

3356-2-03 Discrimination/harassment.

- (A) Policy statement. Youngstown state university (“university”) does not discriminate on the basis of race, color, national origin, age, sexual orientation, gender identity and/or expression, disability, or veteran status or any other basis protected by law in its programs or activities. The university is firmly committed to maintaining a working and learning environment free of discrimination and harassment of any employee, applicant for employment, student, or visitor. The university community seeks to eliminate discrimination and harassment through education and encourages staff, faculty, students, visitors, and volunteers to report concerns or complaints. Prompt corrective measures will be taken to stop discrimination and harassment whenever it occurs.

This policy shall be interpreted and applied consistent with the speech protections of the first amendment of the United States Constitution.

- (B) Purpose. The purpose of this policy is to establish expectations for institutional and individual conduct, aid the university community in recognizing and preventing discrimination and harassment, and provide effective reporting and response mechanisms. For purposes of this policy, the university community includes, but is not limited to, all university employees, students, and any other individual visiting or engaging in any university activity or program.
- (C) Scope. This policy applies to students, faculty, employees (including student employees), third parties, campus visitors, or other individuals engaged in any university activity or program, regardless of sexual orientation or gender identity, and whether on or off campus. The prohibitions of this policy may, in some instances, be broader in scope than the legal prohibitions of state, federal, or other laws prohibiting discrimination or harassment. A determination that this policy has been violated is not equivalent to a violation of law.
- (D) Definitions. For the purpose of determining whether a particular behavior or course of conduct constitutes discrimination or harassment under this policy, the following definitions shall be used:
- (1) “Discrimination.” Conduct that is based on an individual’s sex (including pregnancy), race, color, religion, national origin, age, sexual orientation, gender identity and/or expression, disability, or veteran/military status or any other basis protected by law that:
 - (a) Adversely affects a term or condition of an individual’s employment, education, or participation in a university activity or program; or

- (b) Is used as the basis for a decision affecting an individual's employment, education, or participation in a university activity or program; or
 - (c) Is sufficiently severe ~~and~~or pervasive to a reasonable person that it substantially interferes with an individual's employment or educational performance or create a working, living, or educational environment that is intimidating, hostile, or abusive.
- (2) "Harassment." Conduct, or a course of conduct, that degrades or shows hostility toward an individual or group of individuals and is based on sex (including pregnancy), race, color, religion, national origin, age, sexual orientation, gender identity and/or expression, disability, or veteran status or any other basis protected by law, and is sufficiently severe ~~and~~or pervasive to a reasonable person that it:
- (a) Unreasonably interferes with an individual's employment or education; or
 - (b) Objectively ~~creating~~creates a working, living, or educational environment that is hostile, intimidating, or abusive.
- (3) "Sexual harassment." Sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature that is unwelcome and sufficiently severe or pervasive from both a subjective (the complainant's) and an objective (reasonable person's) viewpoint when it meets any of the following:
- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic status, or participation in a university program or activity.
 - (b) Submission to or rejection of such conduct by an individual is used as the basis for employment, academic, or programing decisions affecting the individual.
 - (c) The conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an employment, academic, or participation environment that is objectively intimidating, hostile, or abusive.
 - (d) Sexual harassment can be directed at a member of the same or different sex or sexual orientation. Examples of inappropriate conduct which may constitute sexual harassment include but are not limited to:

- (i) Sexual advances or propositions, either explicit or implied.
 - (ii) Sexually suggestive or sexually degrading innuendo, comments or gestures.
 - (iii) Remarks or inquiries about sexual activity, sexual orientation, or gender identity or expression.
 - (iv) The display or communication of sexually oriented material (including through e-mail or other electronic means).
 - (v) Unwanted touching, hugging, or contacting another's body.
- (e) “Sexual harassment,” as defined in Title IX of the Education Amendments of 1972, is set forth in the university Title IX sexual harassment policy. (See rule 3356-02-05 of the Administrative Code, university policy “Title IX sexual harassment policy.” Students, faculty employees, volunteers, third parties, campus visitors or other individuals should refer to the Title IX policy referred to above for processes and procedures under Title IX.)
- (4) Intimidating, hostile, or abusive environment (collectively referred to as a hostile environment) is a specific form of discrimination and is often contextual and must be based on the circumstances. These circumstances include but are not limited to:
- (a) The frequency of the conduct.
 - (b) The nature and severity of the conduct.
 - (c) The relationship between the complainant and the respondent.
 - (d) The location and context in which the alleged conduct occurs.
 - (e) Whether the conduct was physically threatening.
 - (f) Whether the conduct was humiliating.
 - (g) Whether the conduct arose in the context of other discriminatory conduct.

