

Board of Regents P01.02 Policy Revision Justification
Presented by the UA Title IX Coordinators, representing UAA, UAF and UAS
March 2016

Introduction

The University of Alaska Statewide Title IX Committee is seeking your support to transform P01.02.020 from a non-discrimination and Title IX compliance statement to a broad Discrimination, Discriminatory Harassment, and Sexual and Gender-Based Misconduct policy that guides all issues around discrimination, discriminatory harassment and sexual and gender-based misconduct.

On February 17, 2016, President Johnsen issued a charge to the Statewide Title IX Committee to revise UA BOR Policies and Regulation in 04.02, 04.07, 04.08, and 09.02 to meet federal compliance.

On February 25-26, 2016 representatives from campuses across the UA system met in Fairbanks, AK to evaluate and provide suggestions for policy revision to meet federal compliance. The best course of action recommended was to expand P01.02.020 to one policy governing all response to discrimination, discriminatory harassment, and sexual misconduct.

The UA Title IX Committee is proposing this change to simplify the policy and regulations for students, faculty, staff, and third parties. One policy and regulation for all forms of discrimination is user-friendly and ensures a simpler process to maintain compliance with state and federal guidelines. The change to one policy is also supported by the NotAlone.gov, the White House Sexual Assault Task Force, and the Association of Title IX Administrators (ATIXA).¹

Proposed Revisions

The proposed revisions would remove discrimination, including sexual discrimination and sexual misconduct from 04.02, 04.07, 04.08, and 09.02 and place it all under the revised P01.02.020.

Attached is a document with the proposed changes to the current policy and regulations.

Justification and Rationale for Recommendations:

1. Transforming P01.02.020 into a Discrimination, Discriminatory Harassment, and Sexual and Gender-based Misconduct policy will:
 - a. ensure that users of the policy (students, faculty, staff, and third parties) can easily access the policy, regulations, and procedures that are attached to it. Currently, pieces of discrimination, discriminatory harassment, and sexual and gender-based misconduct are found throughout 04.02, 04.07, 04.08, and 09.02 making it hard for the user to understand the policy or regulations.
 - b. ensure compliance with federal and state laws. One policy will make it easier to revise the policy in the future for federal compliance as new guidance is released.

¹ NotAlone.gov. Schools. *See. Read the checklist for campus sexual misconduct policies.* <https://www.notalone.gov/schools/>; Price, Marianna. *The ATIXA One Policy, One process Model Policy.* ATIXA.

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Recommended changes in Policy are listed below:

1. Adding genetic identity to **01.02.020(A)**. Adding genetic identity brings UA in compliance with Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits discrimination based on genetic information in employment.²
2. Adding section **01.02.030 Scope of University Authority**. This new section designates the jurisdiction of the new policy in P01.02.020. This subsection of policy is revised from P09.02.030 so that it covers students, faculty, staff, and third parties. The language is revised from the language in P09.02.030 for clarity, inclusion, and federal compliance.
3. Adding section **01.02.040 Resources and Options for Assistance**. OCR requires that UA ensure that reporting parties are aware of available resources, on and off-campus.³ Adding this into the policy ensures that reporting parties are informed of the resources and assistance available.
4. Adding section **01.02.050 Coordination of Compliance Activities Covered Under this Policy**. OCR requires that the discrimination policy designate an individual to coordinate the efforts under this policy. This section of policy also codifies the responsibilities and accountability of the Coordinator in one location.
5. Adding section **01.02.060 Prohibited Conduct**. This section outlines broad categories of conduct prohibited under this policy. This section mimics the prohibited conduct outlined in P09.02.
6. Adding section **01.02.070 Responsible Employees**. OCR requires that UA “make clear to all of its employees and students which staff members are responsible employees so that [they] can make informed decisions about whether to disclose information to those employees.”⁴ This simple policy statement allows users of the policy to quickly identify the responsible employees at UA campuses to ensure OCR compliance and user ease.
7. Adding **01.02.080 Reporting Violations of this Policy**. OCR guidance requires the university to outline reporting options.⁵
8. Adding **01.02.090 Amnesty**. Adding an amnesty statement will help counter act the chilling effect to reporting that occurs when reporting parties or witnesses are afraid to report or participate in the process because of their own policy violations.
9. Adding **01.02.100 Retaliation**. Federal law prohibits retaliation. This statement addresses the chilling effect that fear of retaliation places on reporting parties and witnesses.

