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Equal Opportunity and Discriminatory Harassment Policy

Abstract:

UAB is committed to equal opportunity in education and employment and the maintenance and promotion of nondiscrimination and prevention of discriminatory harassment in all aspects of education, recruitment, and employment of individuals throughout the university.

POLICY STATEMENT

The University of Alabama at Birmingham (UAB) hereby reaffirms its policy of equal opportunity in education and employment.

EQUAL EMPLOYMENT OPPORTUNITY

The University of Alabama at Birmingham is expressly committed to maintaining and promoting nondiscrimination in all aspects of recruitment and employment of individuals at all levels throughout UAB. UAB policies, in addition to state and federal law, prohibit, and will not tolerate, discrimination in any personnel actions, UAB programs, and UAB facilities on the basis of race, color, religion, sex, national origin, disability unrelated to job performance, veteran status, or genetic or family medical history. UAB also complies with the Age Discrimination in Employment Act which prohibits employment discrimination against persons 40 years of age or older and the Age Discrimination Act which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance. UAB will not tolerate any conduct by an administrator, supervisor, faculty, or staff member which constitutes any form of prohibited discrimination. All personnel actions, programs, and facilities are administered in accordance with UAB's equal opportunity commitment and affirmative action plan.

UAB will state its position as an equal opportunity/affirmative action employer in all solicitations and advertisements for employment vacancies placed by, or on behalf of, UAB. UAB will broadly publish and circulate its policy of equal employment opportunity by including a statement in all media communication and printed matter for employment purposes. Further, UAB will consider, through appropriate established procedures, complaints of any individual who has reason to believe that he or she has been affected by prohibited discrimination. See also the "Complaints" section below.

EQUAL EDUCATION OPPORTUNITY

As an institution of higher education and in the spirit of its policies of equal employment opportunity, UAB hereby reaffirms its policy of equal educational opportunity. UAB prohibits, and will not tolerate, discrimination in admission, educational programs, and other student matters on the basis of race, color, religion, sex, age, national origin, disability unrelated to program performance, veteran status, or genetic or family medical history. Complaints by any applicant or student who has reason to think he or she has been affected by discrimination will be considered through appropriate established procedures. See also the "Complaints" section below. This policy must be included in all student handbooks and catalogs. The following summary statement may be printed in other UAB publications:

The University of Alabama at Birmingham prohibits discrimination in admission, educational programs, and other student matters on the basis of race, color, religion, sex, age, national origin, disability unrelated to program performance, veteran status or genetic or family medical history.

DISCRIMINATORY HARASSMENT POLICY

In keeping with its commitment to maintaining an environment that is free of unlawful discrimination and in keeping with its legal obligations, UAB prohibits unlawful harassment based on any of the identified protected classes (and discourages conduct that, while not unlawful, could reasonably be considered unwelcome). Discriminatory harassment of any kind is not appropriate at UAB, whether it is sexual harassment or harassment on the basis of race, color, religion, sex, age, national origin, disability unrelated to program performance, veteran status, genetic or family medical history, or any factor that is a prohibited consideration under applicable law. At the same time, UAB recognizes the centrality of academic freedom and its determination to protect the full and frank discussion of ideas consistent with the subject matter of the course. Thus, discriminatory harassment does not refer to the use of materials about or discussion of race, color, religion, sex, age, national origin, disability unrelated to program performance, veteran status, or genetic or family medical history for scholarly purposes appropriate to the academic context, such as class discussions, academic conferences, or meetings.

FREE SPEECH AND ACADEMIC FREEDOM

The University is committed to free and open inquiry and expression for members of its community. The University is dedicated to the promotion of lively and fearless freedom of debate and deliberation but also to the protection of that freedom when others attempt to restrict it.

In cases of alleged discrimination or harassment, the protections of the First Amendment and applicable state law must be considered if issues of speech or expression are involved. Free speech rights apply in

the classroom (e.g., classroom lectures and discussions) and in all other education programs and activities (e.g., speakers on campus; campus debates, school plays and other cultural events; and student newspapers, journals, and other publications). In addition, free speech rights apply to the speech of students, faculty and staff. UAB's EEO policy is intended to protect students and employees from discrimination and harassment, not to regulate the content of speech. In order to establish a violation under this policy, the harassment must be sufficiently severe, pervasive and objectively offensive that it effectively denies a person equal access to participate in or benefit from an education program or activity or creates a hostile work environment.

