

## University Policies and Handbooks

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# Fayetteville Policies and Procedures 214.1

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## Discrimination (Including Discriminatory Harassment) – Employment, Education, Programs and Services

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### I. Policy Statement

The University of Arkansas (University) is committed to the principle of equal opportunity in education and employment. The University prohibits discrimination (including discriminatory harassment, and sexual harassment) against any student, applicant for admission, employee, applicant for employment, affiliate, subcontractor, on-site contractual staff, agency employee, third party or community member, visitors to campus and others

### RELATED FAYETTEVILLE POLICIES

[Policy  
418.1  
Sexual  
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### RELATED POLICY DOCUMENT

[214.1  
Appendix  
Complaints  
of Sexual  
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or Sexual  
Assault](#)

### RELATED LINKS

participating in campus programs or receiving campus services. The University prohibits discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

[Federal Regulation 41 CFR § 60-2.10 OEOC Website](#)

Discriminatory actions are prohibited based on an individual's actual or perceived association with the following categories, herein called "protected class": race/color; national or ethnic origin; age; religion; disability; sex; sexual orientation; gender; gender identity and expression; marital or parental status; military or veteran status; genetic information; and any other characteristic protected under applicable University policy, state or federal law/executive order.

As addressed in separate policies, the University will provide reasonable accommodations for applicants, employees, students, and others participating in University programs and services who require a reasonable accommodation for a disability. Further, the University provides religious accommodations required for applicants, students and employees as required by law.

The University also prohibits retaliation based on a protected activity, such as the filing of a complaint of alleged discrimination (including discriminatory harassment, or sexual harassment) or participation in the investigation of such a claim. Any witness, complainant or respondent involved in an investigation shall not be retaliated against for their

participation in the fact-finding process.

The University reserves the right to address, as an administrative matter, conduct that does not constitute a violation of this policy, but nevertheless is inappropriate in a professional work or educational environment.

University is committed to building and maintaining a diverse community to reflect human differences and to improve opportunities for all. The University is committed to equal opportunity, affirmative action, and eliminating discrimination. This commitment is both a moral imperative consistent with a campus community that celebrates individual differences and diversity, as well as a matter of law.

The University expects any student, applicant for admission, employee, applicant for employment, affiliate, subcontractor, on-site contractual staff, agency employee, third party or community member, visitors to campus and others participating in campus programs or receiving campus services to join with and uphold this commitment by conducting themselves in an appropriate manner. It is the responsibility of all departments and all personnel, supervisory and non-supervisory to promptly report all potential violations of this policy to the Office of Equal Opportunity and Compliance (OEOC).

The University's OEOC is also responsible for planning and implementing the University's affirmative action program and monitoring affirmative action-related

decisions and activities in accordance with state and federal law. The University maintains an internal system of compliance processes and reporting to help identify and address inequities in employment and any policies and practices that may hinder the fair and equal treatment of minorities, women, individuals with disabilities, and all protected veterans.

## II. **Scope of Application**

This policy applies to any student, applicant for admission, employee, applicant for employment, affiliate, subcontractor, on-site contractual staff, agency employee, third party or community member, visitors to campus and others participating in campus programs or receiving campus services.

Except as described below or in specific University policies, the policies and procedures related to discrimination (including discriminatory harassment) for student, employee, affiliate, subcontractor, on-site contractual staff, agency employee, applicant for employment, third party or community member, visitors to campus and others participating in campus programs or receiving campus services, are coordinated by the Office of Equal Opportunity and Compliance (OEOC). Contact information is as follows:

Office of Equal Opportunity and  
Compliance (OEOC)  
Attn: Compliance Officer  
4 West Avenue Annex (346 N. West  
Avenue)  
University of Arkansas  
Fayetteville, AR 72701  
479.575.4019 (office)  
479.575.3646 (tdd)

For information regarding policies and procedures pertaining to alleged sexual harassment (including sexual assault), please see the Appendix to this policy. For information regarding policies and procedures pertaining to suspected hate crimes, please see Section XII of this policy.

### III. **Definitions**

A. ***Affirmative Action***: Affirmative action is required under Executive Order 11246. It is designed to promote equal employment opportunity for protected class members in all policies and decisions affecting recruitment, selection, assignment, promotion, training, transfer, demotion, layoff, recall, termination, rates of pay or other forms of compensation, and all other terms and conditions of employment.

