



<b>Anti-Discrimination and Harassment Policy</b>	<b>Effective Date: August 17, 2022</b>
<b>Related Policies and Procedures: n/a</b>	

## **I. Statement**

Bay Atlantic University (the University) strives to provide an educational and working environment for all faculty, staff and students that is free from all forms of discrimination and harassment, including sexual harassment. It is committed to providing an environment that treasures diversity and emphasizes the dignity and worth of every individual, an environment in which every individual is treated with respect. Discrimination and harassment in any form are inimical to these goals and fundamentally at odds with the values of the University. Discrimination and harassment are violations of the University policy and will not be tolerated. Individuals who engage in such conduct may be subject to disciplinary action.

This policy is designed to do the following:

- Reaffirm the University's commitment to providing a positive environment for study and work free from discrimination and harassment.
- Provide notice to all members of the University community of what kind of conduct is expected and what kind of conduct is proscribed.
- Inform victims of discrimination or harassment, including sexual harassment, of their options and rights.
- Inform all members of the University community about the procedures available at the University for addressing, investigating, and resolving discrimination and harassment complaints, including sexual harassment complaints.
- Protect the rights and confidentiality of all parties to discrimination and harassment complaints to the fullest extent possible.
- Prevent retaliation against persons alleging discrimination or sexual or other unlawful harassment or against persons cooperating in an investigation.

## **II. Prohibited Conduct**

### **A. Discrimination**

It is the policy of the University to prohibit discrimination of members of the University community on the basis of actual or perceived race, color, religion, national origin, sex, age, disability, sexual orientation, gender identity or expression, family responsibilities, matriculation, political affiliation, marital status, personal appearance, genetic information, familial status, source of income, place of residence or business, or status as a covered veteran, as provided for and to the extent required by District and Federal statutes and regulations.

### **B. Harassment**

Similarly, this policy prohibits unwelcome and offensive acts or communications directed to individuals or groups because of actual or perceived race, color, religion, national origin, sex, age, disability, sexual orientation, gender identity or expression, family responsibilities, matriculation, political affiliation, marital status, personal appearance, genetic information, familial status, source of income, place of residence or business, or status as a covered veteran (hereinafter referred to collectively as “protected classes”), as provided for and to the extent required by District and Federal statutes and regulations.

Examples of impermissible harassment include, but are not limited to, the following:

- The use of physical force or violence to restrict the freedom of movement of another person or to endanger the health and safety of another person based on that person’s actual or perceived membership in a protected class.
- Physical or verbal behavior that involves an express or implied threat to interfere or has the reasonably foreseeable effect of interfering with an individual’s personal safety, academic efforts, employment, or participation in University-sponsored extracurricular activities because of that individual’s actual or perceived membership in a protected class, and which causes that individual to have a reasonable apprehension that harm is about to occur.
- Any type of conduct based on an individual’s actual or perceived membership in a protected class, that has the effect of unreasonably interfering with that individual’s work or academic performance or creates an intimidating, hostile or offensive working or learning environment.
- Epithets, slurs or derogatory comments based on a person’s actual or perceived membership in a protected class.

The foregoing must be interpreted in light of one of the fundamental purposes of a University education, which is to teach students to think, write and express themselves critically. This is a demanding skill and students must confront in stark, and sometimes painful ways, the comfortable assumptions that they bring to the University experience. See Section III below regarding Academic Freedom.

This policy is not intended to address normal differences of opinion that arise but are not based on a person’s actual or perceived membership in a protected class.

In the case of students, those matters may be addressed through the appropriate faculty or staff member. Faculty or staff with concerns regarding such differences of opinion not based on actual or perceived membership in a protected class, are to address them with their respective supervisor.

### **C. Sexual Harassment**

For the same reasons listed above, it is the policy of the University that all faculty, staff, and students work and learn in an environment free from sex discrimination and sexual harassment.

#### **1. Definition**

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or written communication, or physical conduct of a sexual nature, which constitute sexual harassment when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education.
- b. Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions or evaluations; or

- c. Such conduct has the effect of unreasonably interfering with an individual's work performance or learning or of creating an intimidating, hostile, or offensive environment.

This definition applies to both the employment and non-employment contexts, including relationships between faculty and students, academic decisions regarding students, and the environment in which students' function.

Sexual harassment may be committed by persons of either gender against persons of the same or different gender. Although sexual harassment most often exploits a relationship between individuals of unequal power (e.g., between faculty/ staff member and student, or a supervisor and employee/faculty member), it may also occur between individuals of equal power (e.g., between fellow students or co-workers), or in some circumstances even where it appears that the harasser has less power than the individual harassed (e.g., a student sexually harassing a staff/faculty member). Third parties can also commit sexual harassment against students, staff, or faculty.

