

HIGHER ED CHECKLIST

Nondiscrimination Policies and Grievance Procedures Relating to Sexual Harassment



This checklist addresses topics that higher education institutions should consider when creating or revising nondiscrimination policies and grievance procedures related to sexual harassment of employees, students, and minors participating in institution-sponsored programs such as camps. The checklist is based on federal legal requirements and United Educators' (UE) recommendations derived from research and experience with claims brought against members.

Applicable Laws

Federal laws. Title VII of the Civil Rights Act of 1964, the primary federal law prohibiting workplace sexual discrimination, including sexual harassment, applies to institutions with at least 15 employees. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in any education program that receives federal funding, protects students from sex discrimination and sexual harassment. In some states, Title IX protects employees as well.¹ The Campus Sexual Violence Elimination (Campus SaVE) Act, part of the Violence Against Women Reauthorization Act of 2013 (VAWA), imposes separate requirements governing how higher education institutions address sexual violence, including domestic violence, dating violence and stalking, as well as sexual harassment and assault.

Other laws. Most states and some cities or local jurisdictions have laws banning sex discrimination and sexual harassment in the workplace, which may give employees more protections than federal law. States also have individual laws

TERMINOLOGY

For ease of reference, the checklist uses various terms to refer to the person making a complaint or allegation of sexual harassment (victim, complainant) and the person against whom the complaint or allegation is made (perpetrator, respondent). "Parties" refers to the victim and the perpetrator. For purposes of the checklist, these terms may include the parents or guardians of minor students and program participants or campus visitors. "Sexual harassment" and "sexual misconduct" include sexual assault and other forms of sexual violence such as sexual battery, sexual abuse, and sexual coercion.

¹ The institution's location matters because some federal courts of appeal — each of which covers multiple states — have ruled that Title VII is the exclusive federal remedy for employment discrimination, while others have reached the opposite conclusion, holding that employees of educational institutions also are protected from discrimination under Title IX.

regarding abuse of minors, which affect how an institution addresses sexual harassment or assault by adults of minors on its campus, whether as enrolled students or visitors participating in camps or similar activities. Moreover, several states, such as New York and Texas, have passed laws regulating how institutions handle campus sexual misconduct allegations involving adult students.

To help ensure compliance with federal, state, and local laws, UE recommends schools consult with experienced legal counsel when creating or revising their nondiscrimination policies and grievance procedures.

For each item in the checklist, check the appropriate box (“yes” or “no”) and consider whether further action is necessary.

Actions Needed

Nondiscrimination Policies: Content and Availability

When developing or revising policies and procedures that prohibit sexual discrimination and sexual harassment, institutions should seek input from relevant parties and outside experts. Relevant parties may include administration officials, human resources, campus security, student counseling, student affairs and residence life, and youth program administrators. Outside experts may include local law enforcement, medical personnel such as sexual assault nurse examiners (SANE), and domestic violence and rape crisis center counselors.

Depending on their culture, history, and needs, institutions may elect to address sex discrimination and sexual harassment against employees, students, and minors in a single policy or separately. UE does not favor one approach over another.

Note: Although training is outside the checklist’s scope, it is not enough to implement a well-drafted policy against sex discrimination: an institution should train the campus community on the policy, including the type of conduct it prohibits, who is covered, how individuals can report violations, and how the institution will respond.

SCOPE OF COVERED ACTIVITIES IN POLICIES

■ With respect to employees, students, and minors on campus, does your institution have written policy language that:

- Prohibits sex discrimination? Yes
 No

- Defines sex discrimination to include:
 - Sexual harassment and all forms of sexual violence? Yes
 No

 - Discrimination based on sexual orientation, gender identity, or gender expression (if consistent with state law or institutional policy)? Yes
 No

- Provides specific examples of the types of conduct (including sexual harassment, discrimination based on sexual orientation, gender identity or gender expression if applicable, and all forms of sexual violence) prohibited by the policy? Yes
 No

Nondiscrimination Policies: Content and Availability (Cont'd)

SCOPE OF COVERED ACTIVITIES IN POLICIES

- Explains the policy's scope, making clear that it applies to:
 - Activities on campus? Yes
 No

 - Institution-sponsored activities occurring off campus (such as athletics and domestic or international travel)? Yes
 No

 - Social media or other online activity that:
 - Uses the institution's equipment or servers? Yes
 No

