

## HARASSMENT

### A. Background

Furman University is committed to providing equal access to its educational programs, activities, and facilities to all otherwise qualified students without discrimination, harassment or retaliation on the basis of race, national origin, color, creed, religion, sex (gender), age, disability, medical history, marital status, genetic history, veteran status, sexual orientation, or any other category because he or she is perceived to have one or more of the foregoing characteristics protected by applicable state or federal law. An Equal Opportunity employer, Furman also affirms its commitment to nondiscrimination in its employment policies and practices. All employment decisions, including but not limited to hiring, retention, assignment, transfer, evaluation, dismissal, compensation, and advancement for all positions shall be based on job-related criteria as well as be responsive to Furman's needs. In compliance with Title IX (20 U.S.C Sec. 1681 et seq.) Furman University prohibits discrimination, harassment and retaliation. For all concerns arising under Title IX, contact Furman's Title IX Coordinator at 864-294-2221, 3300 Poinsett Hwy, Greenville, SC 29613, Trone Center Suite 215. For other concerns, contact the Associate Vice President for Human Resources at 864-294-2217.

### B. Policy

Furman University will not tolerate any conduct that constitutes Discrimination, Harassment and/or Retaliation. Conduct that involves Sexual Misconduct is covered in Furman's Sexual Misconduct Policy. Any other form of Discrimination, Harassment and/or Retaliation is covered by this Policy link.

The University is committed to providing programs, activities, and an educational and work environment free from discrimination and harassment and fostering a community that promotes prompt reporting of all types of Discrimination and Harassment and timely and fair resolution of complaints. In furtherance of these commitments, this Policy sets forth available resources, describes prohibited conduct, and establishes procedures for responding to complaints of Discrimination, Harassment and Retaliation.

No person shall be denied the benefits of, or be subject to Discrimination, Harassment, or Retaliation, in whole or in part, on the basis of the foregoing protected categories, on the basis of these perceived characteristics or based on association with a person or group with one or more of these actual or perceived characteristics, in any program or activity that is administered by, funded directly by, or that receives any financial assistance from Furman. Additionally, to comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973. Furman will respond to and resolve prohibited Discrimination complaints regarding accessibility as complaints of Discrimination on the basis of disability.

### **Prohibition on Discrimination and Harassment.**

This Policy is designed to protect the rights and needs of Complainants, Respondents, and Third-Party Reporters. Creating a safe environment is the responsibility of all members of the University community.

The University strongly encourages prompt reporting of all types of Discrimination and Harassment and is committed to fostering a community that promotes timely and fair resolution of Discrimination and Harassment cases.

To that end, the University has defined Discrimination and Harassment broadly to include any unwelcome conduct that is of a discriminatory or harassing nature. However, not all conduct of a discriminatory or harassing nature rises to the level of warranting the procedures outlined in this policy. This policy uses the terms Discrimination and Harassment, as defined below, to identify those acts of Discrimination and/or Harassment that do warrant the use of procedures under, and discipline pursuant to, this Policy.

### **Prohibition on Retaliation.**

Retaliation against any person for filing, supporting, or providing information in good faith in connection with a Complaint of Discrimination and/or Harassment is strictly prohibited. Violations of this prohibition will be addressed through this Policy and/or other University disciplinary procedures, as deemed appropriate in the University's discretion. Any person who feels that he or she has been subjected to Retaliation should make a report to the Associate Vice President of Human Resources or designee.

### **Prohibition on Providing False Information.**

Any individual who knowingly files a false Complaint under this Policy, who knowingly provides false information to University officials, or who intentionally misleads University officials who are involved in the investigation or resolution of a Complaint may be subject to disciplinary action.

### **Threshold Requirements Prior to Investigation**

When a formal written Complaint is filed, it will be reviewed to determine if the Complaint meets the following requirements:

- The Complaint must allege prohibited conduct as prohibited by this policy
- The Complaint must be filed by one who alleges that he or she has personally suffered prohibited conduct or by one who has learned of such prohibited conduct.
- In any Complaint not involving employment, the Complaint must be filed within one year of the date of the alleged prohibited Discrimination or Harassment or within one year of the date on which the Complainant knew or should have known of the facts underlying the specific incident or incidents of alleged prohibited Discrimination or Harassment.