## **2. Examples of Sexual Harassment**

Sexual harassment can take many different forms. The determination of what constitutes harassment violation of University policy will vary according to the particular circumstances.

Examples of sexual harassment include, but are not limited to, the following situations:

- Unwelcome sexual propositions, invitations, solicitations, and flirtations; leering.
- Unwelcome and inappropriate touching, patting, fondling, pinching, or obscene gestures.
- Conditioning an employment-related action (such as hiring, promotion, salary increase, performance appraisal, or refraining from discipline or termination) on a sexual favor or relationship.
- Conditioning an academic-related action (such as a grade, assignment, or refraining from discipline) on a sexual favor or relationship.
- Unwelcome verbal expressions of a sexual nature, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; the unwelcome use of sexually degrading language, jokes or innuendos; unwelcome suggestive or insulting sounds or whistles; or obscene telephone calls.
- Sexually suggestive objects, pictures, videotapes, audio recordings or literature, or computerized transmissions placed in a work or study area that may embarrass or offend individuals, subject to general principles of academic freedom discussed in Section III below.
- Sexual assault, coerced sexual intercourse or other sexual contact; or
- Any combination of the above conduct, which has the effect of unreasonably interfering with an individual's work or academic environment.

## **III. Academic Freedom**

The University has accepted and endorsed a definition of academic freedom which includes basic rights and responsibilities to teach and discuss topics pertinent to understanding the subject matter of the course being taught; to conduct research and publish the results; and to speak or act in the capacity of a citizen without institutional censorship or discipline. Conduct claimed to constitute discrimination or harassment must be interpreted in light of the principle of academic freedom so as to protect a faculty member's rights to teach, research and publish freely. The University does not intend that this policy will

be used to address the typical differences of opinion that may arise in the academic setting and are part of the normal process of teaching and learning.

#### **IV. Consensual Relationships**

Consensual relationships may create conflicts of interest and/or appearances of impropriety that impair the integrity of academic or employment decisions. These relationships also have the potential to exploit a subordinate employee or student; to create professional or academic disadvantage of other parties; and to expose the University and/or involved individuals to the risk of liability.

The University strongly discourages consensual relationships between faculty or staff members and students or between supervisors and subordinates. This is particularly so with regard to students who are currently enrolled in a class taught by a faculty member or who are currently employed by a faculty or staff member in any capacity, where the question of consent is complicated by the difference in power that exists between faculty or staff and students in such circumstances. Similarly, an implicit imbalance of power exists between supervisory personnel and staff, which also raises the issue of consent.

The University expects its faculty, staff, supervisors, and administrators to act in a fair, impartial manner when making decisions, avoiding every appearance of impropriety or favoritism that might arise from consensual relationships.

#### **V. Duties of Members of the University Community**

##### **A. All Associated with the University**

Each member of the University community plays a significant role in ensuring that the University is free from all forms of discrimination and harassment, and that any incidents of discrimination or harassment are promptly reported.

If a member of the University community believes they have been subjected to discriminatory or harassing conduct, that individual is advised to report the matter to the Title IX Coordinator. Alternatively, an individual may report the incident to any staff member. Those individuals are required to report any alleged incidents of discrimination or harassment to the Title IX Coordinator as promptly as possible.

The University cannot take action to punish and deter discrimination and harassment if it is not aware that it has occurred.

##### **B. Supervisory Employees**

It is the responsibility of supervisors, chairs, directors, department heads, and other managers to:

- Immediately notify the Title IX Coordinator when they receive reports or complaints of discrimination or harassment;
- Immediately notify the Title IX Coordinator when they observe or otherwise become aware of incidents of discrimination or harassment; and
- Implement any corrective actions imposed as a result of findings of discrimination or harassment.

Any employee or student-employee in a supervisory or managerial capacity who has knowledge of incidents of discrimination or harassment, including sexual harassment, who does not report the matter to the Title IX Coordinator may be subject to disciplinary action up to and including discharge from employment from the University.

### **C. Faculty, Staff and Students**

It is the responsibility of the faculty, staff, and students to discourage discrimination and harassment, regardless of whether they are the person(s) discriminated against or harassed. Any faculty member, staff employee, student-employee, or student who believes he/she is the victim of discrimination or harassment; who witnesses discrimination or harassment; or who receives a report of discrimination or harassment is advised to refer the victim to the Title IX Coordinator and promptly report the incident to and confer with the Title IX Coordinator, or other designated University employees as described in Part V, Sections A and B.

