

Complaint Handling Procedures Involving a University Faculty and Non-Faculty Staff as a *Respondent*

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I. Overview

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 Section III of the Policy. This procedure applies 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. These procedures are implemented and administered by the [Office for Institutional Equity \(“OIE”\)](#).

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 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 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.

Faculty and non-faculty staff 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 faculty or non-faculty staff 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](#), and 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 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, 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 Resolution

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 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 and, in some cases, informal resolution mechanisms may not be appropriate, as in some cases of sexual misconduct. OIE 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. 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 Section 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 refer the situation for facilitation or mediation 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. 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.⁵

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](#).

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. Investigation

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

⁵ Some 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, 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.

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.

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 60 business days from the date of the notice of investigation. 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. 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 or not there has been a violation.

Possible interim 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).

Violations of interim measures will be addressed under the Policy.

F. 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, prior to the submission of the investigation report, the parties will receive notice 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 submitted to the parties. Within seven (7) business days after the notice, 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 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.

G. Disciplinary Actions

In cases where there is a finding of a violation, the responsible official⁶ 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 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](#).

⁶ 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.

OIE will verify both remedial and disciplinary 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 ten (10) calendar 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 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 Section 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.

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 Title IX Coordinator or 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.
4. 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 as set forth in Section XX. 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 ten (10) day deadline as set for the in Section XX.

B. Appellate Officer

Following receipt of an appeal the University will appoint an appellate officer. The appellate officer's role is limited to reviewing the underlying record of the investigation and 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.

The University 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 University no later than two business days after notification of the name of the appellate officer. The University will determine whether such a conflict of interest exists and whether an appellate officer should be replaced.

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 appellate officer, 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 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 two (2) business days, inform the parties that the appeal has been accepted. The appellate officer 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, depending on the parties' availability, schedule a meeting on the appeal to take place within 20 business days after the appellate officer 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 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(s) 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 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 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 shall within three (3) business days from the appellate officer 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.

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.