

## POLICY CONCEPT FORM

<b>Name and UO Title/Affiliation:</b>	Nicole Commissiong, AVP, Office of Investigations and Civil Rights Compliance
<b>Policy Title &amp; # (if applicable):</b>	Discrimination Complaint and Response (V.11.02)
<b>Submitted on Behalf Of:</b>	Human Resources and Office of Investigations and Civil Rights Compliance
<b>Responsible Executive Officer:</b>	Jamie Moffitt, VP for Finance and Administration/CFO

**SELECT ONE:**  New Policy  Revision  Repeal

*Click the box to select*

**HAS THE OFFICE OF GENERAL COUNSEL REVIEWED THIS CONCEPT:**  Yes  No

**If yes, which attorney(s):** Jeslyn Everitt, Associate General Counsel

### GENERAL SUBJECT MATTER

*Include the policy name and number of any existing policies associated with this concept.*

Defines "Discriminatory Misconduct" including prohibited discrimination, harassment and retaliation; discussing reporting obligations and the investigation process

### RELATED STATUTES, REGULATIONS, POLICIES, ETC.

*List known statutes, regulations, policies (including unit level policies), or similar related to or impacted by the concept. Include hyperlinks where possible, excerpts when practical (e.g. a short statute), or attachments if necessary. Examples: statute that negates the need for or requires updates to an existing policy; unit level policy(ies) proposed for University-wide enactment; or existing policies used in a new, merged and updated policy.*

#### Related Policies

[Student Conduct Code](#)

[Sexual Misconduct Standard Operating Procedures](#)

[Employee Formal Process](#)

[Conflict of Interest Policy and Abuses of Power Policy](#)

[Faculty Records Policy](#)

[Student Records Privacy Policy](#)

[Grievance Procedures](#)

[Academic Freedom](#)

[Freedom of Inquiry and Free Speech](#)

[Community Standards Affirmation](#)

[Proscribed Conduct Policy](#)

[Unions – Collective Bargaining Agreements](#)

#### Related Statutes

Title VII of the Civil Rights Act of 1964

Civil Rights Act of 1991  
Title IX of Education Amendments 1972  
Age Discrimination in Employment Act of 1967  
Pregnancy Discrimination Act of 1978  
Rehabilitation Act Section 503 & 504  
American with Disabilities Act (ADA)  
Uniformed Services Employment and Reemployment Rights Act (USERRA)  
Vietnam Era Veterans Readjustment Assistance Act (VEVRAA)  
Immigration Reform and Control Act  
Clery Act  
Equal Pay Act of 1963  
Executive Order 11246  
Family Educational Rights and Privacy Act of 1974 (FERPA)  
Immigration and Nationality Act  
Oregon Revised Statute 659A – state law discrimination  
Oregon Equal Pay Act, as amended  
OAR 839-010-0000 – whistleblowing disclosures by employees  
State laws regarding child abuse reporting

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## **STATEMENT OF NEED**

*What does this concept accomplish and why is it necessary?*

This policy revision accomplishes the following:

1. Consolidates the following policies into a single policy. Several of these policies dated back to the Oregon University System, and either were outdated or contained information that was better suited to procedures rather than policies.
  - Discrimination Complaint Response Policy, <https://policies.uoregon.edu/vol-5-human-resources/ch-11-human-resources-other/discrimination-complaint-and-response>
  - Student Sexual and Gender-based Harassment Policy, <https://policies.uoregon.edu/vol-5-human-resources/ch-11-human-resources-other/student-sexual-and-gender-based-harassment-and>
  - Sexual Harassment Policy, <https://policies.uoregon.edu/content/sexual-harassment>
  - Sexual Misconduct Policy, <https://policies.uoregon.edu/content/sexual-misconduct>
  - Employment Discrimination Policy, <https://policies.uoregon.edu/employment-discrimination>
2. Responds to recent audit on Non-Retaliation Processes, including recommendations that UO create an overarching policy on retaliation and that the University make necessary updates to the Sexual Harassment policy to reflect recent changes to both state and federal sexual harassment laws.

