

Policy 1324
Discrimination and Harassment (Other than Sexual Harassment and Misconduct)

Date of Current Revision: August 2016
Primary Responsible Officer: Office of Equal Opportunity

1. PURPOSE

This policy sets out the university's commitment to providing a workplace and learning environment free from illegal discrimination and harassment. The university's nondiscrimination policy is in Policy [1302](#). This policy also provides procedures for university community members and visitors to file internal complaints alleging discrimination or harassment against any employee or affiliate of the university, or against any visitor whose discrimination or harassment interferes with the complainant's workplace or learning environment. The policy and procedures for complaints concerning harassment and misconduct on the basis of sex, sexual orientation, gender and gender identity, including sexual assault, sexual misconduct, and sexual violence, can be found in Policy [1340](#). Procedures for complaints filed against students can be found in the [JMU Student Handbook](#).

2. AUTHORITY

The Board of Visitors has been authorized by the Commonwealth of Virginia to govern James Madison University. See Code of Virginia section 23-164.6; 23-9:3. The Board has delegated the authority to manage the university to the president.

STATE OR FEDERAL STATUTE AND / OR REGULATION

This policy is written in accordance with Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§2000d and e), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681, et seq.), the Age Discrimination in Employment Act (29 U.S.C. § 621 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.) the ADA Amendments Act of 2008 (ADAAA) (42 U.S.C. § 12,101 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 USC section 791, et seq.), the Equal Pay Act 929 U.S.C. § 206 et seq.), as well as the Virginia Human Rights Act (Code of Virginia §2.2-3900 et seq).

3. DEFINITIONS

Affiliate

An individual who has a formal affiliation with the university under the terms of Policy [1337](#).

Complainant

A university community member or visitor who has been subjected to alleged discrimination or harassment, or who files a formal complaint under this policy.

Complaint

The signed and written document used to file a formal complaint under this policy.

Complaint Commencement Date

The date on which the complainant files the written and signed complaint under this policy.

Day

A calendar day. When a substantial portion of a specified period of days falls on a weekend or during a period of time when the university is closed, that portion of the time period shall not be counted, and the time period shall be extended by the number of days falling when the university is

closed. Weekends are not considered substantial periods of time, and will not be added to extend a deadline. If a time period is set to end on a day when the university is closed, the time period shall be extended to end when the university reopens. Examples: A specified time period will not end during winter break or when the university is closed for inclement weather. A five day time period set to begin the first day of winter break will be extended by the number of days for the scheduled winter break, so that the time will actually begin to run upon the first day after winter break. A deadline that falls on a day when the university is closed for inclement weather will be extended until the next day the university opens for business.

Director of Equal Opportunity (DEO)

The person designated by the University to review claims of discrimination and harassment, other than complaints of sexual harassment and misconduct (which are reviewed by the University's Title IX Office). The University's ADA Coordinator and Section 504 Coordinator is the Director of the Office of Equal Opportunity.

Discrimination

An adverse action or unequal treatment when such action deprives a person of a privilege or right (such as a benefit, an equitable evaluation, a grade, a position or a promotion) or otherwise adversely affects the person on the basis of a protected classification. For the purposes of this policy, discrimination also includes retaliation for filing a complaint and harassment on the basis of a protected classification. It also includes denial of a reasonable accommodation for a disability. For the policy on sexual harassment and misconduct, see Policy [1340](#).

Faculty Member

An instructional or Administrative and Professional (A&P) faculty member employed by the university.

Harassment

For the purposes of this policy, a form of discrimination consisting of unwelcome or offensive physical, oral or written conduct that shows aversion or hostility toward a person on the basis of age, color, disability, genetic information, national origin, parental status, political affiliation, race, religion, or veteran status. Harassment may also include behavior directed toward stereotypical notions of how a person in a protected classification should appear or behave, or a failure to conform to stereotypes. Harassment is prohibited in the following situations:

1. Term or condition of employment or education. This type of harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a university activity are conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome conduct, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a university program or activity.
2. Hostile environment. This type of harassment occurs when the actions of another create a hostile environment, as defined herein.

