



# The Office for Inclusion and Equity

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The University of Texas at Austin

The Office for Inclusion and Equity Procedure and Practice Guide for the Investigation and Resolution of Discrimination, Harassment, Sexual Assault, Sexual Misconduct, Interpersonal Violence, Stalking, Retaliation, and Inappropriate Consensual Relationship Charges

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## **Procedure and Practice Guide:**

The University of Texas at Austin (“University”) prohibits discrimination in employment and in all University programs and activities on a wide variety of bases, including race, color, religion, sex, national origin, age, disability, citizenship, genetic information, veteran status, sexual orientation, gender identity, and gender expression. These prohibitions are included in University policies and procedures as well as federal and state law, including Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, the Equal Pay Act of 1963, the Age Discrimination in employment Act of 1967, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, as amended, and Chapter 21 of the Texas Labor Code.

It is also the policy of the University to provide an educational and working environment for its students, faculty, and staff that is free from sex and gender discrimination, sexual harassment, sexual assault, sexual misconduct, interpersonal violence (including domestic violence and dating violence), and stalking. The University will not tolerate sex and/or gender discrimination (including discrimination on the basis of gender orientation, gender identity or gender expression), sexual harassment, sexual misconduct or physical abuse, threats of violence, physical assault, or any form of sexual violence, including but not limited to sexual assault, acquaintance rape, domestic violence, dating violence or stalking. Individuals who alone, or in concert with others, participate or attempt to participate in conduct prohibited by University policy are subject to disciplinary action by the University, notwithstanding any action that may or may not be taken by civil or criminal authorities. The University strongly encourages students, faculty, staff, and visitors to promptly report all forms of discrimination and harassment.

## **I. Purpose**

The University of Texas at Austin’s Office for Inclusion and Equity (OIE) establishes this practice guide to assist it in carrying out its responsibilities in administering and enforcing applicable federal and state law and University and/or Board of Regents’ policies related to discrimination, harassment, sexual assault, sexual misconduct, interpersonal violence, stalking, retaliation, and inappropriate consensual relationship charges. The Office for Inclusion and Equity may, from time to time, amend these procedures as necessary.

## II. Reason for Practice Guide

This Procedure and Practice Guide is intended to create a process for investigating and resolving complaints and reports of discrimination, harassment, sexual assault, sexual misconduct, interpersonal violence, stalking, retaliation, and inappropriate consensual relationship charges and seeks to clarify the application of University policies enforced by the Office for Inclusion and Equity.

## III. Scope & Audience

These Guidelines apply to all University students and employees (faculty and staff), visitors, applicants for admission to or employment with the University, as well as University affiliates and others conducting business on campus who allege discrimination, harassment, sexual assault, sexual misconduct, interpersonal violence, stalking, retaliation, or an inappropriate consensual relationship by University employees, students, visitors, or contractors.

## IV. Definitions

Complaint: A signed document or other report, including verbal reports (if appropriately acknowledged), that alleges a violation of federal or state law or University policies related to discrimination, harassment, sexual assault, sexual misconduct, interpersonal violence, stalking, retaliation, or an inappropriate consensual relationship.

Complainant: A person who submits a complaint alleging a violation of applicable policy/law.

Discrimination: Conduct directed at an individual or group of individuals that subjects the individual/group to treatment that adversely affects any aspect of their employment, education, or participation in a University activity or program, or has the effect of denying equal privileges or treatment to an individual/group on the basis of the individual's/group's race, color, religion, sex, national origin, age, disability, citizenship, genetic information, veteran status, sexual orientation, gender identity, and/or gender expression.

Discriminatory Harassment: Discriminatory Harassment is a form of discrimination consisting of unwelcome verbal, written, graphic, or physical conduct that:

1. Is directed at an individual or group of individuals on the basis of the individual or group of individuals' actual or perceived protected status, or affiliation or association with person(s) within a protected status (as defined herein); and
2. Is sufficiently severe or pervasive so as to interfere with the individual's/group's employment, education or academic environment or participation in a University program or activity and creates a working, learning, program or activity environment that a reasonable person would find intimidating, offensive or hostile.

To constitute prohibited harassment, the conduct must be both subjectively and objectively harassing in nature. Harassment may include but is not limited to verbal or physical abuse, threats, slurs or derogatory or offensive comments that meet the definition set forth herein. Harassment does not have to be targeted at a particular individual in order to create a harassing environment, nor must the conduct result in a tangible injury to be considered a violation of this policy. Whether the alleged conduct constitutes prohibited harassment depends on the totality of the circumstances, including the nature, frequency and

duration of the conduct in question, the location and context in which it occurs and the status of the individuals involved.