3. Creates consistent reporting obligations. During trainings, stakeholders were often confused by the reporting standards in prior policies. For example, the Discrimination Complaint and Response policy had a single reporting requirement for all forms of prohibited discrimination other than student gender-based discrimination. The Student Sexual and Gender-based Harassment Policy imposed different requirements on different employees with respect to gender-based harassment involving students. The net effect was that employees had different reporting obligations depending on whether the complainant was a student or employee, and different reporting obligations for student sex-based harassment as compared to other forms of harassment. This new policy eliminates this complexity and confusion by creating a single reporting structure that applies equally and evenly to all forms of discriminatory misconduct, and to reports from both students and employees.
4. Incorporates new laws, including:
  - Title IX rulemaking, effective August 2020. In particular, this new policy utilizes the definitions of sexual harassment, stalking, dating violence, and domestic violence from the Title IX/VAWA definitions. This ensures ease of reporting since our policy definitions align with the definitions we report for Clery purposes and that are subject to the Title IX rulemaking.
  - ORS 350.253, effective 2020. Requires a specific definition of sexual harassment.
  - Workplace Fairness Act (SB 726 and 429), effective 2020. Requires provisions around non-disparagement and statute of limitations.
5. Updates definitions, including:
  - Created a single source for definitions of discriminatory misconduct. This policy consolidates existing definitions. Once this policy is adopted, the definitions of discriminatory misconduct in the Student Code of Conduct will be removed and the Code will instead incorporate by reference the definitions in this policy.
  - Added definition of sexual assault, not previously in the policy.
  - Added definition of incapacitation, not previously in the policy.
6. Eliminates inconsistencies and creates a more concise and understandable policy, moving extraneous information to the procedures, consistent with UO's approach to other policies.

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## **AFFECTED PARTIES**

*Who is impacted by this change, and how?*

All students, employees, and campus community members, in that reporting obligations as well as the definitions of prohibited misconduct are being changed.

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## **CONSULTED STAKEHOLDERS**

*Which offices/departments have reviewed your concept and are they confirmed as supportive? (Please do not provide a list of every individual consulted. Remain focused on stakeholders (e.g. ASUO, Office of the Provost, Registrar, Title IX Coordinator, etc.).)*

All unions were invited to participate in the workgroup. The workgroup also included two ASUO representatives, and representatives from University Senate, Student Conduct, Student Life, Office of General Counsel, Human Resources, and Office of Investigations and Civil Rights Compliance, and the OA Council.

The President's leadership team was also consulted including the provost and vice presidents for Diversity, Equity and Inclusion, Advancement, Communications, Student Life, Finance and Administration, Research, Athletics and Student Services and Enrollment Management, and the Chief Human Resources Officer.

For additional student perspectives, the following were consulted: ASUO, Dean of Students (Kris Winters), Domestic Violence Clinic (Kasia Mylnski), Legal Advocate for Respondents (Andrew Coit), Crisis Intervention and Sexual Violence Support Services Program (Jessica Haymaker), Undergraduate Excellence and Student Success (Kimberly Johnson), and University Counseling Services (Shelly Kerr).

For additional employee perspectives, the following were consulted: Internal Audit (Leah Ladley), University Senate (Elliot Berkman), affinity groups, past members of the Committee on Sexual and Gender-Based Violence, all deputy Title IX coordinators, and the Conduct Committee.

# Prohibited Discrimination and Retaliation Policy

## Reason for Policy:

This policy outlines the university's non-discrimination stance; provides definitions for prohibited discrimination, harassment (including sexual harassment) and retaliation; outlines reporting options and obligations; and describes the investigation process. Formal grievance procedures are set forth in applicable collective bargaining agreements and the university's grievance policy.

A list of resources, including confidential resources, and related policies are provided at the end of this Policy.

## I. Policy Statement

The university is committed to equal access to programs, admission, course offerings, facilities, and employment for all of its: (1) students, (2) employees, and (3) university community members. It is the policy of the university to maintain an environment free of discrimination against any person because of their real or perceived "protected characteristic" including race, color, religion, national origin, sex, sexual orientation, gender identity, gender expression, pregnancy (including pregnancy-related conditions), age, physical or mental disability, genetic information (including family medical history), ancestry, familial status, citizenship, service in the uniformed services (as defined in federal and state law), veteran status, expunged juvenile record, and/or the use of leave protected by state or federal law.

Discrimination or harassment based on one or more of these protected characteristics violates the dignity of individuals, impedes the realization of the university's educational mission, and will not be tolerated.

It is the responsibility of every member of the university community to foster an environment free from discrimination, harassment, and retaliation. All students, employees, and other members of the university community are strongly encouraged to take reasonable and prudent actions to prevent or stop acts of discrimination, harassment, or retaliation. This may include directly intervening when safe to do so, enlisting the assistance of others, contacting law enforcement, or seeking assistance from a person in authority.

