

EXECUTIVE SUMMARY

Item Name: Proposed New Board Policy 1-119 “Nondiscrimination and Anti-Harassment” and Repeal of Board Policies 1-110 “Accommodation of Religious Observance and Practice” and 6-707 “Sexual Harassment” (First Reading)

Action Item Discussion Item Information Item

<p>Issue: The Board is asked to review on first reading the proposed new Board Policy 1-119 which updates and locates all of the nondiscrimination and anti-harassment provisions in one Board Policy titled “Nondiscrimination and Anti-Harassment” and the repeal of Board Policies 1-110 and 6-707.”</p>
--

Background

- Currently the Board has several policies that address aspects of nondiscrimination and anti-harassment, including Board Policy 1-110 “Accommodation of Religious Observance and Practice” and 6-707 “Sexual Harassment.”
- This proposal will update and locate all of the nondiscrimination and anti-harassment provisions in one Board policy titled “Nondiscrimination and Anti-Harassment.” Locating this policy in Chapter I “General Provisions” rather than Chapter VI “Personnel Policies” will reinforce the broad application of these provisions to employees, students and members of the public.

Statutory/Policy Requirements

- The revisions proposed in this executive summary comply with applicable state and federal law.

Strategic Implications

- The proposed revision will clarify Board policy and help to avoid confusion by combining multiple provisions into a single policy.

Contact information:

Nancy Tribbensee

602-229-2510

trib@azregents.edu

EXECUTIVE SUMMARY

Discussion

- The proposed new policy will:
 - encompass all forms of prohibited discrimination and include anti-harassment and anti-retaliation provisions;
 - include a reference to the Genetic Information Nondiscrimination Act of 2008, which prohibits the discriminatory use of genetic information and which goes into effect on November 21, 2009;
 - define discrimination, harassment and retaliation;
 - require appropriate religious and disability accommodations as provided by law;
 - provide information on filing discrimination complaints and clarify that filing complaints with outside agencies will not affect the internal process;
 - address confidentiality; and
 - describe responsibilities for all individuals, for supervisors, and for complainants.

The issues now addressed in current Board Policies 6-707 and 1-110 are subsumed in this new policy so those policies will be repealed.

The proposed revisions are attached.

Committee Review:

The Human Resources Committee reviewed at its September 9, 2009 meeting and recommends Board approval.

Recommendation to the Board

The Board is asked to review on First Reading the proposed new Board Policy 1-119 "Nondiscrimination and Anti-Harassment" and the repeal of Board Policies 1-110 "Accommodation of Religious Observance and Practice" and 6-707 "Sexual Harassment" as described in this executive summary.

EXECUTIVE SUMMARY

1-119 NONDISCRIMINATION AND ANTI-HARASSMENT

A. THE POLICY

THE ARIZONA BOARD OF REGENTS AND THE UNIVERSITIES ARE COMMITTED TO CREATING AND MAINTAINING A UNIVERSITY SYSTEM IN WHICH STUDENTS AND EMPLOYEES CAN WORK AND LEARN TOGETHER IN AN ENVIRONMENT THAT IS FREE OF UNLAWFUL DISCRIMINATION, HARASSMENT, AND RETALIATION. THE BOARD AND THE UNIVERSITIES PROHIBIT unlawful DISCRIMINATION, HARASSMENT, AND RETALIATION, BY EMPLOYEES, STUDENTS, CONTRACTORS, OR AGENTS OF THE BOARD AND THE UNIVERSITIES BASED ON A PROTECTED CLASSIFICATION, INCLUDING RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, DISABILITY, VETERAN STATUS, SEXUAL ORIENTATION, AND GENDER IDENTITY. THE BOARD AND THE UNIVERSITIES ALSO SHALL COMPLY WITH THE GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008.

B. APPLICATION OF POLICY

1. THIS POLICY APPLIES TO ALL BOARD AND UNIVERSITY EMPLOYEES IN ALL ASPECTS OF THEIR EMPLOYMENT RELATIONSHIP WITH THE BOARD OR UNIVERSITIES; ALL UNIVERSITY STUDENTS IN ALL ASPECTS OF THEIR RELATIONSHIP WITH THE UNIVERSITIES RELATED TO EDUCATIONAL PROGRAMS, ACTIVITIES, OPPORTUNITIES, AND BENEFITS; AND ALL PERSONS PARTICIPATING IN OR ACCESSING BOARD OR UNIVERSITY SPONSORED PROGRAMS AND ACTIVITIES.
2. EACH UNIVERSITY PRESIDENT AND THE EXECUTIVE DIRECTOR OF THE BOARD SHALL MAINTAIN POLICIES AND PROCEDURES TO ADDRESS, INVESTIGATE, AND PROMPTLY REMEDY COMPLAINTS OF DISCRIMINATION, HARASSMENT, AND RETALIATION AS PROHIBITED BY THIS POLICY.
3. THE BOARD AND THE UNIVERSITIES SHALL PROVIDE REASONABLE RELIGIOUS ACCOMMODATIONS AND ACCOMMODATIONS FOR PERSONS WITH DISABILITIES AS REQUIRED BY LAW.

