

Northern Arizona University

Interim Nondiscrimination and Anti-Harassment Policy

Effective August 14, 2020

Policy Summary

Northern Arizona University is committed to providing a working and learning environment free from discrimination, harassment, including sexual harassment, and retaliation. This policy prohibits discrimination and harassment based on protected status including race, color, religion, sex, national origin, age, disability, veteran status, sexual orientation, gender identity and expression, or genetic information. This policy also prohibits retaliation for raising concerns under this policy or participating in an investigation.

Reasons for This Policy

Harassment and discrimination based on protected status are harmful individually and institutionally and pose barriers to academic and career success. Retaliation can have a chilling effect on reporting instances of prohibited conduct and deter individuals from reporting concerns or participating in the investigative process.

Entities Affected By This Policy

- All university programs and activities

Who Should Know This Policy

- All prospective and current students
- All NAU employees, volunteers, contractors, affiliates, agents and guests
- All persons participating in or accessing NAU-sponsored programs or events

Definitions

Affiliate: a person who belongs to one of the University's affiliations who has developed a formal relationship with the University and who has been determined to be an "affiliate" under the University Affiliate Policy.

Consent: Consent in the context of sexual activity means informed and freely given words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. Consent may not be inferred from: 1) silence, passivity or lack of resistance, 2) a current or previous dating or sexual relationship, 3) acceptance or provision of gifts, meals, drinks, or other items or 4) previous consent to sexual activity.

Consent may be withdrawn during sexual activity. Consent to one form of consensual activity does not imply consent to any other forms of sexual activity.

Consent may not be obtained through physical force, violence, duress, intimidation, coercion, or an express or implied threat of injury.

Consent may never be given by a person who is incapacitated (by drugs, alcohol or otherwise), unconscious, asleep, or otherwise physically or mentally unable to make informed, rational judgments. The use of alcohol or drugs does not diminish one's responsibility to obtain consent. Consent cannot be given by someone who by virtue of age, circumstances or other factors, is deemed by law to be incapable of giving consent.

Dating Violence: The term dating violence means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, (iii) the frequency of interaction between the persons involved in the relationship.

Domestic Violence: Domestic Violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person who shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under state law.

Discrimination: Discrimination is defined under applicable federal and state law. In general, unlawful discrimination means failing to treat people equally, at least based in part, on status that is protected under applicable law or policy. Protected status includes race, color, religion, sex, national origin, age, disability, veteran status, sexual orientation, gender identity and expression and genetic information.

Employee: All individuals who have an employment relationship with the university including, for example, faculty, staff, student-employees, graduate and teaching assistants..

Harassment: Harassment is a specific form of discrimination. For purposes of this policy, harassment is unwelcome behavior, based on a protected classification, that is sufficiently severe or pervasive to create an intimidating, hostile or offensive environment for academic pursuits, employment, or participation in university sponsored programs or activities.

Retaliation: For purposes of this policy, retaliation occurs when an adverse action is taken against an individual for complying with this policy, opposing conduct reasonably believed to constitute a violation of this policy, filing a report or formal complaint, seeking an accommodation under this policy, or participating in any manner in an investigation or proceeding related to this policy. Adverse actions that are likely to deter a complaining individual or others from engaging in protected activity are prohibited.

Sexual Harassment: (see also Title IX Sexual Harassment)

Quid Pro Quo sexual harassment occurs when an employee of the university conditions the provision of an aid, benefit, or service of the university on an individual's participation in unwanted sexual conduct.

Hostile Environment Sexual harassment includes unwelcome conduct of a sexual nature (including unwelcome sexual advances or activity) which is sufficiently severe or pervasive to create an intimidating, hostile or offensive environment for academic pursuits, employment or participation in university sponsored programs or activities.

Examples of conduct that may, if severe or pervasive, constitute sexual harassment include, but are not limited to:

- Unwelcome physical or implied sexual advances, or requests for sexual favors;
- inappropriate physical touching, kissing, brushing up or rubbing against another;
- unwelcome sexually suggestive or degrading jokes, comments, insults or gestures;
- voyeurism (which includes while observing others in a state of full or partial undress or engaged in sexual activity) or non-consensual photographing or audio or video recording of another, or publishing or threatening to publish or disseminate such materials; or

- inappropriate display or circulation of sexually explicit materials such as photos, pictures, posters, magazines, cartoons, or statements, whether in printed or electronic form.

Sexual Assault: A sexual act, directed at another person, without consent of the victim, including instances where the victim is incapable of giving consent.

Stalking: The term stalking means engaging in a course of conduct that would cause a person to (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Title IX Sexual Harassment: Title IX Sexual Harassment (sexual harassment as regulated by Title IX of the Education Amendments of 1972 and its applicable regulations) is conduct based on sex, that constitutes one or more of the following:

- Unwelcome conduct, occurring in the United States, that a reasonable person would find so severe, pervasive and objectively offensive that it effectively denies a person equal access to university sponsored education programs or activities.
- An employee conditioning the provision of an aid, benefit, or service of the university in the United States on an individual's participation in unwelcome sexual conduct.
- Any of the following specific acts of sexual harassment taking place within the United States and within a university sponsored program or activity: sexual assault, dating violence, dating violence, and stalking.