This Policy uses the term "respondent" to refer to the person alleged to have violated the policy; the term "complainant" to refer to the person who was subject to the respondent's alleged misconduct; and "Chief Civil Rights Officer" to refer to the university's Chief Civil Rights Officer & Title IX Coordinator.

## II. Policy Jurisdiction

This Policy applies to all students, staff, faculty, university partners, and other individuals participating in or seeking to participate in, or benefit from, the university's programs or activities, whether on or off campus, including education and employment.

For claims against students and student organizations, jurisdiction is defined by the Student Conduct Code.

For claims against employees, this Policy applies to conduct that: (1) occurs on campus or property owned or controlled by the university (university property), (2) occurs in the context of a university employment or educational program or activity, (3) uses university resources, such as workplace telephones, video conferencing technology, e-mail, or other means of electronic communication, or (4) has continuing adverse effects on or creates a hostile environment for members of the university community. The university will follow applicable collective bargaining agreements, policies and procedures in determining whether corrective action can be imposed for behavior that occurs "off duty."

For claims against third parties, such as contractors, visitors, alumni, and guests, the university will determine the appropriate manner of resolution, which may include without limitation referral to local law enforcement or to the school or employer of the third-party respondent, and/or restriction from access to campus or university programs or activities. The university's ability to take disciplinary action against a third-party respondent is limited and will be determined by the nature of the misconduct and the university's relationship to the third-party respondent.

### **III. Definitions of Discriminatory Misconduct**

The university prohibits Discriminatory Misconduct, which is defined to include the following:

- 1) **Discrimination:** An adverse action taken against an individual or group on the basis of that individual's or group's protected characteristic(s). Discrimination takes two forms: disparate treatment and disparate impact. Disparate treatment occurs when the adverse action is motivated in whole or in part by the protected characteristic. Disparate impact occurs when a policy, requirement, or regularized practice, although neutral on its face, adversely impacts persons in a protected class. An adverse action includes actions that significantly change the terms and conditions of employment, or actions that have a significant detrimental impact on a student's education.
- 2) **Harassment:** Unwelcome verbal or physical conduct based on a protected characteristic that is sufficiently severe or pervasive that it substantially interferes with an individual's employment, education or access to university programs, activities or opportunities, and would have such an effect on a reasonable person who is similarly situated. Harassment may include, but is not limited to, verbal or physical attacks, graphic or written statements, threats, or slurs. Whether the alleged conduct constitutes Harassment depends on the totality of the particular circumstances, including the nature, frequency and duration of the conduct in question, the location and context in which it occurs, and the status of the individuals involved.

- 3) **Sexual Harassment:** A specific form of Harassment involving unwelcome conduct of a sexual nature (such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature) when:
- a. Submission to such advances, requests, or conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic experience, or participation in any university program or activity (*quid pro quo*);
  - b. The conduct is sufficiently severe or pervasive that it has the effect, intended or unintended, of unreasonably interfering with an individual's work or academic performance or it has created an intimidating, hostile or offensive environment and would have such an effect on a similarly-situated reasonable person.
- 4) **Sexual Misconduct:** Having or attempting to have sexual contact with another individual without affirmative consent. "Sexual contact" includes:
- a. Non-consensual penetration: Penetration by a person upon another person without affirmative consent. Penetration includes any vaginal or anal penetration by a penis, object, tongue, or finger, as well as any mouth-to-genital contact, no matter how slight the penetration or contact.
  - b. Non-consensual sexual contact: Sexual contact, including without limitation kissing, touching intimate body parts, and fondling, without first obtaining affirmative consent to the specific activity. The term intimate body parts includes, but is not limited to, breasts, buttocks, groin, genitals, or other body parts that under the circumstances a reasonable person would know that the other person regards to be an intimate body part. Non-consensual touching may include touching directly or through clothing, and also includes intentionally causing a person to touch an intimate part of another person, or intentionally causing a person to touch their own intimate part. Touching also includes contact made with bodily fluids.

For the purposes of this definition, "affirmative consent" is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, gender expression, or any other protected characteristic.

The following principles apply to the above definition of affirmative consent:

- Affirmative consent cannot be obtained through physical force, threats, or coercion.
- Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time.
- Consent to any sexual act or prior consensual sexual activity does not necessarily constitute consent to any other sexual act.

