



Policy against Discrimination and Harassment

Effective:	August 14, 2020 (original) November 9, 2021 (revised)
Responsible Executive:	Director, AA/EEO
Applicability:	All individuals, including Auburn University faculty, staff, and students
Review By:	August 2023

Auburn University is committed to providing a work and educational environment free of Discrimination and Harassment. Auburn University is equally committed to the principle of equal opportunity in education and employment. The University does not discriminate or tolerate Discrimination or Harassment against individuals on the basis of sex, (sexual orientation, gender identity, and gender expression), race, color, religion, national origin, age, disability, genetic information or protected veteran status (collectively, “Protected Status”) in its employment, admissions, and/or education programs and activities.

I. Scope

A. *Generally*

This Policy applies to Prohibited Conduct in all University education programs and activities and to all participants in such education programs and activities, including administrators, faculty, staff, students, volunteers, contractors, and guests. This Policy covers Prohibited Conduct that occurs on campus, in connection with an official University program or activity (regardless of location), and to off-campus conduct when the conduct could deny or limit a person’s ability to participate in or benefit from the University’s programs and activities or when the University, in its sole discretion, has an identifiable interest in the off-campus conduct.

B. *Interaction with University Title IX Sexual Harassment Policy (Title IX Policy)*

All allegations of sex discrimination by students as defined by the Title IX Policy and this Policy are handled exclusively pursuant to the procedures outlined in the Title IX Policy¹.

All allegations of sex discrimination by employees which rise to the level of Sexual Harassment as defined by the Title IX Policy and which fall within the scope of that Policy are handled pursuant to the procedures outlined in the Title IX Policy.

¹ Available <https://sites.auburn.edu/admin/universitypolicies/Policies/TitleIXSexualHarassmentPolicy.pdf>

All other acts of Discrimination—including acts of sex discrimination which do not meet the definition of Sexual Harassment as defined by the Title IX Policy or which fall outside the scope of the Title IX Policy—are handled pursuant to this Policy.

Nothing in this Policy or the Title IX Policy prohibits the University from charging a Respondent with committing misconduct under both policies that stems from the same incident. In those cases, the Director will determine whether the allegations are handled under only the Title IX Policy or are separated into distinct complaints each falling under their respective policy.

II. Definitions of Prohibited Conduct

The following are categories of conduct that are prohibited by this Policy (“Prohibited Conduct”) and may result in disciplinary action when committed by University employees or students.

- A. **“Discrimination”** is conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that adversely affects their education or employment because of their Protected Status.
- B. **“Harassment”** as used in this Policy is verbal and/or physical conduct (i) that is severe or pervasive, (ii) that is based on an individual’s Protected Status, and (iii) that unreasonably interferes with the individual’s work or academic activities, or that creates an environment that a reasonable person would consider intimidating, hostile, or offensive.
- C. **“Sexual Assault”** is engaging in sexual contact with another person without their consent. Consent cannot be obtained by Force or Incapacitation². The University applies the following two types of sexual assault:
 - a. ***Non-Consensual Sexual Penetration*** which is sexual penetration (vaginal or anal), however slight, that occurs with any object or body part, performed by a person upon another person without consent. It also includes, any contact, no matter how slight, between the mouth of one person and the genitalia of another person without consent.
 - b. ***Non-consensual Sexual Contact*** which is any intentional touching, however slight, of the breasts, buttocks, groin, or genitals, whether clothed or unclothed, in a sexual manner with any object or body part, performed by a person upon another person without consent.
- D. **“Sexual Exploitation”** occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own benefit, or to benefit anyone other than the affected individual, and that behavior does not otherwise constitute other Prohibited Conduct.

² This Policy adopts by reference the definitions of Consent, Force, and Incapacitation provided in the Title IX Policy.

Examples of Sexual Exploitation include, but are not limited to:

- causing or attempting to cause the Incapacitation³ of another individual for sexual purposes;
- electronically recording, videoing, photographing, or transmitting sexual sounds or images of another individual without their Consent;
- allowing a third-party to observe sexual acts without all parties' Consent;
- engaging in voyeurism (*e.g.*, watching private sexual activity without the Consent of the participants or viewing another person's intimate body parts (including genitalia, breasts, or buttocks) in a place where that person would have a reasonable expectation of privacy); or
- knowingly exposing another individual to a sexually transmitted disease/infection or HIV.

E. "Intimate Partner Violence" includes any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, or other intimate relationship. Intimate Partner Violence may include any form of Prohibited Conduct under this policy, including Sexual Assault, Stalking, and Physical Assault (as defined below).