 - Creates substantial disruption to the educational process regardless of when or where the activity occurs (as consistent with applicable law)? Yes
 No

 - As appropriate, applies to sex discrimination by:
 - Employees (including administrators) against other employees? Yes
 No

 - Students against other students? Yes
 No

 - Employees against students? Yes
 No

 - Students against employees? Yes
 No

 - Employees against minors? Yes
 No

 - Students against minors? Yes
 No

 - Campus contractors, vendors, visitors, or alumni against employees, students, or minors (and vice versa)? Yes
 No

 - Volunteers against employees, students, or minors (and vice versa)? Yes
 No

 - Makes clear that minors cannot give consent to sexual activity? Yes
 No

■ With respect to **Title IX**, as appropriate, does the policy:

- Explain the law's applicability? Yes
 No

- Identify by name and provide contact information for the Title IX coordinator (including office address, telephone number, and email address)? Yes
 No

- For institutions with multiple Title IX coordinators, identify and describe the responsibilities of each coordinator? Yes
 No

- State that Title IX prohibits retaliation against individuals making or supporting allegations of sex discrimination, and explain how individuals can report retaliation? Yes
 No

Actions Needed

Nondiscrimination Policies: Content and Availability (Cont'd)

SCOPE OF COVERED ACTIVITIES IN POLICIES

■ With respect to **VAWA/Campus SaVE Act**, does the policy:

- Identify sources of counseling, advocacy, legal assistance, and other support services available to the parties? Yes
 No
- Describe all supportive measures that may be available to either party following an allegation of sexual assault (for example, a "no contact" order or academic and living accommodations)? Yes
 No
- State that the Act prohibits retaliation? Yes
 No

POLICY DEFINITIONS

■ Does the policy define:

- "Employees", including administrators, regular and adjunct faculty, clinic health care providers, coaches, and trainers, regardless of whether they work full or part time? Yes
 No
- "Students", regardless of whether they attend full time, part time, or remotely? Yes
 No
- "Minors", including minors participating in programs on campus or sponsored by the institution? Yes
 No
- "Consent" under state law (and under institutional policy, if different) for purposes of sexual activity? Yes
 No

■ With respect to **VAWA/Campus SaVE Act**, does the policy include clear definitions and prohibitions of:

- Sexual harassment, including an explanation of when this conduct creates a hostile environment? Yes
 No
- Sexual violence and sexual assault, including nonconsensual sexual intercourse and other nonconsensual sexual contact? Yes
 No
- Domestic violence? Yes
 No
- Dating violence? Yes
 No
- Stalking? Yes
 No

Actions Needed

Nondiscrimination Policies: Content and Availability (Cont'd)

POLICY CONTENT: REPORTING

■ Does the policy:

- Identify by job title or position individuals who:
 - Are required to report to the institution sex discrimination, including any form of sexual harassment, reported to or witnessed by them? Yes
 No

- Qualify as mandatory reporters under state law for purposes of reporting sexual abuse of a minor? Yes
 No

- Explain how individuals can report policy violations internally, including identifying and providing contact information for the offices or employees that handle such complaints? Yes
 No

- Outline the differences between required internal reporting and the external reports required of mandatory reporters, such as explaining that the former is created by the institution and the latter by state law? Yes
 No

- For employees or volunteers not covered by the preceding items, encourage them to report sex discrimination they experience or witness? Yes
 No

- Encourage students and minors to report sex discrimination they experience or witness? Yes
 No

- Identify an alternate person to handle complaints or reports if a designated handler is the alleged perpetrator? Yes
 No

- State that the institution will promptly address alleged violations of the policy? Yes
 No

POLICY CONTENT: CROSS-REFERENCES AND OTHER INFO

- Does the policy cross-reference and link to the institution's grievance procedures for addressing sex discrimination complaints? Yes
 No

- Is the policy written in straightforward language designed to be understood by the relevant audience? Yes
 No

- Does the policy include contact information for:
 - The U.S. Department of Education regarding Title IX or Campus SaVE Act issues? Yes
 No

 - The Equal Employment Opportunity Commission (EEOC) regarding Title VII issues? Yes
 No

 - The appropriate state agencies regarding employment discrimination on the basis of sex or child sex abuse under state law? Yes
 No

Actions Needed

Nondiscrimination Policies: Content and Availability (Cont'd)

POLICY AVAILABILITY

■ Is the written policy distributed as appropriate to:

▫ Employees, including:

- Administrators?

