



## Non-Discrimination and Anti-Harassment Policy and Procedures

Policy Name:	Title VI -Non-Discrimination and Anti-Harassment Policy and Procedures
Effective Date:	October 28, 2016
Responsible Office:	Diversity, Equity and Inclusion
Category:	Personnel and Student Life

### I. Policy

#### I. Policy Statement

Northwest Missouri State University (the “University”) is committed to maintaining an environment for all faculty, staff, students, and third parties that is free of illegal discrimination and harassment. In keeping with that policy, the University prohibits discrimination and harassment by or against any faculty, staff member, student, applicant for admissions or employment, customer, third-party supplier or any other person (collectively the “University Community”) because of their race, color, religion, national origin, sex, sexual orientation, gender identity, pregnancy, ancestry, age, disability, genetic information, veteran status, or any other legally-protected class (collectively “protected statuses”).

The University will thoroughly and promptly investigate all complaints of discrimination and harassment in accordance with the Non-Discrimination and Anti-Harassment Complaint Resolution Procedures, **except that complaints involving any form of sexual misconduct (including sexual harassment) will be governed exclusively by the University’s Sexual Misconduct Policy and Complaint Resolution Procedures**, available at <https://www.nwmissouri.edu/policies/student/Title-IX-Sexual-Misconduct.pdf>. If an investigation confirms that discrimination or harassment has occurred, the University will take prompt and appropriate remedial action to prevent the discrimination or harassment, eliminate any hostile environment, prevent recurrence of the misconduct, and correct its discriminatory effects on the victim and others, if applicable.

#### II. Scope

This policy applies to all members of the University Community as well as others that participate in the University's educational programs and activities, including third-party visitors on campus. The University's prohibition on discrimination and harassment extends to all aspects of its educational programs and activities, including, but not limited to, admissions, employment, academics, athletics, housing, and student services.

### III. **Definitions**

#### A. Discrimination

Discrimination is materially adverse conduct directed at a specific individual or a group of identifiable individuals based on their protected status and that subjects the individual or group to treatment that adversely affects their participation in employment, academics, and/or the university's other educational programs and activities.

#### B. Harassment

Harassment is generally defined as verbal, written, or physical conduct based on or motivated by an individual's protected status that unreasonably interferes with an individual's work or academic performance or creates a hostile work or educational environment by interfering with or limiting a person's ability to participate in the University's educational programs and activities. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. This policy provides more specific definitions of disability harassment and racial harassment below; however, harassment based on any protected status is prohibited.

#### C. Disability Harassment

Disability harassment is harassment motivated by a person's disability. Disability harassment constitutes discrimination on the basis of disability, which is prohibited by Section 504 of the Rehabilitation Act and its implementing regulations and the Americans with Disabilities Act and its implementing regulations.

Some examples of disability harassment include:

- Fellow students continually remark that a student with a disability is "retarded" or "deaf and dumb" and does not belong in class or on a team
- A staff member intentionally impedes a wheelchair-bound student by placing objects in his or her path
- A professor belittles or criticizes a student with a disability for requiring the use of accommodations with the result that the student is discouraged or feels alienated
- Fellow students taunt or belittle a person with a disability by mocking or intimidating her so she does not participate in class

#### D. Racial Harassment

For purposes of this policy, racial harassment is harassment motivated by a person's race, color, or national origin. Racial harassment constitutes discrimination on the basis of race, which is prohibited by Titles VI and VII of the Civil Rights Act and their implementing regulations.

Some examples of racial harassment include:

- The use of racial epithets or slurs by staff or students
- A professor tells racist jokes that target persons of a particular national origin
- A coach uses stereotyping based on race, color, or national origin
- Fellow students circulate or publish written or graphic materials (such as graffiti) that show hostility to a racial or ethnic group
- A student in a residence hall places racially inflammatory symbols on the wall for the purpose of intimidating or harassing others

#### IV. **Complaints**

##### A. Making a Complaint

A member of the University Community that wishes to make a complaint of discrimination or harassment may do so by contacting one of the following:

Margaret Ann Pierre Esq,  
 Director of Equity and Accessibility, ADA/504 and Title IX Coordinator  
 2440 Student Union  
 Tel: 660.562.1013  
 Email: [mpierre@nwmissouri.edu](mailto:mpierre@nwmissouri.edu)

##### B. Content of the Complaint

So that the University has sufficient information to investigate a complaint, the complaint should include: (1) the date(s) and time(s) of the alleged conduct; (2) the names of all person(s) involved in the alleged conduct, including possible witnesses; (3) all details outlining what happened; and (4) contact information for the complainant so that the University may follow up appropriately.

