



HUMAN RESOURCES POLICIES

Section 100: Standards of Excellence	Policy Number: 104.0 Discrimination and Harassment
New: _____ Revised: <u> X </u>	Effective Date: May 12, 2014
Scope: Faculty, Staff, Students, Vendors, Volunteers, and Visitors	Authority: Office of Human Resources

- 104.0 Title** **Discrimination and Harassment** *(Note: This policy replaces the former Affirmative Action Policy and Sexual Harassment Policy.)*
- 104.1 Philosophy** Otterbein University is an equal access, equal opportunity institution committed to the values and practices of diversity and inclusion. Members and guests of the Otterbein community assume a measure of responsibility for upholding the University’s commitment to free expression, free inquiry, honesty, tolerance, and respect for the rights and dignity of others.
- 104.2 Statement** Otterbein University is committed to providing a workplace that is free from discrimination. Otterbein does not discriminate on the basis of race, color, gender, national origin, religion, gender identity, sexual orientation, age, disability, genetic information, military status, or veteran status (hereafter “protected status”) in admissions, in access to, or in treatment within its educational programs or activities, in employment, recruiting, or policy administration.
- In addition, Otterbein will not tolerate harassment by or of its employees, faculty, students, vendors, or visitors through words or actions based upon an individual’s race, color, gender, national origin, religion, gender identity, sexual orientation, age, disability, genetic information, military status, or veteran status. This prohibition on harassment includes sexual harassment and sexual violence.
- The University will take prompt and effective measures to assure that such discrimination and harassment does not occur. All charges of harassment in violation of this policy will be taken seriously. Any person found to have engaged in harassment will be subject to corrective action up to and including dismissal. The University strongly urges employees, faculty, students, vendors, or visitors to report all possible violations of this policy.
- Also prohibited is retaliation against any individual who seeks relief from discrimination or harassment under this policy or through legal means.
- Although guided by the laws of the United States and the State of Ohio, this policy is unique to Otterbein University and is an expression of the academic, residential, and professional standards of the Otterbein community. Moreover, this policy is not intended to impair or limit the right of anyone to seek a remedy available under state or federal law.
- 104.3 Definitions** Discrimination: adverse action toward an individual based upon that individual’s protected status so as to adversely impact that individual with regard to job



application, hiring, student admissions, corrective action or discharge, promotions, job or educational opportunities, evaluation, employee compensation, or other terms and conditions of an individual's education and/or employment.

Harassment: unwelcome conduct that creates a hostile environment or otherwise results in individuals being denied equal opportunity in the terms and conditions of their employment or education that is based upon an individual's protected status, as defined above.

- Harassment, including sexual harassment and sexual violence, as defined in this policy, is a form of discrimination under the law and under this policy. The University will investigate allegations of sexual violence pursuant to the Sexual Misconduct Policy

Sexual Harassment: a specific form of harassment that generally has been defined in two broad categories:

- Quid Pro Quo: involves promises (for example, raises, promotions, high grades, etc.) based on an individual's willingness to submit to unwelcome behavior, including sexual favors or activities or relationships or other unwelcome attention based on the person's sexuality or gender. It also can involve threats (e.g. demotion, bad grades, corrective action, etc.) based on an individual's refusal to submit to unwelcome behavior, including being involved in a sexual or romantic relationship, granting sexual favors, or engaging in other sexual or unwelcome activities based on sexuality or gender. The promise or threat does not necessarily need to be overt.
- Hostile Environment: ordinarily exists when there are incidents of verbal or non-verbal behavior in the workplace or academic environment that focus on the sexuality or gender of a person, that are unwelcome, that are severe or pervasive enough to adversely affect a person's work or academic environment, and that are outside the realm of appropriate academic study or work practices.

104.4 Forms and Examples

Hostile Environment: The following are examples of the types of conduct that, if severe or pervasive enough, can create a hostile work or educational environment in violation of this policy:

- Abusive, threatening, intimidating, or offensive remarks about or action toward individual persons or classes of persons on the basis of a protected status, as defined above;
- Creating a work or education environment that is less favorable than others or otherwise designed to undermine, humiliate, embarrass, threaten, intimidate, or cause the individual to resign, based upon a person's protected status;
- Conduct creates a hostile environment if it is unwelcome and severe or pervasive enough to adversely affect an individual's work, educational, or living environment.



