X-11  DISCRIMINATION AND HARASSMENT VIOLATIONS  1 OF 9

(includes sexual harassment)

The university seeks to provide an educational community and workplace free of prohibited discrimination and harassment. To that end, it has adopted the following nondiscrimination statement: “Elon University does not discriminate on the basis of age, race, color, creed, sex, national or ethnic origin, disability, sexual orientation, gender identity, or veteran’s status (collectively, “Protected Categories”) in the recruitment and admission of students, the recruitment and employment of faculty and staff, or the operation of any of its programs.” Consistent with our nondiscrimination statement, the university does not tolerate discrimination or harassment of employees, students or other individuals associated with the University including, but not limited to, vendors, contractors, and guests on the basis of any of these Protected Categories.

a. Definitions

1) Discrimination. Prohibited discrimination occurs when an individual suffers an adverse employment, academic or other decision based on Protected Categories.

2) Harassment is defined as conduct (including verbal, written, visual, or physical conduct) that denigrates or shows hostility against an individual based on Protected Categories when such conduct has the purpose or effect of:
   i. unreasonably interfering with his or her work or academic performance, or
   ii. creating an intimidating, hostile, humiliating, or offensive working, living or learning environment.

3) Sexual harassment. Sexual harassment is a particular type of harassment and is a form of prohibited sex discrimination. Sexual harassment includes sexual violence. Sexual harassment generally may be described to include unwelcome sexual advances, requests for sexual favors, or other physical and expressive behavior of a sexual nature when:
   i. Submission to or rejection of such conduct is made either explicitly or implicitly a term of or a condition of education, employment, or participating in university activities;
   ii. Submission to or rejection of such conduct by an individual is or could be used as the basis for evaluation in making academic or personnel decisions affecting that individual; or
   iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's performance, or creating an intimidating, hostile or offensive working, living or learning environment.

Examples of sexual harassment vary with the circumstances but may include, but are not limited to, slurs, threats, derogatory or suggestive comments, unwelcome jokes, and displays of sexually-oriented literature or pictures, unwelcome teasing or sexual advances and other similar verbal or physical conduct, including e-mail, phone calls or other online communications. Sexual violence includes acts such as rape, acquaintance rape and other forms of non-consensual sexual activity.
b. University Obligation to Act. Any member of the university community may file a complaint of discrimination or harassment. The university has a duty to investigate all alleged incidents of prohibited harassment or discrimination in violation of its policy and reserves the right to act as complainant should the university become aware of alleged violations of this policy. Because some actions reported under this policy may also involve potential criminal conduct (sexual violence is considered sexual harassment under Title IX), the university, consistent with applicable law, will determine whether appropriate law enforcement or other authorities ought to be notified. The university will follow its processes for the investigation and redressing of such allegations even when law enforcement authorities are involved. Regardless of pending criminal investigation, the university is obligated to investigate claims and take corrective action to ensure a working and learning environment that is free from discrimination or harassment. All members of the Elon community are expected to cooperate in the resolution or investigation of complaints of harassment and discrimination.

c. Timeliness of Reporting a Complaint. A complaint of discrimination or harassment should be submitted pursuant to this policy as soon after the offending conduct as possible in order to allow for an effective investigation, appropriate resolution to the complaint, and prevention of recurrence. Complaints received more than one year after the occurrence may be difficult to investigate due to such factors as passage of time, availability of witnesses and relevant information, and opportunity to take remedial action (such as when the student or employee are no longer at the University).

d. Confidentiality. All persons involved in the grievance process related to claims of discrimination or harassment are expected to maintain confidentiality regarding information related to the claims to the extent that such confidentiality does not contradict or undermine the university’s responsibility to respond effectively to the complaint or to comply with the law. An individual’s requests regarding the confidentiality of reports of discrimination or harassment will be considered in determining an appropriate response; however, such requests will be considered in the dual contexts of the university’s legal obligation to ensure a working and learning environment that is free from discrimination or harassment and the due process rights of the accused to be informed of the allegations and their source. Some level of disclosure may be necessary to ensure a prompt, thorough and impartial investigation.

e. Filing of False Complaints. The university does not allow the filing of false, frivolous or malicious complaints under this policy. Those bringing such complaints are subject to discipline, up to and including dismissal.

f. Corrective Action. The university provides educational and training programs, and victim resources, to prevent harassment and discrimination, as presented at http://www.elon.edu/e-web/students/saa. The university may, after becoming aware of an alleged violation of this policy, take appropriate action to ensure safety and non-
retaliation. Such interim actions may include placing the accused on administrative leave, reassignment, or authorizing other types of temporary measures while an investigation is pending, including but not limited to “no contact” instructions.