##### C. Conduct that Constitutes a Crime

Any person who wishes to make a complaint of discrimination or harassment that also constitutes a crime—including hate crimes, assault, or property offences—is encouraged to make a complaint with the University Police Department (Tel: 660-562-1254) or local law enforcement. If requested, the University will assist the complainant in notifying the appropriate law enforcement authorities. In the event of an emergency, please contact 911. A victim may decline to notify such authorities.

##### D. Timing of the Complaint

The University encourages persons to make complaints of discrimination and harassment as soon as possible because late reporting may limit the University's ability to investigate and respond to the conduct complained of.

##### E. Vendors, Contractors, and Other Third-Parties

This policy applies to the conduct of vendors, contractors, and other third parties. Persons who believe they have been discriminated, harassed, or retaliated against in violation of this policy should make a complaint in the manner set forth in Section IV.A.

##### F. Anonymous Complaints

While anonymous complaints will be accepted, the University may be limited in its ability to investigate or resolve anonymous complaints. If the anonymous complaint contains

sufficient information regarding the conduct, the University will take reasonable steps to address the concerns in coordination with any relevant department or division.

#### G. Bad Faith Complaints

While the University encourages all good faith complaints of discrimination and harassment, the University has the responsibility to balance the rights of all parties. Therefore, if the University's investigation reveals that a complaint was knowingly false, the complaint will be dismissed, and the person who filed the knowingly false complaint may be subject to discipline.

#### V. Retaliation

It is a violation of this policy to retaliate against any member of the University Community who reports or assists in making a complaint or who participates in the investigation of a complaint in any way. Persons who believe they have been retaliated against in violation of this policy should make a complaint in the manner set forth in Section IV.A.

#### VI. Investigation and Confidentiality

All complaints of discrimination and harassment will be immediately and thoroughly investigated in accordance with the Non-Discrimination and Anti-Harassment Complaint Resolution Procedures, and the University will take disciplinary action where appropriate. The University will make reasonable and appropriate efforts to preserve an individual's privacy and protect the confidentiality of information when investigating and resolving a complaint. However, because of laws relating to reporting and other state and federal laws, the University cannot guarantee confidentiality to those who make complaints.

In the event a complainant requests confidentiality or asks that a complaint not be investigated, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name not be disclosed to the alleged perpetrator, the University's ability to respond may be limited. **The University reserves the right to initiate an investigation and take action despite a complainant's request for confidentiality in limited circumstances involving serious or repeated harassment or where the alleged perpetrator may pose a continuing threat to the University Community.**

#### VII. Resolution

If a complaint is found to be substantiated, the University will take appropriate corrective and remedial action. Students, faculty, and staff found to be in violation of this policy will be subject to discipline up to and including written reprimand, probation, suspension, demotion, termination, or expulsion. Affiliates and program participants may be removed from the University's programs and/or prevented from returning to campus. Remedial steps may also include counseling for the complainant; academic, work, transportation, or living accommodations for the complainant; separation of the parties; and training for the respondent and other persons.

#### VIII. Limitations

Petty slights, minor annoyances, and isolated incidents (unless severe) of rude, uncivil, or non-collegial behavior will generally not rise to the level of a policy violation and should be addressed to a supervisor. Students have the option of addressing such incidents through the Bias Response Protocol. The legitimate exercise of supervisory authority, including oversight, evaluation, and requiring adherence to standards of performance, conduct, and safety, is not considered discrimination, harassment, or retaliation under this policy.

#### **IX. Freedom of Speech and Academic Freedom**

While discrimination and harassment can include verbal and written conduct, the First Amendment to the U.S. Constitution and University policies establishing academic freedom provide significant space for individuals to express controversial views, teach controversial subjects, and engage in controversial research. As such, the offensiveness of a particular expression, course content, subject of academic inquiry, or research topic, as perceived by some, standing alone, is not sufficient to constitute a violation of this policy. The University will apply and construe this policy consistent with the legal rights of community members under the First Amendment, similar Missouri state laws governing freedom of speech, and University policies governing academic freedom.

