BELLEVUE UNIVERSITY

Policy Title: Anti-Discrimination and Harassment Policy

Policy Number: PS 04


Policy Purpose: To create a policy statement that outlines Bellevue University’s stance on Discrimination and Harassment and create procedures for filing grievances.

Applies to: Students, Faculty, Staff, 3rd Party Vendors and Campus Guests

Policy Statement:

Bellevue University is committed to providing an environment that emphasizes the dignity and worth of every member of its community and that is free from harassment and discrimination based upon race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation. Such an environment is necessary to a healthy learning, working, and living atmosphere because discrimination and harassment undermine human dignity and the positive connection among all people at our University. Acts of discrimination, harassment, sexual misconduct, stalking, and retaliation will be addressed consistent with this policy.

Consistent with state and federal law, reasonable accommodation will be provided to persons with disabilities.

SCOPE AND JURISDICTION

It is important that members of the University community understand that the law does not just prohibit discrimination and harassment of employees by employers. The law also prohibits discrimination and harassment between members of the University community more generally: for example, between an instructor and a student, between two students, or between a student and an applicant or campus guest. The policy applies in all University programs and activities, including, but not limited to, discrimination in athletics, instruction, grading, university housing, if available, and university employment.

The University has jurisdiction over complaints alleging discrimination and harassment when the conduct occurs on campus or any other property owned by the University, during or at an official University program or activity (regardless of location), or off campus when the conduct creates a hostile environment on campus. The University will investigate all complaints made under this policy and, if necessary, take action to prevent the recurrence of discrimination and harassment and remedy its effects.
RETAILIATION
In addition, the law prohibits retaliation against an individual for opposing any practices forbidden under this policy, for bringing a complaint of discrimination or harassment, for assisting someone with such a complaint, for attempting to stop such discrimination or harassment, or for participating in any manner in an investigation or resolution of a complaint of discrimination or harassment. It is central to the values of this University that any individual who believes they may have been the target of unlawful discrimination or harassment feel free to report their concerns for appropriate investigation and response, without fear of retaliation or retribution.

TITLE IX STATEMENT
It is the policy of the University to comply with Title IX of the Education Amendments of 1972 and its implementing regulations, which prohibit discrimination based on sex in the University’s educational programs and activities. Title IX and its implementing regulations also prohibit retaliation for asserting claims of sex discrimination. The University has designated a Title IX Coordinator (TC) to coordinate its compliance with Title IX and to receive inquiries regarding Title IX, including complaints of sex discrimination and all other complaints under this policy (including retaliation):

Title IX Coordinator
Bellevue University
1000 Galvin Road South
Bellevue, Nebraska 68005
402-557-5299
TitleIX@bellevue.edu

Upon receiving a complaint, the TC will follow the procedures described in the Bellevue University Discrimination and Harassment Grievance Procedures.

A person may also file a complaint of sex discrimination with the United States Department of Education’s Office for Civil Rights regarding an alleged violation of Title IX by visiting www2.ed.gov/about/offices/list/ocr/complaintintro.html or by calling 1-800-421-3481.

Important Note! Please do not wait to report conduct of concern until harassment becomes sufficiently serious (i.e., severe, pervasive, or persistent) to create a hostile environment. The Title IX Coordinator, designees, and other University officials can take proactive steps to prevent harassment from continuing and perhaps escalating and to protect or otherwise assist the person harassed. For example, the University can issue no-contact directives; refer individuals for counseling; place an employee on administrative leave; or arrange for changes in employee assignments, class schedules, off-campus living arrangements, class requirements, and/or testing schedules as needed. The Title IX Coordinator and designees can also provide expertise and advice to help identify conduct that might be a warning sign of or constitute sexual harassment or hostile environment harassment prohibited by this policy and address any concerns or complaints appropriately.
DEFINITIONS

Consensual Relationships are defined as sexual behavior that is welcomed by both parties, physical and/or verbal, willingly and knowingly entered into by mutual consent. Bellevue University prohibits consensual relationships between a University employee and a University student. It is clear that intimate relationships between University employees and University students, consensual or otherwise, are deemed unprofessional and are strictly forbidden. Sexual behavior occurring outside of this definition shall be construed as sexual harassment, and shall be dealt with appropriately. (This policy is not intended to apply to employees or students attending the University through tuition remission benefits.) Sexual relationships that might be appropriate in other circumstances are always inappropriate when they occur between any instructor, officer, or employee of the University and any student. Further, such relationships may have the effect of undermining the atmosphere of trust on which the educational process depends. Implicit in the idea of professionalism is the recognition by those in a position of authority that in his/her relationships with students there is always an element of power. It is incumbent upon those with authority not to abuse, nor to seemingly abuse, the power with which they are entrusted. Even when both parties have consented to the development of such a relationship; it is the instructor, officer, or other employee who, by virtue of his or her special responsibility, will be held accountable for unprofessional behavior.