- An individual cannot provide affirmative consent if they are below the legal age of 18, unless otherwise permitted by law.
  - An individual cannot provide affirmative consent if they are incapacitated. A person is incapacitated when they lack the ability to choose knowingly to participate in sexual activity, for example when they are unconscious, asleep, involuntarily restrained, physically helpless, or otherwise unable to provide consent. When alcohol or other drugs are involved, incapacitation is a state of drunkenness, intoxication or impairment that is so severe that it interferes with a person's capacity to make informed and knowing decisions.
  - It is the responsibility of each individual involved to ensure they have the affirmative consent of the other(s) to engage in each act of sexual activity. In determining the presence of affirmative consent, the university will analyze whether the communication (through words and/or actions) would be interpreted by a reasonable person under similar circumstances as a willingness to engage in a particular sexual act and if so, whether incapacitation, force, and/or compulsion were used to obtain that consent.
- 5) **Stalking:** Occurs when an individual engages in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for the person's own safety or the safety of others, or (b) suffer substantial emotional distress. "Course of conduct" means two or more instances, including but not limited to unwelcome acts in which an individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about an individual, or interferes with an individual's property. "Substantial emotional distress" means significant mental suffering or anguish. Stalking includes the concept of cyberstalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.
- 6) **Dating Violence:** Any act of violence committed by an individual who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of the interaction between the persons involved in the relationship. For the purpose of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence.
- 7) **Domestic Violence:** Any act of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim 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 the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws in the state of Oregon.



- 8) **Sexual Exploitation:** Taking sexual advantage of another for one's benefit, or to benefit or advantage anyone other than the one being exploited, by: (a) viewing, possessing, producing, or distributing child pornography; (b) non-consensual recording, disseminating, or copying of images, photography, video, or audio recording of sexual activity or nudity conducted in a private space; or (c) purposefully exposing another individual to a sexually transmitted infection, or sexually transmitted disease, without their knowledge.
- 9) **Retaliation:** An adverse action against an individual taken because the individual engaged in a protected activity. Adverse action means any action that is reasonably likely to deter a person from engaging in a protected activity. "Adverse action" does not include petty slights or trivial annoyances. "Protected activity" includes (a) reporting (whether internally or externally) or inquiring, in good faith, about suspected wrongful or unlawful activity; (b) assisting others in making such a report; (c) participating in an investigation or proceeding related to suspected wrongful or unlawful activity; or (d) participating in the university's reasonable accommodation processes.

#### **IV. Academic Freedom and Free Speech**

In all its actions, the university will respect the rights of freedom of expression and academic expression, as set forth in university policies and applicable bargaining agreements.

#### **V. Options for Reporting**

This section discusses options for reporting Discriminatory Misconduct subject to this Policy.

##### **1. Filing a Report**

The university encourages all students, employees, and other members of the university community who believe they have experienced misconduct under this Policy to report the incident immediately to the university. Reports may be submitted to the university's Chief Civil Rights Officer and Manager of Investigations (a) via a web form at <https://investigations.uoregon.edu/how-make-formal-complaint>; (b) by phone, 541-346-3123; or (c) by email, [titleixcoordinator@uoregon.edu](mailto:titleixcoordinator@uoregon.edu).

Reports may be submitted anonymously. Identifying witnesses and providing as many details as possible in a report increases the university's ability to respond and/or take corrective action.

##### **2. Time Frame for Reporting**

Individuals are encouraged to report Discriminatory Misconduct as soon as possible in order to maximize the university's ability to respond promptly and effectively. Although the university does not limit the timeframe for reporting, the passage of time may impact or limit the university's jurisdiction, the ability to impose discipline, and/or the ability to gather relevant evidence that may be lost due to the passage of time.

### **3. Reporting to Law Enforcement**

A reporting party has the right to report, or decline to report, potential criminal conduct to law enforcement. Upon request, the university will assist a reporting party in contacting law enforcement at any time. Under limited circumstances where there is a threat to the health or safety of any university community member, the university may independently notify law enforcement. An individual may make a report to the university, to law enforcement, to neither, or to both. The university's resolution process and law enforcement investigations may be pursued simultaneously but will operate independently of one another. The university will, when appropriate, coordinate information with law enforcement if law enforcement is notified. The university, upon request, may also temporarily pause its investigation to allow preliminary fact-gathering by law enforcement.

### **4. Confidential Resources**

The university also offers a number of confidential resources for individuals who are unsure whether to report misconduct or who seek counseling or other emotional support in addition to, or without, making a report to the university.