- (E) No supervisor (including a faculty supervisor), manager, or official representative of the university shall directly or indirectly imply or threaten that an applicant, employee, or student's submission to or refusal of sexual advances will positively or negatively affect his or her employment, employment conditions, career development, or academic status. This prohibition includes, but is not limited to, instructors, faculty members, graduate assistants and teaching assistants.
- (F) Employee-student consensual relationships. Relationships that might be appropriate in other contexts may, within a university setting, create the appearance or basis for an abuse of power, conflict of interest, favoritism, or of undue advantage. Many university employees are entrusted with advising and mentoring students, evaluating their work, and recommending students for advancement in employment, programs or academia. The unequal institutional power which is inherent in such a relationship heightens the vulnerability of both the student and employee for possible abuse or coercion and can present real or perceived conflict.
- (1) For purposes of this policy, a consensual intimate or sexual relationship is a relationship of an intimate, dating, and/or sexual nature entered into with the consent of both parties (hereinafter referred to as a relationship for purposes of this policy).
 - (2) This policy applies to employees and individuals, whether paid or unpaid, who teach, coach, evaluate, supervise, advise, control, or influence student employment, academic, or resource opportunities. These individuals include but are not limited to:
 - (a) Faculty, lecturers, and instructors (including visiting faculty/instructors),
 - (b) Graduate students,
 - (c) Teaching assistants,
 - (d) Academic advisors,
 - (e) Coaches,
 - (f) Residence hall professional staff.
 - (3) Intimate relationships with students. Because of the elevated risk and the potential exposure of the university and employees to liability for violation of laws against sexual harassment and discrimination and in order to maintain an environment as free as possible from conflicts of interest and favoritism, no employee/individual as defined in this rule shall enter into a relationship with

a Youngstown state university student, including but not limited to undergraduate, graduate, part-time, or full-time, regardless of whether or not there is a direct supervisory or evaluative relationship between them. Should a relationship predate either admission or employment with the university, the individuals involved in the relationship shall inform his/her immediate supervisor and dean and alternate supervisory or academic arrangements shall be made. This prohibition does not apply to married couples; however, rule 3356-7-01 of the Administrative Code regarding conflicts of interest should be consulted. (Corresponding university policy 3356-7-01 can be found on the [“University Policies”](#) webpage.)

- (G) Duty of managers and supervisors to act. Any supervisor, including executive and administrative officers, chairs, executive directors/directors, or faculty supervisor who becomes aware of information that would lead a reasonable person to believe that harassment and/or discrimination has or is occurring shall notify the office of equal opportunity and policy development (“EOPD”) and/or human resources promptly but no later than five working days after becoming aware of the information. The office of human resources shall promptly notify EOPD.
- (H) Complaint procedures.
 - (1) The university encourages all persons who believe they have experienced or witnessed discrimination or harassment to promptly file a complaint with EOPD. A complaint may be formal or informal. However, a complaint alleging a violation of this policy must be filed within three hundred days of the behavior or the last incident at issue. Delays in filing or reporting may make it more difficult for the university to conduct an investigation.
 - (2) An individual also has the right to file a complaint with external agencies, including, but not limited to, the Ohio civil rights commission, the equal employment opportunity commission and/or the department of education. Utilizing the university’s internal complaint procedure does not extend the deadline for filing a complaint with the external agencies. However, it is recommended that the complainant first exhaust the internal complaint procedures by promptly reporting the complaint.
 - (3) The university may assume the role of a complainant and pursue a complaint either informally or formally when it obtains information that would lead a reasonable person to believe that this policy has been violated. In these instances, the university may take any action it deems appropriate, including informing the alleged perpetrator of the complaint and pursuing an investigation even in cases where an alleged victim of harassment or

discrimination is reluctant to proceed. The alleged victim will be notified in advance when such action is necessary.

- (4) Complaint investigations will follow the procedures set forth in the university's "Guidelines for Initiating and Investigating Complaints of Discrimination and Harassment." These guidelines may be obtained from EOPD.
 - (5) Information related to a report of discrimination and/or harassment will only be shared with those university employees who need to know in order to assist in the review, investigation, or resolution of a complaint. The university will make every reasonable effort to conduct all proceedings in a manner that will protect the privacy of all parties. Parties to the complaint should treat the matter under investigation with discretion and respect for the reputation of all parties involved.
- (I) Interim measures. During the course of an investigation, it may be necessary and advisable for the university to take appropriate interim measures that are reasonably available to alleviate the conduct which is the basis of a complaint. These interim measures may include, but are not limited to, separating the parties, placing limitations on contact between the parties, or making alternative academic, living or workplace arrangements. Failure to comply with the terms of interim measures is a violation of this policy and may result in corrective measures, even if the initial complaint is not proven.
- (J) Non-retaliation. University policy and state and federal law prohibit retaliation against an individual for reporting discrimination or harassment or for assisting or participating in an investigation. Persons who believe they are experiencing retaliation for reporting or participating in an investigation of a complaint are strongly encouraged to contact EOPD. Any person found to have retaliated against another for reporting, participating, or cooperating in an investigation will be in violation of this policy and will be subject to corrective measures and/ or sanctions independent of the merits of the original complaint.
- (K) Corrective measures.
- (1) When it has been determined that discrimination, harassment, or retaliation has occurred, steps will be taken to ensure that the prohibited behavior is stopped. Corrective measures and/or sanctions will be imposed consistent with the severity of the offense, applicable university procedures, and collective bargaining agreements. Corrective measures may include sanctions and/or discipline up to and including termination for employees and expulsion

