

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

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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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.

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

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>.

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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.
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

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>.

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/qa-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/qa-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/qa-201404-title-ix.pdf>.

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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.

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/qa-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>.