

# SEX DISCRIMINATION/SEXUAL HARASSMENT POLICY AND PROCEDURES

## I. GENERAL POLICY GUIDELINES

### A. Policy Statement – Notice of Nondiscrimination

It is the policy of AOMA to comply with Title IX of the Education Amendment of 1972, which prohibits discrimination based on sex (including sexual harassment and sexual violence) in the institution's educational programs and activities.

In accordance with federal and state law, AOMA prohibits discrimination on the basis of sex, including sexual harassment, and sexual violence. These will not be tolerated, and individuals who engage in such conduct will be subject to disciplinary action. AOMA encourages students, faculty members, staff members, and visitors to promptly report discrimination based on sex (including sexual harassment and sexual violence).

### B. Scope

This policy applies to visitors, applicants for admission to or employment with AOMA, and students and employees of AOMA.

### C. Definitions

#### 1. *Sex discrimination*

"Sex discrimination" including sexual harassment, is defined as conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that adversely affects their employment or education on account of sex.

#### 2. *Sexual harassment*

"Sexual harassment" is any unwelcome direct or indirect verbal or physical conduct that is made a condition of employment or education, is a basis for employment or education decisions, or creates an offensive atmosphere that inhibits work or learning performance.

"Hostile Environment" includes any situation in where there is harassing conduct that is sufficiently severe, pervasive/persistent and patently offensive so that it alters the conditions of education or employment, from both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint. The determination of whether an environment is "hostile" must be based on all of the circumstances. These may include:

- The frequency of the conduct
- The nature and severity of the conduct
- Whether the conduct was physically threatening
- Whether the conduct was humiliating
- The effect of the conduct on the alleged victim's mental or emotional state
- Whether the conduct was directed at more than one person
- Whether the conduct arose in the context of other discriminatory conduct

- Whether the conduct unreasonably interfered with the alleged victim’s educational or work performance
- Whether the speech or conduct deserves the protections of academic freedom

### 3. *Physical conduct*

Physical conduct that, depending on the totality of circumstances present, including frequency and severity, may constitute sexual harassment includes, but is not limited to, unwelcome intentional touching; or deliberate physical interference with or restriction of movement.

### 4. *Verbal conduct*

Verbal conduct is defined as oral, written, or symbolic expressions that personally describe or are personally directed at a specific individual or group of identifiable individuals; and are not necessary to an argument for or against the substance of any political, religious, philosophical, ideological, or academic idea.

Verbal conduct that, depending on the totality of circumstances present, may constitute sexual harassment includes, but is not limited to:

- a. explicit or implicit propositions to engage in sexual activity;
- b. gratuitous comments, jokes, questions, anecdotes, or remarks of a sexual nature about clothing or bodies;
- c. gratuitous remarks about sexual activities or speculation about sexual experiences;
- d. persistent, unwanted sexual or romantic attention;
- e. subtle or overt pressure for sexual favors;
- f. exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars, or other materials;
- g. deliberate, repeated humiliation or intimidation based upon sex.

The examples on this list are rarely, if ever, necessary to an argument for or against the substance of any political, religious, philosophical, ideological, or academic idea. Constitutionally protected expression cannot be considered harassment under this policy.

### 5. *Sexual Assault*

Any unwanted sexual contact (touching, kissing, fondling or intercourse) committed without consent of the individual or against an individual who cannot reasonably consent.

### 6. *Consent*

- Ongoing—must seek consent for every step of sexual activity
- Active agreement—must seek nonverbal (active participation) and verbal consent.
- Respectful & Honest
  - *“Consent can be given by word or action, but nonverbal consent is less clear than talking about what you want and what you don’t. Consent to some form of sexual activity cannot be automatically taken as consent to any other sexual activity. **Silence** — without*

*actions demonstrating permission — cannot be assumed to show consent. You will do well to keep in mind that under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.”*”

### 7. Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for his or her safety or the safety of others; or
- Suffer substantial emotional distress.
- Source: 42 USCS § 13925(a)

### 8. Dating Violence

Any unwanted sexual contact (touching, kissing, fondling or intercourse) committed without consent of the individual or against an individual who cannot reasonably consent.

