

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

Applicability	All University Units
Responsible Unit	Division of Diversity and Belonging
Policy Administrator	Chief Diversity and Belonging Officer

(A) Policy Statement and Purpose

All members of the University have the right to work and learn in a professional atmosphere that promotes equal employment and educational opportunities.

Bowling Green State University is committed to maintaining an employment and educational environment that is free from unlawful discrimination, harassment, and retaliation. The University prohibits discrimination and harassment on the basis of protected class: age (40 years of age or older), ancestry, color, disability, ethnicity, familial status, gender, gender identity and expression, genetic information, HIV/AIDS status, marital status, military status, national origin, political affiliation, pregnancy, race, religion, sex, sexual orientation, 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).

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 activities protected under this policy.

This policy is intended to prohibit discrimination, harassment, and retaliation in employment and educational opportunities 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.

BGSU encourages anyone who believes that they have been subjected to conduct that is in violation of BGSU policies and procedures to report their concerns so that the University has an opportunity to address prohibited conduct.

Please see Section D of this document for reporting guidance.

(B) Policy Scope and Responsible Administrators

(1) Scope of this Policy; Related Policies

This policy applies to the conduct of faculty, staff, students, student organizations, and volunteers in connection with the employment, educational, and recreational activities of the University. This policy also applies to third-parties such as visitors, as well as 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/content/dam/BGSU/general-counsel/documents/Sexual-Harassment.pdf>.

Title IX sexual harassment and misconduct is covered by Policy 3341-2-41 which is available at: <https://www.bgsu.edu/general-counsel/university-policies/title-ix-sexual-harassment-policy-and-procedures.html>.

(2) Responsibility for Compliance

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

The Division of Diversity and Belonging is charged with the primary responsibility of ensuring that the University's equal employment practices and the conduct of any person within the scope of this policy comply with federal, state, and local laws and University policies and procedures. If conduct by any person within the scope of this policy is alleged to be in violation of this policy the Division of Diversity and Belonging or designee will assess the complaint and determine the best course of action to address the concerns.

The Office of the Dean of Students will investigate and resolve allegations of prohibited conduct by a student or recognized student organization, in

accordance with applicable University policies and procedures, if the alleged violation is within the scope of the Code of Student Conduct.

(C) Definitions

(1) Discrimination

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

(2) Harassment

For purposes of this policy, harassment is unwelcome verbal, non-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 law/executive order, federal regulations, state law/executive order, and University policies, including the protected classes referenced in this policy.

(4) Complainant

An individual alleged to have experienced discrimination, harassment, or retaliation in violation of this policy. In certain situations, the University may assume the role of the complainant.

(5) Respondent

The individual alleged to have engaged in discrimination, harassment, or retaliation in violation of one or more university policies.

(6) Retaliation

This policy and federal and state law prohibit retaliation against any person for asserting their legal rights or their rights under this policy to be free from discrimination or harassment, for reporting discrimination or harassment, or for participating in an investigation of discrimination or harassment. Retaliation also includes any adverse action taken against a person for requesting an accommodation or for their role in reporting discrimination or harassment, assisting a complainant, 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. Any person within the scope of this policy who engages in retaliation is subject to a separate charge of retaliation under this policy.

(D) Reporting Alleged Violations

(1) Timeliness of Report

Complaints are expected to be reported timely to assure proper handling of the complaint. It is recommended that complaints are filed within 180 calendar days of the last act of discrimination, harassment, or retaliation.

Complaints filed after 180 calendar days will require an additional explanation setting forth the reason the complaint was not filed earlier.

(2) How to Report

A complaint can be made by completing a complaint form available on the University's website at:

<https://www.bgsu.edu/equity-diversity-and-inclusion/e-o-compliance/report-an-incident.html>.

A completed form may also be hand delivered, faxed, emailed, or mailed to the Division of Diversity and Belonging.

Anonymous reporting can also be made by calling EthicsPoint at 1-866-879-0426 or by making a report at:

<https://secure.ethicspoint.com/domain/media/en/gui/29886/index.html>.

(E) Policy

(1) Overview of the Procedures Used

The University reporting procedure is a mechanism by which the University may identify, respond to, prevent, resolve, or eliminate incidents of discrimination and harassment.

Upon receiving a complaint, the Division of Diversity and Belonging will initially assess whether the facts alleged in the complaint, if taken as true, indicate a potential violation of this policy. If not, the University will dismiss the complaint and give the complainant written notice explaining the reasons for the dismissal and allowing the complainant ten (10) calendar days to refile a complaint alleging additional facts. If the facts alleged in the refiled complaint still do not indicate a potential violation of this policy, the dismissal will be final.

Upon completion of the assessment of the complaint, if determined that facts alleged in the complaint, if taken as true, indicate a potential violation of this policy, the Equity and Compliance Officer, in consultation with other appropriate departments and/or university leaders as needed, will determine the next course of action. These actions include informal and formal resolution processes.

The investigation of a factually sufficient complaint will be initiated as soon as practicable. The University will endeavor to complete the investigation within 60 calendar days after the complaint was received by the Division of Diversity and Belonging or designee. This timeframe may be extended if circumstances warrant, such as university breaks and leaves of absences or if the complaint was referred for informal resolution.

