

Policy Number: Series 400 -

Policy Title: HOWARD UNIVERSITY TITLE IX (STUDENT) POLICY ON PROHIBITED SEXUAL HARASSMENT AND GENDER-BASED DISCRIMINATION IN EDUCATION PROGRAMS AND ACTIVITIES

Responsible Officer: General Counsel

Responsible Office: Office of the General Counsel

Effective Date: August 1, 2011
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I. POLICY STATEMENT

Howard University (the "University") reaffirms its commitment to provide students with educational opportunities free from sexual harassment and discrimination based upon gender, gender expression, gender identity, sexual orientation, or marital status. In furtherance of this commitment, the University strives to maintain an environment in which all members of the University Community are: (a) judged and rewarded solely on the basis of ability, experience, effort, and performance; and (b) provided conditions for educational pursuits that are free from gender-based coercion, intimidation, or exploitation.

Sexual harassment (hereinafter referred to as "harassment") and gender-based discrimination (hereinafter referred to as "discrimination") are violations of both Federal and local law. They can result in physical and psychological harm to victims, while corrupting the positive work and academic environment the University strives to maintain. Therefore, harassment or discrimination on the part of any member of the Howard University Community shall not be tolerated under any circumstance and is strictly prohibited under both Title IX (applicable to students) and Title VII (applicable to faculty and staff).

The University considers harassment and discrimination to be extremely serious matters. In accordance with Federal law, the University has a legal obligation to investigate all allegations of harassment and discrimination. This obligation arises when the University knows with certainty or has reason to believe that sexual harassment or discrimination may have taken place. Therefore, upon learning of potential prohibited activity, the University may take action to investigate an allegation even if the alleged victim does not file a formal written complaint.

Under this Policy, every complaint submitted to the University, by or against a student, will be reviewed and investigated. However, the submission of false, spurious, or frivolous claims will result in the immediate consideration of disciplinary action, up to and including suspension or expulsion. Additionally, submission of a complaint alleging harassment or discrimination is considered to be a protected activity. Therefore, retaliation against any complainant, Dean, Title IX Designee, administrator, faculty member, witness or individual involved in any aspect of the investigative process under this Policy is strictly prohibited and will be sanctioned accordingly.

Further, this Policy is not designed to limit the academic freedom of University Faculty. The University prides itself on affording faculty with a fair opportunity to teach and conduct research and providing services to the community in a setting that provides the academic freedom necessary to cultivate a wide expanse of ideas and teaching methods. The University encourages the expression of such ideas or the use of such methods, provided that they are expressed or used in a manner that is consistent with this Policy and the legitimate rights of students.

It is important to note two considerations that inform the application of this Policy:

1. **Consensual Relationships**—Sexual Relationships, including dating, between students and faculty, staff, or any other type of University employee are strictly prohibited under this Policy whether or not such a relationship may violate the law. Therefore, violations of this prohibition by a faculty member/staff member and a student could lead to disciplinary action against one or both parties.
2. **Indemnification**--in any legal action precipitated by a violation of this Policy in which the University and a member of the University Community are named as "co-defendants," the University may refuse to defend and/or indemnify any co-defendant who is responsible for that violation. If a complaint is filed in court and a legal action is thereby commenced against the University and/or such employee, the University may decline to represent the employee and may also decline to provide that employee any indemnification for damages awarded against him or her.¹ The University will not defend or indemnify any member of the University Community in any legal proceeding or other similar action alleging sexual harassment if the Office of General Counsel determines that such member violated this Policy and may have acted either (1) in bad faith; or (2) in a manner adverse to the best interest of the University.

The Title IX Coordinator is primarily responsible for implementing this Policy and for ensuring that all students, Deans, Title IX Designees, administrators, faculty members and other pertinent University officials are adequately trained or otherwise made aware of their rights and responsibilities under this Policy. The provisions of this Policy extend to all undergraduate, graduate, transfer, and foreign and/or domestic exchange students as well as all residents and individuals receiving education and/or training at the University. However, all faculty and staff members are expected to comply with all terms of this Policy. In the event a faculty or staff member experiences harassment or discrimination, that individual is encouraged to contact the University's EEO Officer for guidance and further action under the University's Title VII policy.

