



## Ohio Administrative Code

### Rule 3337-40-01 Equal employment and educational opportunity.

Effective: November 19, 2024

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The version of this rule that includes live links to associated resources is online at

<https://www.ohio.edu/policy/40-001.html>

#### (A) Overview

Ohio university values respect across differences and the appreciation of diverse perspectives and cultures. In support of these values, this policy sets forth the expectations and responsibilities for maintaining a safe educational and employment environment free of discrimination, harassment, and intimidation. Accordingly, Ohio university prohibits discrimination and harassment against any person in employment or educational opportunities because they are a member or perceived to be a member of a protected class. The following are "protected classes": age, ancestry, color, disability, ethnicity, gender, gender identity or expression, genetic information, military service or veteran status, national origin, pregnancy, race, religion, sex, sexual orientation, status as a parent or foster parent, or any other bases under the law.

Further in accordance with Ohio revised code section 3320.05, Ohio university prohibits intimidation by reason of race, color, religion, or national origin.

Members of the Ohio university community may not retaliate against a person who has made a protected disclosure under this policy.

#### (B) Basis for policy

The federal and state laws and regulations that form the basis for this policy are listed on the office of equity and civil rights compliance's website at <https://www.ohio.edu/equity-civil-rights/non-discrimination-policies-and-regulations>.



(C) Jurisdiction of policy

These expectations apply to all members of the Ohio university community, which includes, but is not limited to, students, student organizations and student groups\*, faculty, administrators, staff, trustees, and officers, and third parties such as agents, vendors, guests, visitors, volunteers, and campers. \*Pursuant to Ohio revised code section 3345.023, a religious student group may require that its leaders or members adhere to its sincerely held religious beliefs or student standards of conduct.

This policy applies to Ohio university's education programs and activities (defined as locations, events, or circumstances, including employment, where the university exercises substantial control). This includes but is not limited to property owned or controlled by the university, regional campuses, online programs, and university-sponsored events, activities, and travel. This policy also applies to buildings owned or controlled by student organizations recognized by Ohio university and other circumstances where the university has disciplinary authority.

This policy may also apply to conduct outside of Ohio university's education program and activities, including off-campus or online conduct, when the conduct contributes to a hostile environment within the university's education program or activities.

(D) Limitations of scope

Nothing in this policy shall be construed to diminish or infringe upon any right protected under the First Amendment of the U.S. Constitution; Article I, sections 3 and 11 of the Ohio Constitution; or noncommercial expressive activity as defined in section 3345.0212 of the Ohio revised code or university policy 01.041.

(E) Prohibited conduct

The following definitions will be used to determine whether particular conduct constitutes a violation of this policy.

(1) Discrimination



Discrimination occurs when an adverse action is taken by a university community member against another university community member with respect to employment or participation in an education program or activity and the adverse action is based on the person's protected class. Discrimination also includes failure to provide reasonable accommodations as required by law or policy for disability, pregnancy, or religion. Discrimination can take two primary forms: disparate treatment discrimination and disparate impact discrimination.

(a) Disparate treatment discrimination is any intentional differential treatment of a person that is based on that person's protected class and excludes the person from participation in, denies the person benefits of, or otherwise adversely affects a term or condition of a person's participation in a university program or activity, including employment.

(b) Disparate impact discrimination occurs when university policies or practices that appear to be neutral unintentionally result in disproportionate impact on a member of a protected class. Disparate impact discrimination excludes a person from participation in, denies a person benefits of, or otherwise adversely affects a term or condition of a person's participation in a university program or activity, including employment.

## (2) Harassment

Harassment is defined as unwelcome verbal or physical conduct that is directed toward a person or a group of persons on the basis of any protected class listed in part (A) of this policy that, based on the totality of the circumstances, is subjectively and objectively offensive and so severe or persuasive that it:

(a) In the educational context, denies or limits a person's participation in or full benefit of educational programs, activities, or opportunities at Ohio university; or

(b) In the employment context, unreasonably interferes with a person's work performance or creates a work environment that a reasonable person would consider intimidating, hostile, or abusive or where enduring the offensive conduct becomes a condition of continued employment.