Because students who are employed by the University to serve as faculty assistants, tutors, or aides may be less accustomed than other full-time University employees to think of themselves as holding professional responsibilities, they would be wise to exercise special care in their relationships with students whom they instruct or evaluate.

Should knowledge of a possible consensual relationship between a University employee and a University student come to light, an investigation will be initiated. If the investigation substantiates the existence of a consensual relationship, disciplinary action may be taken, including possible termination of employment.

Relationships between employees are not, per se, forbidden as long as one of the employees does not supervise the other employee. Additionally, preexisting relationships that do not pose a problem are not forbidden. However, if a relationship should become a problem at any time, there could be ramifications for both of the employees.

Consent is informed, freely given, and mutual. If coercion, intimidation, threats, or physical force are used, there is no consent. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption, or being asleep or unconscious. There is no consent when there is force, expressed or implied, or use of duress or deception upon the victim. Silence does not necessarily constitute consent. Past consent to sexual activities does not imply ongoing future consent. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent. Consent can be withdrawn—a person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent.

Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined.
based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

- Nebraska law does not specifically define dating violence, but conduct of this nature is covered by the definition of domestic assault found at Neb. Rev. Stat. § 28-323.

**Discrimination** is conduct that is based upon an individual’s race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation that excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual’s employment, education, living environment, if available, or participation in a University program or activity. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.

**Domestic Violence** includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of a victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse or the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

- Nebraska law does not specifically define domestic violence but such conduct is covered by the crime of domestic assault found at Neb. Rev. Stat. § 28-323 and the act of domestic abuse located at Neb. Rev. Stat. § 42-903.

**Harassment** is covered under this policy if it is based upon an individual’s race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation. Harassing conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Sex-based harassment includes sexual harassment, which is further defined below, and non-sexual harassment based on stereotypical notions of what is female/feminine vs. male/masculine or a failure to conform to those gender stereotypes.

Harassment violates this policy when it creates a hostile environment, as defined below.

**Inducing incapacitation for sexual purposes** includes using drugs, alcohol, or other means with the intent to affect or having an actual effect on the ability of an individual to consent or refuse to consent (as “consent” is defined in this policy) to sexual contact.

**Off-Campus Conduct** occurs off campus and can be the subject of a complaint or report and will be evaluated to determine whether it violates this policy (e.g. if off-campus harassment has continuing effects that create a hostile environment on campus). Allegations of off-campus sexual misconduct are of particular concern and should be brought to the University's attention. This misconduct could also include the use of social media, email, text messaging, or the use of any other forums.

Page 4 of 9
Retaliation is action taken by an accused individual or an action taken by a third party against any person because that person has opposed any practices forbidden under this policy or because that person has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy. This includes action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual’s complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy.

Sexual Assault means actual or attempted sexual contact with another person without that person’s consent. Sexual assault includes, but is not limited to:
1. Involvement in any sexual contact when the victim is unable to consent.
2. Intentional and unwelcome touching of, or coercing, forcing, or attempting to coerce or force another to touch a person’s intimate parts (defined as genital area, groin, inner thigh, buttocks, or breast).
3. Sexual intercourse without consent, including acts commonly referred to as “rape.”

Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for anyone’s advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses. Examples of behavior that could rise to the level of sexual exploitation include:
1. prostituting another person;
2. non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
3. non-consensual distribution of photos, other images, or information of an individual’s sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
4. going beyond the bounds of consent (such as letting your friends hide in the closet to watch you having consensual sex);
5. engaging in non-consensual voyeurism;
6. knowingly transmitting an STI, such as HIV, to another without disclosing your STI status;
7. exposing one’s genitals in non-consensual circumstances, or inducing another to expose his or her genitals; and
8. possessing, distributing, viewing or forcing others to view illegal pornography.