for students. In the event that a record of such sanctions will become a part of an employee's personnel records, prior notice will be given to the employee.

- (2) Sanctions may also be imposed on any individual with a duty to act under this policy and associated procedures, who fails to respond in a manner consistent with this policy to a complaint or reasonable information of discrimination, harassment, or retaliation.
 - (3) To the extent possible under applicable law and policies, a complainant will be informed of the corrective measures taken.
- (L) False allegations. It is a violation of this policy for anyone to intentionally report information or allegations that they know, or reasonably should know, to be untrue or false. Sanctions may be imposed on individuals who make false accusations of discrimination or harassment. Failure to prove a claim of discrimination or harassment is not equivalent to a false allegation and no person shall be penalized for good faith reporting of concerns under this policy.
- (M) Use of discrimination and harassment allegations in employment actions or academic status decisions. When making decisions affecting an individual's employment or academic status, allegations of discrimination and harassment may be considered only if they have been addressed through this policy or procedure, a court of law, or other administrative proceeding such as a student conduct hearing for a student accused of a policy violation. Whenever such an allegation is discussed as part of a determinant in the terms and conditions of an employment or academic status, the affected party should be given notice.
- (N) Policy and procedure administration. The office of equal opportunity and policy compliance is responsible for the administration of this policy and the associated procedures. However, all university employees, staff, and students play a role in preventing and reporting discrimination and harassment.
- (O) Educational goals and objectives.
- (1) It is the goal of the university to prevent and eliminate discrimination and/or harassment and to foster an environment of respect for all individuals. In furtherance of these goals, every employee shall complete programs and/or training as directed by the office of human resources and/or the office of equal opportunity and policy compliance. The office of human resources, in conjunction with the office of equal opportunity and policy compliance, shall provide information, programs, and/or training to meet the following goals:

- (a) Provide information about the university's policies relating to discrimination and harassment and the corresponding procedures and reporting mechanisms.
 - (b) Include information regarding this policy in orientation materials for new faculty, staff, students, and volunteers.
 - (c) Notify persons of inappropriate conduct and encourage appropriate behavior when interacting with others.
 - (d) Inform the university community about the problems caused by discrimination and harassment and the unacceptability and illegality of discrimination and harassment.
 - (e) Address issues of discrimination and harassment from a multicultural perspective.
- (2) A statement regarding discrimination and harassment will appear in the university bulletins (graduate and undergraduate), on the webpage of the office of equal opportunity and policy development, and relevant portions shall be referenced in "The Student Code of Conduct."
- (P) Information, assistance, and counseling.
- (1) Individuals may seek general information, anonymously or otherwise, regarding this policy by contacting any of the following offices/units. However, general inquiries with these offices/units will not be considered a report to the university and will not result in action under this policy.
 - (a) The equal opportunity, policy development, and Title IX office.
 - (b) The center for student progress/office of disability services.
 - (c) Housing and residence life.
 - (d) Office of human resources.
 - (e) Intercollegiate athletics.
 - (f) Office of student affairs through the ombudsperson.
 - (2) A student may seek counseling or support services on campus from the university student counseling services during regular business hours (330-941-3737). Employees may contact the office of human resources for information on available counseling services. Information shared within the context of

counseling services is considered confidential to the extent permitted by state and federal law.

- (3) An individual who seeks information, assistance, or counseling may still utilize this policy to file a complaint.
- (4) For information on sexual misconduct including sexual assault, dating violence, domestic violence, stalking, or any other conduct of a sexual nature that is carried out without consent or through force, threat, intimidation or coercion, please see rule 3356-2-3.1 of the Administrative Code. (Corresponding university policy 3356-2-3.1 can be found on the “[University University Policies](#)” webpage.)

Effective: 10/26/2020

CERTIFIED ELECTRONICALLY

Certification

10/16/2020

Date

Promulgated Under: 111.15
Statutory Authority: 3356
Rule Amplifies: 3356
Prior Effective Dates: 11/09/1983, 01/31/2000, 06/16/2003, 08/23/2010,
08/31/2015, 10/10/2016, 10/11/2019