



Nondiscrimination and Anti-Harassment Policy

Effective Date: January 1, 2014

Approval: August 19, 2015

Maintenance of Policy: Title IX/504
Coordinator & Equity Compliance
Officer

PURPOSE: The Marianist vision of community living embraced by the University of Dayton is based on the conviction that every person has innate dignity because all people are made in the image and likeness of God. This conviction is rooted in the following verse: “The dignity of the human person is rooted in [the person's] creation in the image and likeness of God; it is fulfilled in [the person's] vocation to divine beatitude. . . . The divine image is present in every person. It shines forth in the communion of persons, in the likeness of the unity of the divine persons among themselves.” (*Catholic Catechism*, 1700, 1701). A primary assertion of both our religious and civil traditions is the inviolable dignity of each person. Recognition of and respect for the person are central to our life as a Christian and educational community and are what allow us to pursue our common mission while being many diverse persons. Thus, discrimination, harassment, or any other conduct that diminishes the worth of a person is incompatible with our fundamental commitment as a Catholic university conducted in the Marianist tradition, and therefore is prohibited by the University.

SCOPE: Faculty, staff, students, visitors, non-employees, volunteers, contractors and consultants.

POLICY HISTORY:

Approved in its original form:
December 10, 2013

Approved as Amended:
January 1, 2014;

Approved as Amended:
October 27, 2014;

Approved as Amended:
May 5, 2015;

Approved as Amended:
August 19, 2015

REFERENCE DOCUMENTS:

1. University of Dayton Equity Complaint Process for Resolving Complaints of Harassment, Sexual Misconduct and Other Forms of Discrimination;
2. University of Dayton Mandatory Reporting Policy;
3. University of Dayton Anti-Nepotism Policy;
4. University of Dayton Policy on Working with Minors and Children on Campus;
5. University of Dayton Faculty Handbook;
6. University of Dayton Faculty Hearing Committee on Grievances Bylaws and Operating Procedures – Section I;
7. University of Dayton Faculty Hearing Committee on Academic Freedom and Tenure Bylaws and Operating Procedures – Section I;
8. University of Dayton Student Handbook;
9. Title VII of the Civil Rights Act of 1964;
10. Title IX of the Education Amendments of 1972;
11. Sections 503 and 504 of the Rehabilitation Act of 1973;
12. Americans with Disabilities Act;
13. Age Discrimination in Employment Act / Age Discrimination Act;
14. Ohio Revised Code § 4122;
15. National Labor Relations Act;
16. Violence Against Women Reauthorization Act of 2013

POLICY HISTORY (See note at p. 17.)

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DEFINITIONS:

- (a) “Complainant” is defined as the person or entity bringing the allegations that this policy has been violated.
- (b) “Discriminatory Harassment” for purposes of this policy is defined in Section IV.A.
- (c) “Effective consent” for purposes of this policy is defined in Section IV.B.2.
- (d) “Equity Compliance Officer” is the individual responsible for tracking and overseeing reports and complaints of discrimination and harassment and also serves as the University’s Title IX/Section 504 Coordinator.
- (e) “Hostile environment discriminatory harassment” is described in Sections IV.A.2 of this policy.
- (f) “Protected class” for purposes of this policy means age, race, color, creed, religion, ancestry, national or ethnic origin, sex/gender, sexual orientation, gender identity, disability, genetic information, military status, veteran status, familial status or any other protected category under applicable local, state or federal law, ordinance or regulation.
- (g) “Respondent” is the person or entity accused of violating this policy.
- (h) “Responsible Employee” is any employee who meets at least one of the following criteria: (1) has the authority to take action to redress sexual violence or other misconduct; (2) has been given a duty of reporting incidents of sexual violence or other misconduct to the Title IX Coordinator or designee; or (3) is an employee whom an individual could reasonably believe has the above authority or duty.
- (i) “Retaliation” for purposes of this policy is defined in Section IV.E of this policy.
- (j) “Sexual harassment” is defined in Section IV.A.1 of this policy.
- (k) “Sexual misconduct” (including its various forms and manifestations) is defined in Section IV.B of this policy.

POLICY:**I. General Information (Including Background and Contact Information)**

The University affirms its commitment to promoting the goals of fairness and equity in all aspects of its operations. This policy is subject to resolution using the University’s Equity Complaint Process for Resolving Complaints of Harassment, Sexual Misconduct and Other Forms of Discrimination (the “Equity Complaint Process”), as detailed below.