Hostile Environment

A hostile environment is created by oral, written, graphic or physical conduct that is sufficiently severe, persistent or pervasive and objectively offensive that it interferes with, limits or denies the ability of a person to participate in or benefit from the institution's educational programs, services, opportunities, or activities or the individual's employment access, benefits or opportunities. Mere subjective offensiveness is not enough to create a hostile environment. In determining whether conduct is severe, persistent or pervasive, and thus creates a hostile environment, the following factors will be considered: (a) the degree to which the conduct affected one or more individuals'

education or employment; (b) the nature, scope, frequency, duration, and location of the incident(s); (c) the identity, number, and relationships of persons involved; (d) the perspective of a “reasonable person” in the same situation as the person subjected to the conduct, and (e) the nature of higher education. A hostile environment for a member of the university community can be created by the actions of an employee, a student, an affiliate or a visitor.

Protected Classification

A person's age, color, disability, gender identity, genetic information, national origin, parental status, political affiliation, race, religion, sex, sexual orientation or veteran status. See Policy [1302](#).

Respondent

An employee or affiliate of the university or visitor who is accused of discrimination or harassment, or against whom a complaint under this policy is filed.

Retaliation

Overt or covert acts of discrimination, harassment, interference, intimidation, penalty, reprisal or restraint against a group or individual exercising rights under this policy. Retaliation shall be deemed to constitute harassment and, therefore, will be considered a separate violation of this policy.

Staff Member

A full or part-time classified employee or wage employee.

University Community Member

An individual employed or affiliated with the university in one or more of the following full-or part-time capacities:

- Administrative and Professional (A&P) faculty member
- Classified employee or other employee (such as wage or part-time)
- Instructional faculty member
- Affiliate
- Student (graduate or undergraduate)

Visitor

For the purposes of this policy, a person who is not enrolled at, compensated by, or an affiliate of the university, but is engaged in a university-sponsored or contracted working or learning activity.

4. APPLICABILITY

This policy applies when a member of the university community or visitor reasonably believes that he or she has been subjected to harassment or discrimination by an employee or affiliate of the university, or a member of the university community reasonably believes that he or she has been subjected to harassment or discrimination by a visitor. All acts of discrimination are covered under this policy, and all acts of harassment, other than on the basis of sex, sexual orientation, gender and gender identity, are also covered, provided that at least a substantial portion of the alleged wrongful behavior either occurred on university-controlled, university-leased or university-owned property or otherwise had a significant connection to or effect on the activities of the university or the learning or working environment for the complainant. Sexual harassment and misconduct is covered under Policy [1340](#).

A person who is no longer a member of the university community or a visitor, but who was when at least a substantial portion of the alleged wrongful behavior occurred, is eligible to file a complaint. A complaint filed by a complainant who has no further connection with the university or against a respondent who has no further connection with the university may be dismissed by the DEO if the

university has no means to take appropriate steps to eliminate the harassment, prevent its recurrence, or address its effects.

This policy applies to any student acting in the capacity of a university employee. Any allegation of harassment or discrimination against a student (except in the student's capacity as a university employee) should be reported to the Office of Student Accountability and Restorative Practices for disposition pursuant to the Student Accountability Process as set forth in the JMU Student Handbook. Any allegation of harassment or misconduct on the basis of sex, sexual orientation, gender or gender identity should be addressed under the terms of Policy [1340](#).

5. POLICY

The university is committed to providing a work and learning environment that is free from discrimination or harassment based on protected criteria. The university does not discriminate and will not tolerate discrimination or harassment on the basis of age, color, disability, gender identity, genetic information, national origin, parental status, political affiliation, race, religion, sex, sexual orientation or veteran status. Conduct by a member of the university community or a visitor that constitutes discrimination or harassment on the basis of any protected class is a violation of university policy and is sanctionable.

This policy applies in the employment relationship, including job application procedures, hiring, advancement, discharge, compensation, job training, or other terms and conditions of employment. It applies in the educational relationship with students, including application procedures, admissions, grades, discipline, dismissal, or other terms and conditions of matriculation. It applies in services that are provided by the university to students or other individuals, including visitors. It is also a violation of this policy to retaliate against or harass an individual who files charges or participates in proceedings under this policy.

