

## Policy on Prohibited Discrimination, Harassment, and Related Misconduct

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# **Policy on Prohibited Discrimination, Harassment, and Related Misconduct**

**Adopted: May 13, 2019**

## **I. Introduction**

Duke University and Duke University Health System (“Duke”) are committed to encouraging and sustaining a learning and work community free from discrimination, harassment, and related misconduct. Duke is committed to an inclusive community that respects and values all of its members, including (but not limited to) undergraduate students, graduate and professional students, postdoctoral fellows and medical residents, faculty, and staff (including house staff).

The [Office for Institutional Equity \(OIE\)](#) is responsible for administering the Policy on Prohibited Discrimination, Harassment, and Related Misconduct (“Policy”) and its implementing procedures. The Vice-President for Institutional Equity is Duke’s designated Coordinator for Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975. The Assistant Vice-President/Director of Title IX Compliance is Duke’s designated Coordinator for Title IX of the Education Amendments of 1972. These officers may be contacted at the Office for Institutional Equity, Smith Warehouse, 114 S. Buchanan Blvd., Bay 8, Durham, North Carolina 27708, (919) 684-8222, [ois-help@duke.edu](mailto:ois-help@duke.edu).

## **II. Policy**

This Policy prohibits discrimination and harassment on the basis of race, color, national origin, sex (including pregnancy), gender, gender identity, gender expression, sexual orientation, religion, genetic information, age, disability, or veteran status (collectively, “protected status” or “protected characteristics”); this includes discrimination and harassment based on the perception of an individual’s protected status, even if that perception is incorrect. It also prohibits misconduct related to protected status discrimination and harassment, specifically, relationship violence and stalking. The Policy applies to the administration of employment and educational policies, practices, programs, and activities.

The Policy also prohibits retaliation against an individual: (1) who files a complaint or report of discrimination, harassment, or related misconduct; (2) against whom a complaint is filed; (3) who participates in the reporting, investigation, or adjudication of possible violations of this Policy; or (4) who engages in good faith opposition to what the individual reasonably believes to be discrimination, harassment, or related misconduct under this Policy.

The Policy should be read in a way consistent with all applicable federal and state laws addressing discrimination, harassment, and related misconduct.

## **III. Jurisdiction/Scope**

The Policy and associated procedures protect all members of the Duke community (including Duke entities and subsidiary organizations) from discrimination, harassment, and related misconduct while such members are on Duke property (again, including the university and health

system) or participating in Duke-related activity. It also applies to conduct that occurs off Duke property and not in the context of a Duke-related activity that has continuing adverse effects on a Duke-related activity.

Members of the Duke community *protected by* this Policy include, but are not limited to, full and part time students and employees, including faculty members, physicians, staff, undergraduate students, graduate and professional students, doctoral students, post-doctoral scholars, student employees, and temporary and contract employees. The Policy also protects third parties, including applicants for admission and employment, visitors, visiting scholars, patients, employees of Duke contractors, and program participants.

Some types of harassment and related misconduct may be criminal in nature and can also be reported to the [Duke University Police Department](#), 911 (emergencies) or (919) 684-2444 (non-emergencies).

The Office for Institutional Equity is responsible for resolving, under the procedures set out in this Policy, all allegations of prohibited discrimination, harassment, and related misconduct, with two exceptions: 1) Allegations of sexual misconduct against a student are handled by the Office of Student Conduct under the Student Sexual Misconduct Policy; and 2) Allegations of harassment against an undergraduate student are handled by the Office of Student Conduct under the hearing procedures outlined in the Duke Community Standard in Practice: A Guide for Undergraduates.

If you are a **Duke employee, faculty, or physician** and have a concern or question regarding this Policy or its implementing procedures, you may contact [OIE](#) at (919) 684-8222, your department chair, supervisor, manager, or director, entity HR leader or other HR manager, or Duke Human Resources Staff and Labor Relations.

If you are a **Duke student** and have a concern or question regarding this Policy or the procedures for filing a complaint, you can contact either [OIE](#) at (919) 684-8222 or the [Office of Student Conduct](#) at (919) 684-6938.

If you are a **Duke applicant for employment, applicant for admissions, visitor, or patient**, there are resources to assist you with your concern or question. You may contact the office or department with whom you directly interacted or you may contact [OIE](#) at (919) 684-8222. If you are an applicant for employment, you may also contact [Duke Human Resources](#). If you are an applicant for admission, you may also contact the admissions office of the appropriate school.

