

Safe Working and Learning Environment Policy:

The Northern Arizona University Policy Regarding Prohibited Discrimination, Harassment and Other Inappropriate Behaviors

Revised February 2016

I. INTRODUCTION

A. SCOPE OF THE POLICY

1. It is the official policy of Northern Arizona University to prohibit discrimination, to inform individuals of their right to be free from such behaviors, and to promote the safety of all individuals at university sites and activities. This policy covers students, staff, faculty, administrators, contractors, vendors, visitors, residents, and guests in accordance with federal and state statutory and decisional law.

2. This policy is based on Arizona Board of Regents and NAU Policy and state and federal laws including but not limited to: Title VI and Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967; Title IX of the Education Amendments Act of 1972; Sections 503 and 504 of the Rehabilitation Act of 1973; the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended; the Civil Rights Act of 1991; Executive Order 11246; the Genetic Information and Nondiscrimination Act of 2008; the Americans with Disabilities Act of 1990, and the ADA Amendments Act of 2008.

B. PURPOSE OF THE POLICY

1. The purpose of this policy and procedure is to:

- a) prevent the occurrence of discrimination on the basis of sex, race, color, age, national origin, religion, sexual orientation, disability, veteran status, gender identity and genetic information
- b) prevent sexual harassment, sexual assault, and other forms of prohibited harassment by anyone on this campus,
- c) prevent conflicts of interest that might arise from consensual amorous relationships,
- d) assist those affected and prevent retaliation for seeking information, assistance, or resolution, and
- e) provide appropriate sanctions and consequences, up to and including termination or expulsion, for those who, by their actions, intentional or otherwise, practice, promote, or condone such behavior.

2. This policy is not meant to abridge rights, such as free speech, which are otherwise protected by law, and this policy will be enforced consistent with such laws. This policy is not intended to abridge academic freedom (as outlined in the Faculty Handbook). Academic freedom thrives on the independent and open exchange of ideas among students and teachers. However, academic freedom can exist only when all are free to pursue ideas in a non-threatening, non-coercive atmosphere of mutual respect.

C. PROHIBITED CONDUCT

1. Prohibited discrimination, harassment, and sexual assault run counter to the objectives of this university and violate Arizona Board of Regents and university policy. When individuals feel coerced, threatened, intimidated, or otherwise pressured by others into granting sexual favors, or are singled out for derision, abuse, or discriminatory treatment based on their sex, race, age, color, national origin, religion, sexual orientation, disability, veteran status, gender identity, and genetic information their academic and work performance is likely to suffer. Such actions violate not only the dignity of the individuals, but also the integrity of the university as an institution of learning. Retaliation taken for reporting or objecting to prohibited types of discrimination, consensual amorous relationships, sexual and/or other prohibited harassment, or sexual assault is also a violation of the law and this policy.

2. This policy does not cover all forms of perceived unfair treatment. However, several university offices can assist individuals with issues not covered under this policy, including Human Resources, Employee Assistance and Wellness, Counseling Services, and Student Life.

D. OBLIGATIONS OF THOSE IN POSITIONS OF AUTHORITY

When faculty, administrators, and supervisors receive a complaint under this policy or have reason to believe a violation of this policy has occurred, it is their obligation to take steps to prevent its continuation (as outlined in section VII. C).

E. CONFIDENTIALITY

1. It is the obligation of faculty, supervisors, and administrators (including the Equity and Access Office—hereinafter referred to as Equity and Access) to whom a concern or complaint is brought, to maintain confidentiality of all documentation and protect the privacy of all parties to the greatest extent possible insofar as it does not interfere with the university's obligation to investigate and address the allegations of misconduct or with required disclosure under law.

2. If an investigation is initiated as a result of a complaint, it may be necessary to reveal the names of the complainant or other case specifics to the supervisor and/or other involved parties when seeking information, or, if substantiated, when imposing sanctions.