Sexual Harassment can include unwelcome: sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, including sexual assault. Sexual harassment, including sexual assault, can involve persons of the same or opposite sex. Consistent with the law, this policy prohibits types of sexual harassment:
1. Tangible Employment or Educational Action: This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity is conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual’s employment, education, living environment, or participation in a University program or activity. Generally, perpetrators will be agents or employees with some authority from the University.
2. Hostile Environment Harassment: A Hostile Environment is based on race, color, religion, national origin, creed, service in the uniformed services, veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation and exists when harassment:
   a. is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to deny or limit a person’s ability to participate in or benefit from the University’s programs, services, opportunities, or activities; or
   b. when such conduct has the purpose or effect of unreasonably interfering with an individual’s employment.

A hostile environment can be created by anyone involved in a university program or activity (e.g., administrators, faculty members, students, and even campus guests). Mere offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a serious incident, such as a sexual assault, even if isolated, can be sufficient.

In determining whether harassment has created a hostile environment, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. Also, the following factors will be considered:
   1. the degree to which the conduct affected one or more students’ education or individual’s employment;
   2. the nature, scope, frequency, duration, and location of incident or incidents;
   3. the identity, number, and relationships of persons involved; and
   4. the nature of higher education.

Examples of sexual harassment include: unwelcome touching, kissing, hugging, rubbing, or massaging; pressure for sexual activity; unnecessary references to parts of the body; sexual innuendos, jokes, or humor; displaying sexual graffiti, pictures, videos or posters; using sexually explicit profanity; asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities; sending sexually explicit emails or text messages; requesting sexual favors in return for employment, athletic, or other rewards, or threats if sexual favors are not provided.

Sexual Misconduct includes sexual assault, inducing incapacitation for sexual purposes, sexual exploitation, domestic violence, and dating violence.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.
   - The definition of stalking under Nebraska law can be found at Neb. Rev. Stat. §§ 28-311.02 and 28-311.03.

MANDATORY REPORTING AND CONFIDENTIAL DISCUSSIONS

Mandatory Employee Reporting of Sex-based Discrimination, Sexual Harassment & Sexual Misconduct. In order to enable the University to respond effectively and to stop instances of sex-based discrimination, sexual harassment and sexual misconduct involving students or employees at the University proactively, all University employees must, within 24 hours of receiving the information,
report information they have about alleged or possible sex-based discrimination, sexual harassment, and sexual misconduct involving students or other employees to the Title IX Coordinator with the understanding that all reports will be kept confidential to extent possible.

Confidential Discussions
If a victim wishes to have a confidential discussion regarding his or her situation, the following community resources are available:

**LOCAL RESOURCES**
- Methodist Sexual Assault and Domestic Violence 24-Hour Hotline (402) 354-8899
- Women's Center for Advancement Hotline (Douglas County) (402) 345-7273
- Heartland Family Service (Sarpy County) (402) 292-5888 or 1-800-523-3666
- Lydia House/Family Crisis Center (402) 422-1111
- Nebraska Domestic Violence Sexual Assault Coalition Spanish Hotline (402) 672-7118 or 1-877-215-0167
- Crisis Center for Domestic Abuse & Sexual Assault (402) 721-4340
- Planned Parenthood (402) 422-1111
- Urgent Care or Emergency Room (402) 672-7118
- Private Physician or other health care provider

**NATIONAL RESOURCES**
- National Domestic Violence Hotline 1-800-799-SAFE
- National Sexual Assault Hotline 1-800-656-HOPE

These resources are available to assist victims and will not report confidential discussions to the University without permission, unless otherwise required by law (such as when the victim is a minor). Non-identifying information of a crime may be provided to the University so that it can be included in the University’s annual crime statistics disclosure.

RESOLUTION PROCEDURES
Upon receiving a report of alleged or possible sex-based discrimination, sexual harassment, or sexual misconduct, the TC will evaluate the information received and determine what further actions should be taken. The TC will follow the procedures described in the Bellevue University Discrimination Grievance Procedures. The TC will take steps, either directly with the complainant or through a designated employee, to provide information about the University’s discrimination grievance procedures, as well as available health and advocacy resources and options for criminal reporting.

