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*The Procedures for Responding to Discrimination and Harassment Reports Involving Duke Faculty and Non-Faculty (Staff) Respondents applies to both Duke University and Duke Health System. These Procedures are implemented and maintained by Duke’s Office for Institutional Equity.*

## **Procedures for Responding to Discrimination and Harassment Reports Involving Duke Faculty and Non-Faculty (Staff) Respondents**

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## I. Overview

The [Office for Institutional Equity \(OIE\)](#) is responsible for administering the [Policy on Prohibited Discrimination, Harassment, and Related Misconduct \(“Policy”\)](#) and its implementing procedures, including the procedures herein. Faculty, non-faculty staff and students (including undergraduate, graduate, professional students, doctoral students, post-doctoral scholars and fellows, medical residents, house staff and student employees) and all others covered by the Policy have the right to raise good faith<sup>1</sup> concerns or file complaints of discrimination, harassment, and/or related misconduct regarding the actions of faculty, staff, and certain others as explained in [Section III of the Policy](#).

These procedures apply to Prohibited Conduct that does not fall within the definition of [Title IX Sexual Harassment in the Policy](#). In some cases, complaints may not fall within the scope of the Policy at all or may involve concerns not connected to a protected status or characteristic, as set forth in [Section II of the Policy](#). In those cases, the situation may be referred to another Duke office, department, unit, or resource. Again, see Section III of the Policy. The procedures set out below are intended to facilitate and provide a mechanism to address concerns, to resolve complaints in a manner that is prompt, equitable, and consistent with the values of an impartial and reliable investigation, and to provide for appropriate follow-up.

## II. Reporting and Responding

Reports of discrimination, harassment, or related misconduct should be submitted to the appropriate individual or office as soon as reasonably possible, preferably within one year after the most recent alleged misconduct. As explained in the Policy, the sooner a report is filed, the more effectively it can be investigated. In addition, the longer an individual waits to submit a report, the more difficult it may be for Duke to respond, complete an investigation, and/or provide remedies or impose sanctions.

Concerns may be raised and reports may be brought by a complainant. Concerns may also arise because a manager, supervisor, or other individual with oversight responsibility becomes aware of conduct potentially covered by the Policy, either through an allegation or by direct observation. In this situation, the manager, supervisor, or other individual is required to report the situation to OIE and, in some cases, may need to appropriately respond. In certain circumstances OIE, upon learning of conduct potentially covered by the Policy in some other manner, may be required to take action, which may include conducting an investigation.

In some instances, a member of the Duke community may choose to initially report the relevant information to a manager, supervisor, dean, chair, their school or college or other appropriate administrator. In such instances, the information shall promptly be communicated to OIE. OIE will consult with the appropriate administrator to facilitate any follow-up, fact gathering and/or investigation.

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<sup>1</sup> Good faith means that there is a reasonable belief that the prohibited conduct occurred. There is no requirement that a matter complained of actually violate law or policy in order to have been made in good faith.

### **III. Other Resources**

While oversight of these procedures rests with OIE, complainants and respondents may request the help of other appropriate Duke resources, such as [Duke Human Resources Staff and Labor Relations](#) representatives, department managers, directors, and supervisors, department chairs, school deans and/or academic advisors.

The resources noted above cannot provide confidentiality regarding concerns of discrimination, harassment, and/or related misconduct. Duke faculty or non-faculty staff who wish to discuss a concern in a more confidential setting may contact the [Duke Personal Assistance Service \(PAS\)](#). Duke students who wish to discuss a concern in a more confidential setting may contact [Duke Counseling and Psychological Services \(CAPS\)](#), and [Sexual Misconduct Prevention and Response](#).

Additional resources that may be able to provide a level of confidentiality include clergy in their official capacity, [the faculty ombudspersons, or the student ombudspersons](#).

Faculty, non-faculty staff and/or students may wish to inquire of OIE as to the level of confidentiality an office, administrator, or staff can or cannot provide.

### **IV. Timelines**

These procedures establish designated timelines. These timelines should ordinarily be followed, but in extenuating circumstances, OIE has authority to extend such timelines. In the case of such an extension, OIE will notify the relevant parties of the extension. Examples of extenuating circumstances include, but are not limited to the complexity of the case, delays due to holiday or University breaks, the unavailability of parties or witnesses, and inclement weather or other unforeseen circumstances.