II. DISCRIMINATION

A. POLICY BACKGROUND

The Arizona Board of Regents Policy states:

1-119 Nondiscrimination and Anti-Harassment

A. The Policy

The Arizona Board of Regents and the universities are committed to creating and maintaining a university system with an environment free from unlawful discrimination, including harassment, and retaliation. In support of this commitment, the Board and the universities prohibit unlawful discrimination, harassment, and retaliation based on race, color, religion, sex, national origin, age, disability, veteran status, sexual orientation, gender identity, and genetic information.

The Board and Universities will take prompt and appropriate action to: (1) thoroughly investigate complaints under this policy; and (2) prevent, correct and, if necessary, discipline individuals who engage in behavior that violates this policy. (A.B.O.R. Rev. 6/12)

B. DEFINITIONS

1. Discrimination is defined under applicable federal and state law. In general, unlawful discrimination means failing to treat people equally based, at least in part, on status that is protected under applicable law or policy.

2. Protected status includes race, color, religion, sex, national origin, age, disability, veteran status, sexual orientation, gender identity or genetic information.

3. Disparate treatment and disparate impact are both prohibited forms of discrimination. Disparate treatment occurs when one or more persons treat an individual less favorably on the basis of their actual or perceived protected status. Disparate impact occurs when an apparently neutral institutional policy, practice, or requirement has a negative effect on educational or employment opportunities or benefits, for groups of individuals, due to their actual or perceived protected status and it can be shown that the policy, practice, or requirement is not necessary for the institution to perform its stated function.

C. EXAMPLES OF PROHIBITED BEHAVIOR

1. Prohibited discrimination can take many forms. Employment actions (for example, hiring, assignment, evaluation, transfer, promotion, discipline and dismissal) based upon on employee's actual or perceived protected status and not upon the employee's true qualifications and/or performance, are prohibited by this policy and by law. Academic decisions involving students (for example, academic advisement, assignments, grading) based upon

these same characteristics of a student and not upon the student's skills and academic achievement are also prohibited.

2. Harassment is a specific form of discrimination. It is unwelcome behavior, based upon an individual's actual or perceived protected status, where, in aggregate, the incidents are sufficiently pervasive or severe that a reasonable person with the same characteristics as the victim of the harassing conduct would be adversely affected to a degree that interferes to his or her ability to participate in or to realize the intended benefits of an institutional activity, employment or resource. Conduct over social media that rises to this level is prohibited. Harassment, as defined above, is not protected by the First Amendment.

III. SEXUAL HARASSMENT

A. POLICY BACKGROUND

Sexual harassment, like harassment on the basis of membership in other protected categories, is a form of prohibited discrimination. (A.B.O.R. Rev. 6/12)

B. DEFINITIONS

1. Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- a) submission to such conduct is either explicitly or implicitly made a term or condition of an individual's employment, education, or participation in a Board or university activity;
- b) submission to, or rejection of, such conduct by an individual is used as a basis of employment or education decisions affecting such individual; or
- c) such conduct has the purpose or effect of unreasonably interfering with an individual's work, education, or participation in Board or university activities or creating an intimidating, hostile, or offensive environment.

2. In determining whether the alleged conduct constitutes sexual harassment it is necessary to look at the entire context and pattern of behavior. Regardless of intent, it is the effect and characteristics of the behavior that determine whether the behavior constitutes sexual harassment.

3. One form of sexual harassment is an attempt to influence or coerce an unwilling person into a sexual relationship by misusing the authority in an employment or educational relationship. Sexual harassment differs from voluntary sexual relations in that sexual harassment involves coercion, threat, or unwanted sexual attention. Any behavior, whether verbal or physical, constitutes sexual harassment if:

- a) There is a threat, overt or implicit, that any educational or employment decision may be affected by an unwillingness to grant, tolerate, or accept sexual attentions (those decisions may involve grades, recommendations, evaluations, or any other decisions about the requirements, terms, and conditions of employment or learning); this includes cooperative and consenting sexual favors in trade or apparent trade for educational or employment privileges;
- b) a person is required to grant, tolerate, or accept sexual attentions as a condition of employment or learning;
- c) the behavior creates an environment which is intimidating, hostile, or offensive for members of one sex, and thus interferes with a person's ability to work or learn; or
- d) any educational or employment decision has been affected by a person's refusal to submit to or tolerate inappropriate sexual behavior.

