



## Ohio Administrative Code

### Rule 3349-7-10 Affirmative action, equal employment opportunity and non-discrimination/harassment.

Effective: May 31, 2024

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#### (A) Purpose

To establish an affirmative action, equal education and employment opportunity, and non-discrimination/harassment rule to promote compliance with state and federal laws as well as reinforce NEOMED's commitment to maintaining a professional and collegial work and learning environment in which all individuals are treated with respect and dignity. Every individual has the right to work and learn in a professional atmosphere.

#### (B) Scope

This rule applies to all students, faculty, staff, employees and applicants for employment or admission to the university and its programs.

#### (C) Definitions

(1) "Abusive/bullying behavior" is the persistent repeated pattern of mistreatment from others in the workplace or the classroom that causes the victim physical, mental, or emotional harm.

Abusive/bullying behavior includes mistreatment that is abusive physically or verbally, and encompasses offensive conduct or behaviors, such as interference with completing or sabotaging work that has been done. Abusive or bullying behavior is different than that of constructive criticism or counseling to address and improve performance. Abusive or bullying behavior is unprofessional and inappropriate for the workplace or the classroom.

(2) "Affirmative action" is required under Executive Order 11246. It is designed to promote equal educational and employment opportunities for protected class members in all policies and decisions affecting employment and education.

(3) "Applicant" is an individual who has applied for either a specific position at the university, or



who has applied for admission to the university.

(4) "Complainant" refers to any person who seeks recourse pursuant to this rule because they have reasonable cause to believe they experienced harassment or discrimination.

(5) "Complaint" refers to a statement by a complainant seeking recourse pursuant to this rule to address instances of harassment or unlawful discrimination. A complaint can be written or verbal when alleging harassment, abusive/bullying behavior, or discrimination.

(6) "Discrimination" occurs when an adverse employment or education action is taken that is based upon a protected class.

(7) "Equal education opportunity" means that all persons in a protected class shall have equal access to participate in educational activities.

(8) "Equal employment opportunity" means that all persons in a protected class shall have equal access to positions at the university, limited only by their ability to do their job.

(9) "Harassment" is an unwelcome, verbal or physical conduct that is sufficiently severe or pervasive that it unreasonably interferes with, denies, or limits a protected class member's ability to participate in or benefit from the university's education and employment programs or educational activities. The harassment can form the basis for differential treatment or the creation of a hostile environment.

(a) Harassment can include conduct that is deemed by the university to be harmful, threatening, abusive, vulgar, obscene, or hateful.

(b) The conduct alleged to constitute harassment under this rule will be evaluated from the perspective of a reasonable person similarly situated to the complainant, in consideration of all the facts and circumstances.

(c) Harassment must be distinguished from behavior which, even though unpleasant or disconcerting, is appropriate to the carrying out of instructional, advisory, or supervisory responsibilities.



(d) This definition includes behaviors defined in rule 3349-10-75 of the Administrative Code when that specific rule lacks jurisdiction to investigate.

(10) "Protected class" and "protected status" are defined by state and federal law to include age, color, disability, gender identity or expression, genetic information, national origin, race, religion, sex, sexual orientation, transgender status, status as a parent during pregnancy and immediately after the birth of a child, status as a parent of a young child, status as a foster parent, or veteran status. This definition is meant to protect individuals who identify as Jewish and are subject to antisemitic behaviors, including but not limited to rhetorical and physical manifestations of hatred toward Jewish or non-Jewish individuals and/or their property, or toward a Jewish community institution or religious facility.

(11) "Respondent" refers to a person or persons against whom an allegation of harassment, abusive/bullying behavior, or discrimination has been made pursuant to this rule.

(12) "Responsible officer" refers to a university official who decides whether this rule has been violated and makes decisions regarding sanctions, if appropriate. The associate director, diversity, equity, and inclusion is designated the responsible officer for complaints that contain a student respondent. The senior human resources generalist is the responsible officer for complaints that contain an employee respondent. If the responsible officer is charged with harassment, abusive/bullying behavior, or discrimination, the matter will come under the jurisdiction of the president or his designee, for handling. If the president is charged with harassment, abusive/bullying behavior, or discrimination, the matter will come under the jurisdiction of the board of trustees, or their designees, for handling.

(13) "Retaliation" refers to intimidation, threats, coercion, or other behaviors meant to interfere with the employment or educational right of a person or person(s) who reported alleged discrimination, harassment, or abusive/bullying behaviors whether by the alleged or on behalf of the alleged.