The Equity Complaint Process is applicable regardless of the status of the parties involved, who may be members or non-members of the campus community, students, student organizations, faculty, administrators and/or staff. Although certain faculty complaints that are associated with matters outlined in Section I of the Bylaws and Operating Procedures of the Faculty Hearing Committee on Grievances or Section I of the Bylaws and Operating Procedures of the Faculty Hearing Committee on Academic Freedom and Tenure, will be addressed in conjunction with those procedures, so long as an adequate remedy for any violation determined under this policy remains in place.

The Title IX/504 Coordinator & Equity Compliance Officer (“Equity Compliance Officer”) tracks and oversees implementation of the University’s Nondiscrimination and Anti-Harassment policy. The University’s Equity Compliance Office is located in St. Mary’s Hall Room 300 and can also be reached by phone at (937) 229-3615 or via e-mail at azavadil1@udayton.edu. Reports of discrimination, harassment and/or retaliation in violation of this policy should be made to the Equity Compliance Officer or one of the Deputy Title IX Coordinators promptly.

POLICY:

However, there is no time limitation on the filing of complaints, as long as the accused individual remains subject to the University's jurisdiction or a remedy is available to the complaining party. The University encourages prompt complaints because witnesses' memories and availability typically are better closer in time to the incident(s). All reports are acted upon promptly (including investigations, if appropriate) and reasonable effort is made by the University to preserve the confidentiality of reports. Note that the University's ability to move forward in reviewing or investigating any matter depends on a number of factors including, but not limited to, knowledge of the alleged victim's identity and/or the alleged victim's willingness to initiate and pursue a formal investigation.

This policy applies to behaviors that take place on the campus, at university-sponsored events and may also apply off-campus and to actions online when the Equity Compliance Officer determines that the off-campus or online conduct affects a substantial University interest. A "substantial University interest" is defined to include:

- A. Any action that constitutes a criminal offense as defined by federal, state, or local law whether the action takes place on the University's campus or elsewhere;
- B. Any situation in which it appears that the accused individual may present a danger or threat to the health or safety of self or others;
- C. Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder;
- D. Any situation that is detrimental to the educational interests or mission of the University;
- E. Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., including those occurring outside of the University's control (e.g., not on University networks, websites or between University email accounts), will be subject to this policy when those online behaviors cause or have the potential to cause a substantial on-campus disruption;
- F. Off-campus discriminatory or harassing communication that is directed at a protected class (or should reasonably be known to have a negative impact on a protected class) by an employee when such speech is made in an employee's official or work-related capacity.

Contact information for inquiries about this policy and procedure is listed in Appendix A of this policy (the very last page).

II. University Policy Statement on Nondiscrimination

The University adheres to all federal and state civil rights laws banning discrimination in private institutions of higher education. The University of Dayton does not discriminate on the basis of age, race, color, creed, religion, ancestry, national or ethnic origin, sex/gender, sexual orientation, gender identity, disability, genetic information, military status, veteran status, familial status or any other protected category under applicable local, state or federal law, ordinance or regulation, including protections for those opposing discrimination or participating in any complaint process on campus or within the Equal Employment Opportunity Commission, Ohio Civil Rights Commission or other human rights agencies, in the planning and administration of its admissions policies, educational programs, scholarships, loans, and other financial aid, athletic and other school-administered programs, services, and activities, or in employment. Sexual harassment, which includes acts of sexual violence, is a type of sex discrimination.

This policy covers nondiscrimination in employment as well as access to educational opportunities. Therefore, any member of the campus community, guest or visitor who acts to deny, deprive or limit the educational,

employment, residential and/or social access, benefits required by applicable law, and/or opportunities of any member of the campus community on the basis of their actual or perceived membership in the protected classes listed above (which denial, deprivation or limitation constitutes “discrimination” under this policy) is in violation of this policy on nondiscrimination. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities. When brought to the attention of the University, any such discrimination will be appropriately remedied by the University according to the procedures below.

III. University Policy on Accommodating Disabilities

The University is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if he or she has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

The Equity Compliance Officer also serves as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including review or investigation of any complaint alleging noncompliance.

A. Students with Disabilities

The University is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of the University, except where doing so would cause undue hardship or require a fundamental alteration in the nature of the program.

Accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Office of Learning Resources, which coordinates services for students with disabilities. The Office of Learning Resources consults with the student and, when appropriate, reviews documentation provided by the student to determine which accommodations are appropriate to the student’s particular needs and academic programs. For more information on the process, including how to appeal a decision regarding an accommodation request, please see the Office of Learning Resources’ Handbook for Students with Disabilities.