## **VI. Expectations of Employees When Notified of Discriminatory Misconduct**

As a caring community, and to promote a compassionate campus community, the university expects all employees to do the following when responding to disclosures of Discriminatory Misconduct under this Policy:

- Listen to what the person wants to tell you before providing supportive resources, referrals, and information, including those resources listed at the end of this Policy;
- Inform the person of reporting options, including the option to report to the Office of Investigations and Civil Rights Compliance;
- Be sensitive to the needs of the person who allegedly experienced the conduct, without being judgmental, dismissive, condescending, discriminatory, or retaliatory; and
- At the outset of the conversation, if the person making the disclosure appears under 18, ask them if they are 18 years of age or older. If they are under 18, explain that all employees, except for confidential employees engaging in privileged communications, are required to report all disclosures of "abuse" as defined by state law (see ORS § 419B.005), including physical or sexual abuse, sexual exploitation, or a current threat of physical or sexual abuse of a minor, to the Department of Human Services or a law enforcement agency.

In addition to these general expectations, all employees are designated as either Confidential Employees, Designated Reporters, or Assisting Employees and have the additional obligations set forth below.

### **1. Confidential Employees**

The university has identified certain employee positions as Confidential Employees. Confidential Employees will not share information disclosed to them with others without the express permission of the person making the disclosure or as required or permitted by applicable law or professional codes of ethics (such as cases involving imminent risk of serious harm).

The following employees are Confidential Employees under this Policy, when acting in their confidential, professional role:

- All health care and mental health professionals working at the University of Oregon, including without limitation employees at University Health Services;
- Crisis Intervention and Sexual Violence Support Services staff;
- The University's Ombudsperson and program staff (Note: The Ombudsperson does not have a legal privilege of confidentiality, but under their professional code of ethics the Ombudsperson must take steps to avoid, whenever possible, disclosure of confidential records and information);
- Employee and contract attorneys representing students in Student Conduct processes;
- Other employees who have a professional commitment and/or legal privilege that may enable them to oppose successfully an application for a court order seeking disclosure of communications.

## **2. Designated Reporters**

The university has identified certain employee positions as Designated Reporters. When Designated Reporters become aware of an alleged incident of Discriminatory Misconduct under this Policy that involves a student or employee as either the complainant or respondent, they are always obligated to report information they have to the university's Chief Civil Rights Officer (Title IX Coordinator). Designated Reporters should be prepared to report the name, date, time, location, and description of the incident to the extent such information is known. They otherwise will maintain an individual's privacy to the greatest extent possible.

Designated Reporters should not investigate any matter themselves. If a Designated Reporter knows that a matter has already been brought to the attention of the appropriate university office or officer, the Designated Reporter does not need to report it but is encouraged to bring new or additional information to the attention of the Chief Civil Rights Officer. Designated Reporters are also not required to share information disclosed during public awareness events (e.g. "Take Back the Night" and town halls) or as part of an Institutional Review Board-approved human subjects research protocol.

List of Designated Reporters:

- All members of the Board of Trustees (including student, faculty, and staff members) and the Board Secretary
- President and vice presidents (including assistant and associate levels)
- Provost and vice provosts (including assistant and associate levels)
- Deans, including assistant, associate, and divisional deans
- Department Heads

- Dean of Students, including dean of student positions within schools or colleges
- Chief Human Resources Officer
- All attorneys in the Office of General Counsel
- Athletic Directors, including assistant, associate, deputy, or other senior-level athletic directors
- All NCAA intercollegiate coaches and directors of operations
  - EXCEPTION: A coach below the level of head coach is only a Designated Reporter when they receive reports from someone other than a student-athlete on their own team.
- Student Conduct Case Managers
- Title IX Coordinator, OICRC investigators, and appeals officers
- Directors, including assistant and associate directors, or similar of:
  - Campus Planning and Facilities Management
  - Housing
  - Residential Life & Educational Initiatives
  - Fraternity and Sorority Life
  - Student Conduct
  - Study Abroad
  - Employee & Labor Relations
- Resident Assistants and Orientation Leaders
- Residence Life Professional Staff and
- University of Oregon Police Officers and Campus Security Officers

In addition, all university Supervisors, as well as all Human Resources professionals within departments and colleges, are Designated Reporters when informed of Discriminatory Misconduct by any employee. For purposes of this Policy, a “Supervisor” is someone who has the power to take tangible employment actions against an employee, i.e., to effect a significant change of employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits. A person whose job title contains the word supervisor is not necessarily a Supervisor for purposes of this Policy. For the purposes of this Policy, “Supervisor” does not include persons who supervise exclusively graduate employees and/or student employees.

