



Ohio Administrative Code

Rule 3344-2-03 Policy Against Discrimination, Harassment, Sexual Violence and Retaliation.

Effective: February 21, 2020

(A) Discrimination is prohibited

Respect for diversity is an essential element of the university community. The university strongly opposes and does not tolerate discrimination on the basis of race, sex (including sexual harassment, sexual violence, sexual assault, sexual exploitation, relationship violence, domestic abuse and stalking), pregnancy, religion, color, age, national origin, veteran and/or military status, genetic information, disability, sexual orientation, gender identity and/or expression, marital status or parental status, participation in protected activity (retaliation), and/or any other status protected by state or federal law, including Title IX of the Educational Amendments Act of 1972, rule or regulation. "Discrimination" is negative or adverse treatment of an employee, student or other member of the university community based on any of the classifications listed in this paragraph.

(1) This policy applies to all students, employees, visitors and other individuals participating in a university activity, educational or employment opportunity or program. This policy covers conduct that occurs on university property, off-campus during a university activity, or off-campus outside of a university activity when the conduct has continuing adverse effects on or creates a hostile environment for students, employees, visitors or other individuals participating in a university activity.

(2) It is the responsibility of every member of the university community to foster an environment free from discrimination, harassment, sexual violence and retaliation, and to take reasonable action to prevent or stop such conduct.

(3) Information about incidents of discrimination, harassment, sexual violence and/or retaliation should be reported to the office for institutional equity.

(B) Harassment is prohibited



The university strives to provide an environment for students, faculty, staff and other members of the university community that is free from harassment on the bases of race, sex (including sexual harassment, sexual violence, sexual assault, sexual exploitation, relationship violence, domestic abuse and stalking), pregnancy, religion, color, age, national origin, veteran and/or military status, genetic information, disability, sexual orientation, gender identity and/or expression, marital status or parental status, participation in protected activity (retaliation), and/or any other status protected by state or federal law, rule or regulation. Harassment on the basis of any of these protected classes is a form of discrimination prohibited by this policy.

(1) Harassment is unwelcome verbal, non-verbal, graphic, physical, electronic or other conduct that subjects an individual to an intimidating, hostile or offensive educational or employment environment, is based on one or more of the characteristics listed above, and which:

(a) Denigrates, insults, ridicules, disparages or stereotypes an individual or an individual's conduct, family, friends, habits or lifestyle; and

(b) Is sufficiently severe, persistent or pervasive and objectively offensive that it limits or interferes with the individual's ability to participate in or benefit from the university's programs or activities.

(2) Sexual harassment is:

(a) Harassment that is based on gender, sexual orientation, gender expression, or a person's status as a woman or man, transgender, intersex person, or gender-nonconforming individual; and

(b) Sexual harassment includes:

(i) Any unwelcome sexual advance, request for sexual favors or other written, verbal or physical conduct of a sexual nature when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education or participation in a university activity or is used as the basis for any university decisions affecting that individual.



(b) The conduct creates a hostile environment because it is sufficiently severe, persistent or pervasive that it unreasonably interferes with an individual's employment or academic performance or participation in a university activity.

(ii) Unwelcome verbal conduct that is so severe, pervasive, and objectively offensive that the individual is effectively denied equal access to an institution's resources and opportunities (comments about a person's body, spreading sexual rumors, sexual remarks or accusations, dirty jokes or stories), nonverbal conduct, visual conduct (display of naked pictures or sex-related objects, obscene gestures) or physical conduct (grabbing, rubbing, flashing or mooning, touching, pinching in a sexual way, sexual assault), including the following items when they are part of a pattern of conduct that rises to the level of the standard set forth in this paragraph:

(a) Jokes, slurs, innuendos, graphic sexual descriptions, or comments about a person's clothing, body, weight, shape, size or figure, sensuality, sexual activities or genderspecific traits; sounds such as whistling, wolf calls or kissing; repeated unsolicited propositions for dates and/or sexual relations, and; questions about sexual fantasies, preferences or history.

(b) Leering, staring, looking a person's body up and down, licking lips or teeth, winking or throwing kisses; holding or eating food provocatively; lewd gestures, such as motions that mimic sexual activity; persistent flirting and; displaying sexually suggestive pictures, calendars, posters and other visuals.

