

## The Hannah E. Mullins School of Practical Nursing

### NON-DISCRIMINATION AND ANTI-HARASSMENT POLICIES AND PROCEDURES

#### NOTICE OF NON-DISCRIMINATION

The Hannah E. Mullins School of Practical Nursing (HEMSPN) does not discriminate on the basis of race, age, creed, color, sex, gender identity and expression, pregnancy, disability, religion, sexual orientation, genetic information, military status, veteran status, familial status, national origin, or any other protected category under applicable local, state or federal law, ordinance, or regulation in its programs and activities (collectively, “Protected Traits”). Such laws include, but are not limited to, Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Aged Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, the Genetic Information Nondiscrimination Act, and Ohio Revised Code Chapter 4112.

Federal regulations require specific processes when allegations of sexual discrimination may constitute sexual harassment under Title IX of the Educational Amendments of 1972. HEMSPN has adopted a Policy entitled *Policy Prohibiting Sex Discrimination, Sexual Harassment, Stalking and Retaliation* to outline the policies and procedures that HEMSPN will use to address reports of conduct that constitute sexual harassment as defined by Title IX and its implementing regulations (“Title IX sexual harassment”). HEMSPN does not discriminate in its education program or activities, which include admission to and employment at HEMSPN.

HEMSPN has also adopted a grievance procedure to provide the prompt and equitable resolution of student and employee complaints of Title IX sexual harassment which is contained in the *Policy Prohibiting Sex Discrimination, Sexual Harassment, Stalking and Retaliation*. This procedure also describes how members of HEMSPN’s community can report or file a complaint of sexual harassment, and will outline how HEMSPN will respond to these reports and formal complaints.

More information about prohibited conduct (that does not constitute Title IX sexual harassment), and the means by which individuals that experience such conduct may make a report, can be found in this policy. When informed of Prohibited Conduct as defined by this policy, HEMSPN will take prompt action to eliminate the harassment or discrimination, prevent its recurrence, and remedy its effects.

The following person has been designated as the Coordinator to handle inquiries regarding HEMSPN’s non-discrimination and anti-harassment policies:

Title IX Coordinator:

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The Coordinator may designate any responsibility or task assigned to them under this policy to an appropriate individual, including individuals not employed by HEMSPN. If for any reason the Coordinator cannot be impartial with regard to a particular case, the Director shall assign a Coordinator for the case in question.

For further information, individuals may also contact the U.S. Department of Education's Office for Civil Rights at (800) 421-3481, the Ohio Civil Rights Commission at (888) 278-7101, or the Equal Employment Opportunity Commission at (800) 669-4000.

## **SCOPE OF THE POLICY**

This policy prohibits Prohibited Conduct, described below, that:

- Occurs on HEMSPN property;
- Occurs in relation to an official HEMSPN program or activity (regardless of location); or
- Has continuing adverse effects on HEMSPN property or on any member of the HEMSPN community.

## **PROHIBITED CONDUCT**

### **Discrimination on the Basis of a Protected Trait**

Discrimination on the basis of a Protected Trait occurs when a behavior or policy has the purpose or effect of excluding an individual from participation in, denying an individual the benefits of, or being subjected to discrimination under any academic, extracurricular, employment, enrollment, or other program or activity of HEMSPN on the basis of a Protected Trait of that individual. This includes the following when based on a Protected Trait of a person:

- Treating one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
- Providing different aid, benefits, or services or providing aid, benefits, or services in a different manner;
- Denying any person any such aid, benefit, or service;
- Subjecting any person to separate or different rules of behavior, sanctions or other treatment;
- Aiding or perpetuating discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of a Protected Trait in providing any aid, benefit, or service to students or employees; or
- Otherwise limiting any person in the enjoyment of any right, privilege, advantage, or opportunity.

Discrimination on the Basis of a Protected Trait does not include the provision of reasonable accommodations to individuals who are otherwise qualified to participate in HEMSPN's programs, services, or employment opportunities. Individuals seeking reasonable accommodations may contact the Coordinator for more information. Discrimination on the Basis of a Protected Trait also does not include other behavior that is permissible under federal and state laws, regulations, and guidance, for example the offering of or participation in programs for the benefit of veterans and/or military personnel.

### **Harassment on the Basis of a Protected Trait**

Harassment on the Basis of a Protected Trait is unwelcome conduct on the basis of a Protected Trait where:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, grade, or participation in a program, course, or activity;
- Submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting an individual; or

- Such conduct is sufficiently pervasive, offensive, or abusive to have the purpose or effect of unreasonably interfering with an individual’s work or education by being sufficiently serious, pervasive, or persistent as to create an intimidating, hostile, demeaning, or offensive working, academic, or social environment under both an objective and subjective standard. A single incident may create a hostile environment if the incident is sufficiently severe.

The determination as to whether a hostile environment exists is based on the totality of the circumstances, including but not limited to:

- The nature and severity of the conduct;
- The type, frequency, and duration of the conduct;
- The identity of and relationship between the Respondent and the Complainant;
- The number of individuals involved;
- The age and maturity levels of the Respondent and Complainant; and
- The location of the conduct and the context in which it occurred.