### **VI. Prohibition on Retaliation**

Any action taken by the University or any employee or agent of the University to restrain, interfere, coerce or otherwise adversely affect a person's employment, personal safety, academic efforts or participation in University-sponsored activities as a result of that person's allegation of discrimination or harassment or cooperation in such an investigation or adjudication is strictly prohibited. Retaliation may be found even where the underlying complaint was not sustained.

No faculty member, administrator or staff, applicant for employment, or student may be subject to retaliation for action taken in good faith: to seek advice concerning a discrimination or harassment matter; to file a discrimination or harassment complaint; or to serve as a witness or a panel member in the investigation or adjudication of a discrimination or harassment complaint.

It shall not be retaliation, however, for an accused to defend himself/herself against a charge of discrimination or harassment under this policy. Nor shall it be considered retaliation to discipline an individual for false and malicious accusations as set forth in Part VIII, Section F (see below).

Retaliation, if established, may result in disciplinary action against the offending party up to and including discharge from employment or dismissal/expulsion from the University.

### **VII. Dealing with Discrimination or Harassment**

In addition to reporting an alleged incident of discrimination or harassment, any person who perceives himself or herself to be the victim of harassment in violation of this policy may consider taking one or more of the procedural steps described below, as applicable.

#### **A. Self-Help**

An initial course of action for any faculty, staff, or student who feels that he or she has been harassed or discriminated against may be for that person to emphatically tell or otherwise inform the discriminator or harasser that the conduct is unwelcome, offensive, violates this policy, and must stop. This may solve the problem, and, if it does, further proceedings may not be necessary. This option is most appropriate when the alleged conduct is not of a severe or pervasive nature.

#### **B. Counseling**

Once reported to the Title IX Coordinator, a student who perceives himself or herself as a victim of discrimination or harassment may also contact one of the counselors in Student Services for advice.

### **VIII. Filing a Discrimination or Harassment Complaint**

An employee who believes that he or she has been subjected to discrimination or harassment and wishes to file a formal complaint must avail themselves of the procedures set forth below. This allows the University and the individual to work together in an effort to obtain a resolution to allegations of discrimination or harassment.

## **A. University Complaint Procedure for Employees**

### **1. Reporting Complaints**

If an individual who believes that he or she has been the victim of discrimination or harassment in employment decides that he or she wishes to file a complaint, the person must designate to the Title IX Coordinator that he/she consents to initiating the formal complaint procedure. An employee may file a complaint with an EEO Counselor at another District agency if so desired.

### **2. Required Information**

A complaint must be in writing and shall include the name(s), date(s), time(s), a detailed description of the allegations, requested corrective action and any other relevant information on which the complaint is based. The complainant must sign the complaint and be willing to have their identity disclosed to the respondent, if necessary.

### **3. Filing Timelines**

The complaint must be filed with the Title IX Coordinator no later than one hundred eighty (180) days after the alleged incident. The University endeavors to complete its investigation within thirty (30) days from the date of notice of the complaint, subject to the extension period referenced in Sections VIII.A.4 and VIII.A.6. The complaint may be filed externally with the D.C. Office of Human Rights within fifteen (15) days after an exit interview with the Title IX Coordinator, subject to the extension period referenced in Sections VIII.A.4 and VIII.A.6.

### **4. Investigation of Complaints**

The person who believes that he or she has been the victim of discrimination or harassment will be identified as the "complainant" and the alleged offender will be identified as the "respondent." The University Complaint Procedure shall be concluded within thirty (30) days from the date of notice to the Title IX Coordinator, in so far as is practicable. If additional time is needed to conduct the exit interview beyond thirty (30) days, the Title IX Coordinator may extend the thirty (30) day time period for an additional thirty (30) days (the "extension period") and will so advise the complainant.

During the course of the University Complaint Procedure, it shall be the responsibility of the Title IX Coordinator to discuss with the complainant the options available under this procedure.

The Title IX Coordinator will conduct the investigations of all sexual harassment and discrimination complaints regarding employment related issues. During the investigation, the Title IX Coordinator will:

- Orally apprise the respondent of the charge of discrimination or harassment.
- Elicit from the respondent an explanation of what occurred from his/her perspective.
- Investigate the allegations by conducting interviews or gathering other relevant information.
- Attempt in a non-legalistic, non-threatening manner to facilitate a solution acceptable to both the complainant and the respondent.
- Act as mediator, when necessary, and conduct a meeting between the complainant and the respondent, if appropriate.
- Take such other steps deemed appropriate by the Department of Human Resources (or designee).