Moreover, in regulating the conduct of its students, its faculty and its staff to prevent or redress discrimination prohibited by this policy, great care must be taken not to inhibit open discussion, academic debate, and expression of personal opinion, particularly in the classroom. Nonetheless, speech or conduct of a harassing, sexual, or hostile nature that occurs in the context of educational instruction may exceed the protections of academic freedom and constitute prohibited harassment if it is sufficiently severe, pervasive and objectively offensive as defined herein and (1) is reasonably regarded as non-professorial speech (i.e., advances a personal interest of the student or faculty member as opposed to furthering the learning process or legitimate objectives of the course), or (2) lacks an accepted pedagogical purpose or is not germane to the academic subject matter.

A. Definitions and Description of Prohibited Conduct

1. Sexual Harassment

Sexual Harassment is any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise, when the conditions outlined in (a) and/or (b), below, are present.

Gender-Based Harassment includes harassment based on gender, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined in (a) and/or (b), below, are present.

- a. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs and/or activities or is used as the basis for University decisions affecting the individual (often referred to as "quid pro quo" harassment); or
- b. Such conduct creates a hostile environment. A "hostile environment" exists when the conduct is sufficiently severe, and/or pervasive and objectively offensive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's education or employment programs and/or activities. Conduct must be deemed severe, and/or pervasive and objectively offensive. In evaluating whether conduct is sufficiently severe, and/or pervasive and objectively offensive to create a hostile environment, the University will consider the totality of known circumstances, including, but not limited to:
 - The frequency, nature and severity of the conduct;

- Whether the conduct was physically threatening;
- The effect of the conduct on the Complainant's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or University programs or activities; and
- Whether the conduct implicates concerns related to academic freedom or protected speech.

A hostile environment can be created by pervasive conduct or by a single or isolated incident, if sufficiently severe. A single incident of Sexual Assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

See: UAB's [Sex Based Harassment Resources](#).

All Formal Complaints of sexual harassment that meet the definition of sexual harassment in UAB's [Title IX Policy](#) will be subject to the Procedures for Sexual Harassment Complaints found here: [UAB Title IX](#). These procedures apply to the informal resolution, investigation and adjudication of sexual harassment complaints. A Formal Complaint of Sexual Harassment is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. Formal Complaints of sexual harassment cannot be anonymous except for formal complaints filed by the Title IX Coordinator when the Title IX Coordinator believes that with or without the complainant's desire to participate in a grievance process, a non-deliberately indifferent response to the allegations requires an investigation.

2. Discriminatory Harassment of a Non-Sexual Nature

UAB's policy also prohibits discriminatory harassment of a non-sexual nature, which includes verbal, physical, or graphic conduct that denigrates or shows hostility or aversion toward an individual or group on the basis of race, color, religion, sex, national origin, disability unrelated to job performance, veteran status, age over 40, genetic or family medical history, or other status protected by applicable law and that

- Has the effect of creating an intimidating, hostile, or offensive employment, educational, or living environment; or
- Has the effect of unreasonably interfering with an individual's work performance or a student's academic performance.

Prohibited behavior includes non-academic remarks or actions of a non-sexual nature that are severe or persistent or pervasive and objectively offensive sufficient to limit or deny an individual of their rights to employment or educational opportunities or access to activities or benefits of the institution.

3. **Applicability of Policy**

In determining whether the conduct at issue is sufficient to constitute discriminatory harassment in violation of this policy, the conduct will be analyzed from the objective standpoint of a "reasonable person" under similar circumstances.

All harassing conduct prohibited by this policy, whether committed by faculty, staff, administrators, or students, is strictly prohibited and will bring prompt and appropriate disciplinary action, including possible termination of employment or permanent expulsion from UAB. This policy shall apply to any UAB-sponsored event or program, whether on or off campus, or other situations in which an individual is acting as a member of the UAB community.

The level of discipline imposed will depend upon the severity and pervasiveness of the conduct, which may be determined by the existence of prior incidents of harassment or discrimination. Depending upon the severity of the offense, however, a single violation of this policy may be sufficient for termination of employment or expulsion from the University.

B. Prohibition Against Retaliation

Retaliation against an individual who, in good faith, complains about or participates in an investigation of an allegation of discrimination or harassment is prohibited. Any individual who feels he or she has been retaliated against, or has been threatened with retaliation, should report that allegation immediately to the Office of the Chief Human Resources Officer. See also UAB's [Duty to Report and Non-retaliation Policy](#).

C. False Accusations

Anyone who knowingly makes a false accusation of discrimination, harassment, or retaliation will be subject to appropriate sanctions. However, failure to prove a claim of discrimination, harassment, or retaliation by a preponderance of the evidence standard following a good faith investigation does not, in and of itself, constitute proof of a knowing, false accusation.

COMPLAINTS

Prior to seeking a formal resolution, an individual is encouraged to resolve an allegation of discrimination or harassment through the Informal Resolution Procedure outlined below. The Informal Resolution Procedure is never appropriate for allegations of sexual violence.