Any member of the university community or visitor who is subjected to discrimination by an employee, affiliate or visitor on the basis of any protected classification may bring a complaint under this policy to address the situation. Any member of the university community or visitor who is subjected to harassment by an employee, affiliate or visitor on the basis of any protected classification other than sex, sexual orientation, gender or gender identity may bring a complaint under this policy to address the situation. Complaints concerning harassment or misconduct on the basis of sex, sexual orientation, gender or gender identity may be brought under policy [1340](#).

6. PROCEDURES

6.1 Informal Resolution Attempts

6.1.1. Before bringing a complaint to the DEO, the complainant is encouraged to discuss the complaint with the respondent to attempt to resolve it. If the complainant does not feel comfortable discussing the matter directly with the respondent, the complainant is encouraged to discuss the matter promptly with any of the following university resources, who may assist with an informal resolution:

- The DEO
- The complainant's supervisor
- Human Resources staff member
- The respondent's supervisor

Additionally, the following university offices may provide information to the complainant, although they are not equipped to assist with an informal resolution:

- A Counseling and Student Development Center staff member
- The faculty ombudsperson
- The student ombudsperson

Any university official contacted by a complainant is encouraged to communicate the general nature of the matter to the DEO to assist the DEO in developing effective campus educational programs and assessing the campus climate. If necessary, the identities of parties involved may be withheld.

6.1.2. If the complainant meets informally with any university official and asks that the information disclosed be kept confidential, the university official contacted informally by the complainant must determine whether to keep the information confidential or whether it must be communicated to the DEO to protect the university. The official is encouraged to contact the DEO, who can assist the official in that determination. The official should give the complainant information about support resources available to him or her.

6.1.3. If any discussions between the complainant and the respondent or between the complainant and any other university official do not lead to a resolution that is satisfactory to the complainant or if the complainant does not pursue such discussions, the complainant should contact the DEO not later than 30 days after the last date of behavior that constitutes discrimination or harassment. Failure to make a timely report to the DEO may impede the university's ability to effectively investigate the charge, but such failure will not prohibit the complainant from filing a formal complaint, as long as such complaint is timely filed under 6.2.1.

When the complainant contacts the DEO, that person will discuss with the complainant the procedures that will be followed with respect to any ensuing investigation, resolution attempts and referral for a potential hearing. The DEO will advise the appropriate vice president (organizationally above the respondent) of the existence of the complaint, whether it is formal or informal. If the respondent is a visitor, the DEO will advise the vice president over the university-sponsored or contracted working or learning activity in which the visitor is engaged.

6.1.4. If the complainant decides not to file a formal complaint of discrimination, the DEO will advise the appropriate vice president that no complaint was filed, and the matter will be closed.

6.1.5. If an investigation into potential discrimination or harassment reveals information that indicates that the policy applies and that the evidence justifies a preliminary finding of a violation of the policy, the DEO will advise the complainant, respondent, and the respondent's supervisor or sponsoring department of the preliminary finding. The appropriate vice president (organizationally above the respondent) will also receive notice of the finding. If the respondent is a visitor, the DEO will advise the vice president over the university-sponsored or contracted working or learning activity in which the visitor is engaged.

6.1.6. If the investigation into potential discrimination or harassment reveals information that indicates that the policy does not apply or that the evidence does not justify a preliminary finding of a violation of the policy, the DEO will advise the respondent's supervisor or sponsoring department that the informal complaint will be dismissed. The DEO will inform the complainant and the respondent that the informal charge is dismissed. This decision is final and may not be appealed.

6.1.7. If the complainant decides to file a formal complaint, the DEO may, with the permission of the complainant, contact the respondent and attempt to help bring about a resolution. The DEO may suggest that the complainant and the respondent participate in mediation, but participation is not mandatory. Mediation is entirely voluntary, and failure to participate in mediation shall not be considered adversely against either the complainant or the respondent in any ensuing investigation or hearing.

6.2 Complaint Process

6.2.1. The formal complaint must be filed by the complainant not later than 180 days after the last date of discriminatory or harassing behavior by providing the DEO with a signed, written document detailing the allegations, naming the respondent and providing as much detail as possible about the charges. The DEO may extend this period to no more than 300 days if an informal resolution procedure under 6.1.6 is in progress. A formal complaint may not be filed anonymously or on behalf of another person. The DEO will confirm the complaint commencement date with the complainant in writing and will notify the respondent and the DEO, supplying both with a copy of the complaint.