¹ The decision regarding defense and indemnification will be based on the General Counsel's determination as to whether the co-defendant acted in good faith and not in a manner adverse to the best interests of the University. In addition to its refusal to defend and indemnify, in appropriate cases the University may also file a legal action against a member of the University Community to reimburse the University for any loss it may incur as a result of that person's violation of this Policy or any applicable provision of law.

The Executive Vice President and Chief Operating Officer shall ensure that appropriate notice of this Policy and its contents are distributed to all University vendors and those seeking to do business with the University; these individuals are also required to comply with all of the University's prohibitions against harassment and discrimination, as set forth within this Policy.

II. RATIONALE

Title IX of the Education Amendments of 1972, as amended ("Title IX"), and its implementing regulations (34 CFR Part 106) prohibits any individual from being excluded from participation in, denied the benefits of, or subjected to discrimination under any education program or activity on the basis of gender. In compliance with this Federal regulation, it is the policy of the University not to discriminate on the basis of gender in the education programs and activities that it operates. This prohibition against discrimination also extends to employment in education programs and activities and to admission to such programs and activities.

Further, this Policy is designed to protect all University students from illegal and improper forms of harassment and discrimination. It provides students with an opportunity to seek redress against any individual in violation of the Policy and allows the University to reaffirm its commitment to providing educational opportunities free from the negative effects of sexual harassment and discrimination.

III. ENTITIES AFFECTED BY THIS POLICY

While it is the responsibility of the University to disseminate this Policy, it is the responsibility of each member of the University Community to read the Policy and become familiar with its provisions. Moreover, failure to follow the procedures set forth in this Policy may inhibit or prevent the University from properly investigating an instance of alleged harassment, or from taking appropriate remedial action. Therefore, if an alleged victim fails to follow such procedure he or she may be left without a remedy under this Policy.

This Policy applies to all students of the University Community. More specifically, in any instance where a student is named as either the complainant or the accused in a matter alleging harassment and/or discrimination, this Policy will be applied. However, it is important to note that all faculty and staff members are expected to know and comply with the terms of this Policy. Moreover, the prohibitions of harassment and discrimination contained in this Policy extend to third parties, including those serving as contractors and vendors doing business at and/or with the University. Finally, it is important to note that the actions proscribed by this Policy are also applicable to all individuals who are on University premises or on any other property where the University conducts its business. If such an individual commits an act in violation of this Policy, the University will take appropriate remedial measures, under the circumstances, to sanction the offender, to mitigate against the potential for recurrence, and to discipline any member of the University Community who may have participated in such conduct, or may have failed to stop such conduct when he or she had the authority to do so.

IV. DEFINITIONS

Gender: the sex of an individual, male or female, based on reproductive anatomy.

Gender-based discrimination: any intentional or unintentional act that results in an individual being excluded from participation in, denied the benefits of, or subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity based upon the individual's gender.

Examples of Gender-Based Harassment -- Specifically, under this Policy, in providing any aid, benefit, or service to a student, the University shall not:

- a. treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
- b. provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
- c. deny any person any aid, benefit, or service;
- d. subject any person to separate or different rules of behavior, sanctions, or other treatment;
- e. apply any rule concerning the domicile or residence of a student or applicant, including eligibility for fees and tuition;
- f. aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of gender in providing any aid, benefit or service to students; or
- g. otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

Gender Expression: the physical manifestation of one's gender identity, usually expressed through clothing, grooming, mannerisms, chosen names, and social interactions that associate with the social definitions of masculinity and femininity, rather than birth sex.

Gender Identity: a person's self-conception of being a man or woman or boy or girl.

Marital Status: the legal status of being married or unmarried.