EXECUTIVE SUMMARY

C. DEFINITIONS

1. DISCRIMINATION

DISCRIMINATION IS DEFINED IN FEDERAL AND STATE LAW. IN GENERAL, UNLAWFUL DISCRIMINATION IS A FAILURE TO TREAT PERSONS EQUALLY IF THE MOTIVATION FOR TREATING A PERSON DIFFERENTLY IS BASED, AT LEAST IN PART, ON A STATUS PROTECTED UNDER APPLICABLE LAW OR POLICY.

2. HARASSMENT

HARASSMENT IS A SPECIFIC FORM OF DISCRIMINATION. IT IS UNWELCOME BEHAVIOR, WHETHER OR NOT BASED ON A PROTECTED CLASSIFICATION, THAT IS SUFFICIENTLY SEVERE OR PERVASIVE TO CREATE AN INTIMIDATING, HOSTILE, OR OFFENSIVE ENVIRONMENT FOR ACADEMIC PURSUITS, EMPLOYMENT, OR PARTICIPATION IN BOARD OR UNIVERSITY SPONSORED PROGRAMS OR ACTIVITIES. ADDITIONALLY, SEXUAL HARASSMENT, WHETHER BETWEEN INDIVIDUALS OF THE SAME OR DIFFERENT SEX, INCLUDES UNWELCOME CONDUCT OF A SEXUAL NATURE THAT IS MADE, EITHER EXPLICITLY OR IMPLICITLY, A CONDITION OF AN INDIVIDUAL'S EDUCATION, EMPLOYMENT, OR PARTICIPATION IN BOARD OR UNIVERSITY SPONSORED PROGRAMS OR ACTIVITIES, OR THE SUBMISSION TO OR REJECTION OF SUCH CONDUCT IS A FACTOR IN DECISIONS AFFECTING THAT INDIVIDUAL'S EDUCATION, EMPLOYMENT, OR PARTICIPATION IN BOARD OR UNIVERSITY SPONSORED PROGRAMS OR ACTIVITIES.

2. RETALIATION

RETALIATION IN THE CONTEXT OF NON-DISCRIMINATION AND ANTI-HARASSMENT OCCURS WHEN AN ADVERSE ACTION IS TAKEN AGAINST AN INDIVIDUAL FOR ENGAGING IN PROTECTED ACTIVITY. PROTECTED ACTIVITY CONSISTS OF: (1) OPPOSING CONDUCT REASONABLY BELIEVED TO CONSTITUTE DISCRIMINATION, INCLUDING HARASSMENT, WHICH VIOLATES AN EMPLOYMENT DISCRIMINATION STATUTE OR WHICH BOARD OR UNIVERSITY POLICY PROHIBITS; OR (2) FILING A COMPLAINT ABOUT SUCH PRACTICE; OR (3) SEEKING AN ACCOMMODATION UNDER THIS POLICY; OR (4) TESTIFYING, ASSISTING, OR

EXECUTIVE SUMMARY

PARTICIPATING IN ANY MANNER IN AN INVESTIGATION OR OTHER PROCEEDING RELATED TO A DISCRIMINATION COMPLAINT. ADVERSE ACTIONS THAT ARE REASONABLY LIKELY TO DETER A COMPLAINING INDIVIDUAL OR OTHERS FROM ENGAGING IN PROTECTED ACTIVITY ARE PROHIBITED.

D. RESPONSIBILITIES

1. ALL INDIVIDUALS IDENTIFIED IN SECTION B.1. OF THIS POLICY ARE RESPONSIBLE FOR PARTICIPATING IN CREATING AND MAINTAINING A SYSTEM ENVIRONMENT FREE FROM ALL FORMS OF PROHIBITED DISCRIMINATION, INCLUDING HARASSMENT AND RETALIATION, AND FOR COOPERATING WITH BOARD AND UNIVERSITY OFFICIALS WHO INVESTIGATE ALLEGATIONS OF VIOLATIONS OF THIS POLICY.
2. INDIVIDUALS CHARGED WITH SUPERVISORY AUTHORITY ARE REQUIRED TO ENGAGE IN APPROPRIATE MEASURES TO PREVENT VIOLATIONS OF THIS POLICY. INDIVIDUALS CHARGED WITH SUPERVISORY AUTHORITY WHO ARE INFORMED OF OR WHO HAVE A REASONABLE BASIS TO BELIEVE THAT A VIOLATION OF THIS POLICY HAS OCCURRED ARE REQUIRED TO PROMPTLY REPORT IT TO THE INDIVIDUAL OR OFFICE DESIGNATED BY EACH UNIVERSITY PRESIDENT OR, IF APPLICABLE, THE BOARD'S EXECUTIVE DIRECTOR FOR INVESTIGATION. SUPERVISORY INACTION MAY BE CAUSE FOR DISCIPLINARY ACTION.
3. AN INDIVIDUAL BELIEVING THAT HE OR SHE HAS BEEN SUBJECTED TO DISCRIMINATION, HARASSMENT, OR RETALIATION IN VIOLATION OF THIS POLICY SHOULD REPORT THE MATTER IMMEDIATELY TO THE UNIVERSITY IN ACCORDANCE WITH THE POLICIES AND PROCEDURES IN PLACE AT THAT UNIVERSITY. COMPLAINTS ABOUT ALLEGED VIOLATIONS OF THIS POLICY BY ANY BOARD EMPLOYEES SHOULD BE REPORTED TO THE EXECUTIVE DIRECTOR OF THE BOARD OR, IF THAT IS NOT PRACTICABLE, TO THE GENERAL COUNSEL OR THE PRESIDENT OF THE BOARD.