² *Genetic Information Discrimination*. U.S. Equal Employment Opportunity Commission, available at <http://www.eeoc.gov/laws/types/genetic.cfm>.

³ *Questions and Answers on Title IX and Sexual Violence*. U.S. Dept. of Education Office for Civil Rights, p. 3, available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

⁴ *Questions and Answers on Title IX and Sexual Violence*. U.S. Dept. of Education Office for Civil Rights, p. 15, available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

⁵ *Questions and Answers on Title IX and Sexual Violence*. U.S. Dept. of Education Office for Civil Rights, p. 13, available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

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10. Adding **01.02.110 Inquiry and Investigation**. This section addresses how the Coordinator determines which reports warrant a full investigation, the due process rights afforded individuals during the investigation, and the general procedures for the investigation. OCR requires UA to provide due process rights to both parties⁶ and listing the due process rights, as well as the investigation inquiry and general process, will allow users of this policy to understand how UA determines when and how to investigate in a simple and user centric manner.
11. Adding **01.02.120 Standard of Evidence**. OCR requires that UA use a preponderance of the evidence standard for investigations.⁷ This section codifies the requirement for federal compliance.
12. Adding **01.02.130 Sanctions, Corrective Action, and Appeal**. OCR guidance requires the university to outline procedures for sanctions and corrective actions, the rights of all parties to appeal and the appeal process.⁸
13. Adding **01.02.140 Training, Prevention, and Education**. OCR and VAWA require that UA provide training, prevention, and education to students and employees around sexual misconduct, dating violence, domestic violence, and stalking.⁹ Adding this section helps ensure federal compliance with these mandates.

⁶ *Questions and Answers on Title IX and Sexual Violence*. U.S. Dept. of Education Office for Civil Rights, p. 13, available at <http://www2.ed.gov/about/offices/list/ocr/docs/ga-201404-title-ix.pdf>.

⁷ *Questions and Answers on Title IX and Sexual Violence*. U.S. Dept. of Education Office for Civil Rights, p. 14, available at <http://www2.ed.gov/about/offices/list/ocr/docs/ga-201404-title-ix.pdf>.

⁸ *Questions and Answers on Title IX and Sexual Violence*. U.S. Dept. of Education Office for Civil Rights, p. 13, available at <http://www2.ed.gov/about/offices/list/ocr/docs/ga-201404-title-ix.pdf>.

⁹ *Questions and Answers on Title IX and Sexual Violence*. U.S. Dept. of Education Office for Civil Rights, p. 38, available at <http://www2.ed.gov/about/offices/list/ocr/docs/ga-201404-title-ix.pdf>. *Violence Against Women Act*. Fed. Reg.: The Daily Journal of the U.S. Government, available at <https://www.federalregister.gov/articles/2014/10/20/2014-24284/violence-against-women-act>.

**Proposed Revisions of BOR P01.02.020 Nondiscrimination and Title IX Compliance
Proposed by the UA Title IX Coordinators, representing UAA, UAF & UAS
March 2016 – All Feedback due March 28, 2016**

CHANGES TO THE EXISTING POLICY, PAGE ONE, IN RED

P01.02.020: ~~Nondiscrimination and Title IX Compliance~~ Discrimination, Discriminatory Harassment, and Sexual and Gender-Based Misconduct Policy Statement

