

NON-DISCRIMINATION POLICY

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American University of the Caribbean
School of Medicine

St. Maarten

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Policy of Non-Discrimination

- 1.1 As set out in the Student Handbook, Faculty Manual and Staff Handbook, the University maintains a policy of non-discrimination regardless of race, color, religion, age, gender, disability, national origin, sexual orientation or gender expression.
- 1.2 It is the responsibility of every employee and student in the University community to conduct him or herself in a manner that contributes to an environment free of discrimination on the basis of any of these prohibited grounds.
- 1.3 Discriminatory conduct by a student or employee sufficient to create a hostile environment (“Harassment”) will be subject to discipline in accordance with the University’s Administrative Review and Grievance Procedures. Such conduct violates both law and University policy, and it will not be tolerated in the University community.

Definitions

- 2.1 **Discrimination** is conduct or behavior directed toward a student or employee of the University that is based on any actual or perceived trait or characteristic that is protected under the University’s Non-Discrimination Policy.
- 2.2 **Harassment** may take many forms, including verbal acts and name-calling; graphic and written statements, which may include 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. Harassment creates a hostile environment when conduct is sufficiently severe, pervasive or persistent so as to interfere with an individual’s work or academic performance or creates an intimidating, hostile, or offensive environment.
- 2.3 A **Hostile Environment** is one that is sufficiently intimidating, abusive or offensive that it interferes with or limits (i) a student’s ability to participate in or benefit from the University’s program or (ii) the normal operations and performance of an employee. The more severe the conduct, the less need there is for the complainant to show a repetitive series of incidents to prove a Hostile Environment, particularly if the Harassment is physical.
- 2.4 **Sexual Harassment** is a form of unlawful discrimination on the basis of sex. It is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature. Sexual Harassment also encompasses acts of sexual violence, which involves sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol, or because of an intellectual or physical disability. Sexual violence includes acts of rape, sexual assault, sexual battery and sexual coercion. Conduct of one in an official University position, and directed to a University employee or student, will constitute “*quid pro quo*” Sexual Harassment when:

- 2.4.1 submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic standing; or
- 2.4.2 submission to or rejection of the conduct by an individual is used as the basis for an employment or academic decision affecting that individual.

Responsibility of School

- 3.1 Upon receipt of a conduct complaint alleging Harassment, the University must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. A law enforcement investigation does not relieve the University of its independent obligation to investigate the conduct to determine whether it constitutes Harassment creating a Hostile Environment.
- 3.2 If the University independently knows about Harassment that creates a Hostile Environment, then it must take immediate action to eliminate the Harassment, prevent its recurrence and address its effects. The University is not relieved of this obligation in the absence of a conduct complaint.
- 3.3 If Harassment occurs off campus during University-sponsored activities or if off-campus conduct creates the effect of a Hostile Environment on campus, the University is required to take action to alleviate any such effects and protect the victim(s) from further harassment or retaliation.
- 3.4 In determining whether alleged conduct constitutes Harassment, the record as a whole will be considered (including any past incidents involving the complainant or the accused) as well as the totality of the circumstances, such as the nature of the alleged conduct and the context in which it occurred.

Retaliation of Any Kind Prohibited

- 4.1 This Policy encourages students and employees to express freely, responsibly, and in an orderly way their opinions and feelings about any problem or complaint of Harassment. Any act by a University employee or student of retaliation, reprisal, interference, restraint, penalty, discrimination, coercion or harassment -- overtly or covertly -- against a student or an employee for responsibly using this Policy and the University's Administrative Review and Grievance Procedures ("the Procedures") interferes with free expression and openness. Such acts violate this Policy and are grounds for prompt and appropriate disciplinary action.
- 4.2 The University's primary concern is the safety of its students and employees. Therefore, if the incidents of alleged Harassment involve the use of alcohol, drugs or other violations of University policies, these will be addressed separately from complaints made pursuant to the Policy. The University affirms its position that the use of alcohol or drugs never makes the victim at fault for Harassment in general and Sexual Harassment in particular.

Abuse of this Policy

- 5.1 Because of the nature of the allegations, complaints of sexual harassment in particular often cannot be substantiated. Lack of corroborating evidence should not discourage complainants from seeking relief through the Procedures. However, complaints found to have been intentionally dishonest or made in willful disregard of the truth will subject the complainant to disciplinary action.

Standard of Proof

- 6.1 To substantiate Harassment creating a Hostile Environment, a complainant need only meet a “preponderance of the evidence” standard of proof, not the “beyond a reasonable doubt” standard of proof that applies to criminal proceedings.