B. Employees with Disabilities

Pursuant to the ADA, the University will provide reasonable accommodation(s) to qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

An employee with a disability is responsible for requesting an accommodation to his or her supervisor and/or the Office of Human Resources via the ADA Employee Reasonable Accommodation Request Procedure.

The Office of Human Resources will work with the employee’s supervisor and employee to identify which essential functions of the position are affected by the employee’s disability and what reasonable accommodations could enable the employee to perform those duties. An employee may appeal a decision regarding an accommodation request by contacting the Equity Compliance Officer.

IV. University Policy on Discriminatory Harassment, Misconduct and Retaliation

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of discriminatory harassment. The University's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include relevant, but controversial or sensitive, subject matters protected by academic freedom. The sections below describe the specific forms of harassment that are prohibited by law and/or University policy.

A. **Discriminatory Harassment**

Harassment is covered under this policy, and therefore considered "discriminatory harassment," if it is based upon an individual's actual or perceived membership in a protected class. Harassing conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Such harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Sex-based harassment includes sexual harassment, which is further defined below, and non-sexual harassment based on stereotypical notions of what is female/feminine vs. male/masculine or a failure to conform to those gender stereotypes. Discriminatory harassment violates this policy when it creates a hostile environment, as defined in Section IV.A.2, below.

1. Sexual Harassment

Sexual harassment is a form of discriminatory harassment that can include unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, including stalking, sexual assault. Sexual harassment, including sexual assault, can involve persons of the same or opposite sex. Consistent with the law, this policy prohibits two types of sexual harassment:

a. *Tangible Employment or Educational Action*

This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity is conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a University program or activity. Generally, perpetrators will be agents or employees with some authority from the University.

b. *Hostile Environment Sexual Harassment*

Sexual harassment that creates a hostile environment is defined in section IV.A.2 below.

2. Hostile Environment Discriminatory Harassment

A hostile environment based on membership in a protected class exists when harassment:

- is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to deny or limit a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities; or
- when such conduct has the purpose or effect of unreasonably interfering with an individual's employment.

Discriminatory harassment that creates a hostile environment (“hostile environment discriminatory harassment”) violates this policy.

A hostile environment can be created by anyone involved in a University program or activity (e.g., administrators, faculty members, students, and even campus visitors or guests). Mere offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a serious incident, such as a sexual assault, even if isolated, can be sufficient.

In determining whether harassment has created a hostile environment, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. Also, the following factors will be considered:

- The degree to which the conduct affected one or more students’ education or one or more individuals’ employment;
- The nature, scope, frequency, duration, and location of incident or incidents;
- The identity, number, and relationships of persons involved;
- Academic freedom.

3. Policy Expectations with Respect to Consensual Relationships

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this policy. The University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged. Other unique considerations arise in familial relationships, some of which are addressed in this policy in the context of domestic violence; for additional policy considerations in such contexts, please refer to the University’s Nepotism Policy.

a. *Supervisor-Supervisee Amorous Relationships*

Consenting romantic relationships between a supervisor and a person he or she supervises are discouraged and deemed very unwise.

When a supervisor enters an amorous relationship with an employee, he or she must realize that a significant institutional power differential exists. Therefore, if a charge of sexual harassment is subsequently lodged, it will be difficult for the supervisor to rely on the premise that the relationship was entered into by mutual consent.

b. *Faculty-Student Amorous Relationships*

Amorous relationships that might be appropriate in other circumstances are inappropriate when they occur between a member of the faculty and any student for whom he or she has a professional responsibility. Such relationships frequently undermine the atmosphere of trust and objectivity on which the educational process depends. Codes of ethics of most professional associations forbid professional-client sexual relationships. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in giving praise or blame, grades, recommendations for further study and future employment, etc., greatly diminish the student's actual freedom of choice should the desire for an amorous relationship be included in addition to a professor's legitimate expectations. Even when no professional relationship currently exists between a student and a member of the faculty, faculty members should appreciate the constant possibility that they may be unexpectedly placed in a position of responsibility for the student's instruction or evaluation. Graduate assistants should be especially aware of these cautions because, at times, their similarity in age and/or status may cause them to fail to appreciate that when serving as a teaching assistant they are acting as an extension of the faculty.

c. *Staff-Student Amorous Relationships*

A situation similar to that for faculty members holds for members of the staff of the University whose responsibilities include the application or enforcement of policies which may affect a student's status at the University (e.g., award of financial aid, application of disciplinary regulations). All such employees should recognize that an amorous relationship with a student for whom he or she currently has a professional responsibility is inappropriate. Even when no professional relationship currently exists between a student and a member of the administration, such persons should appreciate the constant possibility that they may be unexpectedly placed in a position of responsibility for the student or the student may incorrectly believe that due to the position one holds, one is able to affect the student's status at the University.