### **5. Resolution of Complaints**

If the Title IX Coordinator believes that there is sufficient evidence to support a violation of this policy, the Title IX Coordinator will submit a written report of the investigation and recommendations to the President. The Department of Human Resources (or designee) will subsequently administer disciplinary sanctions in consultation with the the President. The Title IX Coordinator will subsequently conduct an exit interview with the complainant and respondent notifying them of the findings and will issue an exit letter to both parties.

If the Title IX Coordinator, in consultation with the President or designee, believes there is not sufficient evidence to support a violation of this policy, the complainant and respondent will be advised in writing.

A confidential, written summary of the investigation and the actions taken under this complaint procedure will be prepared by the Title IX Coordinator for the University's use and, together with any other documentation, maintained in a file in the Human Resources Department for at least seven (7) years in accordance with the University's record retention policy and applicable law.

#### 6. Filing with External Agencies

Upon receipt of the exit letter, the complainant may file a formal complaint with the D.C. Office of Human Rights within fifteen (15) days after the exit interview with the Title IX Coordinator. A respondent does not have the option to move a charge of harassment to the D.C. Office of Human Rights.

During the extension period described in Section VIII.A.4., the complainant may demand an exit letter at any time, and the Title IX Coordinator shall provide an exit letter upon such a demand. In addition, during the extension period, the complainant may file a formal complaint with the D.C. Office of Human Rights, notwithstanding whether the exit letter has been demanded or issued. If there is an extension period, a formal complaint to the D.C. Office of Human Rights shall be filed by the complainant during the extension period or within fifteen (15) days after a final interview is conducted, whichever is earlier. Formal complaints filed beyond this time period shall be deemed untimely and dismissed as such by the D.C. Office of Human Rights.

The University encourages students, staff, and faculty to utilize the internal complaint process prior to filing an external complaint.

### **B. Sexual Harassment Complaint Procedure for Employees**

Sexual harassment complaints adhere to the same procedure as stated in Part VIII, Section A. The procedure for reporting a sexual harassment complaint, however, adheres to a different timeline. A complainant may file a sexual harassment complaint with the Title IX Coordinator or directly with D.C. Office of Human Rights within one year of the alleged incident. The University shall have sixty (60) days to resolve the complaint before it is referred to the D.C. Office of Human Rights.

### **C. University Complaint Procedure for Students**

#### **1. Reporting Complaints**

A student who perceives herself/himself to be the victim of discrimination or harassment should report the incident to the Title IX Coordinator. Students may also report allegations to a professor, department chair, or supervisor. If a professor, department chair, or supervisor observes or learns of the allegation of discrimination or harassment, they are obligated to report the matter to the Title IX Coordinator immediately.

#### **2. Required Information**

A complaint must be in writing and shall include the name(s), date(s), time(s), a detailed description of the allegations, requested corrective action and any other relevant information on which the complaint is based. The complainant must sign the complaint and be willing to have their identity disclosed to the respondent, if necessary.

### **3. Filing Timelines**

A complaint of discrimination or harassment in educational programs or activities must be filed within one hundred eighty (180) calendar days following the date of alleged discrimination or harassment took place.

### **4. Investigation of Complaints**

The Title IX Coordinator will investigate the allegations brought by the complainant and work to conclude the investigation within sixty (60) days. During the investigation, the Title IX Coordinator will:

- Orally apprise the respondent of the charge of harassment.
- Elicit from the respondent an explanation of what occurred from his/her perspective.
- Investigate the allegations by conducting interviews or gathering other relevant information.
- Attempt in a non-legalistic, non-threatening manner to facilitate a solution acceptable to both the complainant and the respondent.
- Act as mediator, when necessary, and conduct a meeting between the complainant and the respondent, if appropriate.
- Take such other steps deemed appropriate by the Department of Human Resources (or designee).

### **5. Resolution of Complaints**

At the conclusion of the investigation, the Title IX Coordinator shall conduct an exit interview with the complainant and issue an exit letter notifying the outcome. If a violation of University policy is found, the Title IX Coordinator shall notify the respondent of the corrective action to be taken and notify the complainant of the findings and that appropriate corrective action has been or will be taken. If a violation of University policy is not found, the Title IX Coordinator shall notify the complainant and respondent of the findings. The investigation shall be completed within a reasonable amount of time from notice of the complaint, depending on the allegations presented.