To be considered discriminatory harassment, the complainant must allege that the harassment is based on the individuals' actual or perceived protected status, or affiliation or association with person(s) within a protected status (as defined herein).

Finding: A determination made by OIE regarding whether or not sufficient evidence exists to conclude University policy was violated. An OIE finding that University policy was violated does not imply that state and/or federal law was violated.

The standard of proof that will be used in investigating and adjudicating complaints filed pursuant to these procedures and policies is the "preponderance of the evidence" standard. This standard is met if the allegation(s) is deemed more likely to have occurred than not.

Interpersonal Violence: An offense that meets the definition of domestic violence or dating violence:

Domestic Violence: Abuse or violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person with whom the complainant is cohabitating (or has cohabited) with as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the state of Texas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Texas.

Dating Violence: Abuse or violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be determined based on the complainant's statement and with consideration of the type and length of the relationship and the frequency of interaction between the persons involved in the relationship. Two people may be in a romantic or intimate relationship regardless of whether the relationship is sexual in nature; however, neither a casual acquaintance nor ordinary fraternization between two individuals in a business or social context shall constitute a romantic or intimate relationship. This definition does not include acts covered under domestic violence.

Respondent: The person designated to respond to a complaint. Generally, the respondent is the person alleged to be responsible for the prohibited conduct alleged in a complaint. The term "Respondent" may also be used to designate persons with direct responsibility for a particular action or those persons with administrative responsibility for procedures and policies in those areas covered in a complaint.

Responsible Employee: Pursuant to Title IX, a Responsible Employee is a University employee who has the authority to take action to redress an alleged violation of this policy; who has been given the duty of reporting such allegations to the University Title IX Coordinator or designee; or whom an individual could reasonably believe has this authority or duty.

At the University of Texas at Austin, Responsible Employees include, but are not limited to:

- administrators
- academic advisors

- coaches, and other athletic staff who interact directly with students
- faculty members, including professors, adjuncts, lecturers, instructors, and teaching assistants
- graduate research assistants
- residence life directors
- resident assistants
- all supervisory staff

Responsible Employees have a duty to promptly report incidents of sex discrimination, sexual harassment, sexual assault, sexual misconduct, interpersonal violence, and stalking to the University Title IX Coordinator or Deputy Title IX Coordinators. Responsible Employees are not confidential reporting resources.

Retaliation: Retaliation is strictly prohibited by University policy and will not be tolerated.

Retaliation is any action that adversely affects the academic, employment, or other institutional status of a visitor, applicant for admission to or employment with the University, student, or employee of the University that is taken by the institution (or an employee/agent of the institution) because an individual has, in good faith, requested a reasonable accommodation based on religion or disability, opposed a practice believed to be unlawful discrimination, or participated in a discrimination related proceeding. Individuals who have a close association with someone who has engaged in such protected activity are also protected from retaliation. (For example, it is a violation of policy to terminate an employee because his/her spouse filed a discrimination complaint).

Examples of retaliation include but are not limited to: denial of promotion; non-selection/refusal to hire; denial of job benefits; demotion; suspension; discharge; threats; reprimands; negative evaluations; harassment; or other adverse treatment that is likely to deter reasonable people from pursuing their rights. Adverse actions do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague, or negative comments that are justified by an employee's poor work performance or history.

It is not necessary for OIE to find a violation of University policy in the original complaint in order to find that the complainant was retaliated against. Additional information about retaliation can be found at: <http://www.eeoc.gov/laws/types/facts-retal.cfm>

Sexual Assault: An offense that meets the definition of rape, fondling, incest or statutory rape:

Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the complainant.

Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Sexual intercourse with a person who is younger than 17 years of age and is not a spouse of the actor.