6.2.2. Upon receipt of the complaint, the DEO shall determine whether this policy applies and will dismiss a complaint if the policy does not apply. The DEO will notify the complainant, the respondent and the respondent's supervisor in writing of the dismissal. A decision by the DEO that this policy does not apply is final and may not be appealed.

By way of example, the DEO may find that this policy does not apply upon determining any of the following:

- 1) That even if the complainant's allegations are true, the respondent's conduct would not constitute harassment or discrimination as defined in this policy.
- 2) That the alleged conduct did not occur on university-owned, university-leased or university-controlled property, or did not otherwise have a significant connection to the activities of the university or the working or learning environment for the complainant.
- 3) That the complainant or respondent is not a university community member or a visitor with whom the university has any continuing relationship or over whom the university has any control.
- 4) That the complaint was not timely filed.
- 5) That the complainant was not the party harmed by the discrimination or harassment, and the party harmed cannot be identified or has no interest in pursuing the matter.

This list is not exclusive, and other situations may result in the DEO determining that the policy does not apply.

6.2.3. If the DEO determines that this policy applies, the DEO shall conduct an investigation of the complaint in any manner the DEO deems appropriate. All members of the university community are required to cooperate in the investigation.

6.2.4. Not later than 60 days after the complaint commencement date, the DEO shall provide the appropriate office with authority over the respondent (i.e., the supervisor for an employee or the sponsoring department for an affiliate or a visitor) with a confidential written report of the DEO's preliminary findings, with a copy to the appropriate vice president organizationally above the respondent. If the respondent reports under the president's office rather than under a vice president, the president will be notified. If the respondent is a visitor, the DEO will advise the vice president over the university sponsored or contracted working or learning activity in which the visitor is engaged. For sufficient cause, this date may be extended, and failure to complete the investigation or the report shall not serve as a dismissal of the complaint. The DEO will report to the appropriate office his or her preliminary finding by the DEO on whether the respondent violated this policy. Any such preliminary finding by the DEO shall be based on a preponderance of the evidence available. Such a preliminary finding is not binding on the fact-finders in any subsequent misconduct hearing or

procedure. Its function is entirely advisory to the appropriate office concerning the office's subsequent handling of the allegations in the appropriate process. It is then up to the appropriate office to determine what steps to take, including whether to institute disciplinary procedures against the respondent for misconduct, subject to review by the appropriate vice president.

6.2.5. The university may take appropriate interim steps before any formal misconduct charges, such as separating the complainant and the respondent, providing counseling for the complainant and/or respondent, or issuing no contact orders to both parties.

6.2.6. A classified staff member may be disciplined or discharged for violation of this policy under the Policy [1317](#)-Standards of Conduct and Performance for Classified Employees. A wage employee may be disciplined or discharged for violation of this policy under the terms of Policy [1325](#)-Wage Employment. An A&P faculty member may be disciplined or discharged for violation of this policy under the terms of Policy [1335](#) -Administrative & Professional Faculty - Terms and Conditions of Employment. An affiliate may have his/her status as affiliate removed for violation of this policy under the terms of Policy [1337](#)-Affiliates. An instructional faculty member may be disciplined or discharged for violation of this policy under the terms of the Faculty Handbook, [Section III.A.25](#). A visitor may be issued a no-trespass order for a violation of this policy, based on a decision by the vice president over the university-sponsored or contracted working or learning activity in which the visitor is engaged.

6.2.7. If the DEO finds by a preponderance of the evidence available that the evidence does not justify such a preliminary finding of violation, the DEO will dismiss the complaint and will send a notice of such dismissal to the complainant, the respondent, the DEO and the appropriate vice president organizationally above the respondent. If the respondent reports under the president's office rather than under a vice president, the president will be notified. The DEO's decision to dismiss the complaint is final and may not be appealed.

6.2.8. If the DEO finds that the evidence justifies a preliminary finding of violation, the DEO will notify the appropriate vice president organizationally above the respondent, the complainant and the respondent that he or she is referring the complaint to the appropriate office for potential further proceedings. If the respondent reports under the president's office rather than under a vice president, the president will be notified. If the respondent is a visitor, the DEO will advise the vice president over the university-sponsored or contracted working or learning activity in which the visitor is engaged.