Harassment on the Basis of a Protected Trait does not include Sexual Harassment, which is defined and addressed separately in the *Policy Prohibiting Sex Discrimination, Sexual Harassment, Stalking and Retaliation*.

### **Retaliation**

Retaliation is any attempt by a member of the HEMSPN community to penalize, intimidate, harass, or retaliate in any way against a person who makes a report of or who is otherwise involved in an investigation of Prohibited Conduct under this policy. Retaliation is prohibited and should be reported to the Coordinator or designee immediately.

### **Other Types of Prohibited Conduct**

Prohibited Conduct for purposes of this policy also includes any and all “Prohibited Conduct” defined in HEMSPN Policy entitled “Policy Prohibiting Sex Discrimination, Sexual Harassment, Stalking and Retaliation” that does not meet the definition of Title IX Sexual Harassment.

## **REPORTING PROHIBITED CONDUCT**

Individuals who witness or experience Prohibited Conduct are encouraged to report such conduct to the Coordinator. Employees of HEMSPN who become aware of Prohibited Conduct are required to report such conduct to the Coordinator as soon as reasonably possible, except that HEMSPN’s counselor cannot report information learned from a counseling client except as necessary to protect the life of the client or others. Reports may be made anonymously, although an inability to contact the reporter may compromise HEMSPN’s ability to fully address the report. Employees are mandatory reporters and cannot report conduct anonymously.

HEMSPN encourages prompt reporting, but does not limit the timeframe for filing a report of Prohibited Conduct. Note that HEMSPN’s ability to take any action may be negatively affected by the length of time between the conduct and the report. The passage of time may also limit the available range of disciplinary actions, such as where an individual is no longer employed by HEMSPN or is no longer enrolled as a student.

Upon receiving a report, the Coordinator will contact the individual towards whom the conduct was reported to have been directed and offer them the opportunity to speak with the Coordinator and discuss their options and available resources at HEMSPN and within the community.

The individual towards whom the conduct was reported is the “complainant,” and the individual named by the report as having committed Prohibited Conduct is the “respondent.”

Individuals may choose to report criminal conduct directly to law enforcement. Because law enforcement investigates and enforces criminal laws, not HEMSPN policy, a complainant may choose to pursue a criminal investigation, a HEMSPN investigation, neither, or both. The outcome of criminal procedures is not determinative as to whether HEMSPN policy has been violated.

### **Privacy**

All information shared with the Coordinator and investigator will be kept private. This means that it will only be shared in three (3) situations. First, it will be shared when it is necessary to facilitate the options chosen by the complainant to move forward to resolve the allegations, or where HEMSPN otherwise must take action to address the report. Second, if the report constitutes a felony or potential child abuse, state law requires that the report be shared with law enforcement. (The complainant may choose not to participate in the report to law enforcement or may decline to participate in any law enforcement investigation if they wish.) Third, it will be shared if HEMSPN receives a criminal or civil subpoena or is otherwise engaged in a lawsuit requiring it to disclose information.

If a complainant wishes to make a request for anonymity such that their name is not shared with the respondent or witnesses, HEMSPN will try to comply but this may limit HEMSPN’s ability to investigate and respond. However, if the allegations are so serious that HEMSPN must act on them due to safety concerns for the HEMSPN community, HEMSPN may need to move forward to investigate despite the complainant’s wishes. Examples might include where an assault was perpetrated with a weapon, where multiple complainants have alleged an assault by the same individual, or where an employee assaults a student. If this is the case, the Coordinator will notify the complainant.

### **Supportive Measures of Protection and Accommodations**

The Coordinator will offer supportive measures of protection and accommodations as appropriate.

Supportive measures are individualized services offered to either or both the complainant and respondent involved in an alleged incident, either prior to a formal investigation or while such an investigation is pending. Supportive measures may include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the HEMSPN campus, behavioral restrictions, access restrictions, and other similar accommodations. Supportive measures will be individualized and appropriate based on the information gathered by the Coordinator, making every effort to avoid depriving any student of their education or any employee of their ability to work.

Supportive measures are available even if the complainant chooses not to move forward with informal or formal resolution.

## **Informal Resolution**

If it is determined that an informal resolution may be appropriate, the Coordinator will speak with the complainant about this option. If the complainant agrees to participate, the Coordinator will ask if the respondent is willing to participate. The Coordinator may then offer options for informal resolution that are appropriate under the circumstances, such as informal discussions with the parties or formal mediation.

If a satisfactory resolution is reached through informal resolution, the matter will be considered closed. If these efforts are unsuccessful, or if either party requests to terminate informal resolution, the complainant may request a formal investigation. The parties can attempt informal resolution during the course of a formal investigation if they agree to do so. The Coordinator must approve any agreement that comes from informal resolution to ensure it is consistent with HEMSPN's obligations under this policy.

If a complaint is made by a student against a HEMSPN employee, it will be formally investigated.