Sexual Harassment Examples:

- Submission to unwelcome conduct on the basis of gender is made either explicitly or implicitly a term or condition of an individual's employment, academic status, participation in any program or activity, or living environment;
- Inappropriate comments of a sexual nature, including sexually explicit comments, questions, or jokes;
- Persistent, unwelcome attempts to change a working or academic relationship into a romantic or sexual relationship;
- Inappropriate remarks about sexual activity, experience, or orientation;
- Abusive or derogatory remarks about individuals or classes of individuals on the basis of their gender or sexuality;
- Persistent and unwelcome forms of attention toward another member of the University community such as requests for dates, flirtations, sexual advances, phone calls or other communications, or unwanted gifts;
- Touching, patting, hugging, brushing against an individual's body, or repeated or unwanted staring;
- Display of inappropriate sexually oriented or derogatory materials in a location where others can see them;
- Sexual violence or assault (can also be a criminal violation subject to the criminal justice system).

Religious Discrimination Examples:

- Offensive remarks about a person's religious belief or practices so severe or pervasive that they create a hostile or offensive work environment;
- Adverse employment decision such as the victim being fired or demoted is based upon their religion;
- Refusing to allow reasonable accommodation to policies based upon religious beliefs or practices such as refusing to allow employees to wear religious dress such as a Jewish yarmulke or Muslim headscarf.

104.6 Reporting

Reports of discrimination, harassment, or retaliation may be filed with the Office of Human Resources or Office of Student Affairs. Reports of sexual assaults should be filed with Otterbein Police Department or the Westerville Police Department. Any individual who believes he or she has been subject to discrimination or harassment



or retaliation in violation of this policy is encouraged to report the incident(s), even if you are uncertain whether what you are experiencing or witnessing constitutes a violation of this policy. Prompt reporting of incidents is critical to effective enforcement of this policy.

In addition, all persons aware of discrimination, harassment, or retaliation also are urged to report in the manner designated below.

<u>Aggrieved</u>	<u>Administrator</u>
Faculty	Provost
Staff	Vice President for Business Affairs
Student	Vice President for Student Affairs or Director of Student Conduct

Note regarding students: For an incident in which the accused is a student, the investigative and enforcement procedures outlined within the Student Code of Conduct will apply. (See *Campus Life Handbook*)

Duty to Act:

The reporting method described above is preferred. However, if you are uncomfortable speaking with the above personnel, you may report the inappropriate conduct to any supervisor or manager. Any University administrator, supervisor, or faculty chair who receives a report will promptly contact the Director of Human Resources regarding the report. Any faculty member who receives a report from a student will promptly contact the Vice President for Student Affairs, Director of Student Conduct or Director of Human Resources.

Any supervisor, including faculty supervisors, vice president/dean or faculty member who becomes aware of information that would lead a reasonable person to believe that discrimination/harassment has occurred will notify the Office of Human Resources. Corrective action may be imposed on any individual who has a duty to act in any situation of potential discrimination or harassment and who fails to respond in a manner consistent with this and related policies.

The University will take all such reports seriously and take appropriate steps to protect the complaining party from any ongoing harassment or discrimination during the course of these procedures as appropriate.

The University will not tolerate retaliation in any form against any person who in good faith reports an incident or circumstances he or she believes to be discrimination or harassment in violation of this policy, or who assists another in reporting or pursuing an allegation, or participates in an investigation of a claim of harassment. Such retaliation in itself is a violation of this policy and can subject the offender to appropriate sanctions or corrective action.

Any false report of conduct or events allegedly constituting discrimination or harassment under this policy also is a serious violation of this policy and will not be



tolerated. No member of the Otterbein community may knowingly falsify a report of conduct, charge, or testimony under this policy.

The reporting and resolution of retaliation or false reports shall follow the procedures governing reports of discrimination and harassment under this policy.

104.7 Confidentiality

While confidentiality cannot be guaranteed, depending upon the circumstances, the University will make every reasonable effort to protect the confidentiality of all parties of such allegations. The person to who alleged harassment or discrimination is reported may have a duty to share that information with those responsible for this policy.