Yes
 No

- Faculty, including adjuncts?

Yes
 No

- Teaching assistants?

Yes
 No

- Those engaged in postdoctoral research?

Yes
 No

- Athletic coaches and trainers?

Yes
 No

- Health care providers in clinics serving students?

Yes
 No

- Youth program administrators and staff?

Yes
 No

- Other staff, including those employed part time?

Yes
 No

▫ Volunteers?

Yes
 No

▫ Applicants for employment?

Yes
 No

▫ Students?

Yes
 No

▫ Applicants for admission?

Yes
 No

▫ Parents or guardians of minor students or applicants for admission?

Yes
 No

■ Is the policy available and placed prominently:

▫ On the institution's website?

Yes
 No

▫ In hard copy at multiple campus locations?

Yes
 No

▫ In printed and electronic versions of faculty, staff, and student handbooks, volunteer handbooks, codes of conduct, catalogs, and other publications?

Yes
 No

Actions Needed

Nondiscrimination Policies: Content and Availability (Cont'd)

POLICY AVAILABILITY

■ Is the policy available as needed:

- In translation for individuals whose primary language is not English? Yes
 No

- In appropriate alternative formats for individuals with disabilities? Yes
 No

- If separate policies prohibit discrimination against employees, students, and minors, does the institution include cross-references and links in each policy to the other(s) (as appropriate)? Yes
 No

Grievance Procedures For Sex Discrimination Complaints

Institutions may use separate grievance procedures to address sex discrimination complaints, but they are not required to do so. The normal disciplinary process can suffice if it offers prompt and equitable resolution of these complaints. UE recommends incorporating the practices and language described below in your institution's grievance procedures.

GENERAL CONTENT OF GRIEVANCE PROCEDURES

■ Does your institution have written grievance procedures for sex discrimination complaints that:

- State the procedures will provide an investigation and resolution that is prompt, fair, impartial, and equitable to both parties? Yes
 No

- Cross-reference and link to the institution's policy prohibiting sex discrimination? Yes
 No

- Affirm that the institution's grievance process is confidential and information is not shared beyond individuals with a "need to know" (unless otherwise required by law)? Yes
 No

- State that individuals who implement all stages of the grievance procedures receive training in and have experience handling sex discrimination complaints? Yes
 No

- Explain that each party has the right to offer relevant documents and witness names? Yes
 No

- Identify the employees who address victim requests for anonymity or confidentiality? Yes
 No

- Describe the evidentiary standard (preponderance of the evidence, clear and convincing) the institution uses to resolve complaints? Yes
 No

- Explain available supportive measures, both protective and remedial, and provides contact information for either a complainant or respondent to request a supportive measure? Yes
 No

- Explain any alternative resolution options, such as mediation? Yes
 No

- List the typical time frames for each step in the process and explain any method by which a party can seek an extension of time? Yes
 No

- State that both parties will receive periodic status updates during the grievance process? Yes
 No

Actions Needed

Grievance Procedures For Sex Discrimination Complaints *(Cont'd)*

GENERAL CONTENT OF GRIEVANCE PROCEDURES

- If an allegation of sexual harassment or violence involves an athlete, does your institution ensure that someone outside the athletic department oversees the grievance process?
 Yes
 No

- If an allegation of sexual harassment or violence involves a member of a student organization or the Greek system, does the institution ensure that someone outside that organization or system oversees the grievance process?
 Yes
 No

- Do the grievance procedures explain how an individual can get support, access to resources, and certain supportive measures without:
 - Disclosing the alleged perpetrator's identity?
 Yes
 No

 - Making the decision to request an investigation?
 Yes
 No

FILING COMPLAINTS

- Do the grievance procedures explain in detail how individuals can file complaints of sex discrimination, including identifying and providing contact information for the offices or employees that handle them?
 Yes
 No

- With respect to **VAWA/Campus SaVE Act**, do the grievance procedures:
 - State that any student who reports sexual violence, whether the offense occurred on or off campus, will receive a written explanation of their rights and options, including those for confidential reporting?
 Yes
 No

 - Provide notice of a student's right to:
 - File both a criminal complaint and an internal complaint?
 Yes
 No

 - Receive assistance from campus authorities in notifying law enforcement authorities if the victim chooses?
 Yes
 No

 - Decline to notify police or campus authorities?
 Yes
 No

 - State how the institution will protect victim confidentiality, including how publicly available records will be kept without disclosing identity, to the extent permissible by law?
 Yes
 No