- Violence committed by a person who:
  - is or has been in a social relationship of a romantic or intimate nature with the victim
- Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - length of relationship
  - type of relationship
  - frequency of interaction between persons involved in the relationship
- Source: 42 USCS § 13925(a)
- Texas Code 71.0021: "Dating violence" means an act by an individual that is against another individual with whom that person has or has had a dating relationship and that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.

### 9. Domestic (Family) Violence

Crimes of violence committed by current or former spouse or intimate partner; share a child in common; is or has cohabitated with; or another person similarly situated. (Texas Code 47.004)

## II. GENERAL PROCEDURES

### A. Reporting

A person who believes that he or she has been subjected to sex discrimination, including sexual harassment or sexual violence, should report the incident to any AOMA official, administrator, or supervisor. Students are encouraged to report such incidents to the Title IX Coordinator; employees and campus visitors are encouraged to report to human resources department.

Incidents should be reported as soon as possible after the time of their occurrence. No person is required to report sex discrimination or sexual harassment to the alleged offender.

AOMA's Title IX Coordinator is Donna Hurta, [Vice President Finance and Operations dhurta@aoma.edu](mailto:dhurta@aoma.edu). Phone 512-492-3014. Ms. Hurta's office is in Building C, room C8. AOMA's Title IX Deputy Coordinator is Danielle Manor, Compensation and Benefits Coordinator, 512-492-3003 Building C, Room C3 [dmanor@aoma.edu](mailto:dmanor@aoma.edu).

## **B. Referral Responsibility**

Every AOMA employee is responsible for promptly reporting incidents of sex discrimination and sexual harassment, including sexual violence, that come to their attention to the campus Title IX Coordinator.

Appropriate training is provided to the Title IX Coordinator and Title IX Deputy.

## **C. Reporting Options**

If you have been assaulted:

Victims of sexual misconduct are strongly encouraged to report the incident and to take advantage of institutional support services available to them. Every effort will be made to assist victims and to protect their rights. Services and rights available include the following:

1. Sol Community Counseling 512-366-0954. Ask for the counselor on call. Both male and female counselors are available. They will return phone calls between the hours of 8am-10pm. For after hours or immediate crises, call 911 or the MHMR Hotline at 512-472-4357.
2. The SafePlace Rape Crisis Center is available 24 hours a day. Call 512-267-SAFE.

Victims will be informed of the range of legal options available. Victims may do the following.

- Report to the institution (Title IX Coordinator or Deputy Coordinator).
- Report to law enforcement (APD or other agency) by calling 911. This allows the victim access to Victim Assistance Program funds and services.
- Although these entities might work together, the investigations are separate and parallel processes.

## **Confidentiality and Reporting**

Different people on campus have different reporting responsibilities and different abilities to maintain your confidentiality, depending on their roles.

Confidential Reporting Options: If you desire that the details of the incident be kept confidential, you should speak to Sol Community Counseling or off-campus rape crisis resources, who will maintain confidentiality. In addition, you may speak off-campus with members of the clergy and chaplains, who will also keep reports made to them confidential.

Nonconfidential Reporting Options: You are encouraged to speak to institutional officials to make reports of incidents, including but not limited to the Title IX Coordinator/Vice President of Finance and Operations, Compensation and Benefits Coordinator. You have the right and can expect to have incidents of sexual misconduct to be taken seriously by the university when reported, and to have those incidents investigated and properly resolved through administrative procedures. Reporting does not mean that your report won't be confidential, but it does mean that people who need to know will be told, and information will be shared as necessary with investigators, witnesses and the accused. The circle of people will be kept as tight as possible, to protect your rights and privacy.