The Chief Civil Rights Officer may make changes to this list as necessary and following consultation with appropriate stakeholders. Any changes will be posted in the Policy Library, and affected employees will receive appropriate notification and training, including materials designed to provide notice to students.

Designated Reporters who fail to report as required by this Policy may be subject to discipline or other appropriate corrective measures.

### **3. Assisting Employees**

Employees, including faculty, who are not Designated Reporters or Confidential Employees, do not have reporting obligations under this Policy. However, they are considered Assisting Employees and are still expected to do the following when responding to disclosures:

- Comply with the expectations for all employees set forth above.
- Provide the person making the disclosure with resources, including confidential resources as listed at the end of this Policy.
- When appropriate in the conversation, inform the person making the disclosure that unless there is a report made to a Designated Reporter or the Office of Investigations and Civil Rights Compliance, it is unlikely that steps can be taken to stop the discrimination or harassment, remedy its effects, or prevent future instances of discrimination and harassment, because no one in a position to do so will know about the underlying behavior. With a report, the university will be obligated to take corrective action.
- Explicitly ask the person making the disclosure if they want to report the incident to the Office of Investigations and Civil Rights Compliance; and then follow the person's wishes in either making a report for them, assisting them in making the report, not reporting, and/or referring them to confidential resources. In general, reports to the Office of Investigations and Civil Right Compliance and/or referrals to other resources should be made while the person is with you, if possible, but in no event later than 24 hours after the person expressed this wish.

In general, Assisting Employees should not share the information disclosed to them unless requested to do so by the person making the disclosure, or unless the information conveyed suggests a threat to the health or safety of any person, or other mandatory reporting obligations are triggered (e.g., under the Clery Act or state or federal law). For situations involving a threat to someone's health or safety, the employee shall ask the person for permission to convey the information to an appropriate office, such as law enforcement, and shall discuss with the person other ways in which the risk can be minimized. If the person refuses to have an appropriate office contacted, and the employee feels there is a threat to someone's health or safety, then the employee may call the appropriate office and disclose the information received. In the instances where the person is under 18 years of age and discloses "abuse," the employee shall follow state law. See Miscellaneous Information, "Information on Child Abuse Reporting," below.

## **VII. University Response to Reports of Discriminatory Misconduct**

The university will take prompt and equitable corrective measures in an attempt to stop, remedy the effects of, and prevent future instances of Discriminatory Misconduct, as defined in this Policy. If the university initiates an investigation, it will be impartial. In responding to incidents of Discriminatory Misconduct, the university will follow state and federal law, university policies, and any applicable collective bargaining agreements. Employees and students may also choose to exercise applicable formal grievances rights. A complaining party's options will be explained to that person by the Office of Investigations and Civil Rights Compliance, Human Resources, or the Office of Student Conduct and Community Standards, as appropriate.

### **1. Supportive Measures**

Regardless of whether an investigation or other university process is initiated, the university will provide supportive measures as appropriate. In deciding which supportive measures to implement, the university will attempt to mitigate the impact on affected parties, while also balancing the rights of the alleged wrongdoer.

For students, supportive measures may include academic arrangements (such as class withdrawals, incomplete grades and alternative course completion, extension of deadlines), campus escort services, assistance with housing, transportation, and other support services, ombudsperson services, legal advice, confidential support persons, referrals to community agencies, and/or other reasonable measures. Students may also seek confidential resources such as health and counseling services, as well as financial assistance, visa and immigration assistance, and safety planning. All students who have experienced, witnessed, or been accused of Discriminatory Misconduct are entitled to supportive measures.

For employees, supportive measures may include change of employment conditions, leaves of absence, modifications to work schedules, safety planning, information and assistance regarding employee resources, and/or other reasonable measures. Employees may also seek confidential resources such as counseling services through the university's Employee Assistance Program.

## **2. Interim Actions**

After receiving a report of Discriminatory Misconduct, the university may implement interim action(s) when determined necessary to address a substantial and immediate threat of harm to persons or property or when there are reasonable concerns that an investigation may be compromised. Interim actions will remain in place until lifted or modified by a university official with authority to do so. Interim actions aim to prevent the repetition of prohibited conduct, if occurring, and eliminate opportunities for retaliation against a complainant, the individual who reported, other specified persons, and/or a specific student organization. The specific interim action(s) implemented will vary depending on the circumstances of each report. In some instances, the university may share information regarding such interim measures with a complainant, or other appropriate individuals, on a need-to-know basis, such as safety planning. Respondents will be provided with the opportunity to raise an objection about the interim action or request that it be made less restrictive. Interim actions for employee respondents may include administrative leave or changing reporting lines.

