

5 - 16.1

Administrative policy and procedures regarding complaints of unlawful discrimination and harassment

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(A) Purpose. This policy sets forth the expectations and responsibilities for maintaining a safe educational and employment environment free of discrimination and harassment. This policy prohibits discrimination and harassment based on race, color, religion, gender, sex, sexual orientation, national origin, ancestry, disability, genetic information, age, and military or veteran status. Retaliation for reporting or participating in the complaint process is also prohibited.

(B) Definitions.

(1) Office of compliance, equal opportunity, and affirmative action (EOAA) and the office of gender equity and Title IX (Title IX office). The offices that administer this policy, including handling complaints of unlawful discrimination. EOAA has also designated “affirmative action facilitators” at each regional campus and in select university colleges and

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departments and the Title IX office has designated "deputy Title IX coordinators." These individuals may assist EOAA or the Title IX office with investigations. The director of EOAA serves as the ADA Title II and Rehabilitation Act Section 504 coordinator overseeing complaints of disability discrimination. The gender equity director within the division of student affairs serves as the Title IX coordinator.

(2) Complainant. The person, organization, or department that files a complaint with EOAA or Title IX office alleging that they have been discriminated against.

(3) Respondent. The person, organization, or department that the complaint is filed against. If the respondent serves in more than one role on campus (for example, a respondent who is both a student and an employee), the respondent's primary role in the occurrence of the alleged action shall determine which investigative path below shall be followed. Additional sanctions based

on the respondent's secondary role may be considered as appropriate.

(4) Discrimination. Action based on a protected category that limits a group or individual's ability to participate in the university's educational and employment opportunities.

(5) Harassment. A form of discrimination. Harassment is defined as action taken without consent, based on a protected category, and either:

(a) Enduring the offensive conduct becomes a condition of continued employment, academic success, or benefit;
or

(b) Sufficiently severe or pervasive so as to interfere with the individual or group's ability to benefit from university employment, services, activities or privileges.

(6) Protected category. The following personal characteristics are considered "protected

categories." Discrimination is prohibited based on the following:

- (a)** Race;
- (b)** Color;
- (c)** Religion: sincerely held religious beliefs;
- (d)** Gender or sex. This includes discrimination based on gender identity, gender expression, gender non-conformity, and pregnancy. Gender or sexual harassment also includes the following:
 - (i)** Sexual misconduct. Intentional sexual touching with any body part or object, that is without consent. This also includes:
 - (a)** Sexual exploitation, defined as taking non-consensual or abusive sexual advantage of another for one's

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own benefit, or
to benefit a third
party; or

(b) Knowingly
transmitting a
sexually
transmitted
infection
without
consent.

(ii) Stalking. Engaging in
a course of conduct
directed at a specific
person that would
cause a reasonable
person to fear for their
safety or the safety of
others or suffer
substantial emotional
distress.

(iii) Domestic violence.
Felony or misdemeanor
crimes of violence
committed by a current
or former spouse or
intimate partner of the
victim, by a person with
whom the victim

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shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

(iv) Dating violence.

Violence or intimidation committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a

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relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse;

(e) Sexual orientation;

(f) National origin;

(g) Ancestry;

(h) Disability. This category includes protections for individuals with a physical or mental impairment that substantially limits one or more major life activity; individuals with a record of such an impairment; or individuals regarded as having such an impairment.

Complaints regarding a failure

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to accommodate a disability
are also included within this
procedure;

(i) Genetic information of an
employee or an employee's
family member;

(j) Age: over forty years old; and

(k) Military or veteran status.

(7) Consent. An action defined as the
voluntary, unambiguous and
uncoerced agreement to participate in
an act, the nature and full extent of
which is understood by all parties.
Silence or lack of resistance cannot be
the sole factor in determining consent.
Consent may be given verbally or
nonverbally. All parties are
responsible for confirming that their
counterpart's consent is maintained
throughout the act and is present
before engaging in a new act. A person
may be incapable of giving consent
due to physical incapacitation,
physical or mental disability, threat,
coercion, the influence of alcohol or
drugs, or age.

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(a) Coercion: when an individual unreasonably pressures another to engage in sexual activity, despite responses that the conduct is unwelcome or unwanted. Coercion includes elements of pressure, duress, cajoling, and compulsion. The pressure to participate may also be considered unreasonable when the pressuring individual is in a position of influence or authority over the other individual.

(b) Incapacitation. A state where a person lacks the capacity to reasonably appreciate the nature or extent of the situation because of their physical or mental status, developmental disability, or alcohol or drug use.