Sexual discrimination and harassment, including sexual violence, by a faculty or staff member of a student is a serious matter. Filing a complaint against someone for such inappropriate behavior is equally serious. The institution's objective in these situations is to resolve the matter with care and concern for the best interests of the person filing the complaint, the person against whom the complaint is being filed and the institution.

A vice president will not be involved in the investigation or decision if the complaint is against the administrative officer.

#### **D. Resolution Options**

A person who believes that he or she has been subjected to sex discrimination, sexual harassment, or sexual violence and seeks to take action may use either the informal resolution process or the formal complaint resolution process, or both. The informal resolution and formal complaint resolution processes described in this policy are not mutually exclusive, and neither is required as a precondition for choosing the other; however, they cannot both be used at the same time.

### **III. INFORMAL RESOLUTION PROCEDURE**

Informal resolution may be an appropriate choice when the conduct involved is not of a serious or repetitive nature and disciplinary action is not required to remedy the situation. No formal investigation is involved in the informal resolution process.

A request for informal resolution must be made within ninety days of the date of the alleged incident to either the office of the vice president of Finance and operations or the human resources department, who shall determine whether the nature of the problem is such that it can be resolved by agreement on an informal basis, and if so, which office will do so. A request for informal resolution will not extend the ninety-day time limit for filing a formal complaint.

Methods for informal resolution may include, but are not limited to, coaching the person on how to directly address a situation which is causing a problem; mediating the dispute with the parties; aiding in the modification of a situation in which the offensive conduct occurred; assisting a department or division with the resolution of a real or perceived problem; or arranging a documented meeting with the alleged offender that involves a discussion of the requirements of the sex discrimination and sexual harassment policy.

AOMA shall document any informal resolution. Such documentation shall be retained by the office of the vice president Finance and Operations or Human Resources as appropriate and will be kept confidential to the extent permitted by law. An informal resolution meeting shall not be considered a precondition for the filing of a written complaint.

### **IV. COMPLAINT RESOLUTION PROCEDURE**

#### **A. Definitions**

##### *1. Complaint*

“Complaint” is defined as a signed document alleging sex discrimination, including sexual harassment under this policy.

##### *2. Complainant*

“Complainant” is defined as a person who submits a written complaint alleging sex discrimination, including sexual harassment under this policy.

##### *3. Respondent*

“Respondent” is defined as the person designated to respond to a complaint. Generally the respondent would be the person alleged to be responsible for the prohibited discrimination or sexual harassment alleged in a complaint. The term “respondent” may be used to designate persons with direct responsibility for a particular action or those persons with administrative responsibility for procedures and policies in those areas covered in a complaint.

#### *4. Notification*

“Notification “ takes place two days after the date of posting of any document in the United States mail, properly addressed, or upon the date of receipt of any document, when placed in the campus mail, properly addressed. Written communications to a complainant are properly addressed when sent to the address given in the complaint or the last address given since the filing of the complaint.

### **B. Complaint Procedure**

#### *1. Complaint*

A complaint alleging sex discrimination, including sexual harassment or sexual violence) must be submitted in writing to the human resources department or the office of the vice president finance and operations. The complaint must contain the following information:

- Name of the complainant(s)
- Contact information, including address, telephone number, e-mail address
- Name of person(s) directly responsible for alleged violation(s)
- Date(s) and place(s) of alleged violation(s)
- Nature of alleged violation(s) as defined in this policy
- Detailed description of the specific conduct that is the basis of alleged violation(s)
- Copies of documents pertaining to the alleged violation(s)
- Names of any witnesses to alleged violation(s)
- Action requested to resolve the situation
- Complainant’s signature and date of filing
- Any other relevant information
- The following communications do not constitute a complaint and will not be investigated or resolved pursuant to the complaint resolution process:
  - Oral allegations
  - E-mail correspondence
  - Anonymous communications
  - Courtesy copies of correspondence or a complaint filed with others
  - Inquiries that seek advice or information only
  - Precomplaint consultations and informal resolution activities

#### *2. Time Limit*

A written complaint must be filed within ninety calendar days of the occurrence of the alleged violation. In the case of a currently enrolled student, if the last day for filing a complaint falls prior to the end of the academic term in which the alleged violation occurred, then the complaint may be filed within thirty calendar days after the end of that term.