C. EXAMPLES OF PROHIBITED BEHAVIOR

Following are some examples of behavior that could constitute sexual harassment if proven to be unwelcome and, where, in aggregate, the incidents are sufficiently pervasive or severe that a reasonable person with the same characteristics as the victim of the harassing conduct would be adversely affected to a degree that interferes to his or her ability to participate in or to realize the intended benefits of an institutional activity, employment or resource. Conduct over social media that rises to this level is prohibited. Harassment, as define above, is not protected by the First Amendment:

- a) verbal – jokes, comments, requests, or questions of a sexual nature
- b) non-verbal – whistling, staring at body parts, blocking someone’s entrance or exit from a space, gestures of a sexual nature
- c) physical – touching, patting, pinching, slapping, rubbing or any physical contact that is uninvited or offensive
- d) visual – photos, posters, calendars, jokes, cartoons, memos, letters, or notices of a sexual nature which are placed in or on university property, premises, vehicles or other work or study locations of the university
- e) electronic – telephone, facsimile or e-mail communication of a sexual nature that is unwelcome or offensive.

This list of examples is not exhaustive.

IV. CONSENSUAL AMOROUS RELATIONSHIPS

A. DEFINITIONS

The university prohibits any consensual amorous relationships involving a faculty member/instructor and student, or between supervisor and employee, where the faculty member/instructor or supervisor has direct authority, influence, or responsibility with regard to that student or employee. Such authority, influence or responsibility includes, but is not limited in the employment setting, to carrying out assignments, evaluations, and promotion or disciplinary decisions. In the instructional setting, such authority includes being responsible for a student’s evaluation and grading, awarding of financial aid or assistantship/employment offers, serving as a member of a student’s thesis or dissertation committee, and the like. These situations tend to interfere or be perceived as interfering with the objectivity of the faculty member’s/instructor’s or supervisor’s decisions with respect to the student or employee. The authoritative position of one party may create an environment that diminishes the freedom of the other to alter or terminate the relationship. Third parties may also be injured by a sexual relationship between two other parties if they are denied privileges that accrue to those who participate in the relationship.

B. REMEDY

1. Supervisors or faculty members/instructors who engage in such consensual relations are subject to disciplinary action. The scope and extent of such action will be based on the totality of circumstances; these include, but are not limited to, failure to disclose such relationships, failure to remedy such relationships, and repeated violation of this policy.
2. Consensual amorous relationships that violate this policy must be remedied by measures that remove the relationship of authority of the supervisor or faculty member/instructor over the employee or student for all purposes without in any way adversely affecting the status of the subordinate employee or student.

V. SEXUAL ASSAULT

A. DEFINITIONS

1. Northern Arizona University facilitates the enforcement of state and federal laws prohibiting sexual assault. Sexual assault takes many forms, including:
 - a) intentionally or knowingly engaging in sexual intercourse or oral sexual contact with another person without that person’s consent,
 - b) non-consensual penetration of any part of another person’s body by any part of the perpetrator’s body or with other objects, and,
 - c) in some cases, non-consensual touching.
2. The lack of a person’s consent can take many forms, including occasions when that person is coerced by immediate or threatened use of force against his/her person or property, or when that person is incapable of consent because of mental disorder, drugs, alcohol, sleep, age, or other similar impairment.

3. In addition to criminal penalties, members of the university community who engage in sexual assault against a university employee, student, or other individual are subject to disciplinary action by the university up to and including termination or expulsion from the university.