Academic Freedom and Harassment

- 7.1 The University is committed to the principles of free inquiry and expression. Vigorous discussion and debate are fundamental to this commitment, and this Policy is not intended to restrict teaching methods or freedom of expression, nor will it be permitted to do so.
- 7.2 Harassment, however, is neither legally protected expression, nor the proper exercise of academic freedom. On the contrary, Harassment compromises the University’s integrity, as well as its tradition of intellectual freedom. For verbal conduct to constitute Harassment in a higher education teaching context, the complainant(s) must show that
- 7.2.1 the behavior substantially interfered with his or her academic performance, class participation, or educational opportunity;
 - 7.2.2 the behavior would be regarded as offensive by a reasonable person in the same context; and
 - 7.2.3 the behavior was persistent, pervasive, and not germane to the academic subject matter.

Confidentiality

- 8.1 Confidentiality is an extremely important issue, particularly with regard to allegations involving Sexual Harassment. Administrators responsible for implementing this Policy will respect the privacy and confidentiality of individuals reporting or accused of any Harassment to the fullest extent possible; however, the University is obligated to investigate all allegations that might be severe enough to constitute a Hostile Environment and thus confidentiality cannot be guaranteed unless a legally protected relationship exists.
- 8.2 Confidential consultations may be available from individuals who, by law, have special professional status, such as mental health counselors, physicians, chaplains, ministers, and/or personal attorneys. In these cases, the level of confidentiality

depends on what legal protections are held by specific persons receiving the information. Whichever person the complaining or accused parties elect to discuss their concerns with, the issue of confidentiality should be addressed with them before specific facts or identities are disclosed.

- 8.3 There is no provision for anonymous complaints under this Policy. In any investigation of Harassment allegations, the accused must promptly be made aware of the complaint and of the identity of the complainant(s).

Important Time Considerations

- 9.1 University employees or students who believe they have been victims of Harassment are advised that they are required to make a complaint according to the applicable Administrative Review and Grievance Procedures, which set out strict time limits for bringing and addressing complaints. These are available from the office of the Dean, the Registrar, or the Office of Clinical Student Affairs. Students may also download them from the University's website.

Resources for Information and Assistance

- 10.1 Questions concerning this Policy or the Administrative Review and Grievance Procedures may be addressed to the University's on-campus Title IX Coordinator, the Associate Dean of Student Affairs, Dr. Cindy Stroschein (at 599-545-2298 ext. 271, or cstroschein@aucmed.edu). Students in clinical rotations should contact Dr. Paul Lessem (plessem@aucmed.edu). These administrators and the other University Deans are prepared to help all members of the campus community understand this Policy. They are able to explain the options available for resolving concerns related to Harassment in academic or work settings at the University. They cannot assure complete confidentiality, however, unless a legally protected relationship exists such as those described in clause 8.2.
- 10.2 Additional copies of this Policy and the Procedures are available from the offices listed above, and may be downloaded from the enrolled student section of the University's website at www.aucmed.edu.

Responding To Sexual Harassment Concerns

- 11.1 All members of the University community should feel free at any time to seek advice from any of the persons listed above when attempting to deal with behavior they believe is harassing. It is important to understand, however, that when a University administrator has received a complaint about conduct that might constitute Harassment, he or she has an affirmative obligation to investigate the matter. An investigation requires that the complainant be identified so that the person accused of Harassment can be assured of due process.
- 11.2 If health and safety concerns are identified during the investigation of a Harassment complaint, the University may take such interim or temporary measures against the

person accused as are deemed necessary to alleviate a risk of harm to the complainant or others in the academic community, including suspension or involuntary administrative leave.

- 11.3 The University will also take steps to protect the complainant's well-being by providing options designed to minimize contact between the complainant and the alleged harasser. In so doing, the University is bound to minimize the burden of any such steps on the complainant; as a result, the accused may experience changes in class schedule or housing even prior to a final resolution of the complaint.

Results of Proceedings to be Reported

- 12.1 If the findings from any complaint made pursuant to the Procedures are that the accused has violated this Policy, the Administrative Reviewer or appropriate Grievance Committee will be entitled to receive from the Title IX Coordinator the confidential records, if any, of prior incidents involving the complainant and the accused, and will be entitled to consider such records in reaching its recommendations. A summary of these records must be included in the final decision. The Title IX Coordinator will be notified of the final decision resulting from the Procedures as well as confirmation that the corrective action, including any disciplinary action, has been carried out.
- 12.2 In addition, the University may be required to submit to the US Department of Education Office for Civil Rights ("OCR"), copies of all conduct complaints filed by students alleging sexual harassment or violence, and providing OCR with documentation related to the investigation of each complaint, such as witness interviews, investigator notes, evidence submitted by the parties, investigative reports and summaries, any final disposition letters, disciplinary records, and documentation regarding any appeals.

Amendments

- 13.1 The provisions of the Non-Discrimination Policy may be modified, amended or revised from time to time by the University and any changes will be binding on all parties from the effective date.

Effective Date

- 14.1 The effective date of this Policy is April 15th, 2011.