**Faculty members and students should be aware that conduct occurring in the context of educational instruction may exceed the protections of free speech and academic freedom if it meets the definition of harassment and is not germane to academic subject matter, lacks a pedagogical purpose, advances the personal interest of a faculty member or student without relating to the learning process or legitimate academic objectives, causes material adverse action against a person, reveals confidential information about a person, is defamatory or libelous, threatens physical harm or imminent violence, or constitutes some other category of speech that is unprotected by law.**

### **NON-DISCRIMINATION AND ANTI-HARASSMENT COMPLAINT RESOLUTION PROCEDURES**

#### **I. Scope**

These complaint resolution procedures apply to all complaints alleging discrimination, harassment, and retaliation prohibited by the University's Non-Discrimination and Anti-Harassment Policy. Complaints of sexual misconduct (including sexual harassment) are governed exclusively by the University's Sexual Misconduct Policy and Complaint Resolution Procedures, available at <https://www.nwmissouri.edu/policies/student/Title-IX-Sexual-Misconduct.pdf>.

#### **II. Administration**

For purposes of these complaint resolution procedures, "Investigating Officer" means one or more appropriate University officials designated by the Director of Equity and Accessibility, ADA/504 (the "Director").

The Investigating Officer shall discharge his or her obligations under these complaint resolution procedures fairly and impartially. If the Investigating Officer determines that he

or she cannot apply these procedures fairly and impartially because of the identity of a complainant, respondent, or witness, the Director shall designate another appropriate individual to administer these procedures.

### **III. Investigation and Resolution of the Complaint**

#### **A. Commencement of the Investigation**

Once a complaint is made, the Investigating Officer will commence an investigation of it as soon as practicable, but generally not later than seven (7) days after the complaint is made. The purpose of the investigation is to determine whether it is more likely than not that the alleged behavior occurred and, if so, whether it constitutes a violation of the Non-Discrimination and Anti-Harassment Policy. During the course of the investigation, the Investigating Officer may receive counsel from other University officials and legal counsel as determined necessary. Some complaints may involve a preliminary inquiry into whether the matter falls under this policy or requires referral for treatment under a different policy.

In certain narrow circumstances, the investigation may commence even if the complainant requests that the matter not be pursued. In such a circumstance, the Investigating Officer will take all reasonable steps to investigate and respond to the matter in a manner that is informed by the complainant's articulated concerns.

#### **B. The Content of the Investigation**

During the investigation, the complainant will have the opportunity to describe his or her allegations and identify supporting witnesses or other evidence. The respondent will have the opportunity to respond to the allegations and identify supporting witnesses or other evidence. The Investigating Officer will review statements and, depending on the circumstances, may interview others with relevant knowledge, review documentary materials, and take any other appropriate action to gather and consider information relevant to the complaint. All parties and witnesses involved in the investigation are expected to cooperate and provide complete and truthful information.

#### **C. Interim Measures**

At any time during the investigation, the Investigating Officer may determine that interim remedies or protections for the parties involved or witnesses are appropriate. These interim remedies may include separating the parties, placing limitations on contact between the parties, suspension, or making alternative living, class-placement, or workplace arrangements. Supervisors, staff advisors, and other University employees may be notified of interim measures if their notification is necessary to ensure the interim measures are appropriately observed. Failure to comply with the terms of these interim remedies or protections may constitute a separate violation of the Non-Discrimination and Anti-Harassment Policy.

#### **D. Findings Of The Investigation**

At the conclusion of the investigation, the Investigating Officer will prepare a preliminary written report. The written report will explain the scope of the investigation and explain whether any allegations in the complaint were found to be substantiated by a preponderance of the evidence.

The preliminary written report will be submitted to the Director. The Director may accept the preliminary written report, request to review additional information, including summaries of party/witness statements or other information, or return the preliminary report for further investigation. After the review of the preliminary report is complete, the Director will, for both the complainant and the respondent, prepare and deliver a written determination of the complaint. The determination will be one of three outcomes:

1. Finding “No Violation”

If there is a determination that the behavior investigated did not violate the Non-Discrimination Anti-Harassment Policy, both parties will be so informed.