(c) Touching that is inappropriate in the workplace or classroom and/or violates boundaries, such as patting, pinching, stroking or brushing up against the body of another person; placing one's body in the personal space of another person; giving a massage around the neck or shoulders; attempted or actual kissing, grabbing or fondling; touching or rubbing one's body in a sexually manner where it can be observed by another person; exposing the underwear or body parts of another person, and; physical assault, coerced sexual relations, sexual assault or attempted assault.

(C) Sexual violence is prohibited.

Sexual violence is conduct of a sexual nature or conduct based on sex or gender that occurs without affirmative consent or when an individual is incapable of giving affirmative consent. Sexual



violence is prohibited.

(1) Acts of sexual violence are forms of sex- and gender-based discrimination and harassment.

(2) Sexual violence includes sexual assault, sexual exploitation, relationship violence, domestic abuse and stalking.

(a) Sexual assault is sexual contact or sexual intercourse without affirmative consent.

(b) Sexual exploitation is purposely or knowingly doing any of the following:

(i) Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give or withhold affirmative consent to sexual activity;

(ii) Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means;

(iii) Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts in a place where that person would have a reasonable expectation of privacy);

(iv) Recording or photographing private sexual activity and/or a person's intimate parts without affirmative consent;

(v) Disseminating or posting images of private sexual activity and/or a person's intimate parts without affirmative consent;

(vi) Prostituting another person; or

(vii) Exposing another person to a sexually transmitted infection or virus without the other's knowledge.



(c) Relationship violence is violence or the threat of violence by a person towards another based on sex or gender where the individuals are or were in a social relationship of a romantic or intimate nature. Relationship violence may include sexual, financial, emotional, psychological or other coercion or abuse directed at a current or former intimate partner, whether or not accompanied by physical violence.

(d) Domestic abuse means violence or the threat of violence by a person towards another based on sex or gender where the individuals are current or former spouses, persons who have had a child together, or persons who cohabit or have cohabited as a spouses or intimate partners. Domestic abuse may include physical, sexual, financial, emotional, psychological or other coercion or abuse directed at a current or former spouse or person similarly situated to a spouse, whether or not accompanied by physical violence.

(e) Stalking means a course of conduct directed at a specific individual that would cause a reasonable person, if aware of the conduct, under similar circumstances to fear for her, his or others' safety, or to suffer substantial emotional distress. A course of conduct includes two or more acts, including but not limited to, those in which the alleged perpetrator directly, indirectly, or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens or communicates to or about the person towards which such conduct is directed or interferes with that person's property.

(3) Definitions

(a) Affirmative consent is: informed (knowing), voluntary (freely given) and active (not passive), meaning that, through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed-upon sexual activity. Affirmative consent to one form of sexual activity does not, by itself, constitute affirmative consent to another form of sexual activity. Silence, without more, is not affirmative consent. Affirmative consent may be withdrawn at any time by communicating, through clear words or actions, a decision to cease the sexual activity. Once affirmative consent is withdrawn, the sexual activity must cease immediately. Affirmative consent is absent where:

(i) Force is applied to obtain consent. Force includes physical violence, abuse of power, threats, intimidation, and/or coercion.



(ii) An individual knows or should know, based on the circumstances, that the individual seemingly giving consent is substantially impaired (e.g., by alcohol or drug use, unconsciousness or other reason). An individual who is substantially impaired cannot make a rational, reasonable assessment whether to give consent because she/he lacks the capacity to understand the "who, what, when, where, why, or how" of the sexual interaction.

(iii) Coercion occurs when an individual is pressured, psychologically or emotionally manipulated, tricked, threatened, or forced in a nonphysical way, to engage in unwanted sexual activity. Coercion occurs when an individual is caused to believe that sex is owed to another person because of that person's position of authority or based on the parties' relationship. Coercion can involve persistent attempts to have sexual contact after an individual has already refused to engage in sexual activity.

(b) Sexual contact means intentional contact, however slight, with the breasts, buttock, groin or genitals of another, touching another with any of these body parts or any object(s), or compelling another to touch his or her own body parts or the body parts of another in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice

(c) Sexual intercourse is sexual penetration, however slight, with any body part or object, by any individual upon another.