Individuals with workplace, academic, or other concerns not covered by this policy have a number of other resources to address them. For employees (including, faculty and staff within the University and all Health System employees), these may include managers within their program, office, or school; [Staff & Labor Relations in Human Resources](#); the [Faculty Ombudsperson and the Faculty Hearing Committee](#)<sup>1</sup>; the [Personal Assistance Service](#); and union representatives for those in a bargaining unit. For students, this may include their advisors,

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<sup>1</sup> The Faculty Ombuds (a confidential resource) and the Faculty Hearing Committee have jurisdiction to consider complaints from faculty and instructional staff.

administrators in their departments or schools, and the [Student Ombudsperson for the University and/or the Medical School](#).<sup>2</sup> For examples, see the OIE Discrimination and Harassment Q&As.

Anyone can consult directly with the [Office for Institutional Equity](#) for guidance at (919) 684-8222.

#### IV. Definitions

**Allegation:** a statement by a complainant alleging an act of discrimination, harassment, or related misconduct.

**Complaint:** formal notification, either orally or in writing, of the belief that discrimination, harassment, or related misconduct has occurred.

**Complainant:** the person filing a complaint alleging that they had been subject to discrimination, harassment, or related misconduct.

**Consent:** An affirmative decision to engage in mutually acceptable sexual activity freely given by clear actions and/or words. Consent may not be inferred from silence, passivity, or lack of active resistance alone.

- A current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- An individual is unable to freely give consent when the individual is incapacitated (arising, for example, from the use of alcohol or other drugs or when the individual is passed out, asleep, unconscious, or mentally or physically impaired). An individual is unable to freely give consent when the individual is coerced into sexual activity, such as, for example, through the use of physical force, threat of physical or emotional harm, undue pressure, isolation, or confinement.
- The perspective of a reasonable person will be the basis for determining whether a respondent knew, or reasonably should have known, whether a complainant was able to freely give consent and whether consent was given. Additionally, being intoxicated or incapacitated does not diminish one's responsibility to obtain consent and will not be an excuse for sexual misconduct.

**Discrimination:** when an individual or group is subjected to an adverse action based upon a [protected status or characteristic](#). Discrimination can occur under this Policy in either an employment or an educational context. Discrimination also includes failing to provide reasonable accommodations to a qualified person with a disability or to reasonably accommodate an employee's religious beliefs or practices, as required by state and federal law.

**Harassment:** a type of discrimination that occurs when unwelcome verbal, visual, physical, electronic, or other conduct based on an individual's or group's [protected status or characteristic](#) is sufficiently serious to significantly interfere with that individual's or group's ability to

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<sup>2</sup> The Student Ombudspersons (also confidential resources) offer students neutral and confidential guidance on a variety of issues.

participate in or benefit from Duke programs or activities or their terms and conditions of employment. This can include conduct that significantly interferes with the individual's or group's:

- educational environment (e.g., admission, academic standing, grades, assignment);
- work environment (e.g., hiring, advancement, assignment);
- participation in a University program or activity (e.g., campus housing); or
- receipt of legitimately-requested services (e.g., disability or religious accommodations).

**Prohibited harassment includes:**

- **Hostile Environment Harassment:** unwelcome conduct based on protected status that is so severe, persistent, and/or pervasive that it alters the conditions of education, employment, or participation in a program or activity, thereby creating an environment that a reasonable person in similar circumstances and with similar identities would find hostile, intimidating, or abusive. An isolated incident, unless sufficiently severe, would not create a hostile environment. Harassment is distinguished from behavior that, even though unpleasant or disconcerting, is appropriate to the carrying out of certain instructional, advisory, or supervisory responsibilities.
- **Quid Pro Quo Harassment:** conditioning an individual's education, employment, or participation in a program or activity on submission to unwelcome conduct on the basis of protected status or characteristic.
- **Sexual or Gender-Based Harassment:** unwelcome conduct based on sex or gender that creates a hostile environment or involves submission to or rejection of such conduct as a condition of employment, education, or participation in a program or activity. This includes sexual violence and sexual exploitation (defined below).
- **Sexual Violence:** a particularly severe form of harassment defined as any physical act of a sexual nature based on sex and perpetrated against an individual without consent or when an individual is unable to freely give consent. Physical acts of a sexual nature include, but are not limited to, non-consensual touching or attempted touching of a person's breasts, buttocks, inner thighs, groin, or genitalia, either directly or indirectly; and/or sexual penetration (however slight) of another person's oral, anal, or genital opening with any body part or object.
- **Sexual Exploitation:** taking sexual advantage of another without consent for one's benefit or the benefit of another party; e.g., by threatening to disclose an individual's sexual orientation, gender identity, or gender expression unless the individual submits to sexual demands; observing sexual activity others without their knowledge or consent; or streaming images of sexual activity without the knowledge or consent of those involved.