Sexual Harassment: Unwelcome conduct of a sexual nature. Sexual harassment is a form of sex discrimination that can occur when:

- The submission to unwelcome physical conduct of a sexual nature, or to unwelcome requests for sexual favors or other verbal conduct of a sexual nature, is made an implicit or explicit term or condition of employment or education;
- The submission to or rejection of unwelcome physical conduct of a sexual nature, or unwelcome requests for sexual favors or other verbal conduct of a sexual nature, is used as a basis for academic or employment decisions or evaluations;
- Unwelcome physical acts of a sexual nature, or unwelcome requests for sexual favors or other verbal conduct of a sexual nature, that have the effect of creating an objectively hostile environment that substantially interferes with employment or education on the basis of sex; or
- Such conduct is intentionally directed towards a specific individual and has the purpose or effect of unreasonably interfering with that individual's education, employment, or participation in University activities, or creating an intimidating, hostile, or offensive atmosphere.

*Sexual harassment may include:*

1. Sexual violence, as defined under the Texas Penal Code, which includes rape, sexual assault, sexual battery, and sexual coercion;
2. Physical conduct that, depending on the totality of the circumstances present, including frequency and severity, may constitute sexual harassment includes but is not limited to:
  - Unwelcome intentional touching; or
  - Deliberate physical interference with or restriction of movement;
3. Verbal Conduct, including oral, written, or symbolic expression, that, depending on the totality of the circumstances present, including frequency and severity, may constitute sexual harassment includes but is not limited to:
  - Explicit or implicit propositions to engage in sexual activity;
  - Gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
  - Gratuitous remarks about sexual activities or speculation about sexual experiences;
  - Persistent, unwanted sexual or romantic attention;
  - Subtle or overt pressure for sexual favors;
  - Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials; or
  - Deliberate, repeated humiliation or intimidation based upon sex.

This policy applies only to verbal conduct that is not necessary to an argument for or against the substance of any political, religious, philosophical, ideological, or academic idea.

Sexual misconduct: Behavior or conduct of a sexual nature that is unprofessional and/or inappropriate for the educational and/or working environment. Behaviors that may constitute sexual misconduct include but are not limited to:

- Repeatedly engaging in sexually oriented conversations, comments, or horseplay, including the use of language or the telling of jokes or anecdotes of a sexual nature in the workplace, office, or classroom, even if such conduct is not objected to by those present;
- Gratuitous use of sexually oriented materials not directly related to the subject matter of a class, course, or meeting, even if not objected to by those present;
- Failure to observe the appropriate boundaries of the supervisor/subordinate or faculty member/student relationship, including the participation of a supervisor, teacher, adviser, or coach in an unreported consensual romantic or sexual relationship with a subordinate employee or student; or
- Engaging in any form of sexual exploitation. Sexual exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for his or her own benefit or to benefit anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to, engaging in voyeurism; forwarding of pornographic or other sexually inappropriate material by email, text, or other channels to non-consenting students/groups; and any activity that goes beyond the boundaries of consent, such as recording of sexual activity, letting others watch consensual sex, or knowingly transmitting a sexually transmitted disease (STD) to another.

Stalking: A course of conduct directed at a specific person that would cause a reasonable person to fear for his/her own safety or the safety of others or would cause that person to suffer substantial emotional distress. A “course of conduct” means two or more acts in which a person directly, indirectly or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens or communicates to or about a person or interferes with a person’s property. “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the complainant. “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Verbal harassment: Hostile or offensive speech, oral, written, or symbolic, that:

- a. personally describes or is personally directed to one or more specific individuals; and
- b. is sufficiently severe, pervasive, or persistent to create an objectively hostile environment that interferes with or diminishes the Complainant’s ability to participate in or benefit from the services, activities, or privileges provided by the University; and
- c. is not necessary to the expression of any ideas and arguments for or against the substance of any political, religious, philosophical, ideological, or academic idea.

Examples of Verbal Harassment:

Verbal harassment may consist of threats, insults, epithets, ridicule, personal attacks, or the categories of harassing sexual speech, and is often based on the Complainant’s appearance,

personal characteristics, or group membership, including but not limited to race, color, religion, national origin, gender, age, disability, citizenship, veteran status, sexual orientation, ideology, political views, or political affiliation.

The verbal harassment that this section prohibits does not exhaust the category of speech that is unnecessary and inappropriate to the vigorous debate in a diverse community of educated people. An essential part of higher education is to learn to separate substantive argument from personal offense, and to express even the deepest disagreements within standards of civility that reflect mutual respect, understanding, and sensitivity among the diverse population within the University and in the larger society.