A confidential, written summary of the investigation and the actions taken under this complaint procedure will be prepared by the Title IX Coordinator for the University's use and, together with any other documentation, maintained in a file in the Human Resources Department for at least seven (7) years in accordance with the University's record retention policy and applicable law.

### **6. Filing with External Agencies**

Persons who believe that they have been subjected to discrimination and/or harassment may be able to file a complaint with Federal and/or District government agencies, e.g. the D.C. Office of Human Rights, the U.S. Equal Employment Opportunity Commission, or the U.S. Department of Education's Office for Civil Rights.

The University encourages students, staff, and faculty to utilize the internal complaint process prior to filing an external complaint.

## **D. University Investigations**



Very often, an individual who perceives himself or herself to be the victim of discrimination or harassment in violation of this policy may be reluctant to pursue the remedies provided in this section. Similarly, the Human Resources Department may become aware of an alleged incident of discrimination or harassment even though the alleged victim has not reported it. Incidents of discrimination and harassment pose legal risks for the University. The Human Resources Department reserves the right to conduct its own investigations into reported incidents of discrimination or harassment and take appropriate measures even in the case of an alleged victim who is unwilling to report or pursue the matter.

#### **E. Disciplinary Sanctions**

Disciplinary actions for discriminatory or harassing behavior may include one or more of the following:

- Sanctions as stipulated in the Code of Student Conduct, as applicable;
- Requirement to attend training or other education;
- Requirement to obtain counseling;
- Work restrictions;
- An oral or written warning (or letter of concern);
- A written reprimand;
- Suspension; and/or
- Dismissal/expulsion.

Disciplinary sanctions and process will be implemented consistently.

#### **F. Malicious and False Accusations**

If allegations of discrimination or harassment are determined by the Investigator, in consultation with the Department of Human Resources or designee, to be both false and brought with malicious intent, the matter will be sent to the President (or designee) with a report and a written recommendation. The complainant may be subject to the disciplinary sanctions set forth in Part VIII, Section E, as determined by either the Department of Human Resources (employees) or the Office of Student Services (students).

#### **IX. Documentation**

Documentation can be informal handwritten notes taken by the Investigator, Title IX Coordinator, or another member of the University community while speaking with an individual. Documentation may also consist of: testimonial evidence provided during an investigation or a hearing; documentary evidence submitted during an investigation or a hearing; a typed-up after-the-fact recounting of a process or its results; and/or an explanation prepared for the record as to why the Investigator or member of the

University community took a particular step or reached a particular decision with regard to a discrimination or harassment complaint. Documentation can be handwritten, voice transcribed, typewritten, or in any printed or electronic form.

The amount of documentation which is reasonable and prudent with regard to any of the processes outlined in this policy is left to the judgment of the Human Resources Department and the Title IX Coordinator. The Human Resources Department shall from time to time prescribe forms or required documents for the processes established by this policy, as it deems necessary.

All documentation required to be maintained by the Human Resources Department shall be available only to that Department, any other person conducting an investigation under Section VIII of this procedure, the University's legal counsel, or other duly authorized District or Federal agency.

**X. Confidentiality**

It is to be expected that, at all stages of any proceedings under this policy, confidentiality will be maintained to the greatest extent possible. Consistent with their obligations, all roles described herein are expected to maintain the highest standards of confidentiality. Communication by these persons with others with regard to discrimination and harassment complaints can be only on a required "need to know" basis.

Others necessarily involved, such as the complainant, the respondent, and witnesses, will be encouraged to keep confidential to the greatest extent possible matters about which they or others provide testimony or information. With regard to such individuals, however, the University has no means by which to ensure strict confidentiality other than by providing notice of the standards of confidentiality by which the University expects all individuals involved to abide.

**XI. Duties of the Human Resources Department**

The Human Resources Department will implement the Discrimination and Harassment Policy and shall:

- A. Publicize this policy on a periodic basis;
- B. Conduct any training considered advisable with regard to this policy or issues under this policy;
- C. Act on discrimination or harassment complaints directed to or which otherwise come to the attention of the Title IX Coordinator;
- D. Inform the University community about the University counseling services to assist persons who perceive themselves victims of discrimination or harassment;
- E. Implement any corrective actions to be taken under this policy;
- F. Act as an advisor to the President with regard to this policy and perform such other duties as may be assigned by the President in connection therewith;
- G. Act as an advisor to the University community with regard to issues of discrimination and harassment; and
- H. Maintain the records required to be kept under this policy.