## **3. Investigation of Complaints**

The Office of Investigations and Civil Rights Compliance is responsible for responding to reports of Discriminatory Misconduct under this Policy. Upon receipt of a report, complainants are offered support resources and the opportunity to meet with an investigator. Following that interview, the investigator determines whether the allegations, if proven true, would constitute a policy violation. If so, a formal complaint is drafted and the respondent is provided notice that an investigation has been initiated, offered support resources, and offered an interview. During the investigation, witnesses for both parties are interviewed, and documents such as emails, text messages, photographs, and other documentary evidence are also considered. Determinations whether or not a violation of this Policy has occurred are based on a preponderance of the evidence standard, and respondents are presumed not responsible until a decision is rendered. Following the decision, parties are afforded applicable appeal or grievance rights. Operative procedures are set forth in the Standard Operating Procedures for student cases and the Employee Formal Process for employee cases.

#### **4. Corrective Action**

If the university finds that an employee, student, or university community member has engaged in Discriminatory Misconduct under this Policy, it will take immediate and appropriate corrective action. Students who have engaged in Discriminatory Misconduct may face sanctions up to and including suspension or expulsion. Employees who have engaged in Discriminatory Misconduct may face discipline up to and including termination. Campus community members who violate this Policy may be excluded from campus and may otherwise lose the right to use university property and/or to participate in university-sponsored programs and activities.

#### **5. Bad Faith Complaints**

Individuals who make bad-faith complaints may be subject to disciplinary action, student conduct code violations, or other appropriate corrective action. A complaint is made in bad faith when it is intentionally dishonest.

#### **6. Remedial Action**

At any time following a report of Discriminatory Misconduct, the Chief Civil Rights Officer and/or Chief Human Resources Officer may review the complaint, investigative report and/or any sanction to determine whether additional remedies for the parties or university community are necessary to restore and preserve equal access to the university's education programs and activities or to maintain a respectful workplace. Examples of such remedies may include the initiation or continuation of supportive measures, facilitated dialogue, and/or training for members of the university community, as well as modifications to academic, employment, or housing conditions or assignments. Remedial, non-disciplinary action may be taken where the alleged conduct does not constitute a policy violation, but additional incidents or escalation of conduct could give rise to a policy violation.

#### **7. Confidentiality and Privacy**

Information received in connection with the reporting, investigation, and resolution of allegations of Discriminatory Misconduct will be treated as private and will not be disclosed except to those individuals whom the university determines are necessary to conduct an appropriate investigation, to provide assistance and resources to parties, to perform other appropriate university functions, or in accordance with applicable law.

### **VIII. Workplace Fairness**

In compliance with the Oregon Workplace Fairness Act, the university is required to notify employees of the following:

- Oregon state law requires that any legal action taken on alleged discriminatory conduct (specifically that prohibited by ORS 659A.030, 659A.082 or 659A.112) commence no later than five years after the occurrence of the violation. Claims against the university

are also subject to the notice provisions set forth in ORS 30.275, which typically requires notice to the university within 180 days of the incident.

- The university will not require an employee to enter into any agreement if the purpose or effect of the agreement prevents the employee from disclosing or discussing conduct constituting discrimination, harassment, or sexual assault.
- An employee claiming to be aggrieved by discrimination, harassment, or sexual assault may, however, voluntarily request to enter into a settlement, separation, or severance agreement which contains a nondisclosure, nondisparagement, or no-rehire provision and will have at least seven days to revoke any such agreement.
- Employees are encouraged to document any incidents involving conduct that constitutes prohibited discrimination under state or federal law.

### **IX. External Complaints**

The university encourages all individuals with a pertinent complaint to follow the process in this Policy. However, individuals may always choose to make a discrimination complaint directly to outside agencies or law enforcement, including, but not limited to, the Bureau of Labor and Industries' Civil Rights Division, the Office for Civil Rights of the U.S. Department of Education, the U.S. Equal Employment Opportunity Commission, or the Educational Opportunities Section of the Civil Rights Division of the U.S. Department of Justice.

### **X. Differential Treatment Required or Allowed by Law**

Neither this Policy nor any other university policy shall be interpreted as preventing the university from complying with laws that require preferential treatment – such as Oregon's Veterans Preference laws – or from engaging in constitutional admissions practices designed to achieve diversity goals.

### **Related Reporting Obligations**

Employees who have been designated as [Campus Security Authorities](#) also have reporting obligations under the Clery Act.

