3341-5-41 Non-Discrimination in Employment and Education

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(A) Policy Statement and Purpose

Bowling Green State University is committed to maintaining an employment and educational environment that is free from unlawful discrimination and harassment. The University prohibits discrimination and harassment on the basis of protected class: age (40 years of age or older), ancestry, color, disability, gender identity or expression, genetic information, marital status, military status, national origin, pregnancy, race, religion, sex, sexual orientation, special disabled or protected veteran status, or any other legally protected characteristic (including status as a parent during pregnancy and immediately after the birth of a child, status as a parent of a young child, and status as a foster parent as those terms are defined in Ohio law). All members of the University have the right to work and learn in a professional atmosphere that promotes equal employment and educational opportunities.

This policy is intended to prohibit discrimination, harassment, and retaliation in employment and education in accordance with applicable laws. Those laws include, but are not limited to, the Americans with Disabilities Act of 1990 (as amended by the ADA Amendments Act of 2008); the Age Discrimination Act of 1975; the Age Discrimination in Employment Act of 1967; the Genetic Information Nondiscrimination Act of 2008; the Pregnancy Discrimination Act of 1978; Section 504 of the Rehabilitation Act of 1973; Titles VI and VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; the Vietnam Era Veterans’ Readjustment Assistance Act of 1974; Chapter 4112 of the Ohio Revised Code; and any applicable Executive Order.
(B) Policy Scope

This policy applies to the conduct of faculty, staff, students, and volunteers in connection with the employment and educational activities of the University. It also applies to contractors and vendors in the performance of their contracts with the University.

Sexual harassment is covered by Policy 3341-5-38 which is available at: https://www.bgsu.edu/general-counsel/university-policies.html.

Student sexual misconduct is covered by Policy 3341-2-41 which is available at: https://www.bgsu.edu/general-counsel/university-policies.html.

(C) Definitions

(1) Discrimination

Discrimination occurs when an adverse employment or education action is taken against a person and is based upon that person’s protected class as listed in Section (A).

(2) Harassment

Harassment is unwelcome verbal or physical conduct directed toward a person that is based on the person’s protected class. Harassment violates this policy when enduring it becomes a condition of continued employment or when it is sufficiently severe, persistent or pervasive that it unreasonably interferes with, denies, or limits that person’s ability to participate in or benefit from a University education or employment program or activity and creates an objectively hostile environment.

Harassment does not include constitutionally-protected activity or conduct that serves a legitimate purpose.

(3) Protected Class

Protected class is defined by federal and state law and University policy, including the laws listed in this policy.
(4) Retaliation

This policy and federal and state law prohibit retaliation against any person for asserting their legal rights to be free from discrimination or harassment, for reporting discrimination or harassment, or for participating in an investigation of discrimination or harassment. Retaliation includes any adverse action taken against a person for requesting an accommodation or for their role in reporting discrimination or harassment, assisting a reporting party, serving as a witness, or otherwise participating in an investigation. No agent of the university may harass, coerce, intimidate, or discriminate against an individual for filing a complaint or participating in the complaint resolution process.

(D) Policy

(1) Responsibility for Compliance

The University must comply with federal and state anti-discrimination and equal opportunity laws.

The Office of Human Resources (OHR) is charged with the primary responsibility of ensuring that the University’s employment practices and the conduct of the University’s employees and its contractors and vendors comply with those laws. If conduct by a University employee (including a volunteer or a student employee in their capacity as an employee) or a contractor or vendor in violation of this policy is alleged, OHR or its approved designee will receive the complaint, conduct the investigation, report its findings to the appropriate decisional authority, and make recommendations as necessary.

The Office of the Dean of Students or the Office of Residence Life will investigate and resolve allegations of discrimination, harassment, or retaliation by a student or student organization in accordance with applicable University policies.

(2) Overview of the OHR Complaint Procedure
The OHR complaint procedure is a mechanism by which the University may identify, respond to, prevent, resolve, or eliminate incidents of discrimination and harassment.

OHR or its designee will thoroughly investigate all complaints as soon as practicable. Information disclosed during the course of the investigation will remain private except as necessary to conduct the investigation, to determine responsibility and take any remedial action, and to comply with applicable law.