(d) Sexual penetration includes: vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue or finger; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact. "Sexual penetration" also includes compelling a person to penetrate his or her own or another person's intimate parts without consent.

(D) Retaliation is prohibited

The university prohibits retaliation against any person for reporting or complaining of discrimination, harassment or sexual violence; supporting a person who complains about such conduct; assisting, providing information or participating in the investigation of an incident of discrimination, harassment or sexual violence; enforcing university policies with respect to



discrimination, harassment or sexual violence; whether or not the exercise of rights is substantiated by an investigation or otherwise. Retaliation is a form of discrimination.

(1) Retaliation is any overt or covert act of reprisal, interference, restraint, penalty, discrimination, intimidation or harassment, against any person or group for exercising any rights under this policy as described above.

(2) Prohibited retaliation includes retaliatory harassment and retaliation through a third person or persons.

(E) Reporting discrimination, harassment, sexual violence and retaliation.

(1) Information about incidents of discrimination, harassment, sexual violence and/or retaliation should be reported to the office for institutional equity.

(a) The director of the office for institutional equity is the university's title ix coordinator. The associate director of the office for institutional equity is the deputy title ix coordinator.

(b) The office for institutional equity is located in the parker hannifin administration center (ac), room 236. The phone number for the office for institutional equity is 216-687-2223. The office for institutional equity may also be reached by email.

(2) All university employees, except confidential resources, who become aware of information that would lead a reasonable person to believe that discrimination, harassment, sexual violence or retaliation has occurred must promptly report all relevant details to the office for institutional equity. Student employees, including graduate assistants and teaching assistants, have a duty to timely report incidents of discrimination when they become aware of the information in the course of their duties.

(3) The university provides options for reporting discrimination, harassment, sexual violence and/or retaliation, including reporting to a university employee, a confidential resource (a confidential resource will not share information about discrimination, sexual violence and/or retaliation with the office for institutional equity without the consent of the person providing the information except in cases of an emergency), reporting anonymously, and law enforcement. Reports may also be made to



the Ohio civil rights commission, the U.S. equal employment opportunity commission or the U.S. department of education's office for civil rights. Information regarding filing charges with any of these agencies may be obtained from the agency directly or from the office for institutional equity.

(4) Resources available to members of the campus community dealing with discrimination, harassment, sexual violence and retaliation are available from the office for institutional equity, including on its website. Information about the university's prohibition against sexual violence is available on the Title IX webpage.

(F) Addressing reports of discrimination, harassment, sexual violence and/or retaliation

(1) The office for institutional equity is responsible for implementing this policy and issuing related procedures, investigating allegations of violations of this policy, responding to reports of such violations, and ensuring that the university takes appropriate remedial measures to eliminate any violation of this policy and its effects.

(2) The university takes seriously the desire for privacy sought by persons involved in a matter concerning discrimination, harassment, sexual violence or retaliation. The university shares information about such matters on a limited, "need to know" basis, in accordance with federal and state privacy laws and the Ohio Public Records Act.

(3) When an investigation substantiates a report of discrimination, harassment, sexual violence and/or retaliation, remedial measures will be promptly taken to correct the violation, eliminate its effects, and prevent its reoccurrence. The intentional provision of false information pursuant to a report of a possible violation of this policy or during the course of an investigation constitutes a violation of this policy. Information provided in good faith about suspected discrimination, harassment, sexual violence or retaliation does not constitute the provision of false information even if, upon investigation, the report is not substantiated.

(4) The university recognizes that a student who has been drinking alcohol or using recreational or other drugs at the time of a possible violation of this policy may be hesitant to make a report or participate in an investigation because of potential consequences arising from a violation of the student code of conduct. To encourage the reporting of possible violations of this policy and



participation in an investigation, the university will not pursue sanctions against students for student code of conduct violations, such as underage possession or consumption of alcohol, drugs or narcotics, when the violation does not place the health and safety of another person at risk, when information about the violation is learned by the office of institutional equity as a result of a report and/or during the course of an investigation relating to this policy.