## **V. Contacts**

### OIE Contact Details:

#### **Office for Inclusion and Equity**

NOA 4.302

512-471-1849 (phone)

equity@utexas.edu (email)

[www.utexas.edu/equity](http://www.utexas.edu/equity)

### Title IX Coordinator Contact Details:

#### **University Title IX Coordinator**

University Compliance Services

UTA 2.206

512-232-3992 (phone)

titleix@austin.utexas.edu (email)

[www.utexas.edu/TitleIX](http://www.utexas.edu/TitleIX)

#### **Deputy Title IX Coordinator for Students**

Student Emergency Services

Office of the Dean of Students

SSB 4.104

512-471-5017 (phone)

studentemergency@austin.utexas.edu (email)

[www.utexas.edu/TitleIX](http://www.utexas.edu/TitleIX)

#### **Deputy Title IX Coordinator for Faculty/Staff**

Office for Inclusion and Equity

NOA 4.302

512-471-1849 (phone)

equity@utexas.edu (email)

[www.utexas.edu/equity](http://www.utexas.edu/equity)

### Private and Confidential Support Resources Contact Details:

Counseling and Mental Health Center (CMHC)

SSB 5<sup>th</sup> Floor

512-471-3515 (phone)

512-471-2255 (24-hour crisis line)

<http://www.cmhc.utexas.edu/index.html>

University Health Services (UHS)

SSB 1<sup>st</sup> Floor

512-475-4955 (phone)

512-475-6877 (24-hour nurse advice line)

<http://www.healthyhorns.utexas.edu/index.html>

Employee Assistance Program (EAP)

NOA 4.200

512-471-3366

512-471-3399 (24-hour telephone line)

[www.utexas.edu/hr/eap](http://www.utexas.edu/hr/eap)

## **VI. Responsibilities & Procedures**

### **Chapter 1: MANAGEMENT OF COMPLAINTS**

#### Complaints against UT Employees (faculty and staff), Visitors, or Contractors

Individuals may report an alleged violation of state/federal law or University policy by a University employee, including faculty, staff, and student-employees, visitors, or contractors to the Office for Inclusion and Equity, the Title IX Coordinator, or a Deputy Title IX Coordinator, or to any Responsible Employee. Responsible Employees are in turn required to promptly notify OIE, the Title IX Coordinator, or a Deputy Title IX coordinator of the reported incident.

Individuals may also contact the Office of the Dean of Students; however, the Office of the Dean of Students will refer such complaints to the Office for Inclusion and Equity for investigation. The Office for Inclusion and Equity may be contacted directly at 512-471-1849 or <https://www.utexas.edu/equity>.

#### Complaints against UT students (non-employees):

Individuals may report an alleged violation of state/federal law or University policy by a University student (non-employee) to the Office of the Dean of Students, the Title IX Coordinator, or a Deputy Title IX Coordinator, or to any Responsible Employee. Responsible Employees are in turn required to promptly notify the Office of the Dean of Students, the Title IX Coordinator, or a Deputy Title IX Coordinator of the reported incident.

Individuals may also contact the Office for Inclusion and Equity; however, the Office for Inclusion and Equity will refer such complaints to the Office of the Dean of Students for investigation. The Office of the Dean of Students may be contacted directly at 512-471-5017. Incidents may also be reported to the Office of the Dean of Students by completing the online referral form available at <http://deanofstudents.utexas.edu/sjs/> or by visiting the Office of the Dean of Students, located on the 4th



floor of the Student Services Building (SSB), in room 4.104. If you would like to first consult with a staff member before reporting the incident to the Office of the Dean of Students please contact their office at 512-471-5017. A student may file a complaint with the Office of the Dean of Students regardless of whether or not he/she chooses to file a report with the appropriate law enforcement agency.

The Dean of Students / Student Judicial Services processes complaints of violations of this policy as provided in Appendix C (Chapter 11, Student Discipline and Conduct).

## **A. Filing a Complaint**

*\*The following procedures and guidelines apply only to investigations conducted by the Office for Inclusion and Equity. Please refer to Appendix C (Chapter 11, Student Discipline and Conduct) for information specific to Office of the Dean of Students / Student Judicial Services investigations.*

### 1. By an individual

University employees, applicants for employment with the University, students, applicants for admission to the University, visitors, and contractors may file a complaint with the Office for Inclusion and Equity.