**Protected Status/Characteristics:**

- **Age:** the number of years from the date of a person's birth. With respect to employment, individuals who are forty (40) years of age or older are protected from discrimination and

harassment based on age. There is no age threshold for protection from discrimination for students or other participants in educational programs or activities.

- **Color:** an individual's skin pigmentation, complexion, shade, or tone.
- **Disability:** a physical or mental impairment that substantially limits one or more major life activities. Individuals are protected from discrimination if they have such an impairment; have a record of such impairment; or are regarded as having such impairment. A qualified person with a disability must be able to perform the essential functions of the employment or volunteer position or the academic, athletic, or extra-curricular program, with or without reasonable accommodation.
- **Gender:** a socially-constructed set of expectations, roles, behaviors, and activities a given society or culture considers appropriate for individuals generally based on an individual's sex assigned at birth.
- **Gender Expression:** an external expression and presentation of one's gender through clothing, roles, mannerisms, etc. Gender expression does not necessarily align with gender identity.
- **Gender Identity:** one's internal sense of self and identification in relationship to gender which may or may not conform to one's sex assigned at birth.
- **Genetic Information:** information about (i) an individual's genetic tests, (ii) the genetic tests of family members of such individual, and (iii) the manifestation of a disease or disorder in family members of such individual. Genetic Information includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services by such individual or any family member of such individual.
- **National Origin:** an individual's actual or perceived country or ethnicity of origin.
- **Race:** an individual's actual or perceived racial or ethnic ancestry or physical characteristics associated with a person's race, such as a person's color, hair, facial features, height, and weight.
- **Religion:** all aspects of religious observance and practice, as well as belief.
- **Sex (Assigned at Birth):** a designation at birth (male, female, intersex) generally based on external appearance of sex organs; includes pregnancy, childbirth, and medical conditions related to pregnancy or childbirth.
- **Sexual Orientation:** one's sexual, romantic, physical, and/or emotional attraction (or lack of attraction) to others.

- **Veteran Status:** covered veterans include disabled veterans, special disabled veterans, veterans of the Vietnam era, and other protected veterans as defined by federal and state law.

**Related Misconduct:** relationship violence, retaliation, and stalking as defined in this Policy.

**Relationship Violence:** any act of violence or pattern of abusive behavior in an intimate relationship that is used by one partner to gain or maintain power and control over another partner. Relationship violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person.<sup>3</sup> It includes:

- **Domestic violence:** any act of violence or pattern of abusive behavior committed against a current or former spouse/cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.
- **Dating violence:** any action of violence or pattern of abusive behavior committed by an individual who has been in a social relationship of a romantic or intimate nature with the complainant. Whether there is or was such a relationship will be determined by its length, type, and frequency of interaction.

**Retaliation:** an adverse action or other form of negative treatment carried out in response to a good-faith reporting of or opposition to discrimination, harassment, or related misconduct; an individual's or group's participation in Duke's complaint process or the follow-up to a complaint; or other form of good faith opposition to what an individual reasonably believes to be discrimination, harassment, or related misconduct under this Policy. Individuals are also protected from retaliation for making good faith requests for accommodations on the basis of religion or disability. To be a Policy violation, the challenged actions or treatment must be sufficiently serious to discourage or chill a reasonable person from further reporting, participation, or opposition.

**Respondent:** the person or office, program, department, or group against whom the allegation or complaint is made; i.e., the individual(s), organizational unit(s), or group(s) accused of discrimination, harassment, or related misconduct.

**Stalking:** a course of conduct (including cyberstalking) based on a protected characteristic and directed at a specific person that would cause a reasonable person to fear for their safety or the safety of another, or to suffer substantial emotional distress.

## V. Resources and Reporting Options

### A. EMERGENCY LAW ENFORCEMENT, MEDICAL, AND CRISIS RESPONSE RESOURCES

As a first priority, Duke encourages all individuals to report discrimination, harassment, or related misconduct that may involve criminal conduct to the Duke University Police Department or, for incidents taking place off-campus, to the appropriate local law enforcement agency. This

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<sup>3</sup> Adapted from the Office on Violence Against Women, U.S. Department of Justice, [justice.gov/ovw/domestic-violence](https://www.justice.gov/ovw/domestic-violence).



could include sexual violence, relationship violence, stalking, and conduct that could be a hate crime. In cases of sexual misconduct involving a minor, members of the Duke community are required to report the situation to Duke Police. Duke Police can be contacted at (919) 684-2444, <https://police.duke.edu/services/index.php>, or by calling 911 in emergency situations.