- In any complaint alleging Discrimination or Harassment in employment, the Complaint shall be filed within 180 days of the date the alleged prohibited Discrimination, Harassment or Retaliation occurred. This period will be extended by no more than 90 days, if the Complainant first obtained knowledge of the facts of the alleged violation after the expiration of that 180 days.

### **Confidentiality.**

The University will make every feasible effort to preserve the confidentiality of and prevent the disclosure of the identities of the parties involved in a Discrimination and/or Harassment matter. However, information regarding alleged Discrimination and/or Harassment must be handled in accordance with applicable state and federal laws. Individuals should understand, for example, that under conditions of imminent harm to the community, the University may be required by federal law to inform the community of the occurrence of the incident(s) of Discrimination and/or Harassment. In addition, information regarding alleged Discrimination and/or Harassment may be shared among University administrators as appropriate and necessary. The University cannot control disclosures by the Complainant, Respondent or third parties.

Complainants, Respondents, and Third-Party Reporters may request the University treat information regarding alleged Discrimination and/or Harassment as confidential. The University takes such requests seriously; however, such requests may limit the University's ability to investigate and take reasonable action in response to a Complaint.<sup>1</sup> In such cases, the University will evaluate the request(s) that a Complaint remain confidential in the context of the University's commitment to provide an environment reasonably safe from Discrimination and Harassment.

In order to make such an evaluation, the Associate Vice President of Human Resources or designee may conduct a preliminary investigation into the alleged Discrimination and/or Harassment and may weigh the request(s) against the following factors:

- (i) the seriousness of the alleged Discrimination and/or Harassment;
- (ii) whether there have been other Complaints of Discrimination and/or Harassment against the Respondent;
- (iii) the Respondent's right to receive information about the allegations if the information is maintained by the University as an "education record" under FERPA; and
- (iv) the applicability of any laws mandating disclosure.

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<sup>1</sup> A Respondent has a right to know the name of the accuser and information regarding the nature of the allegations in order to defend against the Complaint; thus, the Complainant may not be able both to adjudicate the Complaint and to maintain his or her confidentiality during that process. That said, as explained later in this Section, if the Complainant insists on confidentiality, the University may still take action to limit the effects of the Discrimination and/or Harassment and prevent its recurrence to the extent warranted and practicable.

The Associate Vice President of Human Resources or designee will inform the person requesting confidentiality the University's limitations on protecting confidentiality.

To the extent practicable and appropriate, the University will take prompt and effective action to limit the effects of the alleged Discrimination and/or Harassment and to prevent its recurrence, even if the University cannot take disciplinary action against the Respondent because of the request for confidentiality. For instance, the University may issue a "no-contact" order or take other appropriate interim measures to ensure an individual's safety even in the absence of a formal proceeding.

### **Support Persons.**

Both the Complainant and the Respondent may have a member of the University community, but no parents or family members (even if they are members of the University community), present to support and assist them throughout the process. The Associate Vice President of Human Resources or designee may disallow the attendance of the support person if such support person is also a witness or if, in the discretion of the Associate Vice President of Human Resources or designee, such support person's presence would be obstructive to the process or otherwise warrant his or her removal from the process. A support person may communicate with a Complainant or Respondent privately, but he or she may not have any other speaking role in the process. A support person may not be an attorney. A support person must maintain confidentiality regarding any and all communications exchanged pursuant to this Policy.

### **Other Advisors.**

Absent accommodation for disability and except as set forth in this Policy, the parties may not be accompanied by any other individual during the process.

### **Individuals with Disabilities.**

The University will make arrangements to ensure that individuals with disabilities are provided appropriate accommodations, to the extent necessary and available, to participate in the steps and procedures outlined in this Policy. Requests for Student accommodations must be made to the Office of Disability Services (located in Room 002 of the Earle Infirmary). All other requests for accommodations must be made to the Office of Human Resources.

### **Academic Freedom**

Furman affirms its commitment to academic freedom, but recognizes that academic freedom does not allow any form of prohibited Discrimination. It is recognized that an essential function of education is a probing of opinions and an exploration of ideas that

may cause some students discomfort. It is further recognized that academic freedom insures the faculty's right to teach and the student's right to learn. Finally, nothing in this policy shall be interpreted to prohibit bona fide academic requirements for a specific University program, course or activity.