6.2.9. The DEO will serve as a resource for any hearing officer or body who is charged with conducting a hearing or reaching a decision on the issue of the respondent's misconduct under the terms of this policy. Upon request, the DEO may serve in an advisory capacity in any such hearing or meeting.

6.3 Other Provisions:

6.3.1. Exceptions to Provisions. It is not intended that the outcome of a complaint be determined by a procedural violation that does not unduly prejudice the complainant or the respondent. Therefore, the DEO, the appropriate vice president organizationally above the respondent or the appropriate office to whom the case is referred may make exceptions to the provisions (including time deadlines) of this policy provided, however, that any exception is intended to bring about a just outcome and does not unreasonably adversely affect another participant in the process. If the respondent reports under the president's office rather than under a vice president, the president may make appropriate exceptions.

6.3.2. Confidentiality, Other Consequences. All participants in all proceedings under this policy will observe confidentiality to the extent reasonably possible. However, in the event of any final determination of a violation of this policy, the appropriate vice president organizationally above the respondent will provide information about the final determination to appropriate university officials and to the complainant and respondent. If the respondent reports under the president's office rather than under a vice president, the president will provide this information. The university may also use any information obtained in the proceedings to defend itself against any claims, complaints or allegations brought against it.

6.3.3. Education. The DEO may provide educational materials to appropriate university officials and community members in order to enable them to better fulfill their responsibilities under this policy.

6.3.4. Suspension Pending Outcome. Pending the outcome of any investigation and pending the completion of the procedures in this policy and in the policies concerning misconduct referenced herein, any member of the university community charged with discrimination or harassment may be temporarily suspended from employment and/or issued a no-trespass notice banning the person from campus. Additionally, any person charged through a formal or informal complaint under this policy will be notified that retaliation is prohibited and may result in a separate charge under the policy.

6.3.5. Attorneys in Procedures. The complainant and the respondent have the right to obtain advice of private counsel concerning this policy and the procedures in it. However, the role of counsel is purely advisory in this policy and procedure, and absent exceptional circumstances attorneys are not to be active participants in the process. The DEO, the administrators involved in the decisions, and any committees operating under this policy and procedures shall have access to advice from the Legal Services Office for the university.

7. RESPONSIBILITIES

University community members and visitors are responsible for behaving in a nondiscriminatory and non-harassing manner toward other university community members and visitors, and are responsible for abiding by the terms of this policy.

The DEO is responsible for accepting and investigating complaints under this policy, determining the applicability of this policy to specific complaints, investigating complaints and making preliminary determinations of violations, notifying the appropriate vice president (organizationally above the respondent) of complaints, making recommendations, and disseminating information as provided in this policy.

The employee respondent's supervisor is responsible for determining whether a report and recommendation under this policy should be handled through the misconduct procedures for an employee.

The sponsoring department is responsible for determining whether an affiliate's status should be revoked for violation of this policy.

The vice presidents are responsible for making final decisions concerning referral of all complaints filed against members of the university community under their division. If the respondent is a visitor, the vice president over the university-sponsored or contracted working or learning activity in which the visitor is engaged is responsible for making a determination concerning an alleged violation of this policy. If the respondent reports under the president's office rather than under a vice president, the president will be responsible for making the final decision.

8. SANCTIONS

Sanctions will be commensurate with the severity and/or frequency of the offense and may include termination of employment, removal of affiliate status, exclusion from future learning or working opportunities at the university, and/or issuance of a no-trespass notice.

9. EXCLUSIONS

9.1. This policy does not provide procedures for complaints filed against students. Any member of the university community who is subjected to alleged harassment by a student may bring a complaint under the terms of the Student Code of Conduct. See [J16-100 Harassment and/or Bullying](#).

9.2 This policy does not provide procedures for complaints filed concerning sexual harassment or misconduct. Any member of the university community who is subjected to alleged sexual harassment or misconduct may bring a complaint under the terms of Policy [1340](#).

9.3. Even if an allegation of harassment or discrimination is one of the exclusions from the scope of this policy, any affected person may discuss it with the DEO.

10. INTERPRETATION

The authority to interpret this policy rests with the president and is generally delegated to the DEO.

Previous Version: March 2013

Approved by the President: August 2016