

3344-2-03 Discrimination/harassment policy.

(A) Statement of Policy

The university prohibits discrimination/harassment toward individuals of the university community based on of race, sex (including pregnancy), religion, color, age, national origin, veteran and/or military status, genetic information, disability, sexual orientation, gender identity and/or expression, marital status or parental status. The university shall conduct its programs, services and activities in accordance with applicable federal (including Title IX of the Educational Amendments of 1972), state and local laws, regulations and orders and in conformance with university policies. The university shall not tolerate discrimination/harassment of its faculty, staff or students by persons conducting business with or visiting the university, even though such persons are not directly affiliated with the university.

- (1) This rule seeks to encourage faculty, staff and students to report and address incidents of discrimination/ harassment. Retaliation against faculty members, staff members or students for reporting or complaining of discrimination/harassment, for assisting or participating in the investigation of a complaint of discrimination/harassment, or for enforcing this rule is strictly prohibited.
- (2) The university reserves the right to investigate circumstances that may involve discrimination/harassment in situations where no complaint, formal or informal, is filed. In appropriate circumstances, sanctions in accordance with this rule are implemented pursuant to university policies, procedures and applicable collective bargaining agreements.

(B) Definitions

- (a) “Consent/consensual” is clear communication given by words or actions that show an active, knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Consent is given freely and voluntarily.

Consent shall not be inferred from passivity or when an individual is incapacitated or otherwise prevented from giving consent resulting from impairment due to a mental or physical condition or age. No consent exists when there is a threat of force, or physical or psychological violence. Although consent may be initially given, it may be withdrawn at any point without regard to activity preceding the withdrawal of consent. The voluntary nature of consent shall be subject to heightened scrutiny in circumstances in which a person engages in a sexual relationship with a person over whom he or she has any power or authority within the university.

- (2) “Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined, based upon a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- (3) “Domestic violence” knowingly or recklessly causing or attempting to cause physical harm to a family or household member. A family or household member is any of the following who is residing or has resided with the accused student:
 - (a) A spouse or partner, or person living as a spouse or partner, or former partner or spouse;
 - (b) A parent, foster parent, child of the accused student or another person related by blood to the accused student.
- (4) “Harassment” is conduct towards another person or identifiable group of persons that has the purpose or effect of:

- (a) Creating an intimidating or hostile educational environment, work environment or environment for participation in a university activity;
 - (b) Unreasonably interfering with a person's educational environment, work environment or environment for participation in a University activity; or
 - (c) Unreasonably affecting a person's educational or work opportunities or participation in a university activity.
 - (d) Use of the term harassment includes all forms of harassment, including: stalking, racial, harassment, and sexual harassment.
- (5) "Incapacitated/incapacitation" is a mental state in which an individual cannot make rational decisions because they lack the capacity to give knowing consent (e.g., to understand the who, what, where, why and how of their sexual interaction). Such incapacitation may be caused by alcohol or other drug use, sleep or unconsciousness, or physical or mental impairment.
- (6) "Racial harassment" is conduct that demonstrates hostility towards another person (or identifiable group of persons) on the basis of race, color, national origin or ancestry and that has the purpose or effect of:
- (a) Creating an intimidating or hostile educational environment, work environment or environment for participation in a university activity;
 - (b) Unreasonably interfering with a person's educational environment, work environment or environment for participation in a university activity; or

- (c) Unreasonably affecting a person's educational or work opportunities or participation in a university activity.
- (7) "Relationship violence" is any physical, sexual and/or psychological harm against an individual by a current or former intimate partner. Intimate partners may include, but is not limited to, cohabitating, married, separated or divorced, and may be of the same or opposite sex.
 - (8) "Retaliation" is any overt or covert act of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment, against any person or group for exercising rights under this rule.
 - (9) "Sexual exploitation" is taking non-consensual, unjust or abusive sexual advantage of another. Examples include, but are not limited to:
 - (a) Prostituting another student;
 - (b) Non-consensual video or audio-taping of sexual activity;
 - (c) Going beyond the boundaries of consent (such as knowingly allowing another to surreptitiously watch, otherwise, consensual sexual activity);
 - (d) Engaging in non-consensual voyeurism; and
 - (e) Knowingly transmitting or exposing another person to a sexually transmitted infection ("STI") without the knowledge of the person.
 - (10) "Sexual harassment" is:
 - (a) Any act of sexual violence.
 - (b) Any act of sexual exploitation.

- (c) Any unwelcome sexual advance, request for sexual favors or other written, verbal or physical conduct of a sexual nature when:
 - (i) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education or participation in a university activity;
 - (ii) Submission to, or rejection of, such conduct by an individual is used as the basis for, or a factor in, decisions affecting that individual's employment, education or participation in a university activity; or
 - (iii) Such conduct has the purpose or effect of unreasonably interfering with an individual's employment or academic performance or creating an intimidating, offensive or hostile environment for that individual's employment, education or participation in a university activity.