OIE seeks to resolve investigations under these procedures generally within 90 business days from the date of the notice of investigation. For other processes under these procedures, e.g. alternative interventions and/or assessments, OIE seeks to complete these non-investigation processes generally within 45 business days. The phrase “business days” does not include weekend days or Duke holidays.

### **V. External Resources and Processes**

Some forms of discrimination, harassment, or related misconduct may implicate federal and/or state laws. Complainants or respondents may choose to invoke external processes to resolve their concerns instead of or in addition to pursuing the procedures set forth herein. Some forms of harassment may also be criminal in nature and therefore may be pursued with the Duke Police or a local law enforcement agency. A complainant may choose to utilize the procedures set forth herein, report the alleged conduct to law enforcement, or both.

### **VI. Alternative Resolution**

Alternative Resolution is a voluntary, remedies-based process. Alternative Resolution is typically a spectrum of facilitated, or structured, and adaptable processes and may include appropriate and reasonable educational, restorative, and accountability-focused measures as agreed to by the parties and approved by OIE. Subject to Duke's obligations set out above in Section II, Reporting and Responding, and when appropriate (such as when a complainant does not wish to pursue a harassment or discrimination concern through an investigation), OIE may pursue alternative mechanisms to address a situation.

None of the possible alternative resolution mechanisms noted below are required prior to submitting a report and, in some cases, alternative resolution mechanisms may not be appropriate, as in some cases of sexual misconduct. OIE reserves the right to determine whether alternative resolution is appropriate in a specific case.

Either party may request the use of alternative resolution by notifying OIE. Other than intervention by a supervisor or training by OIE, consent to engage in alternative resolutions must be in writing. OIE reserves the right and has the authority to determine whether alternative resolution is appropriate in a specific case. If OIE determines alternative resolution is not appropriate, OIE shall have the authority to instead move to a formal investigation or some other resolution process.

#### **A. Possible Mechanisms for Alternative Resolution**

The following is a non-exhaustive list of possible alternative resolution mechanisms to address a concern or a report of prohibited conduct. Actions taken utilizing any of these mechanisms do not constitute a formal finding of a violation of the Policy. At any time prior to reaching a resolution, a complainant may withdraw from the Alternative Resolution process. Respondents may withdraw from those mechanisms involving one-on-one meetings or facilitated conversations.

1. **One-on-One Meeting.** The complainant, either alone or with an appropriate third party, may meet with the individual whose behavior is causing concern, discuss the situation, and clearly communicate that the behavior is unwanted and that the complainant wishes it to cease. A complainant will never be obligated to meet one-on-one with a respondent as a means to resolving a complaint; using a one-on-one meeting as an alternative resolution is voluntary.
2. **Intervention by Supervisor or Other Individual with Authority.** The complaining party may request assistance in addressing the behavior from an individual with supervisory authority over the person whose conduct is at issue. While Duke's ability to impose discipline may be limited in the absence of a formal finding of a violation, an individual with supervisory authority may be able to meet with the individual whose behavior is causing concern and clearly communicate that the behavior is unwanted and that the complaining party wishes it to cease.
3. **Facilitated Conversation, Mediation, or Restorative Process.** If all parties are willing, OIE may refer the situation for facilitation or mediation to help resolve the problem.
4. **Training, Education, or Coaching.** OIE may arrange for training, education or coaching to assist in addressing the specific behaviors at issue.

## **B. Achievement of Alternative Resolution**

When possible, resolution of a concern, complaint or report should be achieved in a timely manner. All reasonable efforts should be made to complete any agreed-upon alternative process for resolution within 45 business days from receipt of the concern. In cases of extenuating circumstances, this timeline may be extended.

Other than intervention by a supervisor or training by OIE, all Alternative Resolutions must be agreed to in writing by both parties.

Once an alternative resolution is agreed to by all parties, the resolution is binding and a formal investigation generally will not be initiated about the same matter.

Where appropriate, OIE shall review the alternative resolutions achieved by another office to ensure the manner and terms of the resolution align with applicable policies. Any sanctions or disciplinary or corrective actions associated with the alternative resolution should be documented by the office that developed them; sanctions or disciplinary or corrective actions arrived at through an alternative process conducted by another office shall be communicated to OIE.