OIE investigates all claims, allegations, and complaints of discrimination, harassment, sexual assault, sexual misconduct, interpersonal violence, stalking, and related retaliation filed against University employees, including, faculty, staff, and student-employees, visitors, and/or contractors. Consistent with federal and state law and University policy, the Office for Inclusion and Equity investigates complaints of discrimination on the basis of race, color, religion, sex, national origin, age, disability, genetic information, veteran status, sexual orientation, gender identity or gender expression. OIE also investigates concerns related to The University's Consensual Relationships Policy (3-3050).

Allegations and complaints of this nature against University students (non-employees) should be submitted to the University Title IX Coordinator and/or the Office of the Dean of Students. OIE does not review investigations conducted by the Office of the Dean of Students.

### 2. Departmental Complaints

The Office for Inclusion and Equity may also initiate an investigation upon the request of Human Resources representatives, Deans, Directors, Department-Heads, Vice-Presidents, The University's Title IX Coordinator, and/or the President when those administrators believe that discrimination, harassment, sexual assault, sexual misconduct, interpersonal violence, stalking, or retaliation in violation of federal or state law or University policies has occurred or is occurring. OIE also investigates concerns related to The University's Consensual Relationships Policy. The process for the resolution of departmental complaints will be determined between the relevant department/unit and the Office for Inclusion and Equity. OIE may also pursue Ethics and Compliance Hotline concerns through the Departmental Process.

### 3. Office for Inclusion and Equity

The Office for Inclusion and Equity may also initiate a complaint at the Office's discretion or at the request of the University Title IX Coordinator should the office receive sufficient information to believe that discrimination, harassment, sexual assault, sexual misconduct, interpersonal violence, stalking, or retaliation in violation of federal/state law or University policies may be occurring in a unit, department, or portfolio. OIE may also initiate investigations in response to concerns brought to OIE's attention as a

result of UTS 178 notices and/or the University's Consensual Relationships Policy. The process for the resolution of OIE initiated complaints will be determined on a case-by-case basis depending on the factual allegations presented to OIE.

## **B. Complaints Filed with Outside Agencies**

The University acknowledges that individuals have the right to file complaints with external/governmental agencies at any time within that agency's deadlines, and that those complaints may be filed concurrently with complaints that are filed with the Office for Inclusion and Equity (or any other University office). OIE investigates and responds to charges of discrimination filed with external/governmental agencies, including the U.S. Equal Employment Opportunity Commission (EEOC) and the Texas Workforce Commission (TWC). OIE serves as a neutral investigator of discrimination charges filed with external/governmental agencies. Accordingly, University position statements filed in response to external charges of discrimination may serve as OIE's investigative reports in response to internal formal and departmental complaints.

*Note:* Transportation research related discrimination complaints filed under Title VI with the University in which the University or its sub-recipients are named as respondents will be forwarded to the Texas Department of Transportation for investigation within 10 calendar days.

## **Chapter 2: COMPLAINT OVERVIEW AND RESPONSIBILITIES**

### **A. Timeliness of Complaints**

Allegations of discrimination, harassment, sexual assault, sexual misconduct, interpersonal violence, stalking, or retaliation against University employees, including, faculty, staff, and student-employees, visitors, or contractors should be submitted to the Office for Inclusion and Equity and/or The University's Title IX Coordinator as soon after the offending conduct as possible. Allegations of this nature against University students (non-employees) should be submitted to The University Title IX Coordinator and/or the Office of the Dean of Students as soon after the offending conduct as possible.

To promote timely and effective review, the University strongly encourages the filing of complaints within 180 calendar days of the last act that the complainant believes was a violation of federal or state law or University policy. Although OIE and/or The University's Title IX Coordinator may pursue a complaint filed after 180 days, the lapse of time may make it more difficult to gather relevant and reliable information.

### **B. Confidentiality and Documentation**

The University recognizes that confidentiality is important. Breaches of confidentiality compromise the ability of the University to resolve claims under investigation. The University will attempt to protect the confidentiality of all investigative proceedings to the extent reasonably possible. All participants in the process are expected to respect the confidentiality of the proceedings and circumstances giving rise to the dispute. Until resolution has been achieved, participants are expected to discuss the matter only with those persons who have a genuine need to know.