When investigating prohibited Discrimination Complaints containing issues of academic freedom, the Associate Vice President for Human Resources or designee will consult with the Faculty Chair with respect to contemporary practices and standards for course content and delivery.

### C. Guidelines

1. All persons who commit acts of Discrimination and/or Harassment will be subject to discipline up to and including expulsion for students and termination of employment for faculty/staff. Each Complaint will be investigated and the resulting action will be determined on a case-by-case basis.

Any individual may report alleged Discrimination and/or Harassment to the Associate Vice President of Human Resources or designee. Students may also report alleged Discrimination and/or Harassment as outlined in the Student Handbook. No member of the University community may discourage an individual from reporting alleged incidents of Discrimination and/or Harassment. No employee is authorized to investigate or resolve Complaints without the approval and involvement of the Office of Human Resources and/or Office of Student Life.

The University may start an investigation even in the absence of a filed Complaint if information about Discrimination and/or Harassment comes to the attention of the University. In addition, the University may notify appropriate law enforcement authorities if required or warranted by the nature of the allegations of the Complaint.

Individuals may also file anonymous reports by calling the Campus Conduct Hotline at 866-943-5787. Individuals who choose to file anonymous reports are advised that it may be very difficult for the University to follow-up or take action on anonymous reports, where corroborating information is limited.

2. Students who believe that they have been discriminated against and/or harassed should refer to the procedures listed in the Student Handbook. These procedures are delineated in the Student Handbook. Student Complaints involving faculty or staff behavior will be handled using procedures outlined in this Policy and modeled on the Faculty Grievance Procedures (File 153.1) or the Employee Grievance and Appeals Policy (File 833.1), as appropriate. Student Complainants will be exempt from the time limitations imposed on reporting initial Complaints as outlined in these grievance policies.

3. Faculty/staff members who believe they have been discriminated against and/or harassed by students should:

(a) Tell (or write) the person that the behavior is considered offensive and ask the person to stop the behavior; or, if reluctant to speak (or write) directly to the person, consult with the Associate Vice President of Human Resources or designee or their immediate supervisor/department chair for advice or action. The faculty member or administrator will assist the Complainant by recommending a method of communicating with the person involved or by referring the Complainant to the Associate Vice President of Human Resources or designee.

(b) If the behavior in question does not cease, the faculty or staff member must report the matter to the Associate Vice President of Human Resources or designee for action.

(c) If the Discrimination and/or Harassment cannot be stopped through informal discussion, the Complainant should initiate a formal grievance by providing a written and/or verbal statement of the behavior to the Associate Vice President of Human Resources or designee. For a formal investigation to fully take place, the Complainant will need to be identified to the Respondent. Disciplinary action for a formal Complaint will follow applicable student, faculty or staff policies and procedures.

4. Faculty/staff members who believe they have been discriminated against and/or harassed (excluding students - see #3 above) should:

(a) Tell (or write) the person that the behavior is considered offensive and ask the person to stop the behavior; or, if reluctant to speak (or write) directly to the person, consult with the Associate Vice President of Human Resources or designee or their immediate supervisor/department chair for advice or action. The faculty member or administrator will assist the Complainant by recommending a method of communicating with the person involved or by referring the Complainant to the Associate Vice President of Human Resources or designee.

(b) If the behavior in question does not cease, the faculty or staff member must report the matter to the Associate Vice President of Human Resources or designee for action.

(c) If the Discrimination and/or Harassment cannot be stopped through informal discussion, the Complainant should initiate a formal grievance by providing a written and/or verbal statement of the behavior. For a formal investigation to fully take place, the Complainant will need to be identified to the Respondent. Employees will follow the steps in the employee grievance and appeals policy (File 833.1) and faculty will follow the steps in the grievance procedures (File 153.1).

5. Any individual who refuses to cooperate with or otherwise interferes with an investigation conducted by or on behalf of Furman or an investigation by federal, state or local law enforcement agencies, will be subject to disciplinary action, up to and including expulsion for students and termination of employment for faculty/staff, or removal from campus and/or cancellation of contract.