(D) Rule statement

(1) The university is an equal education and employment institution operating under



nondiscrimination provisions of Title 41 of the Revised Code; Titles VI, VII of the Civil Rights Act of 1964, as amended; and Title IX of the Educational Amendments of 1972, as amended; Executive Order 11246, as amended; Vocational Rehabilitation Act section 504; Vietnam Era Veterans' Readjustment Act, as amended; Age Discrimination In Employment Act of 1967, as amended; Title II of the Genetic Information Nondiscrimination Act of 2008; state of Ohio Executive Order 2019-05d and 2022-06d; State of Ohio Administrative Policy HR-14; and Americans With Disabilities Act, as amended as related to admissions, treatment of students, programs and activities, and employment practices.

(2) NEOMED seeks to promote an environment in which all students, faculty and staff interact on the basis of individual strengths and characteristics, without having such interactions shaped by generalizations or stereotypes based on a person's protected status and to encourage constructive thoughtful and sensitive behavior. Harassment, discrimination, and abusive/bullying behaviors are serious offenses that may be cause for disciplinary action.

(3) Discrimination, harassment, and abusive/bullying behaviors as defined in this rule are prohibited in every aspect of employment, including hiring, layoff, termination, transfer, promotion, demotion, rate of compensation, eligibility for in-service training programs, or terms and conditions of employment. Such acts are also prohibited in the development, delivery, and assessment of all educational experiences designed for students.

(a) All faculty, staff and students have a responsibility for ensuring that NEOMED's working and learning environment is free from harassment or unlawful discrimination.

(b) The university reserves the right to take measures to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile work environment.

(c) Abusive/bullying behavior may be addressed through measures such as remedial action(s), conflict resolution mechanisms, coaching and/or additional civility education trainings.

(4) Retaliation against persons who file complaints or cooperate with the investigation of a complaint of discrimination and/or harassment is a violation of this rule, as well as the law, and is strictly prohibited.



(5) Employees who believe they have experienced harassment, abusive/bullying behavior, discrimination or retaliation may report the incident to their supervisor, manager or the senior human resources generalist, employee relations and development. Students who believe they have experienced harassment, abusive/bullying behavior, discrimination, or retaliation may report the incident to the associate director, diversity, equity, and inclusion.

Faculty, staff and students share the duty to report all instances of discrimination or harassment of which they are aware directly to the senior human resources generalist, employee relations and development or the associate director, diversity, equity, and inclusion.

An employee or applicant for employment may also file a complaint with one or external agencies.

(6) The duties and responsibilities of all departments or division under this rule include:

(a) Ensuring that affirmative action goals are met to the extent possible;

(b) Ensuring the management practices prevent discrimination and support equal employment opportunity ("EEO");

(c) Providing information and resources to supervisors, managers, and employees in support of affirmative action, EEO, and non-discrimination;

(d) Ensuring that instances of discrimination are promptly referred to the department of human resources.

(e) Ensuring that corrective action steps are properly implemented; and

(f) Consulting with the department of human resources to meet obligations under this rule.

(7) The duties and responsibilities of the division of human resources and diversity include:

(a) Producing and maintaining the university affirmative action plan;



- (b) Tracking the outcomes of the plan;
- (c) Consulting with the departments regarding results of the affirmative action planning process and their responsibilities under this rule;
- (d) Providing affirmative action, EEO, and non-discrimination information and resources;
- (e) Investigating complaints of discrimination, harassment, or abusive/bullying behavior under the reasonable person standard and issuing action steps for correction where necessary.
  - (i) If the division of human resources and diversity determines that a person intentionally falsely accused another of discrimination, harassment or abusive/bullying behavior, appropriate actions will be recommended against the person.
  - (ii) Allegations of harassment, discrimination and abusive/bullying behavior often involve the collection, use and disclosure of sensitive personal information. All reasonable measures will be taken to maintain confidentiality. Information concerning a complaint may be provided to appropriate NEOMED officials on a need-to-know basis. Any person knowingly, willfully or negligently breaching confidentiality may be subject to sanctions or other appropriate action.
  - (iii) Subject to any limitations or disclosure requirements imposed by law, all information, whether oral, written or electronic, created, gathered, received or compiled through the course of a complaint is to be considered confidential by both the complainant and respondent, their representatives and advocates, witnesses and other officials designated by this rule. All information will be treated as "supplied in confidence for investigatory purposes." All closed investigatory files will be retained by the general counsel in accordance with rule 3349-3-175 of the Administrative Code.
  - (iv) All investigations will comply with any grant related requirements for notifying the granting agency or removing investigators or other remaining personnel from an award during the pendency of an investigation.
- (8) This rule will not be interpreted, administered or applied to infringe upon the academic freedom



of any faculty, staff or student. Speech or conduct protected by the first amendment to the United States constitution or sections three and eleven of Article I of the Ohio Constitution is not harassment for purposes of this rule. The frank discussion of controversial ideas, the pursuit and publication of controversial research and the study and teaching of material with controversial content do not constitute harassment, provided these activities are conducted in an atmosphere of respect.

