

Shawnee State University

AREA: UNIVERSITY-WIDE POLICY

SUBJECT: UNLAWFUL AND PROHIBITED DISCRIMINATION
DISCRIMINATION AND HARASSMENT

POLICY NO.: 5.03 Rev.
ADMIN. CODE: 3362-5-04
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RECOMMENDED BY: Affirmative
Action and Diversity Committee
APPROVED BY: Board of
Trustees

1.0 Statement of Policy

- 1.1 The educational mission of Shawnee State University requires a working and learning environment free from harassment, hostility and other unlawful and prohibited discrimination. It is our ethical and legal obligation to provide applicants, employees and students an environment conducive to learning and working. Unlawful or prohibited discrimination, including harassment, quid pro quo or the creation of a hostile environment, is not tolerated at Shawnee State University.
- 1.2 The purpose of this policy is to prevent unlawful and prohibited discrimination and harassment from occurring in the workplace and the educational environment; educate students and employees regarding their responsibilities and rights; improve morale; enhance professionalism; increase productivity; encourage victims of discrimination and harassment to come forward and ensure that prompt and effective corrective action is taken to eradicate unlawful and prohibited discrimination and harassment.
- 1.3 The implementation of this policy is the direct responsibility of each administrative and supervisory employee of the University. The President retains responsibility for overall coordination of compliance with this policy. It is the responsibility of all University employees, if they are aware of unlawful and prohibited discrimination or harassment, to report such to the appropriate University officials (ref. 10.3).
- 1.4 Conduct found to violate this policy does not necessarily establish a violation of state or federal anti-discrimination laws.

2.0 Academic Freedom

- 2.1 Freedom of expression is essential to the educational mission of Shawnee State University. Academic freedom protects the actions of a faculty member made in furtherance of this mission. Adherence to the right of freedom of speech and to the principle of academic freedom requires that all thoughts presented as ideas or the advocacy of ideas in instructional settings, if germane to the subject matter of the course being taught, be protected. Discrimination and harassment, including the creation of a hostile environment, are inconsistent with academic freedom on campus.
- 2.2 Shawnee State University is a community of students and employees where the right to freedom of thought and expression coexists with a responsibility to respect the rights of others. **Students and faculty should not be disadvantaged or evaluated on the basis of their political opinions. [See the attached ACE Statement on Academic Rights and Responsibilities]**

3.0 Definitions

3.1 Unlawful and prohibited discrimination: Any adverse employment action, including failure to hire, retain, or promote, against an individual; making decisions affecting a student, including discipline, grades, and class assignment based upon the individual's **political opinions**, race, color, religion, sex, sexual orientation, national origin, disability, age (40 years or older), veteran or other protected status under federal or state statutes.

3.2 Unlawful and prohibited harassment: A form of discrimination that can be directed at any individual based on race, color, religion, sex, sexual orientation, national origin, disability, age (40 years or older), veteran, or other protected status under federal or state statutes. The two forms of unlawful harassment are quid pro quo or hostile environment.

3.2.1 Unlawful and prohibited harassment can occur from a single severe overt action such as physical assault or from a pattern of unwelcome statements or actions that are sufficiently severe or pervasive so as to interfere with an individual's work performance, or create an intimidating, hostile or offensive work or academic environment, when:

3.2.1.1 Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic activities (quid pro quo); or,

3.2.1.2 Has the effect of interfering with an individual's employment or academic performance, or, creates an intimidating, hostile, or offensive working or educational environment (hostile environment). Examples of hostile environment harassment may include, but are not limited to:

Comments that are negative and consistently targeted at one gender, race, or other Title VII category, or sexual orientation.

Unwanted sexual advances; demands for sexual favors in exchange for favorable treatment or continued employment.

Threats and demands to submit to sexual requests in order to obtain or retain any educational or employment benefit.

Verbal conduct such as epithets; derogatory or obscene comments; slurs or sexual invitations; negatively stereotypical jokes; propositions; suggestive, insulting, obscene comments or other verbal abuse of a sexual nature; graphic, verbal commentary about an individual's body, sexual prowess or sexual deficiencies, race-based insults, intimidations, or ridicule.

Unwelcome and repeated flirtations and sexual advances; leering; whistling; touching; or more severe actions such as pinching; assault; coerced sexual acts; blocking normal movements.

