

Revisions to the University Policy on Harassment and Non-Discrimination

Existing Language

The current draft of the University Policy on Harassment and Non-Discrimination is available at:

https://eocc.lehigh.edu/sites/eocc.lehigh.edu/files/2015-10-26_Clean%20%26%20Revised_Policy%20on%20Harassment_v.2.pdf

Proposed Language

The proposed draft of the University Policy on Harassment and Non-Discrimination is attached to this motion. Some highlights of the revisions include the following:

- The definitions of “harassment” and “sexual harassment” have been revised to comply with the new Title IX regulations, while remaining in compliance with other applicable laws, such as Title VI, the ADA, etc. The definition of sexual harassment is directly from the definition required by the Title IX regulations.
- The creation of a grievance process for cases involving sexual harassment as defined by the Title IX regulations that does not comport with the current grievance process in the Policy. The significant aspects of this process include the following:
 - Mandatory and discretionary dismissal of a formal complaint of sexual harassment based on grounds established by the Title IX regulations.
 - Requirement that an Advisor be provided to the parties should they fail to choose their own Advisor. The Advisor provided by the University must be competent to conduct cross-examination at a hearing.
 - Following the conclusion of an investigation into the allegations of sexual harassment, a hearing must be conducted before a trained Decision-maker. The hearing must allow for cross-examination of parties and witnesses by Advisors and must be live, whether in person or through use of technology such as Zoom.
 - The Decision-maker, comprised of three faculty and staff members, who will be required to attend extensive training in order to comply with the Title IX regulations, will be required to cross-examine parties and witnesses, make credibility and relevancy determinations, and render a written decision regarding whether the behavior constituted sexual harassment in violation of the Policy.
 - For cases involving a faculty member as the Respondent, the Decision-maker will consist of two faculty members and one staff member.
- The current processes for resolving discrimination and other forms of harassment remain unchanged, other than a few minor edits to avoid confusion or conflicts with the changes required by the Title IX regulations.

Rationale

In May 2020, the U.S. Department of Education released its final regulations governing sexual harassment in federally funded programs pursuant to Title IX of the Education Amendments of 1972

("Title IX"). As a recipient of federal funds, Lehigh is subject to Title IX and its implementing regulations, including those regulations issued in May of this year.

These Title IX regulations are extensive in scope, historic in nature, and required over 2,000 pages of accompanying explanation and discussion when published. See <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>. The U.S. Department of Education spent approximately 18 months drafting and finalizing the regulations, but provided only until August 14, 2020, for institutions to bring their policies in compliance with the requirements of the regulations. Essentially, these regulations require institutions to create a separate process for handling allegations of sexual harassment (as defined by the regulations) that involve faculty, staff, and students.

The revisions in the attached document have been made in order to ensure that the University is compliant with these regulations as required for August 14, 2020. The current processes for resolving discrimination and other forms of harassment remain unchanged, other than a few minor edits to avoid confusion or conflicts with the changes required by the Title IX regulations.