B. ASSISTANCE AND RESOURCES

1. Assistance for survivors of sexual assault can be obtained from numerous agencies. (A partial listing can be found in section X of this document.)
2. Individuals are encouraged to report sexual assault to the police. Reporting provides the authorities with information that may prevent future assaults. Police departments in Coconino County allow anonymous reporting of sexual assault. Survivors who report sexual assaults to the police are encouraged but not required to follow through with prosecution.
3. Students may also make an anonymous report of sexual assault to the following resources: Flagstaff Medical Center, Campus Health Services, NAU Police Department, Residence Life, Student Life, and Victim/Witness Services.

VI. RETALIATION

Retaliation or retribution of ANY kind taken against an individual as a result of that person filing a complaint, requesting information, cooperating in an investigation, or otherwise participating in these procedures is strictly prohibited. Individuals who have not filed a formal complaint but who have informally expressed concern about a violation of this policy still may file a complaint about retaliation they believe has occurred as a result of their expressed concern.

Retaliation is a separate and distinct violation under the policy and the law. Any person found to have violated this policy of non-retaliation is subject to disciplinary action up to and including termination or expulsion.

VII. PROCEDURES FOR REPORTING AND ADDRESSING COMPLAINTS UNDER THIS POLICY

A. DEADLINES FOR REPORTING VIOLATIONS

1. A complaint regarding alleged violations of this policy may be made, either formally or informally, at any time. However, prompt reporting of an alleged violation of this policy and the ability to address a complaint in a timely, thorough, and sensitive manner are critical to the resolution of an issue.
2. Each complaint will be evaluated based on the circumstances, the nature of the complaint, the strength of the case and the time since the last alleged violation occurred in order to determine the most appropriate method for addressing the complaint.
3. It is strongly encouraged that complaints be made as soon as possible after the alleged violation of the policy in order to preserve an individual's legal right to file a complaint with an outside agency. (See agencies / timelines for filing under section IX.)
4. Informal methods of resolution at the department or college level are encouraged. However, the obligations of supervisors, administrators and faculty to confer with Equity and Access still apply. (See section VII. C. of this policy.)

B. REPORTING OF VIOLATIONS

1. Violations of this policy may be reported through any of the following avenues:
 - a) ***A student or employee's immediate supervisor, chair or head of a department*** – either the complaining party's department or the department where the alleged prohibited behavior is occurring.
 - b) ***Equity and Access*** – particularly if the concern involves the behavior of an employee.
 - c) ***The Office of Student Life*** – particularly if the concern involves the behavior of a student.

2. Any of these avenues can be an **entry** point into the complaint process though the issue may be referred to the most appropriate office.

C. SUPERVISORY RESPONSIBILITY

1. Individuals in positions of authority, e.g., faculty, advisors, administrators, supervisors, graduate assistants, and coaches, are legally agents of the university. Therefore, when they receive a complaint under this policy or have reason to believe that a violation of this policy has occurred, they shall confer with Equity and Access promptly to discuss possible solutions.

2. Even if individuals in positions of authority may work with the complainant to resolve the issue in an informal manner, they shall still confer with the Equity and Access to ensure compliance with Federal and State law. Likewise, Equity and Access will confer with the responsible individual in authority on the resolution of a complaint made directly to the Equity and Access.

3. Equity and Access can be a sounding board to discuss the plan of resolution, rights of both parties, appropriate resolution processes, issues of consistency throughout campus, and to share the experience of Equity and Access staff. When necessary, Equity and Access will investigate claims of violation of this policy and, where substantiated, recommend sanctions.

4. An individual who is made aware of, or in the exercise of reasonable care should have known of, a violation of this policy by a person under her or his authority or supervision and fails to take appropriate action is also subject to disciplinary action and may be subject to legal action.

D. INFORMAL COMPLAINTS

1. Students and employees who are experiencing Sexual harassment, discrimination, or other policy violations, but who wish to achieve an informal solution to the problem, may request that their complaints be resolved through the appropriate supervisory levels in a department, or with the assistance of a neutral party (e.g., a trusted faculty/staff member or a peer/colleague).