The University has an obligation to maintain an environment free of discrimination and harassment, therefore the University cannot guarantee complete confidentiality. In the event confidentiality cannot be maintained, the University will share information only as necessary and only with people who need to

know to fulfill the purposes of University policy and applicable law, such as investigators, witnesses, administrators and the respondent. The University will comply with the Family Educational Rights and Privacy Act (FERPA), with Texas Education Code Section 51.971 and other confidentiality laws as they apply to Title IX investigations. Complainants who want to discuss a complaint in strict confidence may use the confidential resources outlined in this practice guide. Examples of situations in which confidentiality cannot be maintained include:

- when the University is required by law to disclose information (such as in response to legal process);
- when disclosure of information is determined by the Office of Institutional Equity, the Title IX Coordinator, and/or the relevant department/unit to be necessary for conducting an effective investigation of the claim;
- when confidentiality concerns are outweighed by the University's interest in protecting the safety or rights of others or furthering other legitimate University processes.

The University shall maintain documents related to complaints under policies enforced by OIE as required by law. The Office for Inclusion and Equity shall be primarily responsible for records related to complaints. The confidentiality of a complaint under policies enforced by OIE and all documents, correspondence, interviews and discussions relating to the investigation of the information contained in a complaint will be maintained on a need to know basis to the extent permitted by law. Any person who knowingly and intentionally makes an unauthorized disclosure of confidential information contained in a complaint or otherwise relating to the investigation of a complaint under the policies covered by these Guidelines are subject to disciplinary action.

Individuals wishing to remain anonymous can file a complaint (by telephone or in writing) with the Title IX Coordinator or a Deputy Title IX Coordinator (including OIE). However, electing to remain anonymous may greatly limit the University's ability to investigate an alleged incident, collect evidence and/or take effective action against individuals or organizations accused of violating this policy.

### **C. Rights of the Complainant and Respondent in Investigations Conducted by OIE:**

Parties to an investigation initiated pursuant to this policy shall:

- Receive a prompt, fair, and impartial investigation and resolution of all reports of prohibited conduct by an investigator(s) who is properly trained to investigate and resolve such allegations;
- Be notified of available and relevant counseling, mental health, academic, legal and other applicable support services, both at the University and in the community;
- Be informed of all applicable University policies and procedures as well as the nature and extent of all alleged violations contained within the report;
- Have the right to be accompanied by an advisor of the individual's choosing during all meetings, proceedings, and/or disciplinary hearings at which the individual is present. The role of this advisor will be limited to being present only; advisors are not allowed to actively participate in the process;
- Be given equal chance to participate in the investigation process, including the opportunity to identify witnesses and other relevant evidence;

- Be simultaneously informed in writing of the outcome of any University disciplinary hearing arising from an allegation of prohibited conduct, of the University's procedures for appealing the results of the disciplinary hearing, of any changes in the outcome that occurs before the outcome is finalized, and of the University's final outcome.

### **Chapter 3: PROCEDURES FOR EVALUATION AND RESOLUTION OF COMPLAINTS**

#### **A. Resolution Options**

An individual who believes that he or she has been subjected to discrimination, harassment, sexual assault, sexual misconduct, interpersonal violence, stalking, or retaliation in violation of a policy enforced by OIE and seeks to take action may use either the informal complaint resolution process or the formal complaint resolution process, or both. Where applicable, the informal resolution and formal complaint resolution process described in these guidelines are not mutually exclusive and neither is required as a pre-condition for choosing the other; however, they cannot both be used simultaneously, and each should be utilized in good faith.

#### **B. Informal and Formal Processes for Managing Complaints**

Complaints of discrimination, harassment, sexual assault, sexual misconduct, interpersonal violence, stalking, or retaliation may be resolved through either the informal or formal process as described below. Use of the informal process is generally more expeditious than the formal process. The Office for Inclusion and Equity will discuss with the complainant their option of pursuing their concern through the formal process or informal process or both.

While the Office for Inclusion and Equity is committed to respecting a complainant's self-selected complaint process (formal or informal), OIE reserves the right to initiate a formal investigation regardless of the complainant's selection. Examples of situations in which OIE will initiate a formal investigation regardless of the complainant's selection include:

- when the University is required by law to formally investigate an allegation;
- when a formal investigation is determined by the Office of Institutional Equity and/or the University's Title IX Coordinator to be most appropriate;
- when a complainant's selection is outweighed by the University's interest in protecting the safety or rights of others or furthering other legitimate University processes.

When appropriate, the University may take interim preventive measures to insure the safety of the individual(s) submitting the complaint. These measures may be taken during the investigation, as a follow-up or prior to any determination regarding whether there has been a violation of University policies.

Regardless of whether the informal or formal complaint process is used, substantive and, when warranted, procedural developments regarding an investigation will be communicated to the parties.

