

University of Cincinnati



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ADMINISTRATIVE MEMORANDUM NO. 108

TO: Vice Presidents  
Deans  
Department Heads

FROM: Joseph A. Steger *JAS*

RE: Policy Statement on Discriminatory Harassment

The attached document contains the University's Policy Statement on Discriminatory Harassment as approved by the Faculty Senate.

This Policy is effective immediately. If you have any questions, please contact the Office of General Counsel, 556-3483.

POLICY  
STATEMENT ON DISCRIMINATORY  
HARASSMENT

Introduction

The University of Cincinnati is committed to maintaining an environment where open, vigorous debate and free speech can occur. Free speech is an essential prerequisite of academic freedom.

The University also recognizes a right of equal access to and participation in its programs and activities. This right may be diminished or even nullified by expressions of racist, sexist and other offensive expressions that create a hostile environment for any member of the University community. Although the University is deeply concerned by the effects of such speech, it cannot legally censor speech or punish those who exercise First Amendment rights. Because the University is committed to free speech and academic freedom, it believes the best remedy for racist, sexist and other forms of destructive speech is its justifiable condemnation by the entire University community. The University is dedicated to using its full resources as an educational institution to combat intolerance, and urges each member of the community to assist in the struggle to achieve an institutional environment that is free of all vestiges of discrimination.

Although the University cannot, and does not intend to, censor speech or infringe upon the First Amendment rights of its members, it can and will sanction acts of discriminatory harassment that do not qualify for First Amendment protection. This policy statement defines discriminatory harassment and explains the University's enforcement policies as they relate to faculty, administrators, staff and students.

A. Definition of Discriminatory Harassment

It is a fundamental policy of the University of Cincinnati that discrimination on the basis of race, color, religion, national origin, sex, sex orientation, handicap, status as disabled veteran or veteran of the Vietnam era, or age will not be practiced in any of its activities. (University Rule 3361:10-13-01). Discriminatory harassment is a form of discrimination, and thus violates the University's policy against discrimination.

Harassment is conduct that has the purpose or foreseeable effect of unreasonably interfering with an identifiable individual's work or academic performance or of creating an intimidating, hostile, or offensive work or learning environment for that individual. To be guilty of harassment, the actor must either intend to produce the

consequences described above or act in reckless disregard of whether such consequences might result from his or her actions. It is not necessary that the consequences actually occur, but the test of whether they are foreseeable is to be determined objectively by reference to all the circumstances of the particular case.

Discriminatory harassment is harassment that is based on the targeted individual's race, color, religion, national origin, sex, sexual orientation, status as disabled veteran or veteran of the Vietnam era, or age. Discriminatory harassment includes sexual harassment, which is further defined in Administrative Memo #60 (Revised).

#### B. Enforcement Policy for Faculty, Administrators and Staff

The specific rights, rules and disciplinary procedures that apply to represented University employees, including faculty, are set forth in the collective bargaining agreements applicable to such employees. The rights, rules and disciplinary procedures that apply to unrepresented employees are set forth in the University's Personnel Services Policies and Procedures Manual. Instances of discriminatory harassment engaged in by faculty, administrators and staff will be handled using the standards and procedures set forth in those documents.

It should be noted that the standards defining discriminatory harassment that apply to employees are in some respects more expansive than those applicable to students. The University, as an employer, has a responsibility to provide a non-discriminatory and non-hostile environment for employees, for students and for others it serves, such as visitors and patients. The University takes this responsibility seriously, and will not knowingly condone rudeness and similar forms of verbal hostility which could result in creation of a hostile environment for any member of the University community. This means employees (including student helpers) may be subject to discipline for offensive behavior that takes place within the employment context, when the same conduct outside that context might qualify for First Amendment protection.

#### C. Enforcement Policy For Students

The Student Code of Conduct and the Residence Life/Housing Conduct, Regulations and Disciplinary System each prohibit discriminatory harassment without defining these terms. The purpose of this section is to advise students of the types of behavior that fall within the prohibition.

