

Academic Affairs Manual (ACD)

Effective: 7/1/1978

Revised: 1/30/2017

ACD 401: Prohibition Against Discrimination, Harassment, and Retaliation

Purpose

To express the university's policy on discrimination, harassment, and retaliation

Sources

Arizona Board of Regents Policy Manual - 1–119

Title VII of the Civil Rights Act of 1964 (Pub.L. 88-352) as amended, 42 U.S.C. §2000e

Title IX, U.S. Education Amendments Act of 1972 (Pub.L. 92-318), 20 U.S.C. §§1681-1688

Department of Education Dear Colleague Letter dated April 4, 2011; Department of Education Questions and Answers on Title IX and Sexual Violence

The Clery Act, 20 U.S.C. §1092(f) as amended

Arizona Revised Statutes

Applicability

All ASU employees, students, volunteers, contractors and agents; all ASU educational programs, activities, opportunities and benefits; all persons participating in or accessing ASU-sponsored programs and activities.

Policy

Arizona State University is committed to providing an environment free of discrimination, harassment, or retaliation for the entire university community, including all students, faculty members, staff employees, and guests. ASU expressly prohibits [discrimination](#), [harassment](#), and [retaliation](#) by employees, students, contractors, or agents of the university based on any protected status: race, color, religion, sex, national origin, age, disability, veteran status, sexual orientation, gender identity, and genetic information.

Inappropriate conduct need not rise to the level of a violation of federal or state law to constitute a violation of this policy and to warrant disciplinary action/sanctions.

All individuals identified in the [Applicability](#) section of this policy are responsible for participating in and assisting with creating and maintaining an environment at ASU free from all forms of prohibited discrimination, including harassment and retaliation. All individuals identified in the Applicability section of this policy are required to cooperate with any investigation of allegations of violations of this policy.

Providing false or misleading information or failure to cooperate may result in disciplinary action.

Required Reporting

Unless a person is restricted by law from doing so, any employee who is informed of or has a reasonable basis to believe that [sexual harassment](#) has occurred, shall immediately [report](#) all information regarding the occurrence(s) to the Office of Equity and Inclusion/Title IX Coordinator. This mandatory reporting includes students who are also employed/appointed at the University with respect to information they learn as a result of their employment/appointment. Students who are not employed at the University are not required to report such information.

Failure to report and/or inaction may be cause for disciplinary action.

If an individual wishes to have a confidential conversation about an allegation of sexual harassment, that individual can do so by seeking an appointment with a licensed counselor or health care professional. The university provides such services at the [Health Services](#), [Employee Assistance Office](#), or [ASU Counseling Services](#) located on each campus. Also, consistent with state law, the ASU Police Department Victim's Advocate is a person with whom an individual can hold a confidential conversation about an allegation of sexual violence, including sexual assault.

Additionally, any individual has the right to contact local law enforcement to file a criminal report.

A supervisor, manager, or administrator who is informed of or has a reasonable basis to believe that violations of this policy, other than sexual harassment, have occurred shall promptly report it to the Office of Equity and Inclusion. Failure to report or supervisory inaction may be cause for disciplinary action.

Anyone who believes that he or she has been subjected to discrimination, harassment, or retaliation in violation of this policy, or who believes that this policy has been violated, should report the matter immediately to the Office of Equity and Inclusion.

Anonymity

If an individual wishes to remain anonymous, that individual can make a report to the [ASU Hotline](#) at 877/786-3385.

If an individual requests anonymity after a report is filed, the Office of Equity and Inclusion/Title IX Coordinator will take into account the request, the due process rights of all parties involved, the severity of the alleged harassment, and the potential risk of a hostile environment for others in the community in order to determine whether the request can be honored. The requesting party will be advised of the determination.

Other Policy Violations

Because the university has a paramount interest in protecting the well being of its community and remedying discrimination, harassment, and retaliation, any other policy violation (e.g. alcohol or drug use on campus, or underage use) will be considered, if necessary, separately from the allegations of misconduct under this policy.

Procedures

The exclusive procedure and protocols for the investigation of any claims of violations of ACD 401 by students are handled, consistent with this policy, in accordance with the Arizona Board of Regents (ABOR) *Student Code of Conduct (SSM 104-01)* and related procedures, located on the [Sexual Violence Awareness and Response, Policies and Procedures Web page](#). These procedures provide for prompt and equitable methods of investigation and resolution to stop discrimination, remedy any harm, and prevent its recurrence.