2. Finding “Inappropriate Behavior Not Rising To The Level Of A Violation”

There may be a determination that the behavior investigated did not violate the Non-Discrimination and Anti-Harassment Policy but was inappropriate, unprofessional, or violated some other University policy. The Director may determine that such inappropriate behavior merits discipline, ongoing monitoring, coaching, or other appropriate action. If so, the Director may initiate further proceedings or impose disciplinary measures consistent with University policy.

3. Finding “Violation”

If there is a determination that the behavior violated the Non-Discrimination and Anti-Harassment Policy, the Director, in consultation with any appropriate administrator, dean, or other manager, will determine appropriate corrective and disciplinary action to be taken. In addition, the Director will implement reasonable and appropriate measures to ensure that the complainant is not subject to further misconduct and to remedy the effects of any misconduct that may have occurred, including any effect the conduct may have had on the campus community at large. Remedial steps may include, but are not limited to, counseling or training, separation of the parties, and/or discipline of the respondent, including written reprimand, suspension, demotion, termination, or expulsion in accordance with University policy. Remedial steps that do not directly affect the respondent shall be redacted from the respondent’s copy of the written summary of findings.

E. Special Procedure Concerning Complaints Against the President, the Director, and Administrators Senior to the Director

If a complaint involves alleged conduct on the part of the University President, the University Board of Regents will designate an appropriate person to conduct the investigation required by these procedures. The written report of the investigation will be presented to the full Board of Regents, which will prepare and issue the written determination and implement any appropriate and reasonable measures. The resolution issued by the full Board of Regents is final and not subject to appeal.

If a complaint involves alleged conduct on the part of the Director or any administrator senior to the Director, the President will designate an appropriate person to conduct the investigation required by these procedures. The written report of the investigation shall be presented to the President, who will prepare and issue the written determination and implement appropriate and reasonable measures. The resolution issued by the President is not subject to appeal.

F. Informal Resolution

Informal means of resolution, such as mediation, may be used in lieu of the formal investigation and determination procedure. However, informal means may only be used if all parties consent and the Director approves of informal resolution. Either party or the

Director may terminate the informal resolution and insist on a formal investigation and determination, at any time.

#### **IV. Appeals**

##### **A. Grounds of Appeal**

The complainant or respondent may appeal the determination only on the following grounds:

- The decision was contrary to the substantial weight of the evidence,
- There is a substantial likelihood that newly discovered information, not available at the time evidence was presented to the Director, would result in a different decision,
- Bias or prejudice on the part of the Director, or
- The punishment or the corrective action imposed is disproportionate to the offense.

##### **B. Method of Appeal**

Appeals must be filed with the Vice President of Student Affairs (if the respondent is a student) or the Vice President of Strategy and Operations (if the respondent is a non-student) (the "Appeals Officer") within ten (10) days of receipt of the written determination of the complaint. The appeal must be in writing and contain the following:

- Name of the complainant,
- Name of the respondent,
- A statement of the resolution of the complaint, including corrective action if any,
- A detailed statement of the basis for the appeal including the specific facts, circumstances, and argument in support of it, and
- Requested action, if any.

The appellant may request a meeting with the Appeals Officer, but the decision to grant a meeting is within the Appeals Officer's discretion. However, if a meeting is granted, then the other party will be granted a similar opportunity.

##### **C. Resolution of the Appeal**

The Appeals Officer will resolve the appeal within fifteen (15) days of receiving it and may take any and all actions that he or she determines to be in the interest of a fair and just decision. The decision of the Appeals Officer is final. The Appeals Officer shall issue a short and plain, written statement of the resolution of the appeal, including any changes made to the previous written determination. The written statement shall be provided to the complainant, respondent, and the Director within three (3) days of the resolution.

#### **V. Documentation**

Throughout all stages of the investigation, resolution, and appeal, the Director, the Investigating Officer, and the Appeals Officer, as the case may be, are responsible for maintaining documentation of the investigation and appeal, including documentation of all proceedings conducted under these complaint resolution procedures, which may include written findings of fact, transcripts, and audio recordings.

#### **VI. Intersection With Other Procedures**



These complaint resolution procedures are the exclusive means of resolving complaints alleging violations of the Non-Discrimination and Anti-Harassment Policy. To the extent there are any inconsistencies between these complaint resolution procedures and other University grievance, complaint, or discipline procedures, these complaint resolution procedures will control the resolution of complaints alleging violations of the Non-Discrimination and Anti-Harassment Policy.