4. Academic Freedom

The proper exercise of academic freedom by a member of the faculty is not restricted by the University's prohibition of harassment against a protected class. When members of the faculty lecture, lead discussions, show exhibits and the like on sexually-related, race-related, etc. topics relevant to course material, they are not subject to censure arising from claims of harassment, provided such classes are conducted in accord with the norms of the discipline.

B. Sexual Misconduct

State law defines various violent and/or non-consensual sexual acts as crimes. Additionally, the University has defined categories of sexual misconduct, as stated below, for which action under this policy may be imposed. Sexual misconduct/violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving effective consent. Sexual violence could include, but is not limited to: non-consensual sexual contact; non-consensual sexual intercourse; forced sexual intercourse; sexual exploitation; sexual abuse; relationship intimidation; dating violence or domestic violence. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved.

Generally speaking, the University considers Non-Consensual Sexual Intercourse violations, including but not limited to forced sexual intercourse, to be the most serious, and therefore typically imposes the most severe sanctions on such violations, including suspension or expulsion for students and termination for employees. However, the University reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other gender-based offenses including intimate partner or relationship (dating and/or domestic) violence, non-consensual sexual contact and stalking, based on the facts and circumstances of the particular complaint. (Note that this policy defines and prohibits conduct separate and apart from violations of Ohio's criminal code, such that misconduct that is also a criminal violation may be subject both to criminal prosecution *and* sanctions under this policy; additional information regarding criminal standards is set forth in the footnotes of this policy.)

1. Sexual Misconduct Violations¹

Sexual misconduct in violation of this policy includes the following:

- a. The two types of sexual harassment described in Section IV.A.1 above
- b. "Non-Consensual Sexual Intercourse," defined as: Any sexual penetration (anal, oral or vaginal), however slight, with any object or body part, by a man or a woman upon any person, without effective consent.

A subset of Non-Consensual Sexual Intercourse is "Forced Sexual Intercourse," which is defined as:

Any sexual penetration (anal, oral or vaginal), by any object or body part, by a man or woman upon a man or woman, that occurs as a result of physical force.

- c. "Non-Consensual Sexual Contact," defined as:

Nonconsensual sexual contact is any unwelcome intentional sexual touching.

This includes any contact with the breasts, buttocks, groin, genitals, mouth or other bodily orifice of another, as well as the touching of another with any of these body parts, by a man or a woman upon any person, without effective consent.

- d. "Sexual Exploitation," which occurs when a person takes sexual advantage of another for his or her own advantage or benefit, regardless of whether such behavior constitutes one of the other sexual misconduct offenses. Examples include but are not limited to:

¹ The state definition of sexual imposition is set forth below. This standard is applicable to criminal prosecutions for sexual imposition in Ohio, but may differ from the definition used on campus to address policy violations.

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

- (1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.
- (2) The offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.
- (3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.
- (4) The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.
- (5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

- *Non-consensual recording.* Non-consensual digital, video or audio recording of sexual activity or nakedness (full or partial). This includes the unauthorized sharing or distribution of digital, video or audio recording of sexual activity or nakedness (full or partial).
- *Stalking with a sexual component.* Stalking may take many forms, including persistent calling, texting or posting on a social networking site, as well as physical stalking. When the content of the messages or the nature of the physical stalking is of a sexual nature, sexual misconduct has occurred.
- *Compelling Prostitution.* Compel or induce another individual to engage in sexual activity for hire.
- *Voyeurism.* This is a form of sexual exploitation in which one individual engages in secretive observation of another for personal sexual pleasure or engages in nonconsensual video or audio recording of sexual acts or nakedness. This behavior is a form of sexual misconduct and violates the dignity of the affected party(ies), even if the person secretly viewed or recorded may be unaware of the observation or recording.
- *Exposure.* Disrobing or exposure of oneself or another person without his or her consent.

2. Effective Consent²

Whether sexual misconduct (as detailed immediately above, in Section IV.B.1 through IV.B.4) has occurred depends in part on whether “effective consent” exists. Effective consent is granted when a person freely, actively and knowingly agrees at the time to participate in a particular sexual act with a particular person. Effective consent exists when mutually understandable words and/or actions demonstrate a willingness to participate in mutually agreed-upon activity at every stage of that sexual activity. Effective consent has time boundaries. Consent at one time does not imply consent at any other time. The existence of a dating/romantic relationship between the persons involved or the fact of a previous sexual relationship does not automatically establish effective consent for future sexual activity. There is no consent when agreement is only inferred from a person’s silence or lack of resistance; there is threat of physical force, harm or intimidation; or there is coercion.