Title IX Procedures (as discussed in Section H) will apply to allegations that meet this definition.

University Program or Activity: Location, events, or circumstances over which the recipient exercises substantial control over both the Respondent and the context in which the sexual harassment occurs.

Volunteer: A person doing work for the University under the direction and control of University officials and are not being paid by anyone for these activities.

Policy

A. Scope

Northern Arizona University expressly prohibits discrimination or harassment based on any protected status: race, color, religion, sex, national origin, age, disability, veteran status, sexual orientation, gender identity and expression and genetic information. This includes allegations of sexual harassment and Title IX sexual harassment as defined in this policy to include quid pro quo and hostile environment sexual harassment as well as sexual assault, dating violence, domestic violence and stalking.

Retaliation for reporting or participating in the review of a report made under this policy is also prohibited. Inappropriate conduct need not rise to the level of a violation of federal or state law to constitute a violation of this policy and warrant disciplinary action or other appropriate response.

Enforcement of this policy is subject to constitutional protections related to freedom of speech, association, and the press.

Members of the University community are responsible for participating in, creating and maintaining a workplace and/or educational environment free from all forms of prohibited discrimination, harassment and retaliation and for cooperating with any investigation of allegations of a violation of this policy.

B. Reporting

1. Reporting Options

If the alleged violator is a university student, the report should be made to the Office of the Dean of Students. Reports regarding Title IX Sexual Harassment (as defined above) should be made to the Title IX Coordinator. All other reports shall be made to the Equity and Access Office. If the alleged violator is employed by the identified office, then reports may be made to the Human Resources Office.

2. Reporting Obligations – All Employees (Sexual Harassment)

Unless prohibited by law from doing so, any employee who is informed of or has a reason to believe that sexual harassment (as defined below to include quid pro quo sexual harassment, hostile environment sexual harassment, Title IX sexual harassment, sexual assault, dating or domestic violence or stalking) has occurred shall promptly report all relevant information to the Title IX Coordinator. Failure to do so may result in disciplinary action.

This responsibility extends to student employees who learn of information in the context of their University employment. This responsibility does not extend to students outside the employment context, but anyone may make a report to the offices and individuals identified above.

3. Reporting Obligations - Supervisors

Individuals in positions of authority, including supervisors, managers or administrators, who are informed of a violation of this policy (other than sexual harassment as described above) or have a reasonable basis to believe a violation may have occurred are required to contact the Equity and Access Office. Failure to do so may result in disciplinary action. Informal resolution at the department level may be appropriate but that does not eliminate the obligation to report and consult as described above.

C. Anonymous Reports

If an individual wishes to remain anonymous regarding their own concern, that individual can make a report to the [NAU Police Department](#), [the Office of the Dean of Students](#) or the [Equity and Access Office](#). If an individual requests anonymity after a report is filed, the appropriate office will consider the request in light of the due process rights of all involved, the severity of the harassment, the potential risk to other members of the University community and any related legal obligations. If the request cannot be honored, the requesting party will be advised.

D. Confidentiality

It is the obligation of faculty, supervisors, employees, and administrators to whom a concern or complaint is brought to maintain the privacy of all parties to the extent possible insofar as it does not interfere with their duty to report and the University's obligation to investigate and address allegations or as required by law. The University may not impose prior restraints on the parties' ability to discuss the allegations under investigation, for example with a parent, friend, or other source of emotional support, or with an advocacy organization or advisor.

If a victim wishes to have a confidential conversation about an allegation of sexual harassment, including sexual assault, dating/domestic violence or stalking, they can do so by seeking a confidential appointment. This may include such resources as [Counseling Services](#), [Employee Assistance and Wellness](#), or a local community support organization such as [Victim Witness Services for Coconino County](#) or similar organization

in their respective region. The university strongly encourages individuals to utilize support resources regardless of their desire for an investigation to occur.

E. Violations of Law or Other University Policies

1. Violation of Other Policy

Because the university wishes to protect the well-being of the university community, any other policy violation (e.g., drug and alcohol use including by minors) will be considered separately and in light of the concerns brought forward. The priority shall be on the investigation and response to the allegations under this policy.

2. Unfair Treatment Not Based on Discrimination

This policy does not cover all forms of perceived unfair treatment. Issues not covered by this policy may be appropriately referred to other university offices.

3. Violations of Law/Law Enforcement Involvement

For acts that may constitute violations of law, in addition to violation of University policy, individuals may be accountable to both civil authorities and to the University. Investigation, response and discipline under this policy and any related procedures are separate from and independent of any action taken by law enforcement. Absent good cause shown, no delay in any University proceeding will be taken due to any related action by law enforcement.