The Student Code of Conduct emphasizes the specific responsibility of each student to allow the opportunity to all students to attain their educational objectives free from harassment by other students. Harassment takes many forms, some of which are specifically mentioned in the Code. For example, assault,

disturbing the peace, intentionally or recklessly damaging, destroying, defacing or tampering with the property of a member of the University, and disrupting, obstructing or interfering with University functions or activities are prohibited forms of misconduct. Such misconduct also constitutes discriminatory harassment when it meets the definition set forth in Paragraph A.

The Student Code of Conduct also prohibits violations of the criminal law that interfere with the University's exercise of its organizational objectives and responsibilities. It is a criminal offense to:

- . insult, taunt, or challenge another under circumstances in which such conduct is likely to provoke a violent response. O.R.C. Section 2917.11.
- . recklessly cause inconvenience, annoyance, or alarm to another by threatening harm to persons or property. O.R.C. Section 2917.11.
- . knowingly cause another to believe that the offender will cause physical harm to the person or property of such other person or a member of his or her immediate family. O.R.C. Section 2903.22.

Other examples of criminal conduct that can interfere with the University's organizational objectives and responsibilities include, without limitation, vandalism (O.R.C. Section 2909.05), criminal mischief (O.R.C. Section 2909.07), incitement to violence (O.R.C. Section 2917.01), disturbing a lawful meeting (O.R.C. Section 2917.12) and harassment by telephone (O.R.C. Section 2917.21). If any such criminal violation also meets the criteria set forth in Paragraph A, it will be treated under the Student Code of Conduct both as a prohibited criminal law violation and as discriminatory harassment.

The Student Code of Conduct also prohibits discrimination. Therefore, any other course of conduct that constitutes discriminatory harassment as defined in Paragraph A violates the University's policy on discrimination. This means that behavior which does not fall within any of the specific categories of misconduct discussed above will nonetheless constitute prohibited misconduct under the Student Code of Conduct if it meets this basic definition. Examples include, but are not limited to, offensive touching, dirty tricks and other practical jokes, anonymous communications made without legitimate purpose, and similar forms of unwelcome or personally offensive conduct that has the purpose or foreseeable effect of unreasonably interfering with the work or academic effectiveness of its victim or otherwise meets the definition of discriminatory harassment set forth in Paragraph A.

Misconduct of the type described above is often accompanied by the use of epithets, insults and demeaning remarks that seek to stigmatize the victim based on his or her membership in a group that is protected by the University's policy on discrimination. Use of this type of hurtful speech is to be deplored in all cases. However, speech that does not violate the criminal law will not be the subject of student discipline, even when it is deeply offensive to others and destructive of the University's policy on discrimination. By the same token, students should realize that conduct which constitutes discriminatory harassment as defined in Paragraph A is not protected speech and will not be shielded from disciplinary action merely because such conduct has an expressive element.

The dividing line between protected speech and conduct is not always easily drawn. Actions that violate specific provisions of the Student Code of Conduct, or which constitute crimes, are clearly subject to sanction even if partially verbal in character. Whether other actions constitute discriminatory harassment will depend on all the circumstances of the particular case. In doubtful cases, the University will not seek sanctions if it appears possible that its actions would interfere with rights of free expression protected by the First Amendment.

D. Assistance Available For Victims of Discriminatory Harassment

The resources of the University, including those supplied by the Office of Ombudsman, the Office of Affirmative Action, the Office of Residence Life/Housing and the University Dean of Student Affairs and Services, are available to assist and support the victims of racist, sexist, and other forms of discriminatory speech. Students also have a responsibility under the Code of Student Conduct to promote the human rights of all members of the University community. Students can--and should--make a substantial contribution toward realization of the University's equal access policies by joining the faculty and administration in condemning racist, sexist and other forms of discriminatory speech and conduct whenever it occurs.