A. Informal Resolution Procedure

(NOTE: Procedures similar to the following informal process are also included in UAB's [Problem Resolution Procedure for Non-faculty Employees](#) and in the [UAB Faculty Handbook and Policies](#).)

Although none of the actions set forth below is required before an individual is eligible to file a formal complaint, UAB encourages use of these mechanisms for informal resolution of the complaint. This list is not exhaustive. Actions taken using any of these mechanisms do not necessarily constitute a finding of discrimination or harassment.

1. **One-on-one Meeting.** The person making a complaint is encouraged to meet with the person whose behavior is considered discriminatory to discuss the situation and to seek resolution.
2. **Intervention by Supervisor, Manager, or Department/Unit Head.** The person making a complaint is encouraged to contact his/her supervisor to request assistance with resolving an allegation of discrimination or harassment.
3. **Facilitated Conversation.** If one-on-one meetings or intervention by departmental officials as indicated above do not resolve the discrimination or harassment allegation, the individual making the complaint may contact the appropriate office to request the assistance of a "facilitator." Facilitated conversations allow the parties involved to discuss the relevant issues in order to seek mutually agreeable solutions.

Individuals may contact the following "facilitators" for assistance with any aspect of the Informal Resolution Procedure:

- Staff employees may contact their assigned HR Consultant or HR Employee Relations. Faculty may contact the Office of the Provost, their assigned HR Consultant, or HR Employee Relations. Students may contact the Office of the Vice President for Student Affairs.
- Faculty, staff and students may contact the Title IX Office regarding instances of sex-based harassment. Faculty, staff, and students may contact the ADA Compliance Officer regarding instances involving disability discrimination.
- Faculty, staff, mentored graduate students, and postdoctoral fellows ("visitors") may contact the University Ombudsperson Office for guidance on ways to effectively engage in informal resolution.

Should the above informal procedure fail to resolve the matter satisfactorily, a complaint may be filed by Staff, Faculty, and Students through the [Formal Complaint and Resolution Procedure](#) below.

B. Formal Complaint and Resolution Procedure

If one chooses to proceed with a formal complaint, the complaint must be submitted in writing to one of the following, as appropriate:

Staff and Faculty

- HR Consultant/HR Employee Relations
- Office of the Chief Human Resources Officer (including for complaints involving age discrimination)

- Office of the Provost
- Title IX Office (for complaints involving sex based harassment)

Students

- Non-academic Conduct Officer
- Disability Support Services (for disability discrimination)
- Office of the Vice President for Student Affairs
- Title IX Office (for complaints involving sex based harassment)
- Assistant Vice President Institutional Access and Success (for complaints involving age discrimination)

To the extent possible, all complaints will be handled confidentially and addressed in accordance with relevant UAB policy. The complaints will be referred to the appropriate area for review and investigations will be conducted in a timely manner. In instances where staff, faculty and student issues overlap, the areas listed above will confer and/or work collaboratively to resolve the issue.

All individuals may use the procedures without penalty or fear of retaliation.

Also, any inquiries or complaints concerning the application of the Americans with Disabilities Act (ADA); Title VII of the Civil Rights Act of 1964; Executive Order 11246, as amended; Title IX of the Education Amendments of 1972; the Rehabilitation Act of 1973; or other legislation and its implementing regulations as they relate to the University of Alabama at Birmingham should be directed to one of the officials listed above.

POTENTIAL DISCIPLINARY ACTION

A violation of this policy may result in disciplinary action up to and including termination or expulsion from the University.

OVERALL IMPLEMENTATION

The Office of the Vice President for Administration and the Office of the Provost are responsible for submitting revisions to be considered for this policy.

Related Policies and Procedures

[UAB Enterprise Code of Conduct](#)

[Duty to Report and Non-retaliation Policy](#)

[Consensual Romantic Relationships Policy](#)

[Title IX Policy](#)

[Procedures for Title IX Sex Discrimination Complaints \(Non-harassment\)](#)

[Procedures for Title IX Sexual Discrimination Complaints \(Non-harassment\) Against Faculty, Staff, Affiliates and Non-Affiliates](#)

[Title IX Procedures for the Resolution of Sexual Harassment Complaints](#)

[UAB Faculty Handbook](#)

UAB is an Equal Employment/Equal Educational Opportunity Institution dedicated to providing equal opportunities and equal access to all individuals regardless of race, color, religion, ethnic or national origin, sex (including pregnancy), genetic information, age, disability, and veteran's status. As required by Title IX, UAB prohibits sex discrimination in any education program or activity that it operates. Individuals may report concerns or questions to UAB's Assistant Vice President and Senior Title IX Coordinator. The Title IX notice of nondiscrimination is located at uab.edu/titleix.

Approval Signatures

Step Description

Approver

Date

Applicability

The University of Alabama at Birmingham

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