#### *3. Acknowledgment*

Within five working days after receipt of a written complaint, the human resources department or the office of the vice president finance and operations, as appropriate, will send the

complainant(s) a brief acknowledgment of the complaint, stating that the complaint will be evaluated, and advising the complainant(s) that he or she will be contacted within a given time. The acknowledgment letter will include a copy of these complaint procedures.

#### *4. Complaint Evaluation*

- A formal investigation will be initiated if a complaint is complete, timely, within the scope of this policy, and articulates sufficient specific facts, which, if determined to be true, would support a finding that this policy was violated. AOMA may not proceed with a complaint investigation under a variety of circumstances, if for instance:
- a person fails to provide a written, signed complaint;
- a complaint fails to describe in sufficient detail the conduct that is the basis of the complaint;
- the conduct described in the complaint is not covered by this policy;
- the complaint is not timely;
- the complainant(s) declines to cooperate in AOMA's investigation;
- the complaint has been withdrawn; or
- an appropriate resolution or remedy has already been achieved, or has been offered and rejected.

If it is determined that AOMA will not proceed with a complaint investigation, human resources department or the office of the vice president finance and operations, as appropriate, will send a notification letter explaining the reason(s) to the complainant(s), with a copy to the alleged offender(s). The notification letter will also include a statement informing the complainant(s) that, within ten working days of the notification, he or she may appeal the determination not to proceed with a complaint investigation to the president. The request for appeal must be a signed, written document articulating why the decision to dismiss the complaint was in error. The president will respond within twenty working days of receipt of the appeal. If the decision to dismiss is upheld, that decision is final. If the decision is overturned, the complaint is sent back to human resources department or the office of the vice president of student services and operations, as appropriate, for investigation in accordance with the procedures outlined below.

#### *5. Notification of Respondent*

If it is determined that AOMA will proceed with a complaint investigation, human resources department or the office of the vice president finance and operations will give the respondent(s) written notification of the complaint investigation. The notification letter will include a copy of the written complaint. The notification letter will provide the respondent(s) an opportunity to submit a written response to the allegations within ten working days, unless unusual circumstances warrant additional time. The notification letter will include a statement advising the respondent(s) that retaliation against the complainant(s) is prohibited and will subject the respondent(s) to appropriate disciplinary action.

#### *6. Investigation Responsibility*

The office of the vice president finance and operations is responsible for conducting formal investigations of complaints against students alleging sex discrimination and sexual harassment. The human resources department is responsible for conducting formal investigations of complaints against nonstudents alleging sex discrimination and sexual harassment. If a complaint is directed against an individual who would otherwise play a role in investigating and attempting to resolve the complaint, the function assigned to that person by these procedures will be delegated to another person.

#### *7. Investigative Process and Findings*

The investigator will interview both the complainant(s) and the respondent(s) and persons who are considered to have pertinent factual information related to the complaint. The investigator shall also gather and examine documents relevant to the complaint. Facts will be considered on the basis of what is reasonable to persons of ordinary sensitivity and not on the particular sensitivity or reaction of an individual. Findings will be based on the totality of circumstances surrounding the conduct complained of, including but not limited to the context of that conduct, its severity, frequency, whether it was physically threatening, humiliating, or was simply offensive in nature.

#### *8. Representation*

During the complaint process, the complainant(s) and the respondent(s) may designate and thereafter be accompanied by an adviser of his or her choosing at meetings and interviews at which he or she is present; however, no representative may examine witnesses or otherwise actively participate in a meeting or interview.

#### *9. Submission of Evidence*

During the complaint investigation process, the complainant(s) and the respondent(s) will provide the human resources department or the office of the vice president finance and operations, as appropriate, with all documents relied upon regarding the issues raised in the complaint.