2. Informal complaints can be initiated in several ways.

a) Employees may communicate an informal complaint to their appropriate supervisor, chair or department head. Employees may also contact Equity and Access to file an informal complaint. If the concern involves the behavior of a student, employees may choose to submit their complaint to the Office of Student Life.

b) Students may communicate an informal complaint to the Office of Student Life, Equity and Access, to a faculty/staff member, or to a chair or head of a department.

3. An informal complaint need not be made in writing. However, it is recommended that the person to whom the complaint is reported shall document the complaint by taking notes and clarifying them as necessary with the complaining party.

4. Recipients of an informal complaint must confer with Equity and Access within seven (7) calendar days even if resolution may be achieved at the departmental or unit level. Disciplinary actions should not be taken without consulting the appropriate supervisor(s) and Equity and Access.

5. If a mutually acceptable solution cannot be reached at this level, either through the appropriate supervisory levels, or with the assistance of a mediator or a neutral party, complainants may still file a formal complaint through Equity and Access.

E. FORMAL COMPLAINTS

1. A formal complaint shall be submitted to Equity and Access in writing, be dated and signed by the complainant, contain a description of the alleged policy violation, the identity of the person alleged to have violated the policy, and to the best of the complainant's recollection, the date(s), time(s), and location(s) of the act(s). Forms to assist in the reporting process can be obtained from Equity and Access.

2. Equity and Access may explore informal resolution, referral to a more appropriate office, or initiate a formal investigation, depending on the circumstances of the complaint. Formal investigation will include notification to the respondent within seven (7) calendar days of the receipt of the complaint and may include requests for information and participation from all parties deemed relevant to the complaint. (When a formal investigation is referred to the Office of Student Life by Equity and Access, the investigation will be conducted according to the student disciplinary procedures under the Code of Conduct and all relevant guidelines and deadlines will apply.)
3. Further details of the procedures used in a formal investigation will be provided in writing to all parties at the time an investigation is initiated. The written information regarding these procedures is also available to students, staff, and faculty at any time and may be obtained from Equity and Access.
4. After investigating the complaint, Equity and Access will make a determination as to whether the evidence supports a finding that the Safe Working and Learning Environment Policy or civil rights laws have been violated. Equity and Access will communicate a summary of the complaint, the findings, and recommendations for appropriate corrective and/or disciplinary action to the appropriate administrator/supervisor(s).
5. If cause to believe a violation has occurred is found, the recommended sanctions may consist of a range of disciplinary actions up to and including termination or expulsion.
6. While many formal investigations are completed in a matter of days, the length of time needed to investigate a formal complaint is always dependent on the complexity of the case. In the most complex cases, individuals filing a formal complaint will be notified Equity and Access of the investigation results within sixty (60) calendar days of the filing. In the event the investigation is not completed within sixty (60) calendar days, the complaining and responding parties and the university president will be notified in writing of the complaint status and advised of a targeted completion date. The written explanation will be sent on or before the sixtieth (60th) calendar day after the complaint has been filed.

F. EARLY INTERVENTION

If, due to the severity or nature of the complaint, it is determined that intervention should occur prior to the completion of an investigation or resolution of the issue, other university policies and procedures may be applied in order to remove either the complainant or the respondent from interaction that could escalate the situation.

G. RESPONDING TO AN ALLEGATION

Individuals who have had a complaint filed against them or a concern raised regarding behavior prohibited by this policy will be given the opportunity to respond to the complaint or concern in an appropriate manner as determined by the supervisor, department head or Equity and Access.

H. CORRECTIVE ACTION

When investigating complaints and recommending corrective action, Equity and Access will look at the record as a whole and at the totality of the circumstances, such as the severity, pervasiveness, or persistence of the behavior, the context in which the alleged incidents occurred, and prior conduct. The determination of the legality of a particular action will be made from the facts, on a case-by-case basis.