Should it be determined that a violation of the university policy on discrimination or harassment has occurred, appropriate action will be taken and will reflect the severity of the incident and any past discrimination or harassment offenses. Possible actions shall include, but not be limited to, written warning placed in the personnel file, reassignment of duties, suspension without pay, demotion, removal from a portion of assigned duties, appropriate professional training, and dismissal. The resolution of all claims, whether via the informal or formal procedures outlined below, must fulfill the university’s responsibilities to prevent future discrimination and harassment and the creation of a hostile environment, and to ameliorate any negative effects of the discrimination or harassment in question. Determinations of responsibility or non-responsibility for harassment or discrimination will be made using the preponderance of evidence standard. Claims of sexual harassment will also be handled in accordance with Title IX, and claims of harassment regarding physical ability will be handled in accordance with Section 504 of the Rehabilitation Act and the American with Disabilities Acts. Please refer to http://www.elon.edu/e-web/students/saa/and for information on Title IX policies and procedures and to http://www.elon.edu/e-web/academics/support/disabilities.xhtml for information on disabilities services policies and procedures.

g. Retaliation. The university prohibits retaliation against a member of the Elon community because he or she (a) made a complaint of discrimination or harassment in good faith, (b) assisted someone with a complaint of discrimination or harassment, or (c) participated in any manner in an investigation or resolution of a complaint of discrimination or harassment. Examples of such prohibited retaliation include such actions as threats, intimidation, reprisals, adverse employment actions or adverse educational actions due to participation under this policy. Retaliation is a violation of this policy and should be reported under this policy. The university will take corrective action, including disciplinary action up to termination for retaliation prohibited by this policy.

h. Support Resources. Any member of the university community who believes that he or she has been the victim of discrimination or harassment, particularly sexual harassment, is encouraged to seek information and support from members of the institution who can legally provide confidentiality due to their training and position, such as: members of the Counseling Center, medical providers, clergy on the religious & spiritual life staff or the coordinator for student development – violence prevention. Because of the confidentiality afforded these resources, those who believe they are victims of violations of this policy should be aware these resource persons cannot report the alleged harassment or discrimination to the university. To ensure a report to the university, members of the university community should follow Grievance Procedures listed below.
Grievance Procedure for Complaints of Discrimination or Harassment (including sexual harassment) Against a University Employee

a. General Information

1.) This procedure applies for any complaints of violations of this university policy against discrimination or harassment made against a university employee (including claims made by students). Claims of discrimination or harassment made against students will be addressed through the judicial process as identified in the Student Handbook at www.elon.edu/students/handbook.

2.) While the university encourages informal resolution of complaints when possible, the complainant is not required to attempt the informal procedure prior to instigating the formal procedure. Moreover, the complainant retains the right to halt the informal procedure in favor of the formal process at any point in the process.

3.) A member of the university community who wishes to make a report of discrimination or harassment regarding a university employee can report the incident to any of the following persons who will refer the complaint to the Assistant Director of Human Resources for Employee Relations (herein after referred to as the ADHRER) for follow-up: deans; associate provosts; vice presidents; the ADHRER or, in cases involving sex discrimination or sexual harassment, the university’s Title IX Deputy Officer or Title IX Officer. Upon receipt of the complaint, the ADHRER will contact the complainant to determine which of the two processes below he or she wishes to initiate. In the event that the ADHRER is involved in the complaint, or is unavailable to complete the investigation, the office of record will contact the Director of Human Resources who will appoint a university official to carry out the duties of the ADHRER as describe below. Complaints of alleged policy violations by members of the president’s senior staff should be made to the president and complaints of alleged policy violations by the president should be made to the chair, board of trustees.

4.) The timelines for implementing the grievance procedures below are intended to allow for an expeditious and complete resolution of complaints. The university will make every reasonable effort to achieve resolution of complaints within these or shorter timeframes. However, during times when classes are not in session or at the end of an academic term, or depending on the ability of the university to conduct an effective investigation, timelines
may be adjusted. The estimated timeframe for resolution of a complaint via the informal procedure is thirty (30) days from the report of an incident. The estimated timeframe for resolution of a complaint via the formal procedure is ninety (90) days or less from the time the ADHRER receives a written request to initiate the formal procedure. The estimated timeline for notification of the results of an appeal is twenty-one (21) days from the date the request for appeal is received by the provost. When the university cannot adhere to these estimated timelines, the complainant and accused will be notified and provided an anticipated completion date.

b. Informal Procedure

1.) The goal of the informal procedure is to resolve concerns at the earliest stage possible, with the cooperation of all parties involved. Informal resolution may include inquiry into the facts, but typically does not include a formal investigation. Allegations involving sexual assault may not be addressed using the informal procedure.