Physical Assault is threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person. Physical Assault will be addressed under this policy if it involves Non-consensual Sexual Intercourse, Non-consensual Sexual Contact, Sexual or Gender-Based Harassment, Intimate Partner Violence, or is part of a course of conduct under the Stalking definition.

F. "Stalking" occurs when a person engages in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear for the person's safety or the safety of others, or to experience substantial emotional distress. Stalking will be addressed under this policy if it is sexual or gender-based.

Course of conduct means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. Reasonable person means a person under similar circumstances and with similar identities to the Complainant.

Stalking includes "cyber-stalking," a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, phones, texts, or other similar devices or forms of contact.

G. "Complicity" is any act taken with the purpose of aiding, facilitating, promoting or encouraging the commission of an act of Prohibited Conduct by another person.

³ This Policy adopts by reference the definitions of Incapacitation, Consent, and Coercion provided in the Title IX Policy.

H. “Retaliation” is any attempt to seek retribution against an individual or group of individuals involved in filing a complaint or report under this Policy, filing an external complaint, participating in a disciplinary process, or opposing in a reasonable manner an action believed to constitute a violation of this Policy. Retaliation can take many forms, including abuse or violence, threats, and intimidation. Actions in response to a good faith report or response under this Policy are considered retaliatory if they have a materially adverse effect on the working, academic or University-controlled living environment of an individual; or if they hinder or prevent the individual from effectively carrying out their University responsibilities. Any individual or group of individuals can engage in retaliation and will be held accountable under this Policy.

I. “Complainant” means an individual who is alleged to be the victim of Prohibited Conduct.⁴

J. “Respondent” means an individual who has been reported to be the perpetrator of Prohibited Conduct.

III. Reporting Complaints of Prohibited Conduct

Community members who experience or witness Prohibited Conduct should submit a complaint to the following office:

Kelley Taylor, Director
Affirmative Action/Equal Employment Opportunity
Auburn University
317 James E. Foy Hall, Auburn, AL 36849
taylokg@auburn.edu
(334) 844-4794 (office)

While verbal reports of Prohibited Conduct will be received and responded to as appropriate considering the wishes of the reporting individual(s) and the circumstances of each case, the University strongly recommends reports of violations of this Policy be submitted in writing. The written complaint should identify the parties involved; describe the Policy violation, including when and where it occurred; and identify by name or description any witnesses and/or evidence. Written complaints will be treated as confidentially as practicable and shared only on a need-to-know basis.

IV. Supportive Measures

Regardless of the complaint resolution process utilized in response to a complaint of Prohibited Conduct, the University will, to the extent practicable based on the University’s resources, provide the Complainant with support and resources to restore or preserve equal access to the University’s education programs and activities and/or employment. Such measures are designed to protect the safety of all parties implicated by a report or to deter Prohibited Conduct. Supportive measures may include, but are not limited to: counseling, extensions of academic or other deadlines, course-related adjustments,

⁴ A Complainant and Respondent are each individually a “party” and collectively the “parties” with respect to a complaint under this Policy.

modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

V. Complaint-Resolution Process

A. Receipt of a Complaint and Preliminary Assessment

Students and employees who believe they have been discriminated against on the basis of a Protected Status should report incidents to the Office of Affirmative Action/Equal Employment Opportunity (AA/EEO). In addition to the Office of Vice President for Student Affairs, all faculty, staff, and administrators should assist students in directing their harassment and/or discrimination complaints to the Office of AA/EEO.

Upon receipt of a complaint, the Office of AA/EEO will conduct a preliminary inquiry designed to assess:

1. the institutional policy or policies potentially invoked by the alleged conduct,
2. the best path of resolution for the complaint.

In the event the Office of AA/EEO determines there are no reasonable grounds for believing the conduct at issue constitutes a violation of this Policy, the complaint will be closed.

In those instances in which a complainant is unavailable or unknown, e.g. sexual exploitation involving a child, sexual assault of an individual not affiliated with Auburn University, the Director may, in their discretion, move forward with the formal resolution process.

B. Informal Resolution

The Office of AA/EEO will determine whether informal resolution is an appropriate mechanism of resolution based on the information provided about the incident. Options for informal resolution include, but are not limited to, mediation, restorative justice, or other forms of alternative resolution. If informal resolution is determined to be appropriate, the Director of AA/EEO (Director) or their designee will meet separately with both parties to discuss an informal resolution based on the information available. If the proposed resolution satisfies the University's obligation to provide a safe and non-discriminatory environment for the University Community, the resolution will be implemented, and the matter will be closed. The Office of AA/EEO will maintain records of all reports and conduct referred for informal resolution.