The investigation process is not discipline, but it is a neutral fact-finding process that serves to gather and outline the facts of a case. Statements and information obtained in the course of the investigation may be relied upon in a subsequent disciplinary investigation. Therefore, responding parties who are represented by a labor organization have the right to have a representative of their labor organization accompany them when they are interviewed in the course of an investigation under this policy.

OHR or its designee will conduct each investigation in an impartial, fair, and unbiased manner and will take all reasonable efforts to ensure confidentiality for both the complainant and the respondent.

At the conclusion of its investigation, OHR or its designee will report its findings to the appropriate decisional authority for further action as necessary and a determination of responsibility. If the University determines a violation of this policy has occurred, it will take effective corrective action commensurate with the severity of the offense.

(3) Informal Resolution Process

Upon receipt of a complaint within its area of primary responsibility, OHR will consider whether the matter may be resolved by using an informal resolution process to seek a mutually agreeable solution without initiating a formal investigation. If OHR determines that informal resolution is not appropriate, or if it is attempted and not successful, the formal investigation may move forward.
Examples of informal processes include:

(a) Facilitated conversation: a structured conversation designed to help parties find acceptable resolutions regarding communication or work issues.

(b) Mediation: a structured interactive process where parties jointly agree to discuss incidents with a designated OHR investigator.

(c) Referral to the BGSU Employee Assistance Program or a community resource.

(4) Formal Investigation Process

For each unresolved complaint within its area of primary responsibility, OHR or its designee will conduct a formal fact-finding investigation. In collaboration with others as appropriate, OHR may also take interim measures to promote the safety or well-being of those involved or others in the university community.

The steps of the formal investigation process include the following:

(a) Interviews with the reporting party, witnesses, and other individuals as the investigator deems appropriate.

(b) Written notice to the responding party scheduling a meeting to discuss the allegations. The notice will include a general description of the alleged violation that makes a good faith effort to balance the investigatory interests of the University with the responding party’s interest in understanding the nature of the allegations, with the investigator retaining sole discretion in making this determination.

(c) The reporting party and the responding party each will be asked to provide a written statement, the names of witnesses, and any documents or other information they deem relevant.
(d) The reporting party and the responding party each will be given the opportunity to explain and/or respond to the evidence.

(e) Other investigatory actions may be warranted and will be determined by the investigator.

(f) The reporting party and the responding party may have an advisor present during any meeting with the investigator. An advisor must be the party’s union representative or attorney or someone employed full time by the University such as a colleague or supervisor. The advisor must maintain confidentiality and may not impede or interfere with the investigator’s ability to obtain information within the constraints of applicable law, any applicable CBA, and this policy. The advisor may not ask questions of the responding party and may not suggest answers to the responding party. If the advisor is a union representative or an attorney, the party must give at least 48 hours’ advance notice to the investigator.

(g) If the reporting or responding party chooses not to cooperate or respond to requests for information in a timely manner, OHR or its designee will proceed with the investigation without that party’s information, which may lead to an adverse finding.

(h) Any person who deliberately provides information that the person knows to be false during an investigation will be subject to disciplinary action.

(5) Final Report

When the investigation is complete, the investigator will issue a final report. For each allegation, the investigator will report the relevant facts and state whether or not those facts appear to be sufficient, by a preponderance of the evidence, to warrant a decisional authority finding of a policy violation.
The Chief Human Resources Officer (CHRO) or designee will review the final report and submit it to the appropriate decisional authority for any necessary further proceedings and final determination. The decisional authority will notify the reporting party and the responding party that the final report has been submitted and each party may receive a copy of the report from the decisional authority upon request.

(E) OHR Recordkeeping

OHR will maintain the written record of the investigation and all other appropriate documents in accordance with the records retention schedule. When a civil complaint is filed outside the university, information gathered in the course of the internal investigation may be disclosed to the investigating agency. If a criminal matter related to the investigation occurs, the University will only provide information consistent with employees’ *Garrity* rights.

If the decisional authority issues corrective action, a letter documenting the action will be included in the investigation file and the responding party’s personnel file.

(F) Policy Exceptions

Pursuant to 10 U.S.C. § 983, this policy does not apply to prohibit or effectively prevent either of the following:

(1) The establishment, maintenance, or operation of a unit of the Senior Reserve Officer Training Corps at the University; or

(2) A student at the University from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.

Registered Date: February 21, 2020