All University of Oregon employees are [mandatory reporters](#) for child abuse (ORS 419B.010), elder abuse (ORS 124.060), abuse of adults with mental illness or developmental disabilities (ORS 430.765), and abuse of individuals under care in a long-term care facility (ORS 441.640).

### **Related Resources**

<b>Campus Resources</b>	<b>Confidential</b>	<b>For Students</b>	<b>For Employees</b>
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<b>Accessible Education Center</b> <a href="mailto:uoac@uoregon.edu">uoac@uoregon.edu</a> (541) 346-1155		X	
<b>ADA Coordinator</b> <a href="mailto:WorkplaceADA@uoregon.edu">WorkplaceADA@uoregon.edu</a> (541) 346-2985			X
<b>ASUO Office of Student Advocacy</b> <a href="http://asu.uoregon.edu/advocacy">asu.uoregon.edu/advocacy</a> <a href="mailto:studentadvocacy@uoregon.edu">studentadvocacy@uoregon.edu</a> (541) 346-3722		X	
<b>Behavioral Evaluation and Threat Assessment Team</b> <a href="http://dos.uoregon.edu/concern">dos.uoregon.edu/concern</a>		X	X
<b>Bias Education Response Team (BERT)</b> <a href="mailto:bert@uoregon.edu">bert@uoregon.edu</a> (541) 346-3216		X	
<b>Crisis Intervention and Sexual Assault Support Services</b> <a href="http://safe.uoregon.edu">safe.uoregon.edu</a> 164 Oregon Hall (1585 E. 13th Avenue) (541) 346-3216	X	X	
<b>Employee Assistance Program</b> <a href="http://CascadeCenters.com">Cascade Centers, Inc.</a> (800) 433-2320	X		X
<b>Employee &amp; Labor Relations</b> <a href="mailto:uoelr@uoregon.edu">uoelr@uoregon.edu</a> 677 East 12th Avenue, Suite 400 (541) 346-3159			X
<b>Ombudsperson</b> <a href="mailto:ombuds@uoregon.edu">ombuds@uoregon.edu</a> 541 17th Street (541) 346-6400	X	X	X
<b>Respondent Resource Coordinator</b> 185 Oregon Hall (1585 E. 13th Avenue) (541) 346-3216	X	X	
<b>Student Survivor Legal Services</b> <a href="#">Schedule an appointment</a> (541) 346-8619	X	X	
<b>Title IX Coordinator / Office Investigations &amp; Civil Rights Compliance</b> <a href="mailto:titleixcoordinator@uoregon.edu">titleixcoordinator@uoregon.edu</a> 106 Johnson Hall (1098 E. 13th Avenue) (541) 346-8136		X	X
<b>University Health Services</b> 1590 E. 13th Avenue Counseling Services: (541) 346-3227, <a href="http://counseling.uoregon.edu">counseling.uoregon.edu</a> Medical, Clinical and Ancillary Services: (541) 346-2770, <a href="http://health.uoregon.edu">health.uoregon.edu</a>	X	X	
<b>University of Oregon Police Department</b> <b>East Station, 2141 E. 15<sup>th</sup> Street</b> <a href="http://police.uoregon.edu">police.uoregon.edu</a> 24-Hour Emergency: 9-1-1 (541) 346-2919 (non-emergency)		X	X

*\*Conversations with confidential employees are covered by a legal confidentiality protection.*

**Related Policies and Procedures**  
[Student Conduct Code](#)

[Sexual Misconduct Standard Operating Procedures](#)  
[Employee Formal Process](#)  
[Conflicts of Interest and Abuses of Power: Sexual, Physically Intimate, or Romantic Relationships with Students Policy](#)  
[Faculty Records Policy](#)  
[Student Records Privacy Policy](#)  
[Grievance Procedures](#)  
[Academic Freedom](#)  
[Freedom of Inquiry and Free Speech](#)  
[Community Standards Affirmation](#)  
[Proscribed Conduct Policy](#)  
[Protection of Minors](#)  
[Unions – Collective Bargaining Agreements](#)

**Miscellaneous Information**

[Information on the Clery Act](#)  
[Information on Child Abuse Reporting](#)  
[Information on Anonymous Reporting to the UO Police](#)  
[Information on Minors on Campus](#)  
[Information on Title IX](#)  
[Information on Safe Ride Program](#)  
[Information on UOPD Safety Escorts](#)  
[Information on filing a complaint with the Office for Civil Rights](#)