There is no consent when the person is under the age of 16. There is no consent when someone engaging in sexual behavior knew or should have known that the other person was incapacitated. Regardless of the state of the accused, the University will use the perspective of a “sober and reasonable person” in

² In Ohio, a person under the age of 16 years cannot consent to sexual activity. Ohio Rev. Code § 2907.04. This means that sexual contact by an adult with a person younger than 16 years old is a crime, as well as a violation of this policy, even if the minor wanted to engage in the act. Under Ohio Rev. Code § 2907.02, “No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies: (a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception; (b) the other person is less than thirteen years of age, whether or not the offender knows the age of the other person; or (c) the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.” The state standard for lack of effective consent (as explained in this footnote) is applicable to criminal prosecutions for sex offenses in Ohio, but may differ from the definition used on campus to address University policy violations.

determining whether one should have known about the impact of the use of alcohol, drugs, mental illness, etc. on another's ability to give consent. Because incapacitation may be difficult to discern, the person seeking the sexual behavior is strongly encouraged to err on the side of caution; *i.e.*, when in doubt, assume the other person is incapacitated and therefore unable to give effective consent.

Coercion exists when a person engages in threats, sexual pressuring or oppressive behavior that violates the University community's expectation of respect for the dignity of another person by causing another person to engage in unwanted sexual activity. Real or perceived power differentials between the individuals involved may create an atmosphere of coercion. (Coercion can be differentiated from seduction by a repetition of the coercive activity in the face of resistance, the degree of pressure applied or the initiator's knowledge that the pressure is unwanted.)

Incapacitation exists when a person is unaware, blacked out, unconscious, unable to make rational/reasonable decisions and/or otherwise physically or mentally helpless to give effective consent. Indicators of incapacitation include but are not limited to outrageous/unusual behavior, inability or diminished ability to accurately discern his or her environment (who, what, where, when and/or how), slurred speech, vomiting, severe intoxication, loss of voluntary motor skills, loss of involuntary motor skills, disjointed speech patterns (unable to follow a conversation or verbalize complete thoughts), and/or sleepiness that demonstrates an inability to control one's ability to stay awake.

C. Other Civil Rights Offenses, When the Act is Based Upon the Status of a Protected Class

Other types of behavior prohibited by this policy include:

1. Threatening or causing physical harm, extreme verbal abuse or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a protected class
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of their actual or perceived membership in a protected class
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a protected class
4. Hazing, defined as any planned/executed action or activity by or against an active member, associate member, new member, pledge or potential member of an organization or group that inflicts physical or mental harm, distress, anxiety, or which may demean, degrade, embarrass or disgrace any person, regardless of location, consent or intention of participants, is prohibited. Examples of hazing include but are not limited to forced consumption of food, alcohol, drugs or any other substance, forced physical activity, deprivation of food or sleep, and physical acts such as hitting, branding or paddling. Students may not imply that a person be shunned, removed, or unable to join/participate in the maintenance, affiliation or initiation of membership for failing to partake in any form of a hazing activity. Any actions or situations that intentionally or unintentionally endanger a student who is attempting admission into or affiliating with any student organization is prohibited. Hazing is also prohibited under Ohio law. For more information see the Hazing Policy, Procedure, and Resource Guide in the University of Dayton Student Handbook. Hazing that falls outside this policy (*i.e.*, is not based on membership in a protected class) may nonetheless violate other University policies.

5. Bullying, defined as repeated, severe, and/or aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class. Bullying that falls outside this policy (i.e., is not based on membership in a protected class) may nonetheless violate other University policies.
6. Violence between those in an intimate, familial, or otherwise close relationship to each other on the basis of actual or perceived membership in a protected class (this includes romantic relationships, domestic and/or dating violence).³
7. Stalking,⁴ defined as a course of conduct directed at a specific person on the basis of actual or perceived membership in a protected class that is unwelcome and would cause a reasonable person to feel fear.

Stalking may take many forms, including persistent calling, texting, or posting on a social networking site, as well as physical stalking.

A violation of any other University rule or policy, when motivated by the actual or perceived membership of the victim [on the basis of sex or gender or in a protected class], may be pursued using this policy and process. Note that violations of other University rules or policies that do not constitute a violation of this policy (e.g., a violation not motivated by unlawful discrimination or harassment) may nonetheless trigger discipline or sanctions under another University policy or policies.