I. FALSE INFORMATION

Providing false information, or hindering a university investigation are prohibited and can result in disciplinary action up to and including termination or expulsion.

VIII. APPEALS

When an investigation has been completed and cause has been found that this policy has been violated, disciplinary sanctions may be imposed. Disciplinary sanctions may invoke a hearing or appeal right found in another university policy or process (e.g. academic professional grievance process, classified staff grievance procedure, faculty grievance process, service professional hearing guidelines, the student disciplinary procedures, etc.). In such cases, the disciplinary action may be appealed only through those hearing procedures and will be subject to the guidelines and deadlines of those individual processes.

IX. FILING WITH OUTSIDE AGENCIES

This information is provided as a service to members of the university community. Many of the behaviors prohibited in university policies covering discrimination, harassment, and assault are covered by state and federal law. When filing an internal complaint, the complainant reserves the option to file a complaint with an external agency at any time within that agency's deadline regardless of the status of the internal complaint process. The deadlines for filing with external agencies are subject to change according to their appropriate policies and procedures:

Arizona Civil Rights Division (ACRD)/Arizona Attorney General's Office – 180 calendar days. ACRD enforces all State discrimination laws. For university employees, ACRD will accept charges and file simultaneously with the EEOC in Phoenix.

Equal Employment Opportunity Commission (EEOC) – 300 calendar days. EEOC enforces Title VII of the Civil Rights Act (Employment Discrimination); the Age Discrimination in Employment Act; the Equal Pay Act; the Civil Rights Act of 1991; and Title I of the Americans with Disabilities Act (employment).

Office for Civil Rights/Department of Education (OCR) – 180 calendar days. OCR enforces Title IX of the Education Amendments of 1972 (gender discrimination); Title VII of the Civil Rights Act of 1964 (racial discrimination); Section 504 of the Rehabilitation Act of 1973; the Civil Rights Act of 1991; and Title II of the Americans with Disabilities Act (educational program accessibility).

Office of Federal Contract Compliance Programs/Department of Labor (OFCCP) -- 180 calendar days. OFCCP enforces Executive Order 11246/11375 for groups of employees or job applicants of federal contractors/grantees. OFCCP may refer individual complaints under Title VII to EEOC. OFCCP also enforces the Rehabilitation Act of 1973 (Section 503).

X. RESOURCES

A. NORTHERN ARIZONA UNIVERSITY SERVICES

Campus Health Services Counseling*

928-523-2261

Campus Health Services Medical*

928-523-2131

Center for International Education

(Visa and Immigration Assistance)

928-523-2409

Disability Resources

928-523-8773

Equity and Access Office

928-523-3312

Employee Assistance & Wellness *

928-523-1552

Housing and Residence Life

928-523-3978

Human Resources Department

928-523-2223

Inclusion and Multicultural Services

928-523-5656

NAU Police Department
Emergency 928-523-3000
Non-Emergency 928-523-3611

Student Legal Counsel
928-523-4971

Student Life
928-523-5181

Victim Witness Services on campus*
928-523-2225

B. FLAGSTAFF AND COCONINO COUNTY SERVICES

Coconino County Sheriff's Office
Emergency 911
Non-Emergency 928-774-4523

Flagstaff Medical Center
928-779-3366

Flagstaff Police Department
Emergency 911
Non-Emergency 928-774-1414

Northern Arizona Center Against Sexual Assault Services (NACASA)
928-527-1900
www.northcountryhealthcare.org

Victim Witness Services
928-679-7770
www.vwscoconino.org

Northern Arizona University is an Equal Employment Opportunity/Affirmative Action Institution.

Northern Arizona University – updated 2/16

* Due to the confidential nature of the services provided by Employee Assistance and Wellness, Victim Witness Services' campus office, and Campus Health Medical and Counseling Services reports made to these offices do not constitute legal notice to the institution of an alleged violation.