SANCTIONS AND CORRECTIVE ACTION
Violations of this policy will be addressed through the Bellevue University Discrimination Grievance Procedures. Consequences for violating this policy will depend upon the facts and circumstances of each particular situation. Sanctions and Corrective Action could include: a requirement not to repeat or continue the discriminatory, harassing, or retaliatory conduct, a reprimand, a no-contact directive, reassignment, suspension, termination, any of the sanctions identified in the Bellevue University Student Code of Conduct, or any of the disciplinary actions identified in the Bellevue University Employee Handbook. The severity of sanctions or corrective action will depend on the frequency and severity of the offense and any history of past discriminatory, harassing or retaliatory conduct. A finding of discrimination or harassment that creates a hostile environment or results in a tangible employment or educational action, or sexual misconduct may be cause for disciplinary action, up to and including the discharge of employees and the expulsion of students, in accordance with applicable University
procedures. The University may also take appropriate action if it does not find discrimination or harassment that creates a hostile environment or results in a tangible employment or educational action, (a) if the University found that the respondent engaged in disruptive behavior or (b) to prevent the creation of a hostile environment.

**AMNESTY FOR DRUG OR ALCOHOL POSSESSION AND CONSUMPTION VIOLATIONS**

The University strongly encourages students to report instances of sex-based discrimination, sexual harassment, and sexual misconduct involving students. Therefore, students who report information about sex-based discrimination, sexual harassment, or sexual misconduct involving students will not be disciplined by the University for any violation of the University's drug or alcohol possession or consumption policies in which they might have engaged in connection with the reported incident. However, the University cannot guarantee that, if the misconduct is reported to local law enforcement, the police will not take action against the individual.

**FREE SPEECH AND ACADEMIC FREEDOM**

This policy shall not be construed or applied to restrict academic freedom at Bellevue University, nor shall it be construed to restrict constitutionally protected expression, even though such expression may be offensive, unpleasant, or even hateful.

Bellevue University has a long tradition of, and a deep commitment to, academic freedom. The welfare and strength of the University and of society at large depend upon the ability to engage in free expression in the search for meaning. To this end, Bellevue University recognizes and protects full freedom of inquiry, teaching, research, discussion, study, publication, and for artists, the creation and exhibition of works of art, without hindrance, restriction, equivocation, or reprisal. This right extends to other facets of campus life to include the right of a faculty member or student to speak on general educational questions or about the Administration and operation of his/her own institution.

Constitutionally protected speech and traditional notions of academic freedom are valued in higher education. These ideals help to create the stimulating and challenging learning environment that should characterize higher education. In the spirit of a true university environment, individuals are encouraged to invite, rather than inhibit, discourse on ideas. In addressing all complaints and reports under this policy, the University will take all permissible actions to ensure the safety of students and employees while respecting the freedom of speech of students and employees. While the University will vigilantly protect students' and employees' rights against sex discrimination under this policy, this policy does not apply to curriculum or in any way prohibit or abridge the use of particular textbooks or curricular materials, as long as the instructor can show a curricular need for the material, if a complaint is filed. The University, in attempting to protect students and other staff from sexual harassment, will always consider academic freedom to be of the utmost importance and will respond appropriately.

**EXTERNAL COMPLAINTS**

If a student or an employee filed a complaint with the TC and believes the University's response was inadequate, or you otherwise believe you have been discriminated against by the University on the basis of race, color, national origin, sex, including sexual harassment, disability, age, or retaliation, you may file a complaint with the Office for Civil Rights (OCR) of the U.S. Department of Education based in Kansas City, Missouri or the Educational Opportunities Section (EOS) of the Civil Rights Division of the U.S. Justice Department of Justice, and a complaint based on religion with EOS of the U.S. Justice Department.
As an employee, if you filed a complaint with the TC and believe the University’s response was inadequate, or you otherwise believe you have been discriminated against by the University on the basis of race, color, national origin, sex, including sexual harassment, disability, age, religion, creed, pregnancy, marital status, familial status (housing only), or political beliefs, or retaliation, you may file a complaint with the Nebraska Equal Opportunity Commission at http://www.neoc.ne.gov/.

Procedures: Bellevue University Discrimination and Harassment Grievance Procedures

Supporting Documentation: Title IX, Clery Act, Campus SaVE Act, Violence Against Women Act Bellevue University Student Code of Conduct Bellevue University Employee Handbook

Keywords: Title IX, Sexual Discrimination, Sexual Misconduct, Sexual Assault, Discrimination, Harassment, Retaliation, Consensual, Hostile Environment

Responsible Office: Title IX Office

Contact Information: Title IX Coordinator Bellevue University 1000 Galvin Road South Bellevue, Nebraska 68005 402-557-7299 TitleIX@bellevue.edu

Approved by: Mary Hawkins

Effective Date: December 1, 2014


APPROVED:

Dr. Mary Hawkins, Bellevue University President

Date: December 1, 2014