(9) This rule is not to be interpreted, administered or applied in such a way as to detract from the right and obligation of those in supervisory roles to manage performance and behavior and subsequently discipline employees and students, subject to managerial and instructional policies and procedures.

(10) Investigation procedures

(a) When a faculty member is charged with harassment, discrimination or bullying/abusive behavior, this rule and the procedures promulgated hereunder will be employed in lieu of the procedures outlined in faculty bylaws appendix D (university procedure for sanctions of faculty), including censure and dismissal for just cause.

(b) Informal procedures

(i) All members of the NEOMED community are permitted to resolve complaints informally. Students who feel they have been harassed or discriminated against should discuss the matter with the associate director, diversity, equity, and inclusion. Employees who feel they have been harassed or discriminated against should discuss the matter with the senior human resources generalist. The associate director or senior human resources generalist will provide the complainant a confidential forum for expressing concerns and exploring options for addressing them; advise the complainant on both informal and formal procedures for addressing their concerns.

(ii) After receiving a detailed statement of the complaint, the responsible officer may, with the permission of the complainant, attempt to resolve the complaint by informal resolution by discussing the complaint with the respondent to seek a mutually acceptable resolution. If no resolution is reached, the responsible officer will explain that the complainant may file a written



complaint. Unless a written complaint is filed, no further action will be taken by the university except as authorized by the responsible officer.

(c) Formal procedures

(i) All members of the NEOMED community are permitted to file a written complaint at any time. Students should submit a formal complaint to the associate director, diversity, equity, and inclusion. Employees should submit a written complaint to the senior human resources generalist, employee relations and development.

(ii) The responsible officer will investigate and adjudicate the matter.

(iii) Complaints must be filed within one hundred eighty days of the last alleged incident.

(iv) A complainant is permitted one support person to accompany them to investigatory or other meetings. The support person cannot be a family member or attorney, nor may it be a witness or party otherwise involved in the matter related to the complaint. The support person is not a participating party and may not speak on behalf of a party.

(v) It may be necessary to place a faculty member, staff member or student on administrative leave during the investigation and resolution of a complaint. Such administrative leave will not be viewed as a disciplinary action. If the administrative leave involves a faculty member or staff member, the administrative leave will be with pay unless otherwise authorized by law.

(d) Investigation process includes the following steps

(i) The responsible officer will promptly notify the respondent of the formal complaint made against them including a general overview of the complaint details along with the rule under which the complaint was brought.

(ii) The responsible officer will interview the complainant, respondent, and other individuals with knowledge of the situation. The complainant and respondent may identify individuals with knowledge during their interview and/or the responsible officer may interview individuals at their





discretion.

(iii) Following the investigation, the responsible officer will prepare a written report including the allegations, summary of information, findings, recommendations to be implemented.

(iv) The written report will be released to both parties and the complainants' supervisor (if applicable) and be placed in the appropriate personnel file or student file if the respondent is found to have violated this rule.

(e) Recommendations

(i) In making disciplinary decisions and recommendations, the responsible officer will take the following matters into consideration:

(a) The severity of the offense; whether the offense was an isolated incident or involves repeated acts;

(b) Presence of any mitigating and/or aggravating circumstances; and

(c) Whether there was an imbalance of power between the parties.

(ii) Sanctions include but are not limited to:

(a) Employee sanctions could include verbal reprimand, written reprimand, probation, suspension with or without pay, demotion and termination.

(b) Student sanctions could include informal reprimand, formal reprimand, probation, suspension or expulsion.

(c) The responsible officer may impose a sanction upon employees of up to, but no more than, a three day suspension without pay, without consulting with the vice president of human resources. The responsible officer may impose a sanction upon students of involuntary probation without consulting with the dean of the respective college.



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(iii) If respondent is listed as key personnel on any federal award issued to university and is subject to discipline or removed from his/her position through either the informal or formal resolution process, the university will notify the funding source of any such action taken under this rule.