For incidents of sexual violence, sexual exploitation, relationship violence, and stalking, Duke also encourages individuals to seek assistance from a medical provider or crisis response service immediately after an incident. This provides the opportunity to address physical well-being or health concerns, preserve any available evidence, and begin a timely investigative and remedial response. Emotional care, counseling, and crisis response are also available on and off campus; e.g., at Student Health Services (919) 681-9355, <https://studentaffairs.duke.edu/studenthealth>, or at Duke University Hospital Emergency Room, (919) 684-8111, <https://www.dukehealth.org/locations/emergency-room-duke-university-hospital>.

For a complete list of law enforcement, medical, and crisis response resources, click [here](#).

## A. RESOURCES AND REPORTING OPTIONS

Duke encourages all individuals to seek the support of on and off campus resources, regardless of when or where the incident occurred. These resources can provide guidance on reporting options and information about available resources. In general, Duke provides two ways to raise concerns about possible discrimination, harassment, and related misconduct, **Confidential Resources and Reporting Options**.

### 1. Confidential Resources

The following Duke resources can provide counseling, information, and support in a confidential setting. These confidential resources will not share information about a report of discrimination, harassment, or related misconduct without the individual’s express written permission unless there is a continuing threat of serious harm to the complainant party or to others or there is a legal obligation to reveal such information (e.g., suspected abuse or neglect of a minor).

Resources for Students	Resources for Employees
<b>Student Health Services</b> <a href="https://studentaffairs.duke.edu/studenthealth">https://studentaffairs.duke.edu/studenthealth</a> (919) 681-9355, (919) 966-3820 (nurse advice line)	<b>Personal Assistance Service</b> <a href="http://pas.duke.edu/">http://pas.duke.edu/</a> (919) 416-1727; for Duke Raleigh Hospital employees, (800) 327-2251
<b>Counseling and Psychological Services</b> <a href="http://Studentaffairs.duke.edu/caps">Studentaffairs.duke.edu/caps</a> (919) 660-1000	
<b>Ombudsperson</b> <a href="https://web.duke.edu/equity/ombudsperson.htm">https://web.duke.edu/equity/ombudsperson.htm</a>	<b>Faculty Ombuds</b> <a href="https://academiccouncil.duke.edu/ombuds">https://academiccouncil.duke.edu/ombuds</a>

<p><b>Office for Gender Violence Prevention and Intervention, Duke Women’s Center</b>  <a href="http://studentaffairs.duke.edu/wc/gender-violence">studentaffairs.duke.edu/wc/gender-violence</a>  (919) 684-3897</p> <ul style="list-style-type: none"> <li>sexual harassment, sexual violence, relationship violence, and stalking</li> </ul>	
<p><b>Clergy/Religious Life</b>  <a href="https://chapel.duke.edu/student_ministries/religious-life">https://chapel.duke.edu/student_ministries/religious-life</a></p>	

In addition, reports can be made *anonymously* to the [Duke University Compliance and Fraud Hotline](#) at (800) 849-9793 or the [Duke Health Integrity Hotline](#) at (800) 826-8109.

These off-campus resources can also provide counseling, information, and support in a confidential setting to students and employees:

- Duke University Hospital Emergency Room, <https://www.dukehealth.org/locations/emergency-room-duke-university-hospital> (919) 684-8111
- Durham Crisis Response Center (issues of sexual violence, relationship violence, and stalking), [durhamcrisisresponse.org](http://durhamcrisisresponse.org) (919) 403-6562
- InterAct Family Safety and Empowerment Center of Wake County, (issues of sexual violence, relationship violence, and stalking), <http://www.interactofwake.org> (919) 828-3005 (sexual assault); (919) 828-7740 (domestic violence)

### 1. Reporting Options

Individuals are not required to follow any “chain of administration” or “chain of command” in order to file a complaint. Faculty, staff, students, and third parties (such as contractors or visitors) can report discrimination, harassment, or related misconduct committed by faculty, staff, or third parties<sup>4</sup> to [OIE](#); [Human Resources Staff and Labor Relations](#); the [Duke University Compliance and Fraud Hotline](#) (800) 849-9793 or the [Duke Health Integrity Hotline](#) (800) 826-8109; a department supervisor, manager or director; department chair; school dean; academic advisor; entity HR leader or other HR manager; and (for students) a [Harassment Prevention Advisor](#). All such reports will be shared with [OIE](#).