- A. It is the policy of the board that in accordance with federal and state law, illegal discrimination against any individual because of race, color, religion, national origin, age, sex, sexual orientation, gender identity, veteran status, physical or mental disability, marital status, **genetic information, or** pregnancy or parenthood is prohibited. Decisions affecting individuals shall be based on the individual's qualifications, abilities, and performance, as appropriate.
- B. The Board of Regents of the University of Alaska system affirms its commitment to a safe and healthy educational and work environment in which the educational programs and activities are free of discrimination on the basis of sex. The board further affirms its commitment to respond appropriately to sexual harassment and sexual violence, in accordance with applicable law as amended from time to time, including Title IX of the Education Amendments of 1972, the Violence Against Women Reauthorization Act, Title VII of the Civil Rights Act of 1964 (which prohibits discrimination on the basis of sex in employment), Alaska Statute 18.80, and due process of law.
1. Chancellors will have primary responsibility for a campus educational and workplace climate free of discrimination and intimidation based on sex, and for appropriate and timely response to sexual harassment and sexual violence at their respective universities, including extended sites;
 2. Chancellors will provide updates to the board regarding compliance with this policy at least bi-annually in December and June and more often as required by circumstances; and
 3. The president will ensure system oversight and coordination among the universities in implementing this policy.

(09-18-15)

ALL SUBSEQUENT DRAFT POLICY IS NEW

P01.02.030. Scope of University Authority

This policy governs the conduct of students, faculty, staff, and third parties (i.e., non-members of the University community such as vendors, alumni, visitors, or local residents) in any way affiliated with the university. This policy pertains to conduct committed by or against students, faculty, staff, and third parties when:

1. The conduct occurs on property owned or controlled by the university, in university online environments and classes, or at activities sponsored by or authorized by the university;
2. The conduct occurs in the context of university employment or educational programs or activities, including but not limited to, university-sponsored study abroad, research, online, or internship programs; or
3. The conduct occurs outside the context of university employment or educational programs or activities, but has continuing adverse effects on or creates a hostile environment for students, employees, or third parties while on university grounds or other property owned or controlled by the university or in any university employment or educational program or activity.

P01.02.040 Resources and Options for Assistance

The university offers a wide variety of resources for individuals who experience discrimination, discriminatory harassment, and sexual or gender-based misconduct. Resources for immediate assistance may include:

- Trained on-and-off campus advocates and counselors
- Campus and/or community law enforcement
- Campus and/or community medical assistance (including Sexual Assault Response Teams in some communities)

Resources for ongoing assistance may include trained on-and-off campus counselors, advocates, and other support resources. The university may also provide academic accommodations and other interim measures as appropriate.

P01.02.050 Coordination of Compliance Activities Covered Under this Policy

Each Chancellor will designate an individual responsible for compliance activities under this policy, to include Title IX coordination. For the purposes of this policy, this individual will be referred to as “the Coordinator.” The Coordinator is charged with overseeing compliance, ensuring appropriate education and training, coordinating implementation and administration of the university’s procedures for resolving complaints, and ensuring appropriate actions to eliminate prohibited conduct, prevent its recurrence, and remedy its effects. Good faith actions taken by university officials in response to a report of prohibited conduct are not considered adverse actions. The Coordinator acts with independence and authority free of conflicts of interest.

P01.02.060 Prohibited Conduct

This policy prohibits discrimination, discriminatory harassment, and sexual and gender-based sexual misconduct. Specific definitions and terminology associated with these forms of prohibited conduct can be found in university regulation.

P01.02.070 Responsible Employees

To enable the university to respond effectively and to stop instances of sexual misconduct, all university employees must promptly report information about alleged or possible sexual misconduct. Employees, such as licensed health-care professionals and victim advocates, who have a statutory privilege under Alaska law are exempt from these reporting requirements.

P01.02.080 Reporting Violations of this Policy

There are multiple channels for reporting, as outlined in regulation. A reporting party or a third party may choose to report to the university, to law enforcement, to both, or to neither. These reporting options are not exclusive. Reporting parties may simultaneously pursue criminal and university resolution. The university has the right to pursue notice of violation of this policy on its own behalf and initiate investigation, regardless of whether or not a formal allegation is submitted by a reporting party.