B. ***Affirmative Action Plan (AAP)***: is a management tool which consists of written set of specific, results-oriented procedures to be followed in order to ensure equal employment opportunities. According to federal regulation 41 CFR § 60-2.10, “an affirmative action program is a management tool designed to ensure equal employment opportunity. A central premise underlying affirmative action is that, absent discrimination, over time a contractor's workforce, generally, will reflect the gender, racial and ethnic profile of the labor pools from which the contractor recruits and selects.” Affirmative actions include training programs, outreach efforts, and other positive

steps. These procedures should be incorporated into the company's written personnel policies.

Employers with written affirmative action programs must implement them, keep them on file and update them annually.

C. ***Applicant:*** Any individual pursuing employment with the University by submitting appropriate application materials for a specific, vacant position.

D. ***Discrimination:*** Discrimination is adverse action based upon an individual's actual or perceived association with a protected class. Disparate treatment occurs when an individual suffers less favorable treatment than others because of the protected class. Disparate impact occurs when a policy, although neutral on its face, adversely impacts persons in a protected class.

E. ***Discriminatory Harassment:*** (1) Unwelcome, protected class-based verbal, written or physical conduct that (2) is sufficiently severe or pervasive that (3) it unreasonably interferes with, denies, or limits an individual's ability to participate in or benefit from the University's education or employment programs or activities; and (4) the creation of an intimidating, hostile, or offensive environment.

F. ***Equal Opportunity:*** Offers individuals a fair chance for participation in the workplace or educational settings. Equal opportunities for employment and admissions also benefit the organization by resulting in increased diversity.

G. **Protected Classes:** Race/color; national or ethnic origin; age; religion; disability; sex; sexual orientation; gender; gender identity and expression; marital or parental status; military or veteran status; genetic information; and any other characteristic protected under applicable University policy, state or federal law/executive order.

H. **Retaliation:** Any decision to adversely impact the employment or education environment, which is directed against individuals who come forward with discriminatory or discriminatory harassment related concerns or complaints, as well as individuals who participate in an investigation.

I. **Sexual Assault:** The term “sexual assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. A nonforcible sex offense includes incest (i.e., the nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law) and statutory rape (i.e., nonforcible sexual intercourse with a person who is under the statutory age of consent). A forcible sex offense is any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

J. **Sexual Harassment:** Sexual Harassment is unwelcome, gender-based spoken, written or symbolic action or physical conduct that is sufficiently severe or pervasive that

it has the effect of unreasonably interfering with, limiting, or denying someone the ability to participate in or benefit from the University's educational programs or services or an individual's employment. The unwelcome behavior may be based on power differentials, the creation of a hostile environment or retaliation.

1. For the purpose of this Policy, sexual harassment includes following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death. Sexual harassment includes, but is not limited to sexual assault, relationship violence and stalking. Sexual harassment also includes quid pro quo sexual harassment which exists when there are unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature and submission to or rejection of such conduct results in adverse educational or employment action.

2. Sexual harassment is distinguished from voluntary sexual relationships in that it introduces such elements as coercion, threat, unwanted sexual attention, and/or promises of academic or professional rewards in exchange for sexual favors.



Sexual harassment is unwelcome behavior. Behavior that the courts have found to constitute sexual harassment is usually repeated or continues even after the individual makes it clear that it is unwanted.

a. Forms of Sexual Harassment:

- i. Sexual harassment is often divided into two categories: (1) quid pro quo harassment and (2) harassment resulting from a hostile or abusive environment.
- ii. Quid pro quo harassment involves an explicit or implied exchange; that is, the granting or denial of a benefit or privilege in exchange for sexual considerations. The harasser uses submission to or rejection of the offensive conduct as the basis for decisions such as employment, promotion, transfer, selection for training, performance evaluation, or the basis for academic evaluation or recommendations.
- iii. Hostile or abusive environment exists when the workplace or educational environment is permeated by discriminatory intimidation, insults, and ridicule, such as sexual innuendos, uninvited sexual advances, sexually suggestive or discriminatory remarks,

sexually suggestive or offensive signs, graffiti, or pictures, the use of sexually crude and vulgar language, etc. The offensive conduct must be sufficiently severe or pervasive that a reasonable person would find the conditions of the working or learning environment to have been adversely affected. The individual must also subjectively perceive the environment to be hostile or abusive. An environment is hostile or abusive can be determined only by looking at all the circumstances, which may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance or a student's learning.

b. Academic Freedom:

i. Works of art and literature, readings, and other written, auditory, or visual course materials which are used in an educational context, including classrooms, academic offices, and all

other learning environments, or which are part of academic or cultural programs, do not constitute sexual harassment, regardless of their sexual, erotic, suggestive, or vulgar content and regardless of whether they may be offensive to some individuals.