#### *10. Report of Findings and Recommendation – Complaints against Nonstudents*

- a. The investigator will provide a proposed statement of findings, copies of relevant documents, and any physical evidence considered to the appropriate vice president within thirty working days of receipt of the respondent's statement, unless unusual circumstances require more time. The appropriate vice president to act on complaints against faculty and staff members will be the vice president or program director over the area where the respondent is employed. The appropriate vice president to act on complaints against contractors and visitors will be the vice president for operations. If a complaint is directed against a vice president who would otherwise act on a complaint, the function assigned to that vice president will be delegated to another person.
- b. The appropriate vice president or program director will promptly notify the complainant(s) and the respondent(s) that the investigation has been completed and

attach a copy of the proposed statement of findings. Student identifiable information, if any, which is confidential by law, will be redacted. Within ten working days from the date of notification, the complainant(s) and respondent(s) may each submit, for consideration by the appropriate vice president, such comments and corrections as they may have.

- c. Within fifteen days of the notification to the complainant(s) and the respondent(s) that the investigation has been completed, the appropriate vice president or program director and the investigator shall meet to discuss the findings and review the record, along with any comments and proposed corrections submitted by the complainant(s) and respondent(s).
- d. Within fifteen working days from that meeting, the vice president shall take one of the following actions: 1) request further investigation into the complaint; 2) dismiss the complaint if the results of the completed investigation are inconclusive or there is insufficient reasonable, credible evidence to support the allegation(s); or, 3) find that this policy was violated.
- e. If the vice president determines that this policy was violated, he or she, following consultation with the investigator or other knowledgeable persons as appropriate, shall determine a disciplinary action that is appropriate for the severity of the conduct. Disciplinary actions can include, but are not limited to, written reprimands, the imposition of conditions, reassignment, suspension without pay, and termination.
- f. The vice president shall inform the complainant(s) and the accused individual(s) and the appropriate unit head in writing of his or her decision, and shall attach a copy of the final statement of findings. Copies of the vice president's letter, the attached statement of findings, and relevant documents shall also be sent to the office of the Vice President of Student Services and Operations or human resources department as appropriate.

#### *11. Report of Findings and Recommendation—Complaints against Students*

- a. The investigator will provide a proposed statement of findings, copies of relevant documents, and any physical evidence considered to the Vice President of Student Services and Operations within thirty working days of receipt of the respondent's statement, unless unusual circumstances require more time.
- b. The Vice President of Student Services and operations and the investigator shall meet within fifteen working days to discuss the findings, and review the record.
- c. Within fifteen working days from that meeting, the vice president finance and operations shall take one of the following actions: 1) request further investigation into the complaint; 2) dismiss the complaint if the results of the completed investigation are inconclusive or there is insufficient reasonable, credible evidence to support the allegation(s); or 3) find that this policy was violated.
- d. If the vice president finance and operations determines that this policy was violated, the vice president, following consultation with the investigator or other knowledgeable person(s) as appropriate, shall determine whether to initiate a disciplinary action appropriate for the severity of the conduct. Disciplinary actions

- can include, but are not limited to, documented warning, the imposition of conditions, probation, suspension, and dismissal.
- e. As required by federal law, any disclosure of the findings and decision of the office of the Vice President of Student Services and Operations will be governed by the provisions of the Family Educational Rights and Privacy Act.

Student Code of Conduct Special Provisions for Sexual Discrimination and Sexual Harassment, including Sexual Violence.