<p><a href="#">Office for Institutional Equity</a>  114 S. Buchanan Blvd., Bay 8  Box 90012  Durham, North Carolina  27708</p>	<p><a href="#">HR Staff and Labor Relations</a>  University  705 Broad St.  Box 90511  Durham, NC 27705</p>
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<sup>4</sup> All Duke employees, except those designated as confidential resources, are expected to report harassment and related misconduct as defined in this Policy involving undergraduate, graduate, or professional students to the [Office of Student Conduct](#).

(919) 684-8222	(919) 681-2808 Health System Duke South Clinic, Suite 1527 201 Trent Dr. Box 3904 Durham, NC 27705 Phone: 919-684-5557
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Upon receipt of a report of possible prohibited harassment or related misconduct, [OIE](#) will establish any needed interim protective measures to provide for the safety of the parties and the campus community.

To file a police report for possible criminal conduct, contact the Duke University Police Department or, for incidents occurring off campus, the appropriate local law enforcement agency.

**VI. Timeliness**

In order to maintain and support a community that is respectful and free from discrimination, harassment, and related misconduct and to maximize Duke’s ability to respond promptly and effectively, we urge individuals to come forward with reports of concerns or with complaints as soon as possible. Complainants and other reporting individuals are encouraged to seek assistance and utilize available resources if they feel they have been subjected to or receive reports of such conduct. The sooner a complaint is filed, the more effectively it can be investigated, e.g., while witnesses are still available, memories are fresh, and documentation may still be available. With that said, there is no time limit for reporting alleged discrimination, harassment, or related misconduct.

In some cases, e.g., where the individual accused of misconduct is no longer affiliated with Duke, we may not be able to take disciplinary action. However, Duke will strive to provide other fair and reasonable measures to support the reporting party and minimize any future misconduct.

**VII. Prohibited Conduct**

**A. Discrimination and Harassment**

This Policy prohibits all forms of **discrimination** and **harassment** based on an individual’s protected status or protected characteristic, as defined in § II of the Policy.

Discrimination also includes failing to provide reasonable accommodations related to disability or religion, consistent with state and federal law.

This Policy shall be applied in way that is consistent with the University’s principles of academic freedom. Duke University is committed to the free and vigorous discussion of ideas and issues, which the University believes will be protected by this Policy. Academic freedom and the related freedom of expression include, but are not limited to, the civil expressions of ideas – however

controversial – in the classroom, residence halls, and other teaching and student living environments.

### **A. Related Misconduct**

This Policy also prohibits **relationship violence, stalking** based upon any protected status, and **retaliation**. All individuals who believe they have been subjected to discrimination, harassment, or related misconduct prohibited by this Policy are encouraged and have the right to seek support, utilize available resources, and come forward with their concerns or complaints. Fear of retaliation should not be an obstacle to reporting. Any act of retaliation will be a violation of this Policy when it is sufficiently serious (e.g., severe, persistent, and/or pervasive) to discourage a reasonable person from complaining about or opposing discrimination, harassment, or related misconduct.

This policy prohibits retaliation:

**Against the Complainant:** It is a violation of this Policy to retaliate against a complainant or other individual or group for making a good faith report of discrimination, harassment, or related misconduct or for opposing what they reasonably believe to be prohibited discrimination, harassment, or related misconduct in some other way. If warranted, the appropriate senior administrator may monitor performance review, promotion, reappointment, grading, or other evaluation—or, to the extent possible, may reassign the supervisory relationship or other role of authority—to ensure that retaliation does not occur.

**Against the Respondent:** A claim of discrimination, harassment, or related misconduct is not proof of prohibited conduct. A claim shall not be taken into account during an individual respondent's performance review, promotion, reappointment, or other evaluation unless a final determination has been made that the respondent has violated the University's Harassment Policy. If necessary and appropriate, such decisions shall be deferred until the claim is resolved.

**Against a Witness or Participant in the Investigation:** It is also a violation of this Policy to retaliate against an individual or group providing information related to a complaint.

A claim of retaliation by a complainant, respondent, or witness will be resolved through the procedures for complaints of discrimination, harassment, or related misconduct.

