

Procedural Guidelines for Processing Discrimination and Harassment Complaints Based Upon Board Recognized Protected Status

I. Introduction

The University of Akron believes that all students, faculty, staff and guests should be able to enjoy and work in an environment free from discrimination and harassment based on race, color, religion, sex, sexual orientation, gender identity or expression, age, national or ethnic origin, disability, 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, military status, genetic information or status as a veteran. The University's policies on harassment, discrimination and affirmative action can be found in Policies 3359-11-13 and 3359-38-01.¹ For the purposes of these procedures, "discrimination," "harassment," and "retaliation" have the same meanings as provided in those policies. These guidelines are not intended to change those policies but are intended to provide more information on how internal complaints submitted to the EEO Office under those policies will be processed. Collective bargaining agreement provisions will be applied as appropriate. These procedures do not apply to concerns falling under the University's Gender-Based Misconduct and Title IX Policy & Protocol.²

II. Reporting Expectations

We need the support of the entire University community to create an environment free of harassment, discrimination and retaliation based upon Board recognized protected status. Because of this, all members of the University community have a responsibility to report any harassment, discrimination or retaliation that they witness, are involved in or reasonably believe has occurred when that behavior impacts the workplace or educational environment regardless of whether the behavior occurred on or off campus. It is important that concerns be raised as soon as possible to provide the best opportunity for review. If you are not certain whether your concern falls under the discrimination, harassment and retaliation policies, please reach out to us. We will be happy to discuss it with you and help you determine the appropriate resource.

III. After a Report

After a report is received, the EEO Office will meet with the individual impacted by the behavior, or, if appropriate, the reporting party, to discuss options for addressing the concerns. Response options can include training, coaching discussions, facilitated conversations, or formal investigations. Many of these options are available even if the behavior may not rise to the level of violating the University's Non-Discrimination and Harassment policy.

Meetings to discuss potential options for addressing the concern are private and confidential, to the extent permitted by law. Other University resources, such as the ADA Coordinator, Office of Accessibility, Dean of Students, Title IX Coordinator or Deputy Coordinator and the Office of General Counsel or other administrator as deemed necessary, may be consulted depending on the nature and

¹ University policies include categories protected under policy, state and federal law. Not all identified categories are protected under state and federal law.

² More information on Title IX, including a copy of the University's Gender-Based Misconduct and Title IX Policy & Protocol can be located at <https://www.uakron.edu/help>.

severity of the allegations. Allegations of criminal misconduct, including but not limited to hate crimes or sexual assaults, will be reported to the appropriate authorities.

IV. Informal Resolution

Employees are encouraged to bring their concerns to the attention of their supervisor or, if they feel comfortable, address them directly with the individual(s) engaging in the behavior. Supervisors or employees can request the assistance of the EEO Office in resolving these disputes at any time. All nonconfidential employees remain obligated to report all potential violations of Title IX, the Gender-Based Misconduct Policy & Protocol and/or the University's harassment and discrimination policies to the appropriate individual(s) as outlined in the applicable rule/policy. While employees are encouraged to resolve their concerns informally, this step is not required before raising a concern to the EEO Office.

V. EEO Responses

The EEO Office can assist in many ways to address concerns of potential discrimination or harassment. As each situation is different, some responses may better fit some situations than others. The EEO Office will work with you to determine the options that may best fit your situation. Any response other than a formal investigation requires the agreement of all parties, including the EEO Office.

This list is also not exhaustive and options other than those listed below can be discussed as well. Factors considered in determining an appropriate response include the severity of the allegation(s); conduct standards established by the policy; the number of individuals involved; Title IX and Title VII legal requirements and obligations; whether any prior complaints have been filed; whether the alleged harm is easily reparable; and any other factors appropriate under University policy. Concerns involving criminal matters or sexual violence can only be addressed through a formal investigation.

Training and Education

Additional training or education to individuals in response to a situation is one potential option. In some situations, training an entire department or area may be appropriate. In other situations, a one-on-one discussion with the individual engaging in the behavior may be more effective and appropriate. Education can also be completed through a coaching discussion with the other individual to discuss the concerning behavior and how that behavior relates to University policies. The goal of training and education responses is to provide additional context, information and understanding regarding discrimination, harassment and how different behaviors may relate to the University's Non-Discrimination and Harassment policy and effect the learning and/or work environment.