D. Other Objectionable Conduct

Objectionable conduct that does not rise to the level of discrimination or that is of a generic nature not on the basis of a protected status may not result in the imposition of discipline under this University policy, but may be addressed through remedial actions, education and/or conflict resolution mechanisms. For assistance with conflict resolution, faculty should contact the Provost's office; non-faculty employees should contact the Office of Human Resources (and may wish to consult the University's Conflict Resolution Policy); and students should contact the Dean of Students.

E. Retaliation

Retaliation is defined as any adverse action taken against a person who is participating or participated in a protected activity (such as participating in or otherwise assisting with a University investigatory procedure); filing a complaint alleging prohibited discrimination (including harassment); or otherwise objecting to or reporting a practice that he or she reasonably and in good faith believed was in violation of the Nondiscrimination and Anti-Harassment Policy, where such adverse action is taken because of the person's participation in that protected activity. Retaliation involves intentional adverse action taken by a respondent

³ The Ohio definition of domestic violence is "knowingly caus[ing] or attempt[ing] to cause physical harm to a family or household member;" "recklessly caus[ing] or attempt[ing] to cause serious physical harm to a family or household member;" or "by threat of force . . . knowingly caus[ing] a family or household member to believe that the offender will cause imminent physical harm to the family or household member." Ohio Rev. Code § 2919.25. Note that this definition is applicable to criminal prosecutions for domestic violence in Ohio, but it may differ from the definition used on campus to address University policy violations.

⁴ Under Ohio law, the crime of menacing by stalking is defined as follows: "(1) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person; (2) No person, through the use of any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, or computer system, shall post a message with purpose to urge or incite another to commit a violation of division (A)(1) of this section; and (3) No person, with a sexual motivation, shall violate division (A)(1) or (2) of this section." Ohio Rev. Code § 2903.211. Note that this definition is applicable to criminal prosecutions for stalking in Ohio, but it may differ from the definition

or allied third party, absent legitimate nondiscriminatory purposes, that harms the individual as reprisal for reporting a violation of the Nondiscrimination and Anti-Harassment policy or participating or otherwise assisting in an investigation of an alleged violation of the policy. Taking intentional adverse action against a respondent where the investigation found that the respondent did not violate this policy also is impermissible.

For employees, such types of adverse action include, but are not limited to: dismissal from employment; demotion; loss of salary or benefits; transfer or reassignment; or denial of promotion that otherwise would have been received. For students, such types of adverse action include, but are not limited to: being given a grade not based on class/test performance; denial of access to a course, program, organization or housing; denial of support, services or other assistance given to other students; or denial of an award that otherwise would have been received.

Retaliation against an individual for alleging harassment, supporting a party bringing a complaint or for assisting in providing information relevant to a claim of a policy violation is a serious violation of University policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to Equity Compliance Officer and will be promptly investigated. The University will take appropriate steps to help protect individuals who may be subjected to retaliation.

An adverse action is retaliatory only if it is taken because the person participated in a protected activity. The University maintains the right to take action against an employee or student for other legitimate reasons, even if that employee or student has made a complaint of discrimination or harassment or otherwise participated in a protected activity. For example, an employee's supervisor could still provide an employee a negative performance review or take disciplinary action against an employee who violates a University policy. For students, the University could still sanction a student who violated the Code of Conduct. Note that using the Equity Complaint Process in bad faith, i.e., with deliberately false allegations and/or malicious accusations of harassment, is not protected activity.

V. Remedial and Corrective Action

The University may implement initial (and/or interim) remedial and responsive and/or protective actions as appropriate upon notice of alleged harassment, retaliation and/or discrimination, and will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. Procedures for handling reported incidents are fully described in the University's Equity Complaint Process. Deliberately false and/or malicious accusations of harassment, as opposed to complaints which are made in good faith (even if ultimately found to be without merit), are serious offenses and will be subject to appropriate disciplinary action.

Where a respondent is found in violation, the University will impose appropriate sanctions/consequences for the violation. The University will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the University community. Consequences for behaviors in violation of this policy range from reprimand up through and including expulsion (students) or termination of employment (employees). For further details as the types of consequences to which students may be subject to see the Student Handbook. University non-faculty employees should reference the University's Corrective Action policy, and faculty should consult the Faculty Handbook.

The remedial, responsive and/or protective actions could include but are not limited to: issuing no contact orders, providing counseling and/or medical services, providing academic support, interim suspensions (for students), living arrangement adjustments, providing a campus escort, making academic or work schedule and assignment accommodations, safety planning, issuing no-trespass orders and/or referral to campus and community support resources. Note that, even where a violation of this policy is *not* found to have occurred, the University may recommend that mediation, counseling or other restorative steps be taken, or, if another University policy has been violated, implement corrective action as appropriate.