## **VIII. Confidentiality**

Duke recognizes that confidentiality is important. Breaches of confidentiality compromise Duke's ability to investigate and resolve claims of discrimination, harassment, and related misconduct. Duke will attempt to protect the confidentiality of the complaint process to the extent reasonably possible. Investigators, advisors, mediators, members of hearing panels, and any others participating in the process on behalf of Duke shall keep the information obtained through the process confidential. All other participants in the process (including the complainant, respondent, non-Duke advisors, and witnesses) are encouraged to respect the confidentiality of the proceedings and circumstances giving rise to the dispute and to discuss the matter only with those persons who have a genuine need to know.

While Duke is committed to respecting the confidentiality of all parties involved in the process, it cannot guarantee complete confidentiality. Examples of situations in which confidentiality cannot be maintained include:

- When Duke is required by law to disclose information (such as in response to a subpoena or court order)
- When disclosure of information is determined by OIE and/or the department to be necessary for conducting an effective investigation of the claim
- When confidentiality concerns are outweighed by Duke's interest in protecting the safety or rights of others.

# Complaint Handling Procedures

## I. Introduction

Students (including undergraduate, graduate, and professional students), faculty, staff, and all others covered by the Policy have the right to raise good faith concerns or file complaints of discrimination, harassment, and/or related misconduct regarding the actions of faculty, staff, and certain others as explained in § III of the Policy. In some cases, complaints may not fall within the scope of the Policy or may involve concerns not connected to a protected status or characteristic, as set forth in § II of the Policy. In those cases, the situation may be referred to another Duke office, department, unit, or resource. Again, see § 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. These procedures are implemented and administered by the [Office for Institutional Equity \(“OIE”\)](#).

Throughout this document, “**complainant**” refers to the individual who has come forward with a concern or complaint alleging that they had been subject to discrimination, harassment, or related misconduct and “**respondent**” refers to the individual, department, or unit against whom a complaint has been brought.

## II. Reporting and Responding

Complaints 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 complaint is filed, the more effectively it can be investigated. In addition, the longer an individual waits to file a complaint, 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 complaints 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, may be required to take action, which may include conducting an investigation.

Complaints of sexual misconduct against undergraduate, graduate, and professional students are adjudicated by the Office of Student Conduct under the procedures in the Student Sexual Misconduct Policy. Complaints of other forms of harassment against undergraduate students are adjudicated by the Office of Student Conduct under the procedures in the Duke Community Standard in Practice. All other complaints of harassment, discrimination or related misconduct should be submitted to the Office for Institutional Equity.

In some instances, a member of the Duke community may choose to initially relay the complaint to a

manager, supervisor, dean, chair, their school or college or other appropriate administrator. In such instances, the complaint shall promptly be communicated to OIE. OIE will consult with the appropriate administrator to facilitate any follow-up, fact gathering and/or investigation.

### **III. Other Resources**

While oversight of these procedures rests with [OIE](#), complainants and respondents may request the help of other appropriate Duke resources.

Employees may seek advice and assistance from [Duke Human Resources Staff and Labor Relations](#) representatives, as well as department managers, directors, and supervisors.

Faculty and students may seek advice and assistance from academic department chairs, school deans, and academic advisors.

Students may also consult with [Harassment Prevention Advisors](#), who are trained by [OIE](#) to assist with harassment concerns.

The resources noted above cannot provide confidentiality regarding concerns of discrimination, harassment, and/or related misconduct. Duke employees or faculty members who wish to discuss a concern in a more confidential setting may contact the [Duke Personal Assistance Service](#). Duke students who wish to discuss a concern in a more confidential setting may contact [Duke Counseling and Psychological Services](#), the [Office for Gender Violence Prevention and Intervention](#) in the Duke [Women's Center](#).

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

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

### **IV. Timelines within the Procedures**

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 in writing accordingly, including the reason(s) for the extension. Examples of extenuating circumstances include 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. The phrase “business days” shall refer to those days ordinarily recognized by the Duke University administrative calendar as work days.

### **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. Informal Resolutions**

Subject to Duke's obligations set out above in § II, Reporting and Responding, and when appropriate (such as when a complainant does not wish to pursue a harassment or discrimination concern through the submission of a formal complaint), [OIE](#) may pursue more informal mechanisms to address a situation.

None of the possible informal resolution mechanisms noted below are required prior to filing a complaint of discrimination, harassment, or related misconduct and, in some cases, informal resolution mechanisms may not be appropriate, as in some cases of sexual misconduct. Duke reserves the right to determine whether informal resolution is appropriate in a specific case.