Visual conduct such as derogatory posters, photographs, cartoons, drawings or gestures or other displays in the work place of sexually or racially derogatory objects or pictures; transmitting or posting via electronic or other medium defamatory, harassing, obscene or threatening messages or any communications prohibited by law.

4.0 Consensual relationships

4.1 No person involved in a consensual sexual relationship should have direct responsibility for evaluating the employment or academic performance or for making decisions regarding the promotion, tenure, or compensation of the other party to the relationship. Consensual sexual relationships between supervisor and employee or between faculty and student under their authority are strongly discouraged. If such a relationship exists, the supervisor or faculty member should take steps to terminate any supervisory or academic authority that exists.

5.0 Application of policy off campus and Reasonable Person Standard

- 5.1 Unlawful discrimination and harassment are unacceptable not only in the workplace but in other work/academic-related settings such as academic field trips, athletic events, business trips and business-related social events.
- 5.2 In determining whether an action or actions constitute harassment, the standard to be applied is that of the reasonable person of the same status as the complainant as established by case law. For example, the viewpoint of a “reasonable female” should be applied when the complainant is a female. The courts have found that “not intending to harass” is not an acceptable defense.

6.0 Prohibitions

- 6.1 It is a violation of this policy for any student or employee of the University to engage in unlawful or prohibited discrimination or harassment.
- 6.2 It is a violation of this policy to retaliate against any member of the University community who files a complaint of discrimination or harassment. Retaliation is illegal and is contrary to the letter and spirit of this policy.
- 6.3 It is a violation of this policy for anyone to make, or threaten to make, a false accusation of unlawful or prohibited discrimination or harassment, or to otherwise use this policy in a manner inconsistent with its stated purpose.

7.0 Responsibilities

- 7.1 Each dean, director, department chair, and administrative head of an operational unit is responsible for the dissemination and implementation of this policy within his or her area of responsibility and to provide education and training to department or unit personnel on this policy on a regular basis.
- 7.2 It is the professional responsibility of all members of the University community to discourage unlawful or prohibited discrimination or harassment and to cooperate in any investigation resulting from a possible violation of this policy.

8.0 Inquiries

An inquiry about this policy is not considered a complaint nor is it considered notification to the University of an alleged violation of policy.

9.0 Office of Ombuds

- 9.1 The Ombuds Office provides an opportunity for informal discussion of issues or concerns outside the formal channels. The Ombuds Office is available to listen, discuss, answer questions, provide information, and help the employee develop options for resolving problems or conflicts. Employees are encouraged to contact the Ombuds Office if unclear about the particular nature of the concern or if assistance is needed in determining where to go for help. The Ombudsperson will assist in considering and exploring options. Utilizing the Ombuds Office is strictly voluntary and does not constitute notification to the University of an alleged violation of policy.
- 9.2 Ombuds service for student needs is described in detail in the student handbook and is provided by the vice president for student affairs.

10.0 Complaint Procedures

The University encourages individuals who believe they are victims of unlawful or prohibited discrimination or harassment to promptly notify the offender that the behavior is not welcome. It is understood that power and status disparities between the alleged offender and the complainant may make such a confrontation difficult. Therefore, in addition to direct communication with the offender, the complainant may elect to report the behavior in the following manner:

- 10.1 Informal Complaint - An informal complaint can be addressed through university officials identified below. An official may recommend or aid in setting up an informal meeting with the appropriate supervisor, a discussion with the person accused with the university official present, the university official discussing the complaint with the accused without the complainant present, or filing of a formal complaint. Other actions may be identified during the course of the initial interview. Every effort will be made to address and resolve informal complaints in an educational and preventive manner. The decision to proceed informally initially does not preclude the filing of a formal complaint at some later point prior to the completion of the informal complaint process. Nor is filing an informal complaint a prerequisite for filing a formal complaint. However, a complainant should not simultaneously maintain complaints arising from the same occurrence with more than one office.
- 10.2 Formal Complaint - A formal complaint must be written, signed by the complainant and filed with authorized university officials within 180 days of the alleged incident(s) [300 days for complaints under EEOC jurisdiction, 29 CFR § 1601.13]. This timeline may be extended if the incident was reported under the informal complaint step within 180 days or 300 days for EEOC jurisdiction complaints, is being actively investigated and a decision to proceed as a formal complaint is made by the complainant or the receiving official. It may also be extended if a complaint was delayed due to the complainant's fear of retaliation and sufficient evidence is provided that would justify the extension. Formal complaints received by other university officials must be submitted to the affirmative action officer for investigation.
- 10.3 Authorized University Officials
 - 10.3.1 An aggrieved faculty member should report to the provost or the offender's supervisor.
 - 10.3.2 An aggrieved administrator, staff, or student employee should report to his/her immediate supervisor, supervisor of the offender, or the supervisor's supervisor.
 - 10.3.3 An aggrieved individual may report to any individual listed in this section. For example, an aggrieved student may report to the vice president for student affairs, provost, offender's supervisor, supervisor's supervisor or affirmative action officer.
 - 10.3.4 The affirmative action officer is an alternative for any of the above reporting points.
- 10.4 Student filing a complaint against a student - An aggrieved student who wishes to file a complaint for unlawful discrimination or harassment by another student should report to the vice president for student affairs or the Title IX coordinator.
- 10.5 State and federal offices which receive discrimination and harassment complaints are:
 - 10.5.1 Ohio Civil Rights Commission (OCRC), Regional Office, Holiday Office Park 801B West 8th St., 2nd Floor, Cincinnati, OH 45203, 513.852.3344; Central Office, 1111 E. Broad Street, Suite 301, Columbus, Ohio 43205, 614.466.2785 or 888.278.7101.
 - 10.5.2 Equal Employment Opportunity Commission (EEOC), Tower City Skylight Office Tower, Suite 850, 1660 West Second Street, Cleveland, OH 44113-1454, 800.669.4000

11.0 Investigation of a Formal Complaint

- 11.1 The affirmative action officer or a designee of the president is responsible for conducting an investigation of a formal complaint. These investigation results will be reviewed with three members of the advisory panel selected by the investigating official from the constituent representatives (see section 12.0). The three advisory panel members may accept the initial investigation results, recommend the investigator explore additional facts, or conduct an independent investigation.
- 11.2 The affirmative action officer or the University president may refer an investigation to the full advisory panel. In such case that the full advisory panel is involved in the initial investigation and if a request for review is received from either party, a temporary full advisory panel will be constituted in accordance with section 12.0 for the sole purpose of conducting such review.
- 11.3 Written notice will be given promptly to the parties (complainant and alleged offender) when an investigation has been initiated.
- 11.4 Every effort will be made to timely conclude both the initial investigation and the advisory panel recommended actions within 60 calendar days of the filing of a formal complaint. A report listing the findings of facts will be prepared and referred to the appropriate administrative official with the authority to take action (e.g. divisional vice president, provost, president, etc.) if required. Should additional time be needed to assure a thorough investigation, the investigating official may request an extension from the president.
- 11.5 Every possible effort will be made to keep an investigation confidential and to protect the privacy of all individuals involved to the extent permitted under Ohio law. Information concerning the investigation will be shared with others on a "need to know" basis only.
- 11.6 In some instances and if deemed necessary by the investigating official, the University may place the accused on paid leave pending the results of an investigation. The purpose of the leave is to protect all parties and is not an indication of guilt.
- 11.7 When the alleged harassment takes place in an instructional setting and the alleged harasser believes the allegation involves actions protected by academic freedom, the investigating official shall request the University Faculty Senate (UFS) and Shawnee Education Association (SEA) presidents to designate faculty representatives for consultation purposes. The UFS president and the SEA president may designate the same faculty member or two different faculty members in which case both designees will serve as faculty consultants. In the event that the faculty consultant(s) do not agree with the determination of the investigating official, the faculty consultant(s) may file a dissenting report that will be included with the investigating official's final report. The intent is to provide the investigating official with consultative support so that due regard for academic freedom is maintained during the course of the investigation.
- 11.8 In an effort to protect or preserve the integrity of electronic or hard copy records during the course of an open investigation, the investigating official will restrict access to such records. This action must be in compliance with applicable university policies and federal/state laws.