 - Describe the rights of victims and the institution's responsibilities regarding orders of protection, no-contact orders, or similar orders issued by a criminal, civil, or tribal court?
 Yes
 No

 - Explain the importance of preserving evidence as may be necessary to prove criminal sexual violence, or in obtaining a protection order?
 Yes
 No

Actions Needed

Grievance Procedures For Sex Discrimination Complaints *(Cont'd)*

INVESTIGATIONS OF COMPLAINTS

■ Do the grievance procedures:

- State that investigations will be conducted by individuals who:
 - Are knowledgeable about the institution's grievance procedures and confidentiality requirements? Yes
 No
 - Have appropriate training and experience for each particular matter? Yes
 No
- Explain how the institution selects investigators, including whether it uses institution employees, outside investigators, or both? Yes
 No
- Describe generally how investigations are conducted, including the types of evidence (such as party and witness interviews and electronic communication records) that may be collected? Yes
 No
- Explain that each party has the right to offer relevant evidence and witnesses? Yes
 No
- State that employees, students, and volunteers are expected to cooperate with investigations? Yes
 No

COMPLAINT ADJUDICATIONS

■ Do the grievance procedures:

- Outline the institution's adjudication process for determining the facts and resolving discrimination complaints, including whether hearings are required or permitted? Yes
 No
- Identify generally (such as by job position) the individuals responsible for resolving complaints? Yes
 No
- Summarize the types of evidence that may be admitted? Yes
 No

■ With respect to **VAWA/Campus SaVE Act**, do the procedures:

- State that both parties may be accompanied to any meeting or disciplinary proceeding by an advisor of their choice, who may be an attorney, and note any limitations on the advisor's participation? Yes
 No
- Identify other persons who may attend or participate in the adjudication process and the extent of that participation? Yes
 No
- Clarify that evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual violence? Yes
 No
- Prohibit questioning or evidence about the complainant's prior sexual conduct with anyone other than the respondent? Yes
 No
- Describe alternative methods of posing questions that preclude the parties from personally cross-examining each other at a hearing? Yes
 No
- Require simultaneous written notice to both parties of the outcome of the complaint and any option to appeal? Yes
 No

Actions Needed

Grievance Procedures For Sex Discrimination Complaints *(Cont'd)*

Actions Needed

COMPLAINT ADJUDICATIONS

- State that the institution will not require a party to abide by any nondisclosure agreement that would prevent the re-disclosure of information related to the outcome of the proceeding? Yes
 No

- Extend any other rights given to the respondent to the complainant? Yes
 No

REMEDIES, SANCTIONS, AND APPEALS

- Do the grievance procedures outline all potential:
 - Remedies for complainants? Yes
 No

 - Remedies for the campus community? Yes
 No

 - Sanctions against respondents? Yes
 No

- Do the procedures state whether appeals are allowed by one or both parties? Yes
 No

- If your institution allows appeals, do the grievance procedures state:
 - Grounds for appeal, such as new evidence or an outcome against the weight of the evidence? Yes
 No

 - Deadlines for parties to file appeals? Yes
 No

 - Typical time frames for decisions on appeals? Yes
 No

 - The standard of review for appeals? Yes
 No

 - Identities (such as by job position) of the individuals who decide appeals? Yes
 No

 - The process for raising a concern about a conflict of interest for appellate officials? Yes
 No

AVAILABILITY OF GRIEVANCE PROCEDURES

- Are the written grievance procedures distributed to all:
 - Administrators? Yes
 No

 - Faculty, including adjuncts? Yes
 No

 - Other employees? Yes
 No

Grievance Procedures For Sex Discrimination Complaints *(Cont'd)*

AVAILABILITY OF GRIEVANCE PROCEDURES

- Volunteers? Yes
 No

- Students? Yes
 No

- Parents or guardians of minor students? Yes
 No

- Are the grievance procedures available and placed prominently:
 - On the institution's website? Yes
 No

 - In hard copy at multiple campus locations? Yes
 No

 - In printed and electronic publications, including faculty, staff, and student handbooks, volunteer handbooks, codes of conduct, catalogs, and other publications? Yes
 No

- Are the procedures available as needed:
 - In translation for individuals whose primary language is not English? Yes
 No

 - In alternative formats for individuals with disabilities? Yes
 No

Actions Needed

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