6. Any individual who knowingly provides false information or intentionally withholds information without an appropriate legal basis for doing so, during an investigation conducted by or on behalf Furman or an investigation by federal, state or local law enforcement agencies, will be subject to disciplinary action, expulsion for students and termination of employment for faculty/staff, or removal from campus and/or cancellation of contract.

#### D. Definitions

1. **Complainant.** A “Complainant” is an individual who reports or files a Complaint.
2. **Complaint.** A “Complaint” is an allegation of Discrimination and/or Harassment asserted against another party and reported to or filed with the University.
3. **Discrimination.** “Discrimination” is the act of prejudice against a person because they have a certain characteristic or set of characteristics. These characteristics can include, but are not limited to, race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, veteran status, or sexual orientation of any person, or the perception that a person has one or more of these characteristics. No person shall be denied the benefits of, or be subjected to discrimination, in whole or in part, on the basis of the above categories, on the basis of these perceived characteristics or based on association with a person or group with one or more of these actual or perceived characteristics.
4. **FERPA.** The Family Educational Rights and Privacy Act (“FERPA”) is a federal statute codified at 20 U.S.C. § 1232g, with implementing regulations at 34 C.F.R. 99. FERPA protects the privacy of student education records. FERPA grants to parents or eligible students the right to access, inspect, and review education records, the right to challenge the content of education records, and the right to consent to the disclosure of education records.

5. **Respondent.** A “Respondent” is an individual who has been accused of committing the alleged Discrimination and/or Harassment by the reporting or filing of a Complaint.
  
6. **Retaliation.** “Retaliation” means any adverse action threatened or taken against a person because he or she has filed, supported, or provided information in connection with a Complaint of Discrimination and/or Harassment, including but not limited to direct and indirect intimidation, threats, and actions.
  
7. **Harassment.** “Harassment” is any unwelcome verbal, nonverbal, written, electronic, or physical conduct. Harassment comes in many forms *and can be based on various protected categories. No definition can be all encompassing.* Harassment based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person, or the perception that a person has one or more of these characteristics violates this Policy. Any hostile or offensive conduct based on protected status can constitute prohibited harassment. For example, the behavior is so severe, persistent or pervasive that it has the effect of substantially interfering with the individual’s work or educational performance by creating an intimidating, hostile, or demeaning environment for employment, education, on-campus living, or participation in a University activity.

Prohibited forms of harassment under this policy include, but are not limited to:

- a. **Verbal Harassment.** Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person’s race, gender, sexual orientation, or other protected status. This may include, but is not limited to, inappropriate comments regarding an individual’s body, physical appearance, attire, marital status or sexual orientation; unwelcome comments; verbal abuse, threats or intimidation; or patronizing or ridiculing statements that convey derogatory attitudes based on a protected status.
  
- b. **Physical Harassment.** Inappropriate or offensive touching, assault, or physical interference with free movement. It also includes any physical assault or intimidation directed at an individual due to that person’s protected status.
  
- c. **Visual or Written Harassment.** The display or circulation of visual or written material that degrades an individual or group based on protected status. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics or electronic media transmissions.
  
- d. **Environmental Harassment.** A hostile academic or work environment exists where it is permeated by innuendo; insults or abusive comments directed at an individual or group based protected status; or gratuitous comments regarding



an individual or group based protected status that are not relevant to the subject matter in the classroom or work environment. It can also be created by an unwarranted focus on, or stereotyping of, particular racial or ethnic groups, sexual orientations, genders or other protected statuses. An environment may also be hostile toward anyone who merely witnesses prohibited harassment in his or her immediate surroundings, although the conduct is directed at others. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's learning or work.

Harassment does not refer to behavior acceptable to both parties or to the normal exchange of ideas within the academic environment, nor is it intended to discourage the introduction of unpopular or controversial relevant ideas in the classroom (See File [122.1](#), Professional Ethics and Responsibilities, and File [137.8](#), Individual Rights and Responsibilities).

- 8. Student.** A “Student” is any student who is registered at the University or enrolled at the University (a) at the time of the alleged Discrimination and/or Harassment *and* (b) at the time a Complaint is filed.
- 9. Third-Party Reporter.** A “Third-Party Reporter” is an individual who reports or files a Complaint. A Third-Party Reporter is someone other than the person who may have been subjected to the Discrimination and/or Harassment.