(3) Intimidation

Intimidation is defined as aggravated menacing (as defined by Ohio revised code [ORC] section 2903.21), menacing (as defined by ORC 2903.22), criminal damaging or endangering (as defined by ORC section 2909.06), criminal mischief (as defined by ORC 2909.07), or telecommunications harassment (as defined by ORC section 2917.21) by Ohio university faculty, staff, or students by reason of the race, color, religion, or national origin of another person or group of persons.

(4) Sexual misconduct

Ohio university's policy on sexual misconduct, including sexual harassment, is set forth in policy 03.004.

(5) Retaliation

Retaliation is defined as adverse action or threat of an adverse action taken by the university, or member thereof, in response to a person who, in good faith, makes a protected disclosure under this policy by:

(a) reporting suspected discriminatory, harassing, or intimidating conduct to a supervisor or appropriate university official;

(b) filing a complaint under federal or state law or university policy that prohibits discrimination, harassment, or intimidation;

(c) participating in an investigation or proceeding under this policy; or

(d) opposing educational or employment practices that the person reasonably believes discriminate against persons or groups of people in violation of university policies.

Members of the Ohio university community may not directly or indirectly use or attempt to use the official authority or influence of their positions or offices to interfere with a person's right to make a protected disclosure to the person's immediate supervisor, other appropriate administrator or



supervisor within the operating unit, or other appropriate university official about matters within the scope of this policy.

(F) Policy application

(1) Responsibility

All members of the university community are responsible for creating and maintaining an employment and educational environment that is free of discrimination, harassment, and intimidation. The president of the university has delegated the responsibility of overseeing the university's compliance with this policy to the director of equity and civil rights compliance. The office of equity and civil rights compliance ("ECRC") is responsible for investigating all complaints brought under this policy.

(2) Right to file a complaint

Any member of the university community may file a complaint with ECRC if they believe they have been discriminated against or harassed on the basis of any status protected by federal or state law or university policy (listed in part (A) of this policy). In accordance with Ohio revised code section 3320.05, any student who has been subjected to intimidation because of their race, color, religion, or national origin, may file a complaint with the ECRC. Any person who believes they have been retaliated against for a protected disclosure under this policy may report to the ECRC. Third parties may file a complaint on behalf of a person they believe has been adversely affected by conduct violating this policy.

(3) Reporting expectations

All university employees (except those professionals who maintain privilege pursuant to licensing or statutory requirements, when acting in their capacity as such) are expected to immediately report violations of this policy to ECRC if they receive a complaint or violation or observe or learn of conduct that is reasonably believed to have violated this policy. Graduate assistants and student employees are expected to report violations of this policy if they become aware of the violations in the course of their duties and those duties include responsibility for the safety and wellbeing of other



members of the campus community or if they have supervisory, evaluative, grading, or advisory responsibility over other members of the campus community.

In addition to the expectation to report identified in the prior paragraph, in some circumstances there is also a duty to report all allegations of criminal conduct to law enforcement. Section 2921.22 of the Ohio revised code requires every person who knows that a felony has been or is being committed to report it to law enforcement. Knowingly failing to make a report is a criminal offense. If any person suspects or knows of criminal activity occurring on university property, they should call the Ohio university police department ("OUPD") at (740) 593-1911 (in an emergency call 911 immediately). Incidents that occur off campus or at a regional campus should be reported to local law enforcement.

#### (4) Where to report

Reporters may use either of the options below to submit a complaint about an alleged violation of this policy by an Ohio university community member. Reports may be submitted regarding any alleged violation.

(a) Report online by clicking on submit a report at <https://www.ohio.edu/equity-civil-rights>. Reports submitted online are routed immediately to the director of equity and civil rights compliance (ECRC)

(b) File a report with ECRC by mail, phone, or email. A report may be submitted at any time (including during non-business hours) using the contact information below. Reports may also be made in person at ECRC on business days when a staff member is available.

