appropriate corrective action. Responsible employees who fail to report as required by this policy may be subject to discipline, which may include a letter of reprimand or other appropriate corrective measures. Campus Community Members who violate this policy may be trespassed from campus and may otherwise lose their right to use university property and/or to participate in university-sponsored programs and activities.

## **XII. Differential Treatment Required or Allowed by Law**

Neither this policy or any other UO policy, including but not limited to UO policy 580-15, shall be interpreted as preventing UO from complying with laws that require preferential treatment - like Oregon's Veterans Preference laws – or from engaging in Constitutional admissions practices designed to achieve diversity goals.

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## **Related Resources**

### **CONTACT INFORMATION**

#### **Title IX Coordinator**

[TitleIXcoordinator@uoregon.edu](mailto:TitleIXcoordinator@uoregon.edu)

106 Johnson Hall (1098 E. 13th Ave.)

(541) 346-8136

#### **Office of Affirmative Action and Equal Opportunity (OAAEO)**

677 East 12th Avenue, Suite 452

(541) 346-3123

**Office of Crisis Intervention and Sexual Assault Support Services**

164 Oregon Hall (1585 E. 13<sup>th</sup> Avenue)  
(541) 346-7233

**Ombudsperson**

[ombuds@uoregon.edu](mailto:ombuds@uoregon.edu)

1685 E. 17<sup>th</sup> Street  
(541) 346-6400

**UO Counseling and Testing Center**

1590 E. 13<sup>th</sup> Avenue  
(541) 346-3227

**UO Health Center**

1590 E. 13<sup>th</sup> Avenue  
(541)346-2770

**RELATED POLICIES AND PROCEDURES**

[Student Conduct Standard Operating Procedures](#)

[Student Conduct Code](#)

[Student Discrimination Process](#)

[Discrimination Complaint Process](#)

[Student Sexual and Gender-Based Harassment and Violent Complaint and Response Policy](#)

**FORMAL GRIEVANCE PROCEDURES**

**Represented Employees:**

- SEIU - Article 17
- UA - Article 24
- UOPD - Article 16
- Teamsters - Article 28
- GTFF - Article 16

**Unrepresented Employees**

- [Faculty members](#)
- [Officers of Administration](#)

**ANONYMOUS REPORTING**

[Anonymous reporting](#)