E. CONFIDENTIALITY AND OUTSIDE FILING

1. ALL BOARD AND UNIVERSITY EMPLOYEES WHO, IN THEIR ADMINISTRATIVE CAPACITY, RECEIVE REPORTS OF

EXECUTIVE SUMMARY

DISCRIMINATION, HARASSMENT, OR RETALIATION SHALL MAINTAIN THE CONFIDENTIALITY OF THE INFORMATION THEY RECEIVE, EXCEPT WHERE DISCLOSURE IS REQUIRED BY LAW OR IS NECESSARY TO FACILITATE LEGITIMATE BOARD OR UNIVERSITY PROCESSES, INCLUDING THE REPORTING, INVESTIGATION, AND RESOLUTION OF DISCRIMINATION, HARASSMENT, OR RETALIATION ALLEGATIONS.

2. AN INDIVIDUAL'S FILING WITH ANY OUTSIDE AGENCY WILL NOT AFFECT ANY BOARD OR UNIVERSITY INVESTIGATION CONCERNING THE SAME OR SIMILAR EVENTS.

EXECUTIVE SUMMARY

1-110 Accommodation of Religious Observance and Practice

- A. ~~No employee, agent, or institution under the jurisdiction of the Arizona Board of Regents shall discriminate against any student, employee, or other individual, because of such individual's religious belief or practice or any absence thereof.~~
- B. ~~Administrators and faculty members are expected to reasonably accommodate individual religious practices. A refusal to accommodate is justified only when undue hardship would result from each available alternative of reasonable accommodation.~~
- C. ~~No administrator or faculty member shall retaliate or otherwise discriminate against any student, employee or prospective employee because that individual has sought a religious accommodation pursuant to this policy.~~
- D. ~~It is the responsibility of the president of each university, and the executive director of the Board as to the central staff, to take such actions as are necessary to insure that the intent of this policy is implemented. In implementing this policy, the president of each university shall insure that the policy is included in the university catalog and in such other publications as will assure that all members of the university community are advised of its existence, and the manner in which information regarding its implementation may be obtained.~~

REPEALED.

EXECUTIVE SUMMARY

6-707 Sexual Harassment

A. ~~The Policy~~

~~The Arizona Board of Regents and the universities prohibit sexual harassment by employees and students. The Board is committed to creating and maintaining a university system in which students and employees can work and learn together in an environment that is free of objectionable and disrespectful conduct of a sexual nature. Under Board policy, the universities will take whatever action is needed to prevent, correct and, if necessary, discipline persons whose behavior violates this policy.~~

B. ~~Application of Policy~~

~~1. Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (a) submission to such conduct is either explicitly or implicitly made a term or condition of an individual's employment, education, or participation in a Board or university activity; (b) submission to, or rejection of, such conduct by an individual is used as a basis of employment or education decisions affecting such individual; or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work, education, or participation, in Board or university activities or creating an intimidating, hostile, or offensive environment.~~

~~Each university president and the Executive Director of the Board shall maintain grievances and disciplinary procedures to allow for the resolution of complaints under this policy and protect the interest of all parties involved.~~

~~2. Sexual harassment by anyone, including those who are authorized to recommend or take action affecting employees or students, is prohibited and may be cause for dismissal.~~

~~3. Retaliatory action against a person for filing a sexual harassment complaint is prohibited.~~

~~4. Anyone charged with supervisory authority who receives a complaint of sexual harassment or who has knowledge of a violation of this policy shall promptly take action to assure adherence of this policy and/or promptly report it to the person designated by each university president or the Board's Executive~~

EXECUTIVE SUMMARY

~~Director for investigation. Inaction may be cause for disciplinary action.~~

- ~~5. All parties involved in a sexual harassment charge shall have the right to confidentiality insofar as it does not interfere with the legal obligation of the Board and/or the universities to investigate allegations of misconduct and take corrective actions.~~

REPEALED.