VI. Confidentiality and Communicating Offenses Under this Policy

Complaints of discrimination or harassment in violation of this policy can be filed online using the online Harassment and Discrimination Complaint Form located at go.udayton.edu/nondiscrimination. The Bias Related Incident Anonymous Report Form may also be used to file a complaint. To avoid a conflict of interest, any allegations of discrimination by the Equity Compliance Officer should be directly reported to the Vice President for Human Resources.

Complaints and concerns may also be shared with University community members, but whether they can keep the matter confidential or must tell (and how much) the Equity Complaint Officer or one of his or her deputies depends on their reporting responsibilities. In order to make informed choices when consulting campus resources, one should be aware of confidentiality and mandatory reporting requirements, which are explained in further detail in Sections A-C below.

On campus, some resources may maintain confidentiality, offering options and advice without any obligation to inform University officials or an outside agency or individual unless the complainant requests that the information be shared. Other campus resources, such as public safety or “responsible employees” as referenced in Section C, “Non-Confidential Formal Reporting Option,” below, cannot by law provide confidentiality (although they will make reasonable efforts to limit disclosure of information so as to protect privacy).

By making a complaint to them, one is initiating formal action by the University. The following describes the three communication options at the University:

A. Privileged and Confidential Communications for All Protected Class Based Claims

If a party who has experienced an incident of discrimination or harassment does not desire action by the University and would like the details of the incident to be kept confidential, but desires to confide in someone, the party may speak with:

- a counselor at the University Counseling Center 937-229-3141 (students);
- a doctor at the Health Center 937-229-3131 (students);
- an ordained member of the clergy through Campus Ministry 937-229-3339 (students and employees);
- a counselor through the Employee Assistance Program, www.lifeworks.com (employees);
- off-campus local rape crisis counselors, domestic violence resources, local or state assistance agencies, ordained clergy members.

University employees who fall within this category will submit anonymous statistical information for Clergy Act purposes unless they believe it would be harmful to their client, patient or parishioner, but will not otherwise share the information. Confiding in someone within this category does not trigger an investigation or other action by the University.

B. Non-Confidential but “Private” Communications

Those seeking to discuss misconduct, but not to initiate an investigation or other action by the University, may seek advice from certain resources who are not required to initially tell anyone else their private, personally identifiable information unless there is a pattern of abuse or cause for fear for their safety or the safety of others. Unlike the resources listed in Section VI.A, these resources cannot guarantee confidentiality. If a party who wishes to discuss an incident is unsure of someone’s duties and ability to maintain privacy, he or she should ask that person before talking to him or her.

1. Title IX –Sex and Gender Based Misconduct Claims (including sexual harassment, sexual violence, dating violence, domestic violence, sexual assault or stalking)

Private resources for discussing claims of sex/gender misconduct or sexual misconduct include any staff member who works for the University Counseling Center, Health Center, Women’s Center or Campus Ministry. These resources are initially required to provide a limited report that includes the nature, date, time and general location of the incident to the Title IX Coordinator, but these resources do not share any personally identifiable information in the report unless the disclosing party gives permission, except in the rare event that the incident reveals a need to protect the disclosing party and/or other members of the community.

2. All other Protected Class Based Claims (NON- Sex and Gender (Title IX) Claims)

In matters involving Non-Title IX related claims, including all other protected classes defined under this policy, non-confidential but private resources include most faculty members, most staff members, and most students. These resources will be able to explain and help that party make decisions about who is in the best position to help.

Under the University’s Mandatory Reporting Policy, these resources must report possible policy violations to the Equity Compliance Officer and can use the Harassment and Discrimination Incident Report Form to do so. Initially, in making an incident report, these resources do not share any personally identifiable information about the report unless the disclosing party gives permission, except in the rare event that the incident reveals a need to protect the disclosing party and/or other members of the community.

If personally identifiable information must be shared, it will be shared with as few people as possible (on a need-to-know basis) and reasonable efforts will be made to protect privacy.

C. Non-Confidential Formal Communication Option for Title IX – Sex/Gender Based Misconduct Claims

A party wishing to initiate an investigation or other action by the University is encouraged to speak to a “responsible employee” to make a formal report concerning incidents of sexual misconduct. Under the University’s Mandatory Reporting Policy, all University employees are designated as “mandatory reporters” and have a duty to report incidents of possible discrimination or harassment to the Equity Compliance Officer. This makes all employees (except those identified in VI. (A) and VI (B)(1) of this policy) “responsible employees” when it comes to reporting incidents of sex/gender misconduct including, but not limited to, sexual harassment/violence, sexual assault, dating and/or domestic violence and stalking.