- (11) "Sexual violence" is any non-consensual sexual act, including, but not limited to, rape, sexual assault, sexual battery and sexual coercion. Sexual violence also includes relationship violence. Examples of sexual violence include, but are not limited to:
 - (a) Non-consensual sexual contact, touching with any body part or object, another person's intimate parts (e.g., genitalia, groin, breast, buttocks), whether clothed or unclothed.
 - (b) Non-consensual sexual intercourse, oral, anal and/or vaginal penetration, to any degree and with any body part or object.
 - (c) Compelling a person to touch their own intimate body-parts or the intimate body-parts of another, without consent.

- (12) “Stalking” is engaging in a course of conduct directed at another person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

(C) Consensual relationships

The university does not intrude upon private choices regarding personal relationships when these relationships do not violate the policies of the university, cause harm to the safety and well-being of members of the campus community, or increase the risk of harm to the safety and wellbeing of members of the campus community. Consensual romantic or sexual relationships in which one party retains a direct supervisory or evaluative role over the other party are unethical, create a risk for real or perceived coercion, and are expressly a violation of this rule. Furthermore, the possibility of a future amorous relationship may distort the present instructional or advisory relationship. Therefore, persons with direct supervisory, evaluative, grading, or academic advising responsibilities who are involved in such relationships shall, as soon as possible, report those relationships to the attention of their supervisor, department chair or director. Such reporting of those relationships will likely result in the necessity to remove any supervisory, evaluative, grading, or academic advising responsibilities for the interests of the individuals and university. The supervisor, department chair or director, to whom such relationship is reported, shall take effective measures as soon as practicable.

(D) Reporting guidelines

(1) Duty to report

- (a) Any executive or administrative officers, dean, chair/director; faculty or administrative supervisor; faculty member; coach; or human resources consultant who becomes aware of information that would lead a reasonable person to believe that discrimination and/or harassment has occurred will notify the office for institutional equity, by ensuring that a discrimination/harassment complaint form or other appropriate documentation is filed within five

working days of becoming aware of the information. Graduate assistants and student employees have a duty to report violations of this rule of which they become aware in the course of their duties when these duties include responsibility for the safety and wellbeing of other members of the campus community or if they have supervisory, evaluative, grading, or advisory responsibility over other members of the campus community.

- (b) In addition to the duty to report sexual misconduct to the office for institutional equity as identified above, in some circumstances there is a duty to report allegations of criminal conduct to law enforcement authorities. Section 2921.22 of the Revised Code requires every person who knows that a felony has been or is being committed, to report it to law enforcement authorities. It is a criminal offense to knowingly fail to make the report. If you suspect or have knowledge of criminal activity occurring on university property, call CSU police at (216) 687-2111 (in an emergency, dial 911 immediately). Incidents that occur off campus shall immediately be reported to local law enforcement.

(2) Filing a formal report of violation of this rule

The office for institutional equity serves as the recipient for any formal complaint or report of discrimination/harassment. Other offices may handle certain aspects of the university response, such as the department of human resources, dean of students offices, CSU police, etc. The office for institutional equity is responsible for investigating complaints under this rule, and monitoring/coordinating the response of other campus offices that may respond to complaints of sex-based offenses under this rule, including complaints of retaliation for filing a complaint on the basis of this rule. The director, office for institutional equity serves as the university's Title IX coordinator. The office for institutional equity is

located in the Parker Hannifin administration center (AC), room 236; phone number 216-687-2223; facsimile 216-687-9274.

(3) Self-reporting of sexual offenses

Persons who are victims or survivors of sexual offenses are encouraged to contact university police. Reporting an assault to university police may not require criminal prosecution; however, it does allow the university to assist and provide resources. The Cleveland state university police department can be contacted at 216-687-2020.

(4) Confidential assistance for victims or complainants

Cleveland state university offers some confidential resources for persons who have been affected by sexual offenses. In most circumstances, these confidential resources do not have a duty to report violations of this rule to the office for institutional equity or law enforcement. There is no expectation that a report to a confidential resource puts the university on notice of a violation of this rule.

(5) Privacy/confidentiality

(a) Information received in connection with the filing, investigation, and resolution of allegations will be treated as confidential except to the extent it is necessary to disclose information in the course of the investigation, for the purposes of addressing conduct or practices that violate the rule, or when required to do so by law. All persons involved in the process should observe the same standard of discretion and respect for the privacy of persons involved in the process.

(b) If the complaint contains sufficiently detailed information about conduct that may constitute a crime, then the matter shall be reported to the CSU police department.