Sexual harassment: unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) submission to such conduct is made either explicitly or implicitly a basis for any decision affecting the terms or conditions of participation in any such program or activity or status in an academic course; or

(2) such conduct has the purpose or affect of unreasonably interfering with a student's educational right, privilege, advantage, or opportunity; or

(3) such conduct is so pervasive or severe that it creates an intimidating, hostile, or offensive environment for learning and has no reasonable relationship to the subject matter of the relevant course of instruction.

Examples of Sexual Harassment -- The **following examples** are illustrative of conduct that, if proven, may be considered by the University to establish sexual harassment in an academic setting:

a. unsolicited, unwelcomed flirtations, advances, and/or propositions of a sexual nature;

b. insults, jokes, or anecdotes that belittle or demean an individual or a group's sexuality or gender;

c. unwelcomed sexually-oriented gestures, verbal expressions, or comments of a sexual nature about an individual's body, clothing, or sexual experience;

d. inappropriate displays of sexually suggestive objects or pictures;

e. unnecessary and inappropriate touching, such as patting, pinching, hugging, or brushing against an individual's body;

f. sexual assault (includes all incidents of "criminal sexual conduct" as defined by the District of Columbia Code or the applicable law where the sexual assault takes place);
or

g. suggestions that submission to or rejection of sexual advances will affect decisions regarding such matters as an individual's employment, work assignments, status, salary, academic standing, grades, receipt of financial aid, or letters of recommendation.

Sexual orientation: an individual's natural preference when developing emotional and sexual relationships with people of the same sex (homosexual relationships), opposite sex (heterosexual relationships) or either sex (bisexual relationships).

Sexual violence: physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's intellectual or other disability and/or use of drugs or alcohol. Acts of sexual violence include rape, sexual assault, sexual battery, and sexual coercion. Sexual violence is a form of sexual harassment prohibited by Federal and local law.

University Community: all members of Howard University including, but not limited to, members of the Howard University Board of Trustees, students, faculty, and administrative personnel. Also includes individuals engaged and participating in educational activities hosted by the University.

V. POLICY PROCEDURES

In determining whether alleged conduct constitutes harassment or discrimination, the University will look at the record as a whole and the totality of the circumstances. This inquiry will examine information such as the nature of the sexual advances and the context in which the alleged incidents occurred. All determinations of the appropriateness of a particular action will be based upon the facts, and made on a case-by-case basis.

Rights of the Complaining Party

Any student member of the University Community who believes that he or she has been subjected to harassment or discrimination, in violation of this Policy, is urged to promptly pursue the matter and to file a formal written complaint, as advised below. The complaining party will not be reprimanded, retaliated against, or discriminated against in any way for initiating an inquiry or complaint in good faith.

Rights of the Alleged Subject

A person against whom a complaint is lodged shall be presumed innocent of that charge unless and until there is a final administrative finding of culpability or a stipulated admission to the charge by that person.

PROCEDURES FOR RESOLVING SEXUAL HARASSMENT AND GENDER-BASED DISCRIMINATION COMPLAINTS IN EDUCATIONAL PROGRAMS OR ACTIVITIES WHEN THE COMPLAINANT OR ACCUSED IS A UNIVERSITY STUDENT

(1) Immediate Assistance for Victims of Sexual Violence

If a student has been the victim of sexual violence, he or she may need to receive medical treatment and/or counseling. Medical attention is available at Howard University Hospital, located at 2041 Georgia Avenue, N.W., Washington, D.C. 20060, (202) 865-1131. Students can also receive medical assistance from the Student Health Center, located at 2139 Georgia Avenue, NW, (202) 806-7540.

Counseling services are available at the University Counseling Center, which is located in the C.B. Powell Building, 6th and Bryant Streets, N.W., (202) 806-6870. Inquiries should be directed to the Director of the Center. When the Center is closed, the student may contact Howard University Campus Police or the Resident Assistant of any University Residence Hall for assistance. Victims of sexual violence should also report any incidence to law enforcement authorities at the Metropolitan Police Department, Third District, (202) 673-6815, or the Detectives Office (202) 673-6915. Sexual violence may also be reported to the Howard University Campus Police Department, located at 2244 Tenth Street, N.W., (202) 806-1100.