In cases where a University policy violation may also constitute a crime, parties may wish to obtain legal advice about how or whether the University's process may affect any related criminal or civil matter.

F. Time Limits and Considerations

Although there are no time limits within which a complaint may be filed under this policy, individuals are encouraged to bring forward issues in a timely manner to facilitate an effective investigation process and resolution. Filing with an outside agency, including law enforcement, the U.S. Equal Employment Opportunity Commission or the Office for Civil Rights (U.S. Department of Education) will not affect any investigation under this policy concerning the same or related events.

G. Obligation to Provide Truthful Information

As allegations under this policy may result in severe consequences, the University takes the accuracy of information in its processes very seriously. All participants have an obligation to provide truthful information. Initiating a false complaint, falsifying or withholding evidence or inducing another person to do the same, or otherwise hindering an investigation with malicious intent, are strictly prohibited and may result in consequences to the individual. This provision does not apply to reports made or information provided in good faith, even if the information later proves to be faulty or the facts alleged are not later substantiated.

H. Interim Actions

The University may take interim actions designed to support and protect individuals and the University community even in the absence of a formal complaint or while the complaint is being processed. An employee may be placed on administrative leave if deemed appropriate under University policy or as governed by Title IX regulations.

I. Sanctions

If, after review through the appropriate University procedures, it is determined by a preponderance of the evidence that violation of this policy has occurred by an employee or student, educational and/or disciplinary action(s) may be taken; such actions may include up to termination for employees (including student employees) and up to suspension, expulsion, or degree revocation for students. Affiliates, volunteers and other individuals violating this policy may be subject to a severing of their connection to the University, trespass from campus or any related privileges.

In addition to disciplinary action, the University will also consider remedies designed to address the impact of the violation on the reporting party.

H. Applicable Procedures

The applicable procedures for addressing a formal complaint under this policy will be determined by the allegations made.

1. Title IX Procedures (Student Respondent)

If allegations are made against a student (except in the context of employment) and include allegations as defined in the [Student Sexual or Gender-Based Misconduct](#) policy, that policy will govern the handling of the complaint. If determined at the outset or after initiation of those procedures that they are not applicable, the matter may be referred back for action under this policy or the *Student Code of Conduct*.

2. [Non-Student Title IX Procedures](#) (Non-Student Respondents)

If allegations are made against a non-student and include allegations as defined as Title IX Sexual Harassment, then the *Non-Student Title IX Procedures* will be applicable. If determined at the outset or after initiation of those procedures that those procedures no longer govern the process, then the matter may be handled under other appropriate University policies and procedures, including this policy.

3. [Equity and Access Non-Title IX Procedures](#)

The *Equity and Access Non-Title IX Complaint Procedures* will be applicable to all other complaints under this policy. These procedures provide for prompt and equitable methods to identify prohibited behavior and to stop discrimination, remedy any harm and prevent its reoccurrence. If a student is also an employee and the allegations are related to conduct in that role, the *Equity and Access Non-Title IX Procedures* will apply to the investigation and determination of any appropriate employment related sanctions. If the behavior also constitutes a violation of the Student Code of Conduct or other student policy, then the matter may be referred to the Office of the Dean of Students.

4. Informal Complaints

Reports made under this policy (except Title IX Sexual Harassment) may be addressed informally under this policy at the request of a reporting party in consultation with the Equity and Access Office.

I. University Compliance Offices and Officers

The University has identified the following individuals as the persons responsible for compliance with certain federal laws related to discrimination and harassment. They may be contacted with questions or concerns regarding prohibited discrimination and related policies and procedures:

The person designated to serve as the University's Title IX Coordinator is:

Elyce C. Morris
Title IX Coordinator
Elyce.Morris@nau.edu | 928.523.5315
Babbitt Administrative Center (Building 51), Suite 100
PO Box 4116, Flagstaff, AZ 86011-4116
in.nau.edu/title-ix

The person designated to serve as ADA/504 Coordinator is:

Jamie Axelrod
Director, Disability Resources
Jamie.Axelrod@nau.edu | 928.523.8773
Health and Learning Center (Building 25), Room 2050
PO Box 5633, Flagstaff, Arizona 86011-5633
in.nau.edu/disability-resources

The person designated to serve as the University's compliance officer for Title VI, Title VI, and other non-discrimination laws not otherwise addressed above is:

Pamela Heinonen
Associate Vice President, Equity and Access
Pamela.Heinonen@nau.edu | 928.523.9342
Old Main (Building 10), Room 113
PO Box 4083, Flagstaff, Arizona 86011-4116
in.nau.edu/eao

The Dean of Students is:

Ivy Banks
Assistant Vice President and Dean of Students
University Union (Building 30), Room 104
Ivy.Banks@nau.edu | 928.523.4835
PO Box 6015, Flagstaff, Arizona 86011-6015
University Union Room 104
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