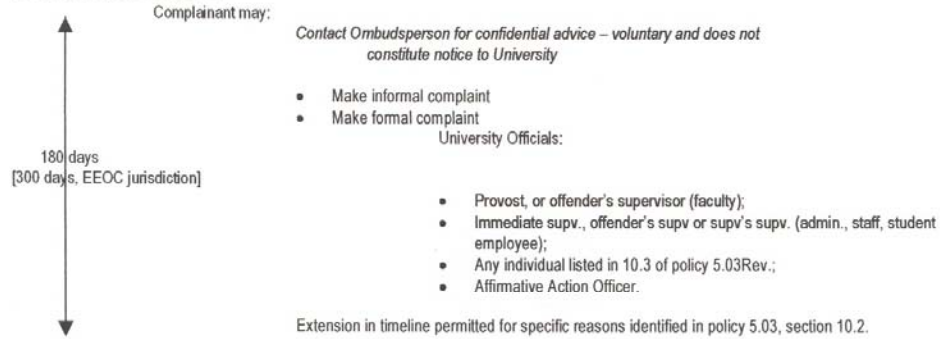
12.0 Advisory Panel

- 12.1 The advisory panel will include two (2) faculty members, two (2) administrators, two (2) support staff and one (1) Administrative Technical Support Staff (ATSS), selected via the constituent governance process. If a student is involved, a student member will be identified through consultation with the student government association. Membership, except for the student, will be for staggered three-year terms in order to permit training and to allow continuity of experience.

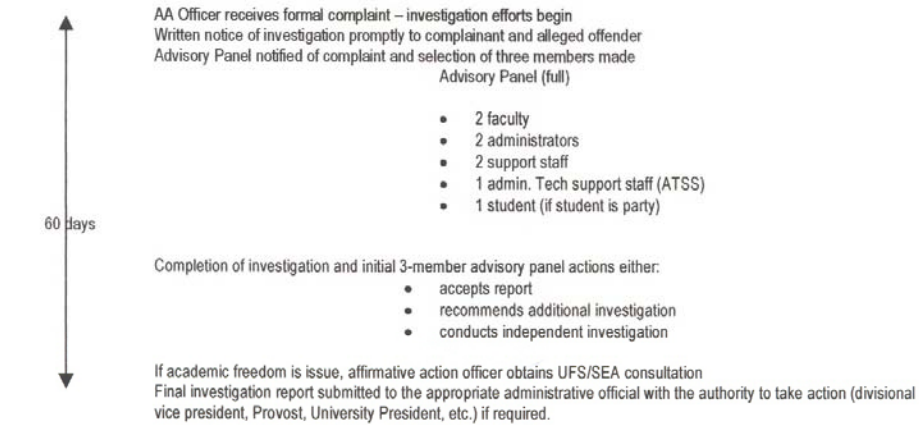
- 12.2 The advisory panel is strictly advisory in nature. Its purpose is to assure that independent and impartial review of the allegations has occurred.
- 12.3 Any advisory panel member who has direct involvement in a complaint or matter under review should self identify and will be excused from an investigation review or appeal. Members are expected to maintain the strictest confidence in all matters concerning investigations and proceedings.
- 13.0 Investigation Review
- 13.1 Within 14 workdays of receiving the final investigation results, the complainant or the accused may submit a written request for a review of the investigation results to the investigating official.
- 13.2 Within 14 workdays of receiving the review request, members of the advisory panel who did not participate in the initial investigation will convene for the purpose of reviewing the final investigation results.
- 13.3 Within 30 working days from the date convened, the advisory panel will submit a written report of the review of the investigation to the University President. The advisory panel's report will be given consideration by the appropriate administrative official when considering possible action(s).
- 13.4 The advisory panel's role is to review the procedures of the investigation for fairness and to determine if the findings of facts are supported by substantial evidence. The advisory panel does not decide or recommend disciplinary action. If discipline is required, the appropriate administrative official will be responsible for its implementation.
- 14.0 Discipline
- 14.1 Any disciplinary action resulting from a violation of this policy will be proportionate to the seriousness of the offense and will be designed to eliminate the unlawful discrimination or harassment.
- 14.2 Any supervisor who fails to report a complaint of possible violation(s) of this policy may be subject to disciplinary action.
- 14.3 Any person found to have made false allegations of unlawful discrimination or harassment is subject to disciplinary action up to and including termination.
- 14.4 Disciplinary measure(s) imposed upon the accused shall not violate the provisions of the appropriate labor agreement(s) or administrative policy concerning non-bargaining unit appeals. These may be obtained by contacting the Human Resources Department.
- 15.0 Record Retention and Public Records
- 15.1 Upon the conclusion of a formal investigation, the final report and related documents will be retained in accordance with the University's records retention schedule. Release of copies of such documents shall be handled in accordance with ORC Chapter 149, Ohio Public Records Act and Board of Trustee policy 5.19, Requests for Access to/and Copies of Public Records.