(8) Retaliation. A retaliatory action is any materially adverse action taken against a person because they, or someone they are associated with, engaged in an activity protected by

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this policy. Protected activity includes:

(1) filing a good faith report or complaint of discrimination under this rule or under the law; (2) participating in the process for complaints of discrimination made under this rule or the law; (3) complaining of or opposing discrimination as defined by the rule. A materially adverse action is one that might deter a reasonable person from participating in a protected activity. It may include, but is not limited to, termination, discipline, and harassment, but does not include petty slights, minor annoyances, or trivial punishment.

(c) Eligibility. All students, faculty, staff, visitors, applicants, and university recognized student organizations. This policy will apply to incidents occurring on campus or within university-sponsored events and programs, and to incidents occurring off-campus if both parties are affiliated with the University through enrollment or employment at the time of the incident. Complaints within the purview of this policy must be filed with EOAA within thirty business days of the

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misconduct, stalking, domestic violence and dating violence).

(1) This policy does not apply to those specific complaints of sexual harassment that fall within the purview of Title IX and rule 3343-5-16.2 of the Administrative Code. The director of gender equity/Title IX coordinator or designee will review reports of discrimination and harassment to determine which policy is applicable. Title IX and rule 3342-5-16.2 of the Administrative Code applies to:

(a) Sexual harassment as defined by that policy;

(b) Occurring in a Kent state university education program or activity, against a person in the United States; an;

(c) Filed by a complainant who, at the time of filing a formal complaint, is participating in or attempting to participate in the education program or activity of the university with which the formal complaint is filed.

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(D) How to file a complaint. An eligible person [as defined in paragraph (C) of this rule who believes that they have been discriminated against by a university department, an employee, a visitor to campus, a student organization, or a student is encouraged to contact EOAA to file a complaint by phone at 330-672-2038, or via email at **aa_eeo@kent.edu (mailto:aa_eeo@kent.edu)**. Matters involving gender equity can be filed with the Title IX office by phone at 330-672-7535 or at **titleix@kent.edu (mailto:titleix@kent.edu)**. Complaints of retaliation follow this same process.

(1) The applicable office (EOAA or the Title IX office) will first examine the allegations within the complaint to determine if they are within the purview of this policy. Complaints outside of the purview of this policy may be referred to another university process. The office may also decline to accept a complaint if they determine that the allegations, even if true, would not be a violation of this policy. If the office declines to accept a complaint, the party who brought forth the allegation will be notified in writing of this decision. This decision may be

appealed using the appeal process noted in this policy.

(2) A complainant's consent is generally necessary before an investigation will be started. However, the director may determine that an investigation may move forward without the consent of the complainant, in the following situations: where the director believes the safety of the university community may be at risk because of the circumstances of the allegations; for repeated allegations against a single respondent; or where the director believes the alleged policy violations may affect a larger group.

(3) Anonymous or indirect reports will be reviewed to determine if enough credible information has been provided to substantiate an investigation. At the discretion of the director, the office may initiate an investigation without a specific complainant.

(4) The university will make every reasonable effort to honor the confidentiality and privacy of all parties involved to the extent

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practicable and allowed by law. The office may be limited in its ability to investigate without permission to share relevant details. Alleged felonies may be reported to the police in accordance with Ohio law. The reporting party may make a report to law enforcement at any time.

(5) Remedial measures to eliminate harassment may be available regardless of whether a complaint is filed. Such measures may include modifications to academic, employment, and housing situations as appropriate. A no-contact order may be put in place if requested and would prohibit contact between both parties.

(6) If a respondent has more than one role with the university (for example, student and employee), the complaint will be handled in accordance with the context the respondent was in when the alleged incident occurred. At the conclusion of that process, EOAA, the Title IX office, or the office of student conduct may make additional recommendations or findings regarding

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the respondent's other role, as appropriate.

(7) If either party is a minor who is not an enrolled student, the minor's parents may be notified. If the allegations involve sexual misconduct, stalking, or violence, local law enforcement will be notified as well.

(8) Parties notified. The office will notify the respondent in writing when a complaint is made. If the respondent is a university employee, organization, or department, relevant supervisors and administrators will be notified of the complaint as well.

(E) Informal resolution. If both parties agree to do so, the office may attempt an informal resolution of the complaint within sixty business days of filing the complaint. This may include a meeting of both parties with the office representative to discuss the complaint and come to a mutual resolution; a mutual no-contact order; or some other voluntary resolution agreement. If an informal resolution is reached, it will be recorded in writing. Either party may choose to elevate the complaint to a formal investigation at any time, including if they

feel the other party is not adhering to the agreement.