Facilitated Discussions

The EEO Office can also facilitate discussions between the parties. A facilitated discussion allows the parties to discuss their concerns or address the behavior directly with the other person. These discussions are facilitated by the EEO Office who can help guide the discussion or questions. The goal of a facilitated discussion is to allow the parties to reach an understanding and set expectations for future behavior and interactions.

Formal Investigation

A formal investigation is initiated by a written complaint which alleges that a University employee or visitor has engaged in behavior which violates the University's Non-Discrimination and Harassment policy. The investigation process is a neutral process designed to review the allegations and gather facts. The investigator is not an advocate for either the Complainant or the Respondent, though the investigator can make referrals to support resources as needed by either party.

If the behavior is found to violate University's policy, then appropriate action can be taken to address that behavior, such as additional training or disciplinary action.

VI. Formal Investigation and Complaint Process

Complaints requesting a formal investigation must be made in writing. Anonymous complaints will be accepted, but the ability to respond to anonymous complaints may be limited. Complaints should be sent to:

EEO Office
Administrative Services Building, Room 143
(330) 972-7300, eeocompliance@uakron.edu

Complaints are kept confidential to the extent possible, subject to an appropriate investigation following the applicable policies, laws and due process requirements.

Filing an internal complaint with the University does not prevent you from filing a complaint with a law enforcement agency or other external agency, nor does it extend any time limits to file a complaint with those agencies.

Formal investigations will generally proceed as follows:

- Interview the reporting party;
- Interview the individual who is the alleged subject of the discrimination, harassment or retaliation, if different than the reporting party;
- Notice to the Respondent of the charge;
- Interview witnesses;
- Interview the Respondent;
- Interview any additional witnesses, as appropriate;
- Gather and review relevant documents or evidence; and
- Issue a final report, with a copy to all parties.

Before beginning a formal investigation, written notice of the complaint is sent to the Respondent. This written notice includes a copy of the written complaint to allow the Respondent to understand the behavior being investigated and to assist them with identifying witnesses. The University retains the right to place an employee on leave during the pendency of an investigation if it is determined that the individual presents a threat to the health and/or safety of a party or the University community.

Both parties may identify potential witnesses. Witnesses should have personal knowledge of the alleged harassment, discrimination or retaliation. Character witnesses generally will not be interviewed.

The investigator will use discretion in determining what interviews are conducted. All individuals participating in the investigation may provide copies of relevant documents or other information to the investigator that they believe will assist the investigator in understanding what occurred.

Witnesses will receive a written request from the investigator for an interview. Interviews will be conducted at a reasonable hour, and preferably during the employee's normal working hours. Interviews may not be recorded without the permission of the investigator.

Parties and witnesses may have a support person, advisor or legal representative accompany them to an interview. This person may not actively participate in the interview by asking questions or suggesting answers and will not be provided with copies of documents during or after the interview. The investigator may end the interview if the support person, advisor or legal representative is being disruptive or obstructing the interview. At least 48 hours' notice should be given to the investigator if a support person, advisor or legal representative will attend the interview. The University reserves the right to have a representative from the Office of General Counsel attend any meetings in which the party or witness is represented by a legal representative. University employees represented by a recognized collective bargaining organization may have a union representative with them at an interview. Union representatives will have the rights provided within this Policy or any additional rights granted to them under the applicable collective bargaining agreement.

All employees are expected to participate in the investigation. An investigation will proceed regardless of an employee's refusal to participate and appropriate findings will be made based on the information available. As the goal of the investigation is to determine what occurred, the best way to assist is to provide any information you have regarding the underlying events. At the discretion of the EEO investigator, the complaint may be dismissed or the investigation ended if: the Respondent is no longer employed by the University; the complaint was not filed in a timely manner; or the behavior as alleged would not fall under the University's Non-Discrimination and Harassment policy. Parties will receive written notice of a dismissal and the basis for that dismissal. Dismissals prior to an investigation may be appealed following the process outlined below. The dismissal of a complaint does not prevent the EEO Office, or other University office, from addressing the behavior through another response, such as providing additional training or coaching.