Unlawful and prohibited discrimination and harassment Investigation *Flowchart*

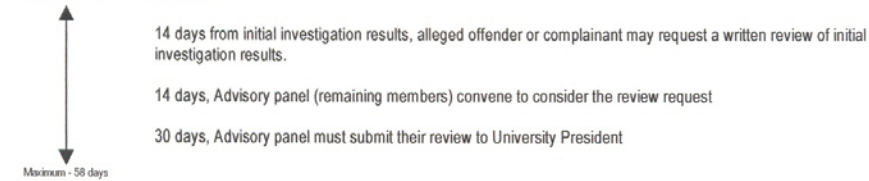
Incident Occurs



Investigation Begins



Review Process



Inaction/action Appropriate administrative official will consider panel's report when considering possible action

Record Retention Affirmative Action Officer maintains records per ORC 149.

American Council on Education



Statement on Academic Rights and Responsibilities

Intellectual pluralism and academic freedom are central principles of American higher education. Recently, these issues have captured the attention of the media, political leaders and those in the academy. This is not the first time in the nation's history that these issues have become public controversies, but the current interest in intellectual discourse on campus suggests that the meaning of these terms, and the rights and responsibilities of individual members of the campus community, should be reiterated.

Without question, academic freedom and intellectual pluralism are complex topics with multiple dimensions that affect both students and faculty. Moreover, America's colleges and universities vary enormously, making it impossible to create a single definition or set of standards that will work equally well for all fields of academic study and all institutions in all circumstances. Individual campuses must give meaning and definition to these concepts within the context of disciplinary standards and institutional mission.

Despite the difficulty of prescribing a universal definition, we believe that there are some central, overarching principles that are widely shared within the academic community and deserve to be stated affirmatively as a basis for discussion of these issues on campuses and elsewhere.

- American higher education is characterized by a great diversity of institutions, each with its own mission and purpose. This diversity is a central feature and strength of our colleges and universities and must be valued and protected. The particular purpose of each school, as defined by the institution itself, should set the tone for the academic activities undertaken on campus.
- Colleges and universities should welcome intellectual pluralism and the free exchange of ideas. Such a commitment will inevitably encourage debate over complex and difficult issues about which individuals will disagree. Such discussions should be held in an environment characterized by openness, tolerance and civility.
- Academic decisions including grades should be based solely on considerations that are intellectually relevant to the subject matter under consideration. Neither students nor faculty should be disadvantaged or evaluated on the basis of their political opinions. Any

member of the campus community who believes he or she has been treated unfairly on academic matters must have access to a clear institutional process by which his or her grievance can be addressed.

- The validity of academic ideas, theories, arguments and views should be measured against the intellectual standards of relevant academic and professional disciplines. Application of these intellectual standards does not mean that all ideas have equal merit. The responsibility to judge the merits of competing academic ideas rests with colleges and universities and is determined by reference to the standards of the academic profession as established by the community of scholars at each institution.

- Government's recognition and respect for the independence of colleges and universities is essential for academic and intellectual excellence. Because colleges and universities have great discretion and autonomy over academic affairs, they have a particular obligation to ensure that academic freedom is protected for all members of the campus community and that academic decisions are based on intellectual standards consistent with the mission of each institution.

June 23, 2005

The following organizations have endorsed this statement:

- American Association of Community Colleges
- American Association of State Colleges and Universities
- American Association of University Professors
- American Council of Learned Societies
- American Council on Education
- American Dental Education Association
- Association of American Colleges and Universities
- Association of American Law Schools
- Association of American Universities
- Association of Catholic Colleges and Universities
- Association of Governing Boards of Universities and Colleges
- Association of Higher Education Facilities Officers
- Association of Jesuit Colleges and Universities
- The College Board
- ACPA—College Student Educators International
- College and University Professional Association for Human Resources
- Council for Advancement and Support of Education
- Council for Christian Colleges and Universities

Statement on Academic Rights and Responsibilities

Page 3 of 3

- Council for Higher Education Accreditation
- Council for Opportunity in Education
- Council of Graduate Schools
- Council of Independent Colleges
- EDUCAUSE
- Hispanic Association of Colleges and Universities
- National Association for Equal Opportunity in Higher Education
- National Association of Independent Colleges and Universities
- National Association of State Universities and Land-Grant Colleges
- National Association of Student Personnel Administrators
- National Collegiate Athletic Association
- University Continuing Education Association

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