Matters that clearly fall outside the purview of the Office for Inclusion and Equity will be referred to the appropriate University office/department.

### **C. Informal Resolution**

The informal resolution process may be an appropriate choice when the conduct involved is not of a severe or repetitive nature and disciplinary action is not required to remedy the situation. The informal resolution process is not a fact finding endeavor. No formal investigation is conducted. Rather, the informal resolution process provides an opportunity to give notice of a perceived wrong and have OIE informally address the concern.

Following the informal resolution process, complainants may still choose to pursue a formal complaint as long as both processes are utilized in good faith. Generally, the filing of a formal complaint following the resolution of an informal complaint is appropriate after a reasonable amount of time has passed and the situation has not improved and/or circumstances have changed, including the occurrence of additional concerning conduct/behavior.

The University shall document the informal resolution process. Such documentation shall be retained by the Office for Inclusion and Equity as appropriate and will be kept confidential to the extent permitted by law.

### **D. Informal Resolution Mechanisms**

The following are examples of possible mechanisms used by OIE to address informal complaints. This list is not exhaustive.

1. *One-on-One Meeting.* OIE, alone or with a human resources representative and/or a department/unit representative, may choose to meet with the respondent and discuss the allegation and make it clear that the behavior is unwanted and could be a violation of University policy;
2. *Intervention by Supervisor.* OIE may contact an individual with supervisory authority over the respondent and request assistance in addressing the allegation;
3. *Coaching.* OIE, in coordination with a human resources representative and/or a department/unit representative may provide a coaching to the respondent.

Mechanisms pursued as a result of informal complaint do not denote a violation of federal or state law or University policy.

Other examples of the types of remedial action that may be recommended as a result of the informal resolution process, include, but are not limited to:

- aiding in the modification of a situation in which the offensive conduct occurred;
- assisting a department, unit or division with the resolution of a real or perceived problem;
- providing training and educational opportunities to address and correct both current and future concerns;
- arranging a documented meeting with the alleged respondent that involves a discussion of the requirements of applicable University policies;
- participation of the respondent in counseling / coaching sessions;

- prohibition of the respondent from participating in grading, honors, recommendations, reappointment and promotion decisions, or other evaluations of the complainant;
- documentation of the concerns placed in the respondent's personnel file; and/or
- restrictions on the respondent's access to University facilities.

## **Chapter 4: PROCEDURES FOR EVALUATION AND RESOLUTION OF FORMAL COMPLAINTS**

### **A. Requirements of a Formal Complaint**

Although not required, formal complaints should be documented on the Office for Inclusion and Equity's official formal complaint form.

Formal complaints filed with OIE must be written, signed, and dated. Verbal complaints may be accepted by OIE if the complainant signs and dates a written transcript of the verbal communication and OIE confirms the receipt of the verbal complaint in writing.

A complaint must also contain:

1. The full name and contact information of the complainant (who must be the individual claiming to be harmed by the alleged policy violation);
2. The name of the respondent(s);
3. The complaint must include a statement describing the alleged policy violation which should contain the following information:
  - (a.) The grounds or bases for the complaint;
  - (b.) The conduct or behavior believed to be in violation of University policy, including the names (and if known titles) of the University-based individuals involved;
  - (c.) The dates, time period, and the location of the conduct or behavior believed to be in violation of University policy;
  - (d.) The effect that the conduct or behavior have had on the complainant's work, education, or the complainant's ability to take part in a University program or activity;
  - (e.) The names (and if known contact information) of any persons who may have information pertinent to the allegations, and the names of any persons who may have experienced similar treatment;
  - (f.) Any documents or material supporting the allegations;
  - (g.) A statement of an outcome or resolution the complainant believes would be an appropriate remedy for the complaint.
4. A statement by the complainant verifying that the information supporting the allegations of is true and accurate to the best of complainant's knowledge.

## **B. Failure to Meet the Requirements of a Complaint**

The Office for Inclusion and Equity has the discretion to not formally investigate a complaint. Legitimate reasons for not formally investigating a complaint include but are not limited to:

- a person fails to meet the required elements for filing a complaint;
- the conduct/behavior described in the complaint is not covered by a policy enforced by OIE;
- the conduct/behavior described in the complaint, even if proven true, would not constitute a violation of federal or state law, or a policy enforced by OIE;
- the complaint is not timely;
- the complainant declines/refuses to cooperate in the University's investigation;
- the complaint is withdrawn; or
- an appropriate resolution or remedy has already been achieved, or has been offered and rejected.