Upon receiving the initial report from the complainant, the assistant director of human resources for employee relations (ADHRER) will notify the university employee's supervisor(s) (if the accused is a faculty member, this will usually be the chair of the employee's department and the dean of the employee's school or college) and, in cases involving sex discrimination or sexual harassment, the university's Title IX Deputy Officer or Title IX Officer as applicable, or the 504 Officer in cases of disabilities discrimination or harassment. The ADHRER will then take appropriate steps to resolve the concern, which may include holding discussions (either separately or together) with the complainant, the accused, the accused's supervisor, and appropriate university officials. If the ADHRER is involved in the complaint or is unavailable to complete the informal procedure, the director of human resources will assume the role of the ADHRER or will assign another staff member to do so.

2.) If the matter is resolved informally to the satisfaction of all parties, the supervisor of the accused, in consultation with the ADHRER, will maintain a record of the resolution and, in instances of sexual discrimination or harassment, the university's Title IX Deputy Officer or Title IX Officer as applicable, and in cases of disabilities discrimination or harassment, the 504 Officer), in consultation with the ADHRER, will maintain a record of the resolution.

3.) If the matter cannot be resolved informally to the satisfaction of all parties or the complainant chooses the formal process at any time, the complainant may initiate the formal procedure described below by notifying the ADHRER.
c. Formal Procedure

1.) If informal resolution is unsuccessful, unavailable (such as in the instance of sexual assault), or if the complainant prefers the formal procedure, a formal written complaint may be filed. The written complaint shall include details of the allegations of violations of the university policy against harassment and discrimination including, but not limited to the alleged violations, the date/s and time/s of the alleged violations and any witnesses or other relevant information about the complaint. If the ADHRER is involved in the complaint, or is unavailable to complete the investigation, the complainant should submit the statement to the director of human resources. If the ADHRER is involved in the complaint or is unavailable to complete the investigation, the director of human resources will investigate or assign an investigator who will then take on the duties of the ADHRER as described below.

2.) Upon receipt of the written complaint, the ADHRER will notify the accused, the university accused employee’s supervisor(s), the provost and if the case involves sex discrimination or sexual harassment, the university’s Title IX Deputy Officer or Title IX Officer as applicable or in cases of disabilities discrimination or harassment, the 504 Officer. The university will conduct a prompt, thorough and impartial investigation.

3.) The ADHRER will undertake an investigation of the allegations contained in the written statement. Depending on the nature of the allegations, the investigation could include interviews with the complainant, the accused and/or witnesses; review of written documentation and relevant policies; and any other steps necessary to thoroughly investigate the allegations. The investigation will be conducted as expeditiously as possible, and the results of the investigation will be forwarded to the provost. At that time academic support staff with faculty rank and administrative staff with faculty rank who are accused of violating the policy must notify the Provost whether they choose the faculty or staff procedure; once notification is given, the accused may not change procedures.

4.) Within fourteen (14) days of the ADHRER’s receipt of the written complaint, the provost, or his/her designee, will assemble a three-member hearing committee. The three-member committee will consist of one faculty member appointed by the chair of Academic Council, one staff member appointed by the provost/vice president for academic affairs (from a pool of eight (8) staff members recommended by the Staff Advisory Council) and one administrator at the level of an assistant dean (staff or faculty) or above, appointed by the provost. To be eligible for appointment, an appointee must have completed training in university discrimination and harassment policies and procedures (including Title IX and 504/ADA obligations), and have no conflict of interest in the complaint. If the provost finds
an appointee to have a conflict of interest or be unable to complete the required training in a timely fashion, she or he will request an additional three names from the appointer and choose one name from that list.

5.) The hearing committee will elect a chair by majority vote who will serve as the convener of the committee.

6.) The provost will provide the hearing committee with a copy of the results of the confidential investigation conducted by the ADHRER. After reviewing the results of the investigation, the committee will conduct a hearing regarding the allegations and investigation findings. Both the complainant and the accused each may be accompanied and advised at the hearing by a university student or employee; however, no attorneys may be present or participate in the hearing. Reasonable provisions will be made for university employees or students to appear as witnesses.

7.) The hearing should normally be completed within thirty (30) days from the receipt of the investigation. Within fourteen (14) days of the completion of the hearing, the committee will provide a written report of responsibility or non-responsibility for policy violations. The committee will provide a copy of this report to the complainant, the accused, the ADHRER, the provost, and, in cases involving sex discrimination or sexual harassment, the university’s Title IX Deputy Officer or Title IX Officer as applicable or in cases of disabilities discrimination or harassment, the 504 Officer. The committee will also issue a recommendation to the provost for sanctions, if any, to be assigned to the accused if the accused is found responsible for any alleged policy violation.