The exclusive procedures and protocols for the investigation of all claims of violations of ACD 401 by employees are set forth in [P20](#). These procedures provide for prompt and equitable methods of investigation and resolution to stop discrimination, remedy any harm, and prevent its recurrence. Unless specifically and explicitly excepted by ABOR policy, these procedures and protocols shall be the exclusive process for reviewing claims of violations of ACD 401. If a deviation from these procedures is determined to be necessary for a particular case, that deviation shall not invalidate the findings of any investigation.

Sanctions

The university will take interim measures, designed to support and protect individuals and the university community, at any time. Such interim measures might include: restrictions on contact, class or work schedule alterations, leaves of absence, increased safety measures, student housing changes, or course/class academic adjustments. If it is ultimately determined that this policy has been violated, then these measures may also become part of any permanent sanction/discipline against the violator.

If, by the preponderance of the evidence, a violation of this policy is found to have occurred by an employee or student, then disciplinary action(s) can be taken; such disciplinary action(s) may include termination for employees or suspension or expulsion for students. Violations of this policy by persons who are not employees or students of the university may be subject to appropriate sanctions as provided for under law or policy.

The filing of a complaint or charge by an individual with any outside agency, such as the Equal Employment Opportunity Commission or the Office of Civil Rights, will not affect any ASU investigation concerning the same or similar events.

Definitions

Discrimination

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

Harassment

Harassment is a specific form of discrimination. It is unwelcome behavior, based on a protected status, which is sufficiently severe or pervasive as to create an intimidating, hostile, or offensive environment for academic pursuits, employment, or participation in university-sponsored programs or activities.

Sexual Harassment

Sexual harassment is harassment, whether between individuals of the same or different sex, which includes unwelcome behavior or conduct of a sexual nature (including **unwelcome sexual activity**) that is made, either explicitly or implicitly, a condition of an individual's education, employment, or participation in university-sponsored programs or activities or the submission to or rejection of such behavior or conduct is a factor in decisions affecting that individual's education, employment, or participation in university-sponsored programs or activities. Sexual harassment is also unwelcome behavior or conduct of a sexual nature (including unwelcome sexual advances or activity), which is sufficiently severe or pervasive as to create an intimidating, hostile, or offensive environment for academic pursuits, employment, or participation in university-sponsored programs or activities.

Sexual Violence

Sexual violence includes attempted or actual physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the use of drugs or alcohol, due to an intellectual or other disability, or due to age is also a form of sexual harassment. This can include rape, sexual assault, sexual battery, sexual coercion, domestic and dating violence, and stalking.

Retaliation

Retaliation occurs when an adverse action (e.g., termination, denial of promotion, refusal to hire, unjustified discipline or evaluation, etc.) is taken against an individual for complying with this policy, opposing conduct reasonably believed to constitute a violation of this policy, filing a report under this policy, seeking an accommodation under this policy, or participating in any manner in an investigation or proceedings related to this policy.

Adverse actions that are reasonably likely to deter a complaining individual or others from engaging in protected activity are prohibited.

Report

Allegation(s) of a violation of this policy that is/are made to any manager, supervisor, administrator, or the Office of Equity and Inclusion or the Dean of Students, Office of Student Rights and Responsibilities.

Unwelcome Sexual Activity

Engaging in sexual activity with a person, whom you reasonably should know or do know, has not consented or is incapable of giving consent.

- consent in the context of sexual activity means informed and freely given words or actions that indicate a willingness to participate in mutually agreed upon sexual activity
- consent may not be inferred from:
 1. silence, passivity or lack of resistance
 2. a current or previous dating or sexual relationship,
 3. acceptance or provision of gifts, meals, drinks, or other items

or

- 4. previous consent to sexual activity
- consent may be withdrawn during sexual activity, consent to one form of consensual sexual activity does not imply consent to any other form of sexual activity
- consent must not be obtained through physical force, violence, duress, intimidation, coercion, or an express or implied threat of injury
- consent may never be given by a person who is: incapacitated (by drugs, alcohol or otherwise), unconscious, asleep, or otherwise physically or mentally unable to make informed, rational judgments. The use of alcohol or drugs does not diminish one's responsibility to obtain consent and does not excuse conduct that violates this policy

and

- consent cannot be given by someone who, by virtue of age, circumstances or other factors, is deemed by law to be incapable of giving consent.

Additional Information

For information on how to file a complaint with the office of Civil Rights, go to: <http://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

Cross-References

For additional information, see:

1. [ACD 402](#), "Romantic or Sexual Relationships Between Faculty Members and Students"
2. [ACD 405](#), "Individuals with Disabilities"

and

3. [SPP 815](#), "Romantic or Sexual Relationships Between Staff/Volunteers and Students"

For appropriate grievance procedures for students, see:

Student Services Manual—[SSM 104-01](#), "Student Code of Conduct and Student Disciplinary Procedures"

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