K. ***Working Day***: A regularly scheduled workday, excluding those days which are designated as holidays by the official University calendar or by action of the Chancellor or Provost, unless otherwise specified herein.

#### IV. **Timeframe for Reporting**

Alleged discrimination (including discriminatory harassment) must be reported by the individual subjected to the discriminatory action within 90 working days of its occurrence or, in the event of termination of employment, an individual has 10 working days to report. However, under compelling circumstances, a delayed report of discrimination or discriminatory harassment may be investigated by the University.

#### V. **Confidentiality**

OEOC investigators request confidentiality from all parties and witnesses involved in an investigation. During the course of an investigation, it will be necessary for OEOC to provide details to people with a legitimate need to know. This may include: (i) information provided to respondents to allow them to fully respond to the allegations; (ii) information provided to witnesses or other people with whom

investigators communicate in order to obtain or verify information; (iii) where appropriate, information is shared with management during the course of an investigation to allow any necessary actions to be taken prior to the conclusion of the investigation. In addition, the identity of investigation participants and the details of the investigation may become known for reasons outside the control of the investigator.

#### VI. **Records**

Investigation records will be maintained by OEOC, including for statistical purposes and to document that the University has responded to complaints. Investigation determinations and records of administrative actions taken in response will be kept in employee personnel files if a complaint is substantiated. Further, such a record may be retained in personnel records where a finding of a violation of this policy was not sustained but where administrative action was determined to be appropriate.

Records maintained by OEOC may include, but are not limited to, information to document receipt of the complaint and that the University has responded to all complaints; notification of the person against whom a complaint is made as well as their response; steps taken to investigate the complaint; and whether the complaint was a violation of policy. The records will document actions taken to stop discrimination (including discriminatory harassment) and any actions taken, corrective or disciplinary.

The University will comply with

reporting obligations established by federal funding agencies, including, but not limited to, any required disclosure of investigative findings or disciplinary activity concerning researchers on federally funded projects. As appropriate, OEOC and the Title IX office will work with the Office of Research Support & Sponsored Programs to fulfill any reporting requirements regarding any matter addressed by OEOC or Title IX.

#### VII. **False Reports**

Willfully making a false report of discrimination (including discriminatory harassment) is a violation of University policy and is a serious offense. Any person who willfully makes or participates in making a false or frivolous<sup>[1]</sup> report under this policy may be subject to disciplinary action up to and including termination.

#### VIII. **Managers, Supervisors and Administrators Responsibilities**

Managers, supervisors and administrators are responsible for fostering and maintaining a work environment free of discrimination (including discriminatory harassment). A manager, supervisor or administrator who tolerates offensive conduct or comments based on the protected factors in the workplace, even in the absence of the individual who would be offended by the conduct, may serve to further encourage subordinates to engage in more of the same, and possibly worse, conduct and may be responsible for fostering a hostile and/or offensive work environment.

Managers, supervisors and administrators who witness or are informed of an employee engaging in

discrimination (including discriminatory harassment) should make reasonable efforts to stop the behavior and are obligated to report the incident to the Office of Equal Opportunity and Compliance as soon as possible.

#### **IX. Complaint Resolution**

*This section describes the general process used in reviewing and resolving complaints. Note that specific steps, such as the timing of interviews, may vary somewhat based on the facts and circumstances of the matter.*

**A. Reporting Process.** Allegations can be made by individuals who are directly involved in, who observe, or who receive reliable information that discrimination (including discriminatory harassment) may have occurred. An individual seeking to report discrimination (including discriminatory harassment) should submit the Complaint Form to the Compliance Officer or designee via the OEOC website:  
<http://oeoc.uark.edu/>.

If an individual notifies a manager, supervisor, or administrator that they are being subjected to or witnessed discrimination (including discriminatory harassment), the manager, supervisor, or administrator should inform the individual that the University has established procedures for addressing such issues and refer the individual to the Office of Equal Opportunity and Compliance.

**B. Understanding the complaint.** The first step OEOC takes in an investigation is to gather information about the complaint. This usually involves interviewing

the complainant and gathering any additional evidence the complainant may have, including any documentation and the names of any witnesses. In order to facilitate the investigation, complainants are strongly encouraged to share all information they have regarding the matter. The investigator will use this information to determine if the allegations are best addressed by OEOC under the applicable policies.

**C. Support person.** Complainants and Respondents may have a support person present with them during the informal and formal resolution process to provide emotional support. The support person is not permitted to answer questions or inject themselves into the interview process. A support person cannot be a party to the complaint or participate as a potential witness. Support persons must be identified to the OEOC at least two business days before the date of the meeting with the OEOC officer.