(6) Cooperation with investigation

- (a) A person with a duty to report shall actively provide information in the time and manner deemed necessary and appropriate by the university to conduct the investigation. Failure to cooperate with the investigation process in a timely manner may compromise the university's ability to conduct an investigation and address allegations fully.
- (b) If the complaint contains sufficiently detailed information about conduct that would constitute a violation of this rule, the office for institutional equity will exercise due diligence to address the concerns identified with the appropriate unit officials to the extent possible with the available information.

(7) Anonymous complaints

Anonymous complaints will be accepted; however, the university's ability to obtain additional information may be compromised and the ability to investigate or resolve anonymous complaints may be limited.

(8) Filing a false complaint

It is a violation of this rule to make a knowingly false and malicious complaint. In the event the investigation of a complaint demonstrates that the complaint was filed with knowingly false or malicious charges, the office for institutional equity will refer the matter to the office of general counsel.

(E) Procedures

- (1) Individuals who believe they have experienced or witnessed discrimination/harassment are encouraged to bring forward a complaint under the procedures for

investigating complaints of discrimination and harassment at <http://www.csuohio.edu/offices/affirmativeaction/>.

- (2) To determine whether a particular act or course of conduct constitutes discrimination/harassment under this rule, the alleged behavior will be evaluated by considering the totality of the particular circumstances, including the nature, frequency, intensity, location, context and duration of the questioned behavior. Although repeated incidents generally create a stronger claim of harassment, a serious incident, even if isolated, can be sufficient.
- (3) Consideration of classroom and instructional settings
 - (a) The classroom or other instructional setting (e.g., studio, laboratory, office hours) presents special issues because academic freedom protects the expression of ideas, even where the idea or its expression is perceived to be mature, controversial, explicit, graphic, or offensive. Nevertheless, conduct that would otherwise constitute violation of this rule will not be exempt merely because it occurs in an instructional setting. Rather, the investigation will consider the legitimate pedagogical context, and will take into account discipline-specific guidelines for professional practice as defined by the appropriate educational unit.
 - (b) Accordingly, if the conduct that was the basis for the complaint occurred in an instructional context, broad deference is given to the presentation or discussion in an instructional setting of sexual topics that are mature, controversial, graphic, or explicit and such conduct shall not be considered sexual harassment even if some persons find these topics subjectively offensive, when there is legitimate pedagogical basis for the presentation.

(4) Sanctions/corrective action implementation

When discrimination and/or harassment is found, steps will be taken to ensure that the behavior is stopped promptly, the effects, if any, are remedied and that reoccurrence is prevented, whenever possible. Appropriate corrective action may range from counseling, written reprimands, suspensions, or other action up to and including termination or expulsion, in accordance with applicable rule, code of conduct, or collective bargaining agreement.

(5) The office for institutional equity is responsible for the administration of this rule. The president and each vice president, dean, department chair, director, administrator, coaches, faculty member and supervisor are responsible for assuring compliance with this rule.

(F) Forms, references counseling and support

(1) Forms

The discrimination and harassment complaint form is available upon request from the office for institutional equity or online through the office for institutional equity website, "How to File a Complaint," at <http://www.csuohio.edu/offices/affirmativeaction/>.

(2) References

- (a) Procedures for investigating complaints of discrimination and harassment are available online at the office for institutional equity website (<http://www.csuohio.edu/offices/affirmativeaction/>).
- (b) Sections 2921.22 and 4112.02 of the Revised Code.
- (c) Affirmative action, equal access, equal opportunity and discrimination/harassment policy statement
- (d) The CSU code of student conduct

(3) Counseling and support

- (a) For contact information for resources and support, visit www.csuohio.edu.
- (b) CSU counseling center 216-687-2277*
- (c) CSU employee assistance program (800) 227-6007*
- (d) CSU health and wellness services 216-687-3649*
- (e) CSU maryjoyce green women's center 216-687-4674
- (f) CSU office for institutional equity 216-687-2223
- (g) CSU office of judicial affairs 216-523-7346
- (h) CSU ombudsperson
- (i) CSU police 216-687-2020
- (j) CSU residence hall director
- (k) Cleveland rape crisis center 216-619-6192*
- (l) Domestic violence & child advocacy center of Cleveland 216-229-2420 or 216-391-HELP for emergency assistance*
- (m) Legal aid 216-687-1900
- (n) Witness/victim services center 216-443-7345*
- (o) *denotes a confidential resource

(G) External agency filing

Persons who believe that they have been subjected to discrimination/harassment may be able to file a complaint with the Ohio civil rights commission, the U. S. equal employment opportunity commission or the U. S. department of education's office for civil rights. Information regarding filing charges with any of these agencies may be obtained from the agency directly or from the office for institutional equity.

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