Resolution utilizing the alternative resolution process generally will not establish a violation of the Policy. However, except for mediation and restorative process, the admission of any conduct by the respondent in the course of an Alternative Resolution may be considered in any future proceedings under this policy, if such admission is either relevant to the subsequent proceedings or such prior admission demonstrates a pattern or practice of prohibited conduct.

Once an Alternative Resolution is agreed to by all parties, the resolution is binding, and the parties are precluded from resuming or starting the formal investigation process about the same matter. Subsequent inappropriate or Prohibited Conduct will not be considered the same matter. Any violation of the terms of the Alternative Resolution agreement may result in disciplinary action or a further claim of Prohibited Conduct.

## **VII. Assessments**

When deemed appropriate, upon receipt of a report or allegations of prohibited conduct, OIE will first conduct an assessment to determine if the matter should proceed to an investigation. An assessment may include the interviewing of witnesses and review of other evidence. In cases involving allegations of pay inequity based on one or more protected status, an assessment may include analyzing and reviewing applicable data and interviewing pertinent personnel. If it is determined that there is not enough information to warrant an investigation, the matter will be closed with recommendations for responsive action or be redirected for other resolution. Assessments will generally be concluded within 45 business days. Once concluded, the assessment decision will be documented and forwarded to the appropriate individuals, as determined by OIE.

## **VIII. Formal Investigations**

## **A. Submitting the Report and Initial Review**

At a minimum, the report should identify the complainant, the respondent, and the specific allegations of the prohibited conduct. The complainant may communicate the reported conduct either orally or in writing. In either case, OIE and/or the investigator will document the filing of the report.

Once a report is submitted, OIE shall review the complaint to determine the most appropriate manner for responding to the reported conduct, allegations and/or concerns.<sup>2</sup>

At any time prior to the conclusion of the investigation, the complainant may withdraw a report. However, if the allegations or information obtained through the investigation raise issues of potential serious concern to the Duke community or for other compelling reasons, OIE may nonetheless proceed with an investigation notwithstanding the complainant's decision to not participate. Whether the circumstances warrant an investigation in the absence of a complaint is in the discretion of OIE.

## **B. Reports to Departments Other than OIE**

If a complaint is filed with any department, school, or office other than OIE, the department, school, or office shall promptly convey a record of the complaint to OIE. As noted above, OIE shall review the complaint in order to determine the most appropriate manner for responding to the allegations. In making its determination, OIE will ordinarily consult with the respective office, department, or school.

## **C. Investigations**

Once a report is accepted for investigation, OIE shall assign the investigation to an investigator, when possible, from within the Duke community. Upon completion of the investigation, the investigator will make findings of fact and determine whether such findings establish a violation of the Policy.

All parties shall have the opportunity to provide information during the investigation. The investigator will share relevant information obtained during the course of the investigation with the parties and give them the opportunity to respond.

The parties have the right to an advisor of their choosing present at meetings. To maintain the integrity of the investigation, individuals who are witnesses or potential witnesses may not serve as advisors. The advisor's role in any meeting is limited to quietly conferring with the complainant or respondent through verbal or through written correspondence. The advisor shall not engage in conduct that is disruptive to the investigative process.

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<sup>2</sup> Some reported conduct, concerns or allegations may clearly fall outside the scope of policies implemented by OIE. See Section III of the Policy. In such cases, OIE may refer the matter to the Office of Student Conduct and Community Standards, Human Resources Staff and Labor Relations, the department, or other Duke office or administrator. In these instances, OIE will, to the extent possible, notify the complainant of such. If a matter includes issues within the scope of OIE's policies as well as involving other Duke policies, the appropriate administrators will work together to determine how to handle the matter, including whether one office or the other can handle the entire matter.

Individuals with disabilities may request reasonable accommodations during the investigative process. OIE will consult with the [Disability Management System](#) to determine what accommodations might be appropriate based on documentation provided by the individual to OIE or to the Disability Management System directly regarding the nature of the disability and its impact on the individual's ability to participate in the proceedings.

The investigation process will generally take no longer than 90 business days from the date of the notice of investigation is provided to the parties. If it will take longer, again, the parties will be notified.