When a party informs a “responsible employee” about an incident involving sexual misconduct, the employee is required to report all relevant details about the incident to the University’s Title IX Coordinator or designee. This includes the names of the victim(s), alleged perpetrator(s), witnesses and any other relevant facts, including the date, time and specific location (if known). A party’s requests for confidentiality or that no investigation be pursued should be made to the responsible employee at the time the report is made. The responsible employee will then inform the Title IX Coordinator of the requests and those requests will be weighed by the Title IX Coordinator, based on relevant information that may be received in consultation with others involved in monitoring University safety matters, against the University’s obligation to provide a safe, non-discriminatory environment for all members of the University community, including the reporting party. However, honoring such requests may limit the University’s ability to meaningfully investigate and pursue conduct action against an accused individual.

Complainants have the right, and can expect, to have complaints taken seriously by the University when formally reported, and to have those incidents investigated and properly resolved through these procedures. Non-Confidential Formal Reporting still affords privacy to the complainant, and only a small group of officials who need to know will be told. Information will be shared as necessary with investigators, witnesses and the responding party. The people with this knowledge are charged with preserving a complainant’s rights and privacy to the extent reasonable in order for an adequate, reliable and impartial investigation to be conducted.

D. Reporting of Instances Involving Minors

Anyone witnessing or otherwise knowing of a violation of this policy that involves a minor (generally, a non-UD student, under the age of 18) should refer to the University’s Working with Minors and Children on Campus Policy. Any observed violations of that policy should be reported to Public Safety (937-229-2121) and the person in charge of the program. If abuse was witnessed by a “mandatory reporter” as defined by Ohio Revised Code § 2151.421, the incident must also be reported to Montgomery County’s Children Services at 937-224-KIDS (5437) or the municipal or county peace officer.

VII. Federal Timely Warning Obligation

Victims of sexual misconduct should be aware that University administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The University will undertake reasonable efforts to ensure that a victim’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

NOTE ON POLICY HISTORY: This policy was first effective as an overarching policy applicable to the whole University community and all protected classes on January 1, 2014. The University’s original sexual harassment policy was approved in 1983. The original University-wide notice of Nondiscrimination was approved in August 2012. (Individual units and offices had issued their own such statements at various time over prior decades.)

Nondiscrimination and Anti-Harassment Policy, (continued)

APPENDIX A TO NONDISCRIMINATION AND ANTI-HARASSMENT POLICY

CONTACTS FOR THIS POLICY:

INTERNAL CONTACTS

Inquiries about this policy and accompanying complaint procedures may be made internally to the people listed below. Note that, although each has a particular category of complaint that is his or her particular focus, you may contact any listed person if you have an issue that falls under this policy.

Amy Zavadil, Ph.D. (All Complaints and Visitor Complaints)
Title IX/504 Coordinator and Equity Compliance Officer
University of Dayton
St. Mary's Hall Room 300
300 College Park
Dayton, OH 45469-1641
937-229-3615
azavadil1@udayton.edu

Christine Schramm
Deputy Title IX Coordinator (Complaints against Students)
Associate Vice President for Student Development and Dean of Students
University of Dayton
Gosiger Hall Room 202
300 College Park
Dayton, OH 45469-0965
937-229-1212
cschramm1@udayton.edu

Carolyn Phelps, PhD
Deputy Title IX Coordinator (Complaints against Faculty)
Associate Provost for Faculty and Administrative Affairs
University of Dayton
St. Mary's Hall Room 212
300 College Park
Dayton, OH 45469-1634
937-229-2245
Cphelps1@udayton.edu

CONTACTS FOR THIS POLICY (continued):

Lee Jackson
Deputy Title IX Coordinator (Complaints against Non-Faculty Employees)
Director of Employee and Labor Relations
University of Dayton
St. Mary's Hall Room 315
300 College Park
Dayton, OH 45469-1614
937-229-1284
ljackson3@udayton.edu

Angie Petrovic
Deputy Title IX Coordinator (Complaints Involving Equity in Athletics)
Associate Director of Compliance, Department of Athletics
University of Dayton
Frericks Convocation Center, Room 108
300 College Park
Dayton, OH 45469-1230
937-229-1285
apetrovic1@udayton.edu

EXTERNAL CONTACTS

Inquiries about this policy and accompanying complaint procedures may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Equal Employment Opportunity Commission (EEOC)
Contact: <http://www.eeoc.gov/contact/>