104.8 Investigation and Resolution

During the investigatory period, the University will take steps to assure that the alleged conduct does not continue and that the complaining party (referred to as the “Complainant”) is safe from further improper conduct or retaliation. The complaining party should discuss with the Director of Human Resources or assigned investigator any need for such action.

- **Student Respondents: If the Respondent (the party complained of) is a student, the Vice President for Student Affairs or Director of Student Conduct will initiate the proper procedures through the Student Judicial System, through which the complaint will be handled from this point on.**

Steps in Investigatory Process:

1. The Director of Human Resources and/or investigator(s) assigned by the Director will review the Complainant’s allegation and meet with him or her to discuss and, if needed, gather further information. Should the Complainant choose, a friend or family member (but not legal counsel) may be present at any investigative meeting.
2. Before proceeding further, the Director of Human Resources, with the advice and input of any assigned investigator(s), will make a determination as to whether the conduct or language complained of would, if true, constitute a violation of this policy. If the conclusion is that the conduct or language complained of, even if true, would not constitute a violation of this policy, there will be no further investigation. The University will take any steps needed to remedy inappropriate conduct that does not constitute a violation of this policy. If the conclusion is that the conduct would, if true, constitute a violation of this policy, the investigation will proceed as follows.
3. The investigator(s) will investigate the allegation by contacting the Respondent and witnesses, gathering other pertinent information and following up with the Complainant, Respondent, and witnesses as needed. While the allegation is under investigation, the investigator will encourage all parties and witnesses to provide any additional information (including statements, e-mails, documents, or



any other facts) that may assist the investigation. The investigator will continue to receive and review this information until the investigation is closed.

Conflicts: All parties shall identify any conflicts of interest as soon as possible in the process. If the Respondent would, under other circumstances, be a part of the investigation or appeal process, the President will appoint a substitute to stand in the place of that person. If there is an allegation that the President has violated this policy, the Chair of the Board of Trustees, working in consultation with the Director of Human Resources, will define a process for reviewing the allegation.

Confidentiality: The University encourages, but does not require, those involved in the process to maintain confidentiality to the extent possible. Limiting information to those who have a need to know will help foster a successful investigation. The Director of Human Resources and any assigned investigator will listen in confidence and will make every effort to maintain, but cannot guarantee, the confidentiality of the claim, information provided, or concerns.

104.9 Conclusions

Findings, Conclusions, and Recommendations:

1. Upon completion of the investigation, the Director of Human Resources, together with any other assigned investigator(s), will prepare a written report that will include factual findings as well as a conclusion of whether or not it is more likely than not (a preponderance of the evidence in legal terms) that there has been a violation of this policy. The report may also include recommendations for resolution, corrective action, or other appropriate action.
2. The Director of Human Resources shall forward the final report to the respective Vice President or Provost.
3. If the conclusion is that it is more likely than not that a violation of this policy has occurred, the Respondent will be advised in writing of the finding of a violation and the corrective action. The Complainant will be advised in writing that the investigation is complete, that a violation was found, and that there will be corrective action taken against the Respondent.
4. If the investigation does not support a violation of any University policy, both the Complainant and the Respondent will be advised in writing of this outcome.

104.10 Appeals

If either the Complainant or Respondent disagrees with the outcome of the investigation, or if the Respondent disagrees with the recommended corrective action, he or she may submit an appeal. An appeal must be submitted to the Director of Human Resources within seven (7) days of receipt of the final report. If no appeal is submitted within that time, the conclusion and the recommendations of the report become final and the corrective action/recommendations shall be implemented.

Appeal Procedures:



1. The written request for appeal must identify the reasons and evidence supporting the appeal, state the result sought, and be submitted to the Director of Human Resources. A copy of the written request will be provided to the non-appealing party within five days, who may submit a written response to that request within five days of its receipt.
2. The Director of Human Resources will forward the report, the file, the request for appeal, and response to the Office of the President. Within fourteen days, the Office of the President will issue a decision. Both the Complainant and Respondent will be advised in writing of the President's decision.