Anonymous reporting is permitted, however doing so may limit the university's ability to investigate and respond to a complaint.

There is no time limit for reporting prohibited conduct to the university under this policy. If the responding party is no longer a student or employee at the time of the complaint or report, the university may not be able to take disciplinary action against the responding party, but it will still seek to meet its obligations by providing support for the reporting party and taking steps to end the prohibited behavior, prevent its recurrence, and address its effects.

Individuals who have filed a complaint with the university and believe the university's response was inadequate, or otherwise believe they have been discriminated against by the university on the basis of a protected status, may file a complaint with the appropriate federal or state office.

P01.02.090 Amnesty

The university may provide amnesty from policy violations, depending on the circumstances, to individuals who report misconduct or who otherwise may be hesitant to report because they fear being accused of policy violations that may become known as a result of reporting.

P01.02.100 Retaliation

The university will not tolerate retaliation in any form against any student, staff, faculty, or third party who files an allegation, serves as a witness, assists a reporting party, or participates in an investigation of discrimination, discriminatory harassment, or sexual misconduct. University policy and state and federal law prohibit retaliation against an individual for reporting discrimination, discriminatory harassment, or sexual misconduct or for participating in an investigation. Retaliation is a serious violation that can subject the offender to sanctions independent of the merits of the allegation.

P01.02.110 Inquiry and Investigation

The investigative process is initiated when the Coordinator receives a complaint or report of a violation of this policy. The Coordinator will conduct an initial assessment and determine any appropriate interim measures. Following the initial assessment, the Coordinator may take any of the following actions:

- If the Coordinator determines that the complaint, even if substantiated, would not rise to the level of a policy violation, the Coordinator may dismiss the complaint.
- If the reporting party chooses not to participate, the Coordinator may dismiss the complaint or initiate an investigation.
- If all parties agree that an informal resolution should be pursued, the Coordinator will attempt to facilitate a resolution of the conflict that is agreeable to all parties. Informal resolution, such as mediation, is not allowed in incidences of sexual assault. A party always has the option to request a formal investigation.
- If the Coordinator determines that the complaint is outside the scope of this policy, the Coordinator may refer the complaint to another office for review.
- If the Coordinator determines that the complaint or report would, if substantiated, constitute a violation of this policy, the Coordinator will initiate an investigation.

The university is committed to providing a prompt and impartial investigation of all alleged violations of this policy. The reporting and responding parties have equivalent rights throughout the process. Due process rights include: a) notification of investigation, b) the opportunity to present evidence, c) the ability to identify individuals who may possess relevant information, d) the right to be accompanied by an advisor of their choice, and e) the opportunity to address each allegation and review information pertaining to those allegations with the investigator. The university will provide both parties with written notification of investigative findings, including appeal rights.

P01.02.120 Standard of Evidence

The university uses a preponderance of evidence standard to determine responsibility during investigations of prohibited conduct. When a preponderance of evidence (i.e., more likely than not) is found to substantiate a complaint, sanctions or corrective actions may be taken.

P01.02.130 Sanctions, Corrective Action, and Appeal

Findings of violations of prohibited conduct under this policy will be shared with the appropriate disciplinary authority: the Student Conduct Office for student violations; the Human Resources office for employee violations. For responding parties who are both students and employees, the Coordinator may engage both disciplinary authorities.

The appropriate disciplinary authority is responsible for administering sanctions or corrective actions. The disciplinary authority may, or may not, choose to meet with the responding party before imposing sanctions or corrective actions. Both the reporting and responding parties will receive written notice of relevant sanctions or corrective actions as defined by law. Both parties have the right to appeal or comment per university policy, regulation, and state law.

Both parties have the right to appeal a finding of no violations of prohibited conduct, under conditions laid out in university regulations.

P01.02.140 Training, Prevention, and Education

Students, staff, faculty, and identified third parties are required to complete training on non-discrimination, anti-harassment, and the prevention of sexual misconduct in the educational and work environment.