C. Formal Resolution Procedures

If the Office of AA/EEO determines that a formal investigation is warranted to resolve a complaint, the University will determine whether an employee or student is responsible for a violation of this Policy and what, if any, corrective action is appropriate, in accordance with the procedures described below.

1. Assignment of Investigator

The Director will appoint an investigator or investigative team with experience investigating allegations of discrimination and harassment. The investigator(s) may be an employee of the University or an external investigator engaged to assist the University in its fact gathering.

2. The Investigation

The investigation will be conducted in a manner appropriate in light of the circumstances of the case. The investigation may include, but is not limited to, conducting interviews of the complainant(s), the respondent(s), and any witnesses (witnesses must have observed the acts in question or have information relevant to the incident); reviewing law enforcement investigation documents, if applicable; reviewing personnel files; and gathering, examining, and preserving other relevant documents and physical, written, and electronic evidence (including text messages and other phone records, social media posts, swipe records, security camera footage, etc.). The parties will be afforded an opportunity to identify and present relevant witnesses and evidence to the investigator, as well as identify witnesses who may have relevant information.

The parties will have an opportunity to review a summary of information gathered by the investigator and provide written comments within (5) days⁵ after the receipt of the information.

3. The Investigator's Report and Conclusions

The investigator will make conclusions as to whether the respondent violated any provision of this Policy. The standard of proof shall be by a preponderance of the evidence. The investigator's findings and conclusions will be contained in a written report.

- a. **Determination of No Policy Violation.** If the investigator determines that the respondent did not violate any provision of this policy, the Director or designee will determine and document the appropriate resolution of the complaint and notify the parties of that determination. Appropriate resolutions may include, but are not limited to, dismissal of the complaint, conferences with one or more of the parties, and the introduction of remedial and community-based efforts such as educational initiatives and/or trainings.
- b. **Determination of a Policy Violation.** If the investigator determines there is sufficient information to find, by a preponderance of the evidence, that the respondent violated this Policy, the matter will be referred for corrective action.

D. *Corrective Action*

If the Respondent is found responsible, corrective action will be addressed as follows:

1. For Policy violations by employees (including staff, faculty, and students acting in their capacity as student employees), the Director or designee will consult with the individual

⁵ Days referenced in this Policy are working days, meaning days when the University is open. This includes days when classes may not be scheduled, e.g. Fall, Winter, Spring, and Summer Breaks.

supervisor and department head, and in cases involving faculty, the Director or designee will consult the Associate Provost for Faculty Affairs, and/or the respective Dean, and/or Chair, to determine the appropriate corrective action up to and including termination of employment.

2. For Policy violations by contractors, vendors, and others doing business with the University, the Director or designee will consult with the contracting department to determine the appropriate resolution, up to and including termination of a contractual relationship.
3. For Policy violations by students, the Director or designee will take corrective action including, but not limited to, the sanctions provided in the [*Code of Student Conduct*](#).

E. *Appeals*

Either party may appeal the investigator's finding(s) on one or both of the following grounds:

- A procedural irregularity occurred that substantially impacted the outcome;
- There is new evidence that was not reasonably available at the time the decision was made that could have substantially impacted the outcome.

No other grounds for appeal are permitted. Appeals are not intended to be a full rehearing. In most cases, appeals are limited to a review of the written documentation and pertinent documentation regarding the grounds for appeal. The decision by the appeal officer or panel will be considered the final determination in the process. No other grounds for appeal are permitted.

A party must file an appeal within seven (7) days of the date they receive notice of dismissal or Investigating Officer's determination. The appeal must be submitted in writing to the Director. The appeal must specifically identify the determination and/or dismissal being appealed, articulate which one or both of the grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

Promptly upon receipt of an appeal, the Director will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the Director determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal, the Director will dismiss the appeal and provide written notice of the same to the parties.

If the Director confirms that the appeal is timely and invokes at least one permitted ground for appeal, the Director will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within seven (7) days. The Director will also appoint an appeal officer or panel to consider and resolve the appeal.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the appeal officer or panel will promptly decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale.

The determination of a complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the appellate body has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, the University strives to issue the appeal officer's written decision within (21) days of an appeal being filed.

F. *Knowingly Filing a False Complaint*

Knowingly filing a false complaint is a violation of this Policy. Such conduct may result in corrective action up to and including separation from the University.

VI. Academic Freedom

This Policy is not intended to inhibit or restrict academic freedom and this Policy shall be interpreted in a manner that is consistent with the University's academic freedom policies.