The University will take steps to prevent retaliation or recurrence of any harassment or to correct any discriminatory effects on the Complainant or others.

104.11 Corrective Action

Respondent is a Faculty Member: If recommended corrective action is termination, non-renewal, or denial or delay of promotion or sabbatical, said corrective action will be pursued in accordance with the Faculty Manual unless the Respondent chooses to accept the corrective action and forego the Faculty Manual process.

A finding of discrimination, harassment, or retaliation under this policy a) will constitute "harassment" as that term is used in the Faculty Manual and, therefore, may be cause for termination; b) may be considered by the University in determining whether a faculty member will be renewed, promoted, or granted a sabbatical, in accordance with the Faculty Manual; c) may be considered as evidence of a lack of commitment to the mission of the University and the basic goals of liberal education and, therefore, constitute an inadequate record of service; or d) may be considered as a basis for a less than satisfactory evaluation in an interim-tenure review.

Respondent is a Non-Faculty Employee: The Respondent will be advised in writing of the finding of a violation and the corrective action will be imposed. Results and recommended corrective action, if any, will be provided to the relevant Vice President who will be responsible for implementing the discipline

Respondent is an Administrator: The respondent will be advised in writing of the finding of a violation and the corrective action will be imposed. Results and recommended corrective action, if any, will be provided to the relevant Vice President who will be responsible for implementing the discipline

Respondent is a Student: The corrective action will be governed by the Student Code of Conduct procedures.

Vendors, contractors, subcontractors, visitors, guests, or other individuals who do business with the University: If the investigation reveals that reasonable cause exists to believe that such individual has violated this policy, the matter shall be referred to the Vice President for Business Affairs for appropriate administrative action consistent with the goals of this policy.



Records: After any challenge to corrective action has concluded, and corrective action has been imposed, all records pertaining to the complaint and its resolution shall be maintained in the Office of Human Resources.

104.12 Administration

Awareness: The University will take appropriate steps to make faculty, staff, and students aware of this policy and related procedures. Members of the University community are expected to take the time to review disseminated information regarding this policy. Any questions can be addressed to the Director of Human Relations or the Vice President for Student Affairs. This Discrimination and Harassment Policy shall be published on the University's website and be a part of the University Policies and Procedures Manual and included in the Faculty Manual. It will also be referenced in the Campus Life Handbook.

Title IX Coordinator: The Director of the Office of Human Resources has been designated to coordinate the University's compliance with non-discrimination requirements under Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Age Discrimination in Employment Act of 1975, which prohibit discrimination on the basis of disability, race, sex and age respectively. With agreement of the Office of the President, the Director of the Office of Human Resources may delegate this authority. The Office of Human Resources may be contacted regarding the University's compliance efforts or any potential violations of the aforementioned statutes as well as Title VII of the 1964 Civil Rights Act which governs employment discrimination.

Training: The University will periodically offer training opportunities for its faculty, staff, and students. This training is expected of any employee in a supervisory position and others as designated by the University such as Residence Hall Assistants. Failure to participate in training, as required, may be grounds for corrective action including termination.

104.13 Related Laws

Related Federal and State Laws

- "Title VII of the 1964 Civil Rights Act (Title VII), as amended": prohibits employment discrimination on the basis of race, color, religion, national origin or sex (including pregnancy);
- "Title IX of the Education Amendments of 1972": prohibits discrimination on the basis of sex;
- "Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), As Amended": prohibits employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
- "Equal Pay Act of 1963 (EPA), as amended": protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- "Age Discrimination in Employment Act (ADEA) of 1967, as amended": protects individuals who are 40 years of age or older;
- "Title VI of the Civil Rights Act": provides monetary damages in cases of intentional employment discrimination;



- “Title II of the Genetic Information Nondiscrimination Act of 2008”: protects applicants and employees from discrimination based on genetic information;
- Ohio Civil Rights Act, Ohio Revised Code Chapter 4112;
- Ohio Fair Employment Practices Act: Ohio Revised Code 4112.01 et seq.

104.14 Related Policies

Sexual Misconduct; Workplace Violence; Whistleblower

104.15 History

Enacted: May 15, 2003

Revised: February 1, 2005; May 12, 2014