(2) Filing a Complaint

Student complaints of harassment or discrimination allegedly committed by other students or members of the University Faculty and/or staff should be brought to the attention of the Dean or Title IX Designee of that College or School, or to the organizational unit of the University that employs such Faculty and/or staff member or enrolls such student.² If the complainant is enrolled in a different College or School, the complaint should be filed with the College or School that employs the Faculty member or with the Title IX Coordinator if the alleged perpetrator is a University staff member. In the event a complaint is filed in a College or School different from the one in which the student is enrolled, a confidential copy of the complaint should also be provided to the Dean of the College or School in which the complainant is enrolled.

All complaints filed with Deans or Title IX Designees shall be submitted to the Title IX Coordinator for review and assignment. Students are encouraged to consult with the Title IX Coordinator or an assigned Title IX Designee if they have any questions regarding this Policy including, but not limited to, the appropriateness of filing a complaint.

If a complaint is filed directly with the University's Title IX Coordinator, that individual will: (1) assign a Title IX Designee to investigate the matter; and (2) identify the appropriate University official to take remedial action under the circumstances (Title IX Decisional Authority"). **The Title IX Coordinator is located in the Office of the General Counsel and can be reached by visiting the Administration Building at 2400 6th Street, N.W., Suite 321, Washington, D.C. 20059, or by calling (202)806-2650.**

NOTE: If the performance of a duty or responsibility, under this Policy, creates an actual or apparent conflict of interest or is a violation of the University's Code of Ethics and Conduct, the General Counsel may reassign duties and/or responsibilities of such employees on a case-by-case basis to avoid such conflict or violation. All conflict of interest determinations will be made by the General Counsel.

Moreover, in addition to or instead of the persons described in the preceding paragraphs, a student may file a complaint of sexual harassment, gender-based discrimination, or discrimination based on race, color, or national origin with the United States Department of Education, Office for Civil Rights ("OCR"). The address and telephone number of the appropriate OCR District are as follows:

U. S. Department of Education
Office for Civil Rights
District of Columbia Office
400 Maryland Avenue, S.W.
Washington, D.C. 20202-1475
Telephone: (202) 453-6020; FAX: (202) 453-6021; TDD (877) 521-2172

² Each College/School has one or more Title IX Designees. To obtain the name(s) of the current Title IX Designee(s) for each individual College or School, contact the Office of the Dean for each individual College/School, the Provost, the Senior Vice President for Health Sciences or the University's Title IX Coordinator. Additionally, a list of the Title IX Designees may be found at www.howard.edu/policy.

(3) Title IX Designees

Title IX Designees shall be appointed by the Title IX Coordinator after consultation with the appropriate Vice President or Dean responsible for the supervision of the College or School that employs the Designee. No Designee, however, shall be permitted to investigate any matter or consult with any potential complainant without first receiving training of a type and duration specified by the Title IX Coordinator. Such training shall be completed within 60 business days after the selection of the Designee. Additionally, all Designees are required to attend training sessions every three (3) years, or as frequently as legislative changes mandate.

(4) Written Requirement

A formal complaint must be submitted, in writing, and must include the name(s), date(s), time(s), description of specific incident(s), and any other information on which the complaint is based. The complainant must sign the complaint and be willing to be identified to witnesses and to the person against whom the complaint is directed, if that is determined necessary by the University to resolve the complaint.

(5) Time of Filing

A formal complaint must be filed within 120 calendar days following the date of the alleged harassment or discrimination. While the University is firmly committed to protecting all students from harassment or discrimination in educational programs or activities, failure to timely file a complaint with the appropriate Dean, Title IX Designee, or Title IX Coordinator may adversely affect the ability of the University to take any remedial measures under this Policy.