#### **D. OIE Initiated Investigation**

If OIE has reason to believe an individual has engaged in conduct that might violate the Policy, OIE has authority to undertake an investigation, notwithstanding the absence of a filed or submitted complaint.

#### **E. Supportive Measures**

When appropriate, the department(s), office(s), or school(s) involved in the matter, in consultation with OIE, may take supportive measures to foster a more stable and secure environment during the resolution of a complaint, including to ensure the safety of the individual(s) involved (including the parties and/or witnesses). These measures may be taken prior to any determination regarding whether or not there has been a violation.

Possible supportive measures include, but are not limited to, "No Contact Directives" between individuals; rescheduling of work shifts, classes, exams, or assignments; reassignments; leaves of absence; or changes in housing assignment. "No Contact Directives" between individuals involved in a report to OIE will be issued by OIE in consultation with the department(s), office(s), or school(s).

#### **F. Determination**

Upon completion of the investigation, the investigator will make a determination as to whether there is sufficient information to establish a violation, using a preponderance of the evidence standard. A preponderance of the evidence standard means that, based on the information acquired during the investigation, more likely than not a violation of the Policy occurred.

In making a determination, polygraph examinations and/or their results are neither admissible nor considered in any part of the investigation.

To the extent possible, prior to making the report available to the parties, the investigator will notify the parties that the investigation has concluded and a determination has been reached. This notice will also communicate the manner in which the investigation report will be shared with the parties. Within ten (10) business days after the notice, the investigator will share the investigative report or other written documentation with the parties. This document will generally be the same for both parties, containing a summary of the investigation and the determination as to whether there is a violation of the Policy.

In cases where a violation has been found, the report shared with the complainant will also include any remedial actions to address any harm to the complainant caused by the violation. Sanctions, or disciplinary actions against the respondent, are discussed below. Remedial actions should be reasonably calculated to minimize the potential for recurrence of the prohibited conduct, as well as to reasonably remedy any negative consequences from that. OIE will verify that the actions have been implemented.

## **G. Disciplinary Actions**

In cases where there is a finding of a violation, the responsible official<sup>3</sup> will consult with OIE and the appropriate HR administrator to determine the appropriate disciplinary action(s) or sanction(s). This determination will take into consideration all of the circumstances of the current incident(s), as well as any prior admissions and/or findings of a violation. Examples include: progressive disciplinary action; prohibition from certain academic or managerial responsibilities or privileges; letter of reprimand placed in a respondent's personnel file; restrictions on a respondent's access to Duke programs or facilities; required training or coaching; limitations on merit pay or other salary increases for a specific period; demotion; suspension; or dismissal/termination from Duke.

Sanctions and or disciplinary actions should be reasonably calculated to minimize the potential for recurrence of the prohibited conduct, as well as to reasonably remedy any negative consequences from the prohibited conduct. With advance approval from OIE, the responsible official may disclose the sanctions and/or other relevant information to those who have been impacted by the violation or to others within Duke who have a legitimate need to know the outcome.

The responsible official shall notify OIE of the dispositive actions and the rationale for any deviations from the actions recommended by OIE.

OIE will verify both remedial and disciplinary actions have been implemented.

## **IX. Appeals**

Either party has the right to appeal the determination of the investigator as to whether there is a Policy violation on the grounds stated below. If no appeal is submitted within five (5) business days after submission of the determination document to the parties, the findings and determinations shall become final and not subject to further appeal.

If the investigator determines that the respondent has violated the Policy and that determination is the sole basis for a responsible official's decision as to sanction, disciplinary action, or other adverse action, such action or sanction will be stayed pending the outcome of the appeal process. However, the disciplinary action or sanction will be communicated to the respondent and, to the extent consistent with [Section VIII.G](#) of these procedures, to the complainant. In those cases where a responsible official also considered a respondent's prior misconduct or non-performance in setting the sanction/disciplinary action, the sanction can be immediately implemented. In any case, remedial/non-disciplinary actions

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<sup>3</sup> The responsible official is the individual vested with authority to impose sanctions or disciplinary or corrective actions. For example, for staff, the responsible official in most cases will be the respondent's second-level manager or supervisor.

may be implemented during the course of the appeals process unless inappropriate to do so.