8.) Either the complainant or the accused may request an appeal of the hearing committee’s finding of responsibility or non-responsibility by providing a written notice of appeal to the provost within seven (7) days of the hearing board’s determination. Appeals of the hearing board’s decision may only be made on the basis of (i) substantial violations of the procedures of this policy and/or (ii) the emergence of new, material information relevant to the alleged policy violations. Written notice of appeal must identify the basis of the appeal and should include sufficient detail to support the appeal. If the provost is involved in the case, the complainant should submit the statement to the president of the university, who will then take on the duties of the provost as described in this paragraph. Upon receipt of this written appeal, the provost will review the information from the formal procedure plus any new information submitted and permit the non-appealing party an opportunity to provide information relevant to the appeal if desired.
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The provost will make a final determination of responsibility and notify the complainant and accused of the outcome within thirty (30) days of receiving the request for appeal. If the provost upholds a decision of responsibility, she or he will assign sanctions and communicate in writing this decision and sanctions to the accused, the accused's supervisor, the ADHRER, and, in cases involving sex discrimination or sexual harassment, the university's Title IX Deputy Officer or Title IX Officer as applicable, in cases of disabilities discrimination and harassment, the 504 Officer. Any decision to issue sanctions by the provost will be placed in the accused's personnel file.

9. If no appeal is filed of the hearing committee findings, the provost will determine appropriate corrective actions including sanctions upon a review of the hearing committee findings and file. A written summary of corrective action will be provided to the accused, the accused's supervisor, the ADHRER, and, in cases involving sex discrimination or sexual harassment, the university's Title IX Deputy Officer or Title IX Officer as applicable, in cases of disabilities discrimination or harassment, the 504 Officer, within two weeks of provost receiving the reports of the hearing committee.

10. The university will maintain documentation of the complaint, its investigation and hearing process under this policy. In cases involving sex discrimination or sexual harassment, all documentation will be filed with the university's Title IX Deputy Officer or Title IX Officer as applicable and, in cases of disability discrimination harassment, with the university's 504 Officer.

Implementation of sanctions

a. The provost is responsible for implementing sanctions and will follow all relevant existing procedures including those outlined in the General Grievance Procedure, Section VIII-1.

b. In cases where the sanctions assigned to the accused include either dismissal or suspension, the accused may request that a staff committee hold a hearing on the sanctions. The accused must make this request to the Provost within seven (7) days of the provost's determination of sanctions. The provost will appoint a three-person committee of staff from a pool of eight (8) staff members recommended by the Staff Advisory Council; the three-persons may not have served in the original hearing. To be eligible for appointment, an appointee must have completed training in university discrimination and harassment policies and procedures (including Title IX and 504/ADA obligations), and have no conflict of interest in the complaint. If the provost finds an appointee to have a conflict of interest or be unable to complete the required training in a timely fashion, she or he will appoint another person(s) from the Staff Advisory Council recommended pool of eight (8) persons.
The staff committee must hold a hearing concerning the sanctions within fourteen (14) days of receiving the accused request for hearing from the provost. The staff committee must provide the president a written recommendation within seven (7) days of the conclusion of the hearing. Within seven (7) days of receiving the recommendation of the staff committee, the president will then provide a final written statement of sanctions to the accused, the accused’s supervisor, the ADHRER, the provost and, in cases involving sex discrimination or sexual harassment, the university’s Title IX Deputy Officer or Title IX Officer as applicable, and in cases of disabilities discrimination or harassment, the 504 Officer.

c. In cases where the corrective actions assigned to the accused do not include either dismissal or suspension, and the accused believes that the corrective actions assigned are excessive or inappropriate, the accused can request that a staff committee hold a hearing on the sanctions. The accused must make this request in writing to the Provost within seven (7) days of the provost’s determination of sanctions. The provost will appoint a three-person committee of staff from a pool of eight (8) staff members recommended by the Staff Advisory Council; the three-persons may not have served in the original hearing. To be eligible for appointment, an appointee must have completed training in university discrimination and harassment policies and procedures (including Title IX obligations), and have no conflict of interest in the complaint. If the provost finds an appointee to have a conflict of interest or be unable to complete the required training in a timely fashion, she or he will appoint another person(s) from the Staff Advisory Council recommended pool of eight (8) staff members. The staff committee must hold a hearing concerning the sanctions within fourteen (14) days of receiving the accused request for hearing from the provost. The staff committee must provide a written recommendation to the provost within seven (7) days of the conclusion of the hearing. Within seven (7) days of receiving the recommendation of the staff committee, the provost will then provide a final written statement of sanctions to the accused, the accused’s supervisor, the ADHRER, and, in cases involving sex discrimination or sexual harassment, the university’s Title IX Deputy Officer or Title IX Officer as applicable or in case of disabilities discrimination or harassment, the 504 Officer.