(6) Notice to the Accused

The subject of the investigation shall have the right to be informed, in writing, of the complaint and the allegations made against him or her. The accused will be notified within 10 calendar days of receiving the complaint. The accused will have an opportunity to submit a written response to the charges. This response must be submitted within 7 calendar days of receiving notification of the complaint.

(7) Confidentiality

To the fullest extent practicable, complaints of harassment or discrimination will be processed confidentially and consistently with the University's need to investigate and take corrective action against such behavior. While the vast majority of investigations involve disclosure of the complainant's identity to the accused, there may be situations where state and/or Federal law prohibits disclosure or where the complainant requests for his or her identity to remain confidential during the course of the investigative proceedings.

In the event a Complainant requests to keep his or her identity confidential, the Title IX Coordinator, Title IX Designee(s) or other Title IX Decisional Authority will inform the Complainant that the confidentiality request may limit the University's ability to respond to the allegations and address the University's provisions against retaliation. If the complainant continues his or her request for confidentiality, the University will take all reasonable steps necessary to investigate, respond to, and remedy the situation giving rise to the complaint. However, the University cannot guarantee complete confidentiality, especially if the Title IX Coordinator, Title IX Designee or other Title IX Decisional Authority, after consultation with the Office of the General Counsel, determines that resolution of the complaint requires disclosure to conduct an effective investigation or that confidentiality concerns are outweighed by the University's interest in protecting the safety, welfare, and well being of others. If a complainant so elects, the Title IX Coordinator or Title IX Designee may attempt to affect a resolution of issues of concern prior to the filing of a formal complaint, in appropriate circumstances.

(8) Interim Remedial Action

Promptly upon learning of potential harassment or discrimination, the Title IX Coordinator, the Dean, and/or the Title IX Designee(s) will consult with the complainant to determine whether interim remedial measures should be taken to alleviate problems or conflicts while the investigation is pending. Such measures may involve either the complainant or the subject and may include, but are not limited to, class and/or work reassignments, a transfer from teaching to administrative, research, or other non-teaching duties, administrative leave (with pay) or excusable absences from class and/or work assignments. Such measures, however, shall not be considered disciplinary action against any person and may only be taken with the concurrence of the Provost, Senior Vice President for Health Sciences and/or an appropriate Cabinet-level administrator, after consultation with the Office of General Counsel.

(9) Investigation

The Dean, Title IX Coordinator, or assigned Title IX Designee(s) will have 60 calendar days to conduct a thorough and timely investigation of all complaints alleging harassment or discrimination under this Policy. The Title IX Coordinator shall be responsible for the management of all such investigations. In the event additional time is needed, the investigator(s) must make the request, in writing, to the Title IX Coordinator. If additional time is permitted, the Title IX Coordinator will notify the complainant, in writing, that additional time has been granted for completion of the investigation.

Additionally, please note, with the concurrence of the General Counsel, the conduct of an investigation may be delegated to outside law firms or consultants. Any law firm or consultant used shall be selected and retained solely by the General Counsel. In the event an outside law firm or consultant is used to conduct an investigation under this Policy, the resulting Report of Investigation may be disclosed only to the extent authorized by the General Counsel.

(10) Methods of Investigation

The conduct of investigations **must** include an interview of the complainant and **may** include one or more of the following fact-finding methods:

- (a) Review of all relevant documents including, but not limited to, academic records, emails, phone records, handwritten notes, and police reports;
- (b) Personal interviews of Faculty, students, administrators, staff and other persons who may have knowledge or information relevant to the allegations in the complaint; or
- (c) Letters of inquiry by the investigator to those persons described in (b) above.

(11) Resolution

Upon the conclusion of a harassment or discrimination investigation, a Report of Investigation shall be prepared by the Dean, Title IX Coordinator or Title IX Designee(s) and delivered to the Title IX Coordinator or other Title IX Decisional Authority. The Report shall contain a brief description of the complaint, a statement of the methodology used to investigate the complaint, findings of material fact, and an opinion of the Dean, Title IX Coordinator or Title IX Designee(s) as to whether the allegations are sustained by the facts.³ This Report must be completed within the 60 calendar day investigation time frame.