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

The following is a non-exhaustive list of possible mechanisms to informally address a concern or complaint. None of the actions set forth below is required before an individual may file a complaint. Actions taken utilizing any of these mechanisms do not constitute a formal finding of a violation of the Policy. Should any of the following mechanisms fail to resolve the matter satisfactorily, an individual may file a complaint as set forth in the § VII of these procedures. At any time prior to reaching a resolution, a complainant may withdraw from the informal resolution process. Respondents may withdraw from those mechanisms involving one-on-one meetings or facilitated conversations. [OIE](#) shall also have the authority to determine that informal resolution is not an appropriate mechanism or that [OIE](#) should instead move to a formal investigation or some other resolution process.

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.

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. **Intervention by [Harassment Prevention Advisors \(HPAs\)](#).** A student may contact [OIE](#) and request the intervention of an [HPA](#) or contact an [HPA](#) directly to assist with the offending conduct.



4. **Facilitated Conversation, Mediation, or Restorative Process.** If all parties are willing, [OIE](#) may arrange for a facilitator or mediator to help resolve the problem.

5. **Training, Education, or Coaching.** [OIE](#) may arrange for training, education or coaching to assist in addressing the specific behaviors at issue.

## **B. Achievement of Informal Resolution**

When possible, resolution of a complaint should be achieved in a timely manner. All reasonable efforts should be made to complete any agreed-upon informal process for resolution within 20 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 informal resolutions must be agreed to by both parties.

Once an informal resolution is agreed to by all parties, the resolution is binding and a formal complaint generally may not be filed later about the same matter.

Where appropriate, [OIE](#) shall review informal 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 informal resolution should be documented by the office that developed them; sanctions or disciplinary or corrective actions arrived at through an informal process conducted by another office shall be communicated to [OIE](#).

Resolution utilizing the informal 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 informal 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.

Any breach of the terms of an informal resolution agreement may result in disciplinary action or a further claim of discrimination, harassment, or related misconduct.

## **VII. Formal Investigations**

### **A. Where to File a Complaint**

Individuals are not required to follow any “chain of administration” or “chain of command” in order to file a complaint. As explained in § V.B.2 of the Policy, complaints can be filed with [OIE](#); [Human Resources Staff and Labor Relations](#); a department supervisor, manager or, director; department chair; school dean; academic advisor; entity HR leader or other HR manager; and (for students) a [Harassment Prevention Advisor](#). All such reports will be shared with [OIE](#).

Complaints of sexual misconduct against Duke students should be submitted to the [Office of Student Conduct](#) at the address or using the link below.

[Office of Student Conduct](#)

200 Crowell Hall  
Box 90893  
Durham, North Carolina 27708-0893  
(919) 684-6938.

### **B. Submitting the Complaint and Initial Review**

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

Once a complaint is submitted, [OIE](#) shall review the complaint to determine the most appropriate manner for responding to the allegations.<sup>5</sup>

At any time prior to the conclusion of the investigation, the complainant may withdraw a complaint. 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. Whether the circumstances warrant an investigation in the absence of a complaint is in the discretion of [OIE](#).

### **C. 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.

### **D. Investigation**

Once a complaint is accepted for investigation, [OIE](#) shall assign the complaint to two investigators from within the Duke community. Upon completion of the investigation, the

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<sup>5</sup> Some concerns or allegations may clearly fall outside the scope of policies implemented by [OIE](#). See § III of the Policy. In such cases, [OIE](#) may refer the matter to the [Office of Student Conduct, Human Resources Staff and Labor Relations](#), the department, or other university 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.

investigators 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 investigators will share 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 with the investigators. 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.

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 45 business days from the date the complaint is put into writing. If it will take longer, again, the parties will be notified.

#### **E. [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.

#### **F. Interim Measures**

When appropriate, the department(s), office(s), or school(s) involved in the matter, in consultation with [OIE](#), may take interim measures to foster a more stable and secure environment during the resolution of a complaint, including to insure the safety of the individual(s) involved (including the parties and/or witnesses). These measures may be taken prior to any determination regarding whether there has been a violation.

Possible interim measures include, but are not limited to, "No Contact Orders" between individuals; rescheduling of work shifts, classes, exams, or assignments; reassignments; leaves of absence; or changes in housing assignment. Violations of interim measures will be addressed under the Policy.

#### **G. Determination**

Upon completion of the investigation, the investigators 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.