(F) Formal investigation. If informal resolution is not attempted or reached, the office representative will conduct an impartial, prompt and thorough investigation of the matter.

(1) The investigation may include, as applicable: interviews with both parties; interviews with anyone that may have relevant information about the complaint; and collecting and reviewing relevant documentation or other evidence.

(2) A formal investigation, including any of the following resolution steps, will be completed within ninety business days of filing a complaint. If more time is needed, the investigator will notify both parties in writing.

(3) Either party may have an individual of their choice accompany them through any stage of this process to provide support and guidance.

(4) The complainant may request to withdraw their complaint at any point prior to the resolution of the

complaint. The complaint will be concluded at that point, without resolution, unless the director elects to proceed with the complaint in accordance with paragraph (B)(2) of this rule.

(G) Formal resolution for student and student organization respondents. If the respondent is a student or student organization, the investigator will notify the office of student conduct that a hearing panel should be convened and provide a report of their findings. For more detailed information regarding the hearing and appeal proceedings, see the code of student conduct.

(1) The complainant and the respondent will be notified of the date of the hearing, and it will be scheduled to accommodate the class schedules of both parties.

(2) Both parties will have an opportunity to be heard before the hearing decision-maker(s) and bring any witnesses;

(3) The hearing decision-maker(s) will decide whether the non-discrimination policy was violated.

The hearing decision-maker(s) uses a

preponderance of the evidence
standard in making this decision;

(4) Both parties will receive the decision in writing consistent with the code of student conduct in rule 3342-4-02.1 of the Administrative Code.

(5) If discrimination or harassment was found to have occurred, the written decision will include the steps that the university will take to prevent recurrence of any discrimination or harassment and to correct any discriminatory effects on the complainant and others, if appropriate.

(6) The decision may be appealed by either party, in writing, to the office of student conduct and a decision will be issued to both parties consistent with the code of student conduct in rule 3342-4-02.1 of the Administrative Code. An appeal may only be made on the following bases:

(a) Procedural irregularity that affected the outcome of the matter;

(b) New evidence that was not reasonable available at the

time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(c) The decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(d) For decisions resulting in separation from Kent state university only (including but not limited to suspension, dismissal, removal from university housing, and persona non grata): sanction(s) imposed were not appropriate for the conduct violation for which the respondent was found responsible.

(H) Formal resolution for employee, university department, and visitor respondents. The investigator will summarize any relevant information gathered as part of their investigation. The written disposition will

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include the investigator's determination of whether the non-discrimination policy was violated.

- (1) The investigator uses a preponderance of the evidence standard in making this decision.
- (2) If discrimination or harassment was found to have occurred, the disposition will include the investigator's recommended sanctions to prevent recurrence of any discrimination/harassment and to correct any discriminatory effects on the complainant and others, if appropriate.
- (3) If the respondent is an employee or department, the respondent's department is responsible for determining whether they will accept and implement the sanctions recommended in the written disposition. The respondent's department must notify the office in writing within fifteen business days after receiving the investigation findings if the recommended sanctions will be adopted. If not, the department must identify what other

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course of action will be taken regarding the respondent.

(4) If the respondent is a visitor to campus, the investigator may recommend the persona non grata process be initiated pursuant to rule 3342-5-12.7 of the Administrative Code.

(5) The decision may be appealed by either party, in writing, to the vice president of human resources within seven business days, and a decision will be issued to both parties within thirty business days. An appeal may only be made on the following bases:

(a) Procedural irregularity that affected the outcome of the matter;

(b) New evidence that was not reasonable available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(c) The investigator(s), or decision-maker(s) had a

conflict of interest or bias for or again complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(I) Requirement to report. All employees of the university (except those health care professionals with statutory confidentiality requirements, when acting in their capacity as such) are required to notify the Title IX office all instances of possible gender/sexual harassment, sexual misconduct, stalking, and intimate partner violence within the purview of this policy that they are made aware of in their capacity as an employee. A report to the center for sexual and relationship violence support services (SRVSS) or Kent state police services satisfies this requirement. Employees are also expected to report to EOAA possible non-gender-based discrimination or harassment they are made aware of in their capacity as an employee. With EOAA office approval, university departments may create internal reporting structures that ultimately and promptly lead to the EOAA office.

(J) Either party may file a separate complaint against the university may also be filed with external agencies, including but not limited

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to: the Ohio civil rights commission, the equal employment opportunity commission, and the department of education office for civil rights.

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