- A. Refer to Student Code of Conduct MAC process. Special provisions for sexual discrimination, harassment and sexual violence include:
- B. Timing. The institution will respond promptly when receiving a complaint of sexual discrimination, sexual harassment or sexual violence. Investigations will take no more than sixty calendar days.
- C. Advisor/Advocate. All student parties to sexual misconduct complaints have the right to an advisor/advocate from the community to assist and support in connection with student conduct proceedings. Any advisors from outside the community must be approved by the Vice President of Finance and Operations.
- D. Sexual History/Character. All parties to a complaint have the right not to face questions or discussion of their sexual history or character unless the hearing chair or administrative hearing officer decides that such information is highly relevant to determining whether the policy has been violated.
- E. Right to present own complaint or use proxy. Alleged victims have the right to present their own complaint if they want to, or to ask the institution to stand as complainant in their place.
- F. Right to know outcomes and sanctions. Whether in writing or an oral report, the complainant has the right to know the outcome and sanctions of the hearing. The complainant will not be required to sign a non-disclosure agreement.
- G. Right to be informed of Review (Appeal) Status. The parties will be informed by the Vice President of Finance and Operations office if any of the parties in the complaint requests an appeal.
- H. Right to Review (Appeal). All parties will have the right to a review of the outcomes of a hearing.
- I. Right to Equity. All parties will be treated with as much equity as possible during this process.

## **V. MISCELLANEOUS**

### **A. Employee Grievance of a Disciplinary Action**

Any employee disciplined pursuant to this policy may grieve that action by submitting a written grievance, within ten working days of the imposition of the disciplinary action, to the president's office. Ordinarily, the president will assign responsibility for review and action on the appeal of the vice president's action to another vice president; however, when required by

unusual circumstances, the president may review and handle a grievance pursuant to this policy.

If the disciplinary action that is being grieved does not involve termination, demotion, or suspension without pay, the vice president shall thoroughly review and finally decide the matter within thirty calendar days of its receipt unless unusual circumstances require more time.

If the disciplinary action that is being grieved involves termination, demotion, or suspension without pay of an employee, the vice president who is assigned to review the grievance shall follow the procedures for appealing such actions contained in that section. Complainants will be required to appear and testify at hearings that may be a part of such proceedings.

#### **B. Retaliation Prohibited**

A student, faculty member, or staff member who retaliates in any way against an individual who has brought a complaint pursuant to this policy or participated in an investigation of such a complaint, is subject to disciplinary action, up to and including dismissal from AOMA.

#### **C. Filing of False Complaints**

Any person who knowingly and intentionally files a false complaint under this policy is subject to disciplinary action up to and including dismissal from AOMA.

#### **D. Effect on Pending Personnel Actions**

The filing of a sex discrimination, sexual harassment, or retaliation complaint will not stop or delay any evaluation or disciplinary action related to the complainant who is not performing up to acceptable standards or who has violated AOMA rules or policies.

#### **E. Relationship of Complaint Process to Outside Agency Time Limits**

The filing of a sex discrimination or sexual harassment complaint under this policy does not excuse the complainant from meeting the time limits of outside agencies.

#### **F. Title IX Grievance Procedure**

This complaint procedure shall also constitute the grievance procedure for complaints alleging unlawful sex discrimination required under Title IX of the Education Amendments of 1972. As used herein, "complaint" is synonymous with "grievance."

#### **G. Time Frames**

Time frames mentioned in these procedures may be extended for good cause, such as holidays or when classes are not in session, or when it is necessary to complete an investigation due to difficulties reaching witnesses or parties to the complaint.

## **H. Documentation and Confidentiality**

AOMA shall maintain documents related to complaints under this policy as required by law. The office of the vice president of finance and operations shall be primarily responsible for records related to complaints against students. The human resources department shall be primarily responsible for records related to complaints against nonstudents. The confidentiality of a complaint under this policy and all documents, correspondence, interviews, and discussions relating to the investigation of the information contained in a complaint will be maintained on a need-to-know basis to the extent permitted by law. Any person who knowingly and intentionally makes an unauthorized disclosure of confidential information contained in a complaint or otherwise relating to the investigation of a complaint under this policy is subject to disciplinary action.

## **I. Consensual Relationships**

Participation of a supervisor, teacher, adviser, or coach in a consensual romantic or sexual relationship with a subordinate employee or student in all cases creates a prohibited conflict of interest. See AOMA's policy.

**For assistance: Questions regarding this policy should be directed to Title IX Coordinator.**