The Title IX Coordinator will then forward the Report to the Provost, the Senior Vice President for Health Sciences or the Title IX Decisional Authority within 10 calendar days of receipt. If the complaint involves allegations of harassment or discrimination by Faculty members, the Report shall be accompanied by a recommendation stipulating what remedial measures, if any, are appropriate under the circumstances.

³ Such a determination should be based on the investigator's good faith belief as to whether credible and relevant facts make it more likely than not that the alleged harassment or discrimination did take place.

Such measures shall be adopted by the University within 10 business days of forwarding the Report to the appropriate party, unless the Provost, the Senior Vice President for Health Sciences, or the Title IX Decisional Authority, after consultation with the Office of General Counsel, finds such measures unreasonable under the circumstances. In the event the measures are deemed to be unreasonable, the recommendations of the Provost, the Senior Vice President for Health Sciences, or the Title IX Decisional Authority are final, and those remedial measures will be followed.

In the event that no harassment or discrimination has been found, the investigator shall not make a recommendation for specific remedial action unless subsequently requested by the Provost, the Senior Vice President for Health Sciences or the Title IX Decisional Authority. In these cases, the Provost, the Senior Vice President for Health Sciences or the Title IX Decisional Authority shall take or direct such remedial measures as may be appropriate under the circumstances, after consultation with the Office of General Counsel. The action or declination of action by the Provost, the Senior Vice President for Health Sciences or the Title IX Decisional Authority is final and may not be appealed to any other authority.

(12) Outcome Notification

In the event the allegations of harassment or discrimination in education programs or activities are sustained, the Provost, the Senior Vice President for Health Sciences or the Title IX Decisional Authority shall: (i) notify the subject of the investigation of the findings and of the remedial action taken or to be taken; and (ii) notify the complainant that the allegations have been sustained and that appropriate remedial action has been or will be taken. The complainant shall be informed of the nature of such action only to the extent necessary to demonstrate that the allegations have been appropriately addressed.

If the allegations of harassment or discrimination are not sustained, the Provost, the Senior Vice President for Health Sciences or the Title IX Decisional Authority shall advise the Complainant and the subject of that outcome.

Each party to the complaint will be notified of the investigative findings within 10 business days of the Provost, the Senior Vice President for Health Sciences or the Title IX Decisional Authority receiving the Report of Investigation.

(13) Alternative Procedures

If the Provost, Vice Provost, Senior Vice President for Health Sciences, Vice President (or person of similar rank) is the subject of a complaint of harassment or discrimination, the Report of Investigation shall be furnished by the Title IX Coordinator to the President who shall take such remedial action as may be appropriate. If the President, in his individual capacity, is the subject of such a complaint, the Title IX Coordinator shall notify the General Counsel who, in turn, will recommend a special investigative protocol to the Chairman of the Audit and Legal Committee of the Board of Trustees. Thereafter, the complaint shall be investigated as directed by said Committee.

VI. SANCTIONS

Employee Disciplinary Measures

Engaging in sexual harassment, or failing to carry out the responsibilities established by this Policy, will give rise to disciplinary action, up to and including separation from the University.

In most cases, the Dean of the College or School where the complaint is filed shall be considered the University official empowered to take any remedial action necessary to promptly and effectively eliminate the harassment or discrimination, prevent its recurrence, and protect the complainant from future incidents. However, in all circumstances, the Title IX Coordinator may identify other University officials to enforce all necessary remedial action, if appropriate.

Student Disciplinary Measures

If a student is charged with violating this Policy, the procedures recited in the Student Code of Conduct shall be used in lieu of those specified in this Policy for the imposition of discipline, if appropriate.

VII. HYPERLINK

www.howard.edu/policy