Supportive measures that have been implemented in the course of the investigation will be extended throughout the appeal process.

### **A. Grounds for Appeal and Submission**

Grounds for an appeal are limited to the following bases:

1. New information not reasonably available at the time of the decision/hearing that could affect the outcome of the matter;
2. The investigator(s) had a conflict of interest or bias for or against a party that affected the outcome of the matter; and/or
3. Procedural error(s) that affected the outcome of the matter.

The appeal process is not a re-investigation of the underlying complaint.

Requests for appeals must be in writing, identify the ground(s) for the appeal including details as to the new information available and/or procedural error, and be timely submitted to the Vice President for Institutional Equity. Submissions may be made electronically via e-mail, sent via regular mail, hand delivered, or delivered by another mechanism that ensures the receipt of the written appeal within five (5) business days.

### **B. Appellate Officer**

Following receipt of an appeal, OIE or its designee will appoint an appellate officer. The appellate officer's role is limited to reviewing the underlying record of the investigation or hearing, the appealing party's ("Appellant") written appeal statement, any response to that statement by the other party ("Appellee"), and information presented at a meeting of the appellate officer, if convened.

OIE or its designee will notify the Appellant and Appellee of the name of the appellate officer. The Appellant and/or Appellee may challenge the participation of an appellate officer because of an actual conflict of interest, bias, or prejudice. Such challenges, including rationale, must be submitted in writing to the Vice President for Institutional Equity no later than two (2) business days after notification of the name of the appellate officer. The Vice President or their designee will determine whether such a conflict of interest exists and whether an appellate officer should be replaced.

### **C. Appeals Procedure**

Within ten (10) business days after the appeal is submitted, the Vice President for Institutional Equity shall forward the appeal to the appellate officer, along with the investigator's report and determination, but not the sanction or disciplinary action set by the responsible official. OIE shall also notify the responsible official and appropriate Duke Human Resources administrator of the appeal.

The appellate officer may summarily deny an appeal if it is not properly based on one of the designated grounds for an appeal. For those appeals that are accepted for consideration, the appellate officer shall, within the next five (5) business days, inform the parties that the appeal has been accepted. OIE will also provide the non-appealing party with a copy of the appeal. The non-appealing party shall be allowed ten (10) business days to respond to the appeal in writing.

The appellate officer will review the submitted documents and if the appellate officer deems it necessary, schedule a meeting on the appeal to take place within 25 business days after the appellate officer receives the appeal from OIE. The appellate officer will consider the availability of each party in scheduling the meeting.

Either party may bring an advisor of their choice to the appeal meeting. The advisor's role is limited to quietly conferring with their advisee. The advisor may not address the appellate officer.

During the meeting on the appeal, the parties shall be given the opportunity to provide opening comments. The appellate officer may pose questions of the parties. The parties ordinarily are not permitted to present witnesses. However, in its discretion, the appellate officer may hear testimony from the investigator or other individuals the appellate officer believes will assist in their determination. The appellate officer may reasonably limit the time for the appeal meeting, limit the time for opening comments, and implement general practices to ensure an orderly and equitable meeting.

The appellate officer shall make a determination on the appeal and submit that determination in writing to the Vice President for Institutional Equity within ten (10) business days after the appeal meeting, or if there is no appeal meeting, 10 business days after the 10 business day deadline for the appellee to respond in writing. In its determination, the appellate officer, consistent with the grounds established for appeal, shall have authority to either uphold or overturn the findings and determinations or remand the case to OIE for additional investigation or follow-up. In either case, the determination must include a summary of the rationale.

The Vice President or their designee shall, within five (5) business days from receipt of the appellate officer's determination, forward the appeal determination to each party at the same time and to the responsible official(s) for disposition of any sanctions and/or disciplinary or remedial actions. The responsible official shall notify OIE of any dispositive actions.

The decision by the appellate officer to uphold or overturn the findings and determinations is final. Neither these procedures nor the Policy provides further review of the findings, determination or the determination of the appellate officer.

## **X. Coordination with Other Policies and Procedures**

Nothing in these procedures affects the rights of faculty and staff under other Duke policies and procedures, such as the [Faculty Hearing Committee](#) or the [Dispute Resolution Process](#).

However, OIE should be informed of the results of any such related proceedings.