If it is determined that the Office for Inclusion and Equity will not proceed with a complaint investigation, the Office for Inclusion and Equity will send notification explaining the reason(s) to the complainant. The notification will also include a statement informing the complainant that, within ten (10) working days of the notification, he or she may appeal the determination not to proceed with a complaint investigation to the appropriate executive official. The request for appeal must be written and signed and articulate why the decision to dismiss the complaint is in error.

The appropriate executive official will respond within twenty (20) working days of the receipt of the appeal. If the decision to dismiss is upheld, that decision is final. If the decision to dismiss is overturned, the complaint is sent back to the Office for Inclusion and Equity for investigation in accordance with the procedures outlined in this procedure and practice guide.

A complainant who intentionally makes dishonest or malicious allegations will be subject to University discipline up to and including dismissal.

## **C. Withdrawal of Complaints**

Once filed, the Office for Inclusion and Equity has an obligation to investigate complaints raising significant claims of discrimination, harassment, sexual assault, sexual misconduct, interpersonal violence, stalking, or retaliation. However, in appropriate circumstances, and at the discretion and judgment of the Office for Inclusion and Equity and/or the University's Title IX Coordinator, it may be determined that upon a written and signed request to do so by the complainant, that withdrawal of a complaint is permissible. The Office for Inclusion and Equity shall notify the respondent of such withdrawal.

## **D. Complaint Processing**

1. Intake Interview: At or soon after the time a complainant files a complaint, a representative from the Office for Inclusion and Equity shall conduct an interview with the complainant. A formal investigation will be initiated if a complaint is complete, timely, within the scope of an applicable University policy, and articulates sufficient specific facts, which, if determined to be true, would support a finding that University

policy was violated. If it is determined that the University will not proceed with a complaint investigation, The Office for Inclusion and Equity or the Office of the Dean of Students, as appropriate, will send a notification letter explaining the reason(s) to the Complainant.

2. Notice to Respondent: When a formal complaint of discrimination, harassment, sexual assault, sexual misconduct, interpersonal violence, stalking, or retaliation is filed, the respondent will be informed of (i) the identity of the complainant (if permissible under applicable law/university policy); (ii) the allegations alleged by the complainant; and (iii) the facts surrounding the allegations. A representative from the Office for Inclusion and Equity shall conduct an interview with the complainant. OIE will provide the respondent with a formal complaint notification letter summarizing this information. The notification letter informing the respondent of the formal complaint shall include a statement advising the respondent that retaliation against the complainant and those participating in the investigation is strictly prohibited.

The respondent shall be given the opportunity to provide information and to be heard concerning the complainant's allegations, including the opportunity to submit a written response to the complaint. The Office for Inclusion and Equity will also notify the respondent's supervisor, head-of-unit, human resources representative, and/or other appropriate designee about the formal complaint.

3. Submission of Evidence: During the complaint investigation process, the complainant(s) and the respondent(s) are expected to provide the Office for Inclusion and Equity with all relevant documents and/or other evidence relied upon regarding the issues raised in the complaint.

4. Access to Information Regarding the Investigation: Complainants and respondents, upon inquiry and during the course of an investigation, shall be advised of the status of the investigation within reason.

5. Amending a Complaint: If, during the course of an investigation, a staff member from the Office for Inclusion and Equity determines that more information is required to enable a meaningful investigation, the staff member may request the complainant to clarify or amplify allegations in the complaint.

Complainants may also be allowed to add additional respondent(s) and/or additional allegations to the original complaint. The Office for Inclusion and Equity reserves the right to determine whether the expansion or amendment of a complaint forms the basis of a new complaint. Any such expansion or amendment to a complaint must be in writing and the receipt of which must be documented in writing by OIE.

6. Investigative Process and Findings: The OIE investigator may interview any persons who are considered to have pertinent factual information related to the complaint. The investigator shall assemble statements, documents, and other relevant evidence from the complainant, the respondent, witnesses, and other identified individuals who have or may have information concerning the allegations set forth in the complaint. The investigator shall also gather and examine other documents, evidence, facts, or information relevant to the complaint. Facts will be considered on the basis of what is reasonable to persons of ordinary sensitivity and not on the particular sensitivity or reaction of an individual.