To the extent possible, the investigators will let the parties know of their determination and the procedures for appeal at the same time. Within five (5) business days after that, the investigators will submit the investigative report or other written documentation to the parties. This document will generally be the same for both parties, containing a summary of the investigation, any factual findings, and the determination as to whether there is a violation of the Policy.

In cases where a violation has been found, the report submitted to 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.

## **H. Disciplinary Actions**

In cases where there is a finding of a violation, the responsible official<sup>6</sup> will consult with [OIE](#) 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 various academic or managerial responsibilities involving the complainant or others; letter of reprimand placed in a respondent's personnel file; restrictions on a respondent's access to Duke programs or facilities; limitations on merit pay or other salary increases for a specific period; or demotion, suspension, or dismissal/termination from the University.

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. The responsible official shall notify [OIE](#) of the dispositive actions and the rationale for any deviations from the actions recommended by [OIE](#).

[OIE](#) shall communicate to the complainant any sanctions or disciplinary actions resulting from the determination in a manner consistent with applicable laws, regulations, and Duke Human Resources policies and practices. OIE will verify that the actions have been implemented.

## **VIII. Appeals**

Either party has the right to appeal the determination of the investigators 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.

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<sup>6</sup> The responsible official is the individual vested with authority to impose sanctions or disciplinary or corrective actions. For example, for employees, the responsible official in most cases will be the respondent's second-level manager or supervisor.

If the investigators determine 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 § VII.H 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 may be implemented during the course of the appeals process unless inappropriate to do so.

Interim 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. The determination and/or material findings are clearly erroneous when evaluated in light of the information obtained during the investigation;
2. A party presents new information not reasonably available at the time of the investigation and material to the findings or determination; and/or
3. Procedural error(s) that materially impacted the investigators' decision.

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

Appeals must be in writing, identify the ground(s) for the appeal, 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 insures the receipt of the written appeal within the five (5) day deadline.

### **B. Appeals Board and Panel**

[OIE](#) shall constitute a 12-member Appeals Board (the Board). The Board shall be comprised of the following:

- 2 regular-rank University faculty (not School of Medicine)
- 2 regular-rank School of Medicine faculty
- 2 Health System non-faculty staff
- 2 University non-faculty staff
- 2 graduate/professional students
- 2 undergraduate students

[OIE](#) shall appoint one member of the Board to serve as chair. The Board will serve as a pool from which the Chair will select three (3) persons to serve on each appeals panel, including one person to serve as panel chair. OIE will train the Board on all relevant portions of the Policy and

these procedures. Board members will serve for a term of three (3) years and are subject to reappointment.

In those cases where there are insufficient Board members able or willing to serve on a panel, [OIE](#) may select and train another member of the Duke community to serve as a panel member.

### **C. Appeal Procedures**

Within five (5) business days after the appeal is submitted, the Vice President for Institutional Equity shall forward the appeal to the three-member appeals panel selected by the chair of the Appeals Board, along with the investigators' 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 appeals panel may summarily deny an appeal if it is not properly based on one of the designated grounds for an appeal.

Once the panel chair receives an appeal, the chair will determine if the appeal falls within the three (3) specified grounds for appeal; those appeals that do not will be denied. For those appeals that are accepted for consideration, the panel chair shall, within the next two (2) business days, inform the parties that the appeal has been accepted and who will be on the panel. The panel chair will also provide the non-appealing party with a copy of the appeal. The non-appealing party shall be allowed five (5) business days to respond to the appeal in writing.

To the extent feasible, the panel shall be comprised of at least one member with the same community status as the parties.

Either party may challenge the participation of a panel member based upon a conflict of interest or bias. Such challenges, including the rationale, must be submitted in writing to the Vice President for Institutional Equity no later than two (2) business days after notification of the names of the appellate panel members. The Vice President will decide whether such a conflict of interest exists and, if it is determined that it does, will replace the panelist.

The appeal panel will review the submitted documents and, depending on the parties' availability, schedule a meeting on the appeal to take place within 20 business days after the panel chair receives the appeal from [OIE](#).

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 panel.

During the meeting on the appeal, the parties shall be given the opportunity to provide opening comments. The panel may pose questions of the parties. The parties ordinarily are not permitted to present witnesses. However, in its discretion, the panel may hear testimony from the investigators or other individuals the panel believes will assist in their determination. The panel 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 appeals panel shall make a determination as to whether to grant the appeal and submit that determination in writing to the Vice President for Institutional Equity within five (5) business days after the appeal meeting. In its determination, the appeals panel, 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 shall within three (3) business days from the appeal panel 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 appeals panel 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 appeal panel.

## **IX. 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.