The EEO Office will make every reasonable effort to complete investigations within sixty (60) calendar days from the receipt of the written complaint. At the end of the investigation, the investigator will prepare a written report summarizing the investigation. All parties and witnesses will have the opportunity to review the summary of their interview(s) before the report is finalized. Once the review process is complete, the investigator will determine whether it is more likely than not (i.e. by a preponderance of the evidence) that the Respondent violated the applicable policy when reviewing the events as a whole and in the context in which they occurred. Respondents are not presumed to have engaged in conduct which violates University policy.

The EEO Office may make recommendations but will not discipline any party as part of the investigation. Instead, policy violations will be referred to Employee & Labor Relations and/or other appropriate individuals for corrective action. Corrective action can include, but may not be limited to, an educational conference, training and/or disciplinary action up to and including termination. Corrective

action will be imposed by following applicable disciplinary policies and/or applicable collective bargaining provisions. Corrective action can also be taken if the Respondent is determined not to have violated the University's policies on discrimination, harassment or retaliation, but where the underlying conduct shows inappropriate workplace behavior. A copy of the final report will be provided to the Complainant, the Respondent and the appropriate supervisory official(s).

Appeals

Either party may submit a written appeal of the investigator's findings to Sarah Kelly, the Vice President for Human Resources, at sarah30@uakron.edu within five (5) business days from the date of the findings. Appeals will be reviewed using an abuse of discretion standard. Under this standard, the Vice President for Human Resources does not substitute their judgment for that of the investigator, but rather looks to whether the investigator exercised sound and reasonable decision making or acted unreasonably. Any recommended corrective action will be delayed during the appeal. Appeals may be filed for the following reasons:

- The investigator misapplied or misinterpreted the University's Non-Discrimination and Harassment Policy (3359-11-13) or the Affirmative Action Policy (3359-38-01);
- The investigator did not follow the procedural requirements set forth in the University's Non-Discrimination and Harassment Policy (3359-11-13) or the Affirmative Action Policy (3359-38-01) and that failure may have affected the outcome of the investigation;
- There is no reasonable basis to support the investigator's finding that the Respondent violated the University's Non-Discrimination and Harassment Policy (3359-11-13) or the Affirmative Action Policy (3359-38-01); or
- To consider new evidence that was unavailable to the individual at the time of the investigation and which is sufficient to change the decision.

The Complainant, the Respondent and the EEO Office will be notified of the outcome of the appeal.

VII. Retaliation

University policy as well as state and federal law prohibit retaliation against individuals for making a complaint of harassment or discrimination, for assisting an individual in making a complaint, or for participating in an investigation to evaluate a complaint. Retaliation can include, but may not be limited to:

- Taking negative employment action against an individual;
- Taking actions that substantially interfere with or have a chilling effect on the individual's ability to participate in and benefit from the educational or work environment;
- Failing to provide instruction or assistance that would otherwise be provided;
- Failing to fairly and/or objectively evaluate the employee's or student's performance;
- Failing to record an appropriately earned grade for a student; or
- Otherwise sabotaging an employee's or student's performance or evaluation.

Retaliation in any form will not be tolerated and can subject the offender to discipline up to and including termination of employment. Retaliation complaints will be investigated as a separate policy

violation, which will be subject to the procedures in this Policy. Any individual who believes that they have been subjected to retaliation for making a complaint or participating in an investigation should promptly notify the EEO Office.

VIII. Recordkeeping

The EEO Office will maintain a record of all complaints received, investigatory materials, reports and the outcome of any informal process, investigation or appeal in accordance with the University's Records Retention Schedule. Information gathered during the investigation may be disclosed in accordance with applicable laws and regulations to outside agencies having jurisdiction over either the University or complaints of harassment, discrimination or retaliation. Records may also be disclosed pursuant to a public records request.

IX. For Additional Information, Please Contact:

The University of Akron
Office of Equal Employment Opportunity and Affirmative Action
(330) 972-7300, eeocompliance@uakron.edu

Tami Hannon, Senior Director, Human Resources
Administrative Services Building, Room 143
(330) 972-8201, tlz2@uakron.edu

Kelsea Homer, Equal Employment Opportunity Specialist Sr.
Administrative Services Building, Room 140
(330) 972-7904, kld67@uakron.edu

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