**D. Legal Counsel.** It is the complainant's and respondent's decision whether to seek the advice of an attorney, at their own expense, if they feel they need legal advice. Although anyone may seek legal advice, OEOC communicates and interacts with the parties and any witnesses, not with their attorneys.

**E. Interim Measures.** As appropriate, OEOC will put in place measures for the purpose of protecting the safety and well-being of the complainant, the respondent, and/or the community; deterring retaliation; and preserving the integrity of the investigation and resolution process.

**F. Participating in the process.**

Complainants are not required to participate in the investigation process; however not participating may limit the University's ability to respond fully to the incident, including pursuing appropriate disciplinary action. Additionally, if University officials know about possible conduct that would constitute a complaint, the University will investigate, to the fullest extent possible, to determine what occurred and take appropriate actions to resolve the matter.

**G. Interviewing the respondent.** After

OEOC understands the nature and scope of the complaint, the respondent is asked about the allegations and given a full and fair opportunity to respond. The respondent is also asked to provide any documentation and to identify any witnesses relevant to the complaint. The complainant is not present during the respondent's interview and vice versa.

**H. Preliminary Review.** After OEOC

understands the nature and scope of the complaint by reviewing the information provided by the complainant and respondent, OEOC will make a determination whether the matter is within the purview of OEOC, whether to make a determination based on its preliminary review, or whether to conduct a full investigation and gather other evidence.<sup>[2]</sup>

**I. Findings.** When an investigation is

necessary, after reviewing all of the relevant evidence, OEOC will determine if there is a violation of University policy using the



preponderance-of-the-evidence standard. OEOC will inform the appropriate University officials and parties of the outcome.

**J. Corrective Action.** While OEOC does not impose disciplinary action, the respondent should be aware that the University takes allegations of discrimination (including discriminatory harassment) and retaliation very seriously. After OEOC conducts a fair, equitable, and timely investigation, OEOC may recommend corrective action to the appropriate University officials, if warranted. Such action can include, but is not limited to, specialized training, and other actions up to and including termination of employment or review under the Code of Student Life.

**X. Training**

All new employees should receive training on preventing, reporting and addressing discrimination (including discriminatory harassment) within the first three months of beginning employment. Each employee must receive refresher training at least every three years. Employees should receive the University of Arkansas Acknowledgement of Policies.

**XI. Limitations**

Nothing in this policy shall be construed as creating rights or obligations in excess of any requirements of applicable law and regulations.

Any questions regarding interpretation of this policy and procedures can be referred to OEOC at <http://www.oec.uark.edu/> or [479.575.4019](tel:479.575.4019).

## XII. **Reporting Suspected Hate Crimes**

If an individual believes that they have been a victim of a hate crime<sup>[3]</sup>, they should immediately report the crime to either campus, city, or state police. The Office of Equal Opportunity and Compliance may also investigate the action under this policy as an act of discrimination (including discriminatory harassment) based on a protected class.

If a crime occurs on the University of Arkansas campus, or property owned or leased by the University of Arkansas, UAPD should be notified. UAPD can be contacted by telephone, emergency/information telephones, in person, by email and by text. Using a campus telephone, UAPD may be reached by dialing 911 if it is an emergency or 575-2222 for emergencies or non-emergencies. If using a cell phone to contact UAPD for non-emergencies, dial 479-575-2222.

In addition, outside on University grounds, one may use the emergency/information telephones located across the campus and in selected parking lots. The telephones are also located in all elevators on campus and throughout the parking garages. The telephones are a direct connection to the UAPD Communications Center. Communications Center personnel can supply information or dispatch officers as necessary. UAPD officers patrolling campus in vehicles, on foot and on bicycles are eager to be of assistance and may be contacted directly.

The email address for UAPD is [crimepre@uark.edu](mailto:crimepre@uark.edu). The number to

contact UAPD by text is [479-575-2222](tel:479-575-2222).  
Photographs can be sent via text to this number.

[1] For purposes of this policy, “frivolous” means plainly lacking any merit. This would include claims that are not made in good faith.

[2] As appropriate, OEOC will interview witnesses and review documentation that has been determined to be relevant to the situation. OEOC may also contact the complainant and respondent with additional questions or to request additional information.

[3] Hate Crimes: The victim was intentionally selected because of the perpetrator’s bias against the victim. For the purposes of the Clery Act, the categories of bias that may serve as the basis for a determination that a crime is a hate crime would include the victim’s actual or perceived race, religion, gender, gender identity, sexual orientation, ethnicity, national origin, and disability.

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