## ***Formal Investigation***

Following the receipt of a report, the Coordinator will conduct an initial assessment to determine if there is reason to believe, based on the information available, that the policy may have been violated and a formal investigation is appropriate. The Coordinator may seek further information from the complainant or others to assist in this initial assessment. If the Coordinator determines that there is insufficient information to suggest that a policy violation may have occurred, the complainant may submit additional information at any time and request another assessment.

If the Coordinator determines that there is reason to believe that the policy may have been violated, the Coordinator will provide written notice to the respondent of the behavior that may have violated HEMSPN policy, including the identities of the parties involved, the specific section of the policies allegedly violated, the conduct constituting the potential violation, and the date and location of the alleged incident, to the extent the information may be available. The respondent will be offered the opportunity to speak with the Coordinator to learn about the process, options for supportive measures of protection and accommodations, and their rights and responsibilities.

The Coordinator will select one or more trained investigators to conduct an investigation into the reported conduct. The investigators may be, but are not required to be, employees of HEMSPN.

The investigator shall offer each party the opportunity to be interviewed. In addition, each party may submit written statements, suggested witnesses, suggested questions for the other party or witnesses, and other evidence that is relevant to the reported behavior. The investigator will gather any relevant evidentiary materials and question witnesses as appropriate. The investigator will prepare an initial investigative report detailing the relevant evidence gathered. The initial investigative report focuses on the evidence that has been collected and does not include a determination as to whether a policy violation occurred.

The parties will be provided five (5) calendar days to review the initial investigative report and provide a written response to the investigator, which may include additional evidence, suggested witnesses, and suggested questions for witnesses or the other party. Extensions of this deadline may be provided to both parties by the Coordinator for good cause. The investigator will review the information submitted by the parties and conduct any follow-up investigation that the investigator deems necessary.

At the conclusion of the investigation, the investigator will prepare a final investigative report. In it, the investigator will analyze the evidence, make any necessary and relevant findings of fact, and make a determination by a preponderance of the evidence as to whether a policy violation occurred. Notice of the outcome will be provided simultaneously to both parties.

It is anticipated that the investigation will be completed within thirty (30) calendar days, but the Coordinator may extend this deadline with good cause upon notice to both parties. Reasons for extension may include, but are not limited to, the complexity of the allegations, the availability of witnesses, the collection of relevant records, and/or cooperation with a concurrent criminal investigation.

### **Policy Violation: Adjudication**

If a policy violation is found to have occurred, the Director will determine the appropriate sanctions and corrective action. If the Director is unavailable or is not impartial with regard to a particular case (as determined either by the Coordinator or the Director), the Coordinator is responsible for assigning a trained adjudicator. This determination will typically be made within five (5) business days, although the Coordinator may extend this deadline for good cause with notice to both parties.

All disciplinary action will be taken in accordance with applicable State law. When imposing discipline, the Director shall consider the totality of the circumstances involved in the matter. In those cases where unlawful discrimination/retaliation is not substantiated, the Director may consider whether the alleged conduct nevertheless warrants discipline in accordance with other HEMSPN policies.

Both parties will simultaneously be provided notice in writing of the sanctions. After the sanctions are issued, either party may appeal as provided below.

Sanctions that may be issued include reassignment of work duties; reassignment of classes; restrictions on contact; access restrictions to HEMSPN property or events; access restrictions to HEMSPN services; suspension; expulsion; termination of employment; educational sanctions such as research paper or project, or educational program attendance; community service; withholding of promotion or pay increase; suspension of employment with or without pay; or formal reprimand.

### **No Policy Violation Found**

If no policy violation is found, either party may file an appeal after receiving notice of the determination.

### **Appeals Process**

Either party may request an appeal of the investigative decision and/or the sanctions rendered. The three grounds upon which an appeal of the decision or sanctions may be made are:

1. A procedural error materially affected the outcome of the case;
2. Substantive new evidence that was not available at the time of the investigation and that may change the outcome of the case;
3. Severity of the sanction is disproportionate to the prohibited conduct.

Disagreement with the finding or sanctions is not, by itself, grounds for appeal.

The request for an appeal, including the grounds upon which the request is based, must be submitted in writing to the Coordinator within five (5) business days following the date listed on the outcome letter.

The other party will be provided a copy of the appeal and given five (5) business days to provide a written response. Extensions may be granted by the Coordinator for good cause with notice to both parties.

Any appeal will be conducted in an impartial manner by the Director or, if the Director cannot be impartial with regard to a particular case (as determined by the Coordinator or the Director), an impartial, trained individual appointed by the Coordinator. The Director will review the final investigative report, the appeal, and the response. The Director may ask follow-up questions of the Coordinator and the investigator if necessary. The Director does not confer with the parties as part of the appeal. The Director will render a decision within ten (10) business days after the deadline to provide an appeal response. Both parties will be notified in writing of the appeal's outcome. This decision is final.

Adopted: \_\_\_\_\_

Effective: \_\_\_\_\_