#### Equity and Civil Rights Compliance

006 Lindley Hall

Ohio University

Athens, OH 45701

(740) 593-9140 (phone)



equity@ohio.edu

Inquiries and complaints may be made externally to:

Office for Civil Rights (OCR)

U.S. Department of Education

400 Maryland Avenue, SW

Washington, D.C. 20202-1100

Customer Service Hotline: (800) 421-3481

Fax: (202) 453-2172

TDD: (877) 521-2172

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Web: <http://ed.gov/ocr>

Inquiries and complaints involving employees may be made externally to:

Equal Employment Opportunity Commission (EEOC)

Cleveland Field Office

Anthony J. Celebrezze Federal Building

1240 E. 9th Street, Suite 3001



Cleveland, OH 44199

Phone: (800) 669-4000

#### (5) Cooperation with investigation

A reporting party is expected to actively provide information supporting their report in the time and manner deemed necessary and appropriate by the university to conduct the investigation. Failure to cooperate with the investigation process in a timely manner may compromise the university's ability to conduct an investigation and address allegations fully. All employees and students are expected to participate and cooperate with investigations as requested by ECRC.

#### (6) Privacy

Every effort is made to preserve the privacy of reports and the identities of those involved in investigations. This information will not be shared except as necessary to carry out the purposes of this policy, as required by law, or as permitted by the Family Educational Rights and Privacy Act (FERPA).

Ohio university employees may be provided with information related to reports so they can respond to them and/or assist in their assessment, investigation, and resolution. Ohio university reserves the right to determine which officials have a legitimate educational interest in being informed about incidents under this policy, pursuant to FERPA.

When an investigation is undertaken, the complainant's identity and the allegations made in the report are generally disclosed to the respondent. Further, the parties and their support people have the opportunity to review the evidence that will be utilized in making a determination.

If a report contains sufficiently detailed information about conduct that may constitute a felony, the matter will be reported to law enforcement, as discussed in section (F)(3). When required by the Clery Act, the Ohio university police department will be provided information regarding the report so they can maintain the campus crime log and assess if a timely warning should be issued to the campus.





(7) Anonymous complaints

Anonymous complaints will be accepted; however, Ohio university may be limited in its ability to investigate or resolve anonymous complaints because our ability to obtain additional information may be compromised.

If the anonymous complaint contains sufficiently detailed information about conduct that may constitute a crime, ECRC will notify the Ohio university police department. If the anonymous complaint contains sufficiently detailed information about conduct that may violate this policy, ECRC will exercise due diligence to address the reported concerns identified with affected individuals and, where appropriate, planning units.

(8) Student conduct

A violation of university policy 40.001: Nondiscrimination in Education and Employment by a student, student organization, or student group may also violate the Student Code of Conduct. Further, allegations of other conduct prohibited by the student code of conduct may be investigated and adjudicated through the University Policy 40.001. Grievance Process in conjunction with violations of university policy 40.001.

(G) Investigation process

ECRC will review all reports of discrimination, harassment, and intimidation in accordance with the university policy 40.001 Grievance Process (linked from the references part of this policy).

The standard of evidence applied to determine responsibility for violation of this policy is the preponderance of the evidence, meaning that the statements and information presented in the matter must indicate to a reasonable person that it is more likely than not that there has been a violation of the policy.

Appropriate sanctions and/or remedies will be determined and implemented when a violation is found. For a student respondent, sanctions may include reprimand, disciplinary probation,



suspension, and expulsion. These sanctions may also be imposed on a student organization or group. For an employee respondent, sanctions may include censure, reprimand, suspension without pay, demotion and/or loss of tenure, and dismissal/termination of employment. Sanctions take into account prior disciplinary history, if any.

In conjunction with a sanction, a respondent found in violation of this policy may be assigned conditions of sanction, including but not limited to access restriction, revocation of rights and privileges, housing or worksite reassignment, educational activities, etc.

Remedies are designed to restore and ensure a safe educational and/or employment environment free of discrimination, harassment, and intimidation for the complainant.

As appropriate, the parties may be provided with the option to resolve the reported matter through informal resolution, also detailed in the university policy 40.001 Grievance Process.

#### (H) Community education

All Ohio university administrators, faculty, and staff must receive training on this policy. The training will include information about protected classes and the prohibition on discrimination, harassment, and intimidation. The training will also include information about how to respond to hate incidents (harassment and intimidation, as defined in this policy) at the time they occur in a class or event held at Ohio university.

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<https://www.ohio.edu/policy/40-001.html>