Information obtained during the investigation will remain as private as practicable. Complete confidentiality is not guaranteed as this information will be used to conduct the investigation, determine responsibility, take any remedial action if warranted, and comply with University policies and applicable laws.

The investigation process is not a disciplinary procedure. The investigation is a neutral fact-finding process that serves to gather information and analyze facts compared to University policies and procedures and applicable local, state, and federal laws. However, the statements and information obtained during the investigation may be relied upon in a subsequent disciplinary procedure.

University investigators do not make final decisions regarding the investigation, findings of responsibility, or remedial action.

The complainant and respondent may have one individual of their choice to serve as their advisor during this process. The advisor must maintain confidentiality and may not impede or interfere with the investigatory meeting. If the advisor is an attorney, the University requires at least 48 hours' notice be given to the investigator.

The Division of Diversity and Belonging or designee will conduct a thorough review of the allegations in a fair and impartial manner with due respect to all parties involved.

(2) Informal Resolution Process

The Division of Diversity and Belonging will determine if an informal resolution may be an appropriate measure to address the concerns presented in the complaint.

Please note: Matters that involve a criminal offense and/or those cases involving sexual violence are not eligible for the informal resolution process.

Informal resolution methods include, but are not limited to:

- (a) Informal Inquiry – A meeting with the complainant, respondent, and department leadership to discuss the concerns.
- (b) Facilitated Conversation – A structured conversation designed to help the parties find acceptable resolutions regarding communication or work issues.
- (c) Referral – The utilization of third-parties, such as the Employee Assistance Program or community resource, to provide support, information, or advice regarding the current situation.
- (d) Mediation – A structured interactive process in which a facilitator assists the complainant and respondent to identify and address concerns and negotiate an agreement to resolve the dispute.

(3) Investigation Process

If an attempt to resolve an issue utilizing the Informal Resolution Process is not successful or not an option, the Equity and Compliance Officer or designee will initiate the Investigation Process.

For each unresolved complaint the Equity and Compliance Officer or designee will conduct a formal fact-finding investigation in collaboration with other departments as appropriate.

Interim measures to promote the safety or well-being of those involved or the university community may be appropriate.

The University uses the preponderance of evidence or the “more likely than not” evidentiary standard to determine culpability and responsibility when resolving complaints under this policy.

The steps of the formal investigation process include the following:

- (a) Interviews will be scheduled with the complainant, witnesses, and other individuals as deemed appropriate.
- (b) Written notice will be sent to the respondent to schedule a meeting to discuss the allegations. The notice to the respondent 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 respondent’s interest in understanding the nature of the allegations, with the investigator retaining sole discretion in making this determination.
- (c) The complainant and the respondent can provide a written statement related to the complaint, the names of witnesses, and any documents or other information they deem relevant.
- (d) The complainant and the respondent will be given the opportunity to explain and/or respond to the evidence obtained during the investigation.
- (e) Other investigatory actions may be warranted and will be determined on a case-by-case basis by the University.

- (f) If the complainant or respondent chooses not to cooperate or respond to requests for information in a timely manner, the investigation will proceed without that party's information.
- (g) Any person who deliberately provides information that the person knows to be false during an investigation may be subject to disciplinary action.

(4) Preliminary Report

After interviewing the complainant and the respondent, giving each of them the opportunity to review and comment on their statement and to identify witnesses and provide information, completing witness interviews, and gathering relevant information, the investigator will prepare a preliminary report.

The preliminary report will generally include the complainant's statement, the respondent's statement, and a statement from each witness, along with a copy of other relevant information obtained during the investigation and/or written summary of it. The preliminary report will not contain any findings.

The investigator will provide the preliminary report to the complainant and respondent, and their advisors (if applicable) for review and comment. In addition, the investigator will provide the parties and their advisors any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the final investigation report.

The preliminary report and evidence will be provided electronically or in a hard copy. Each party will have ten (10) calendar days from the date the preliminary report is shared to submit a written response, which the investigator will consider before completing the final investigation report.

If a party identifies new relevant information, the investigator will address any relevant issues identified and pursue additional investigative steps as needed. The investigator will include those matters in a revised preliminary report and give the parties two (2)

business days to review and comment on it before writing the final report.

(5) Final Report

Upon conclusion of the investigation, the Chief Diversity and Belonging Officer or designee will report the findings to the appropriate decisional authority for any necessary further proceedings and final determination. The decisional authority will notify the complainant and the respondent that the final report has been submitted and will communicate the determination as to whether a policy violation has occurred. Each party may receive a copy of the report from the decisional authority upon request. If the University determines a violation of this policy occurred, corrective action commensurate with the severity of the offense will be administered. The absence of a finding of a policy violation does not preclude the decisional authority from making recommendations to enhance awareness of equity and diversity values and to continue to maintain an employment and educational environment that is free from unlawful discrimination, harassment, and retaliation.

(F) Recordkeeping

The University 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 during 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 respondent's personnel file.

(G) Policy Exceptions

Nothing in this policy detracts from any legal right of a parent or guardian to act on behalf of a student, subject to Family Educational Rights Protection Act (FERPA), including, but not limited to filing a formal complaint.

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.

This policy has been assessed for adverse differential impact on members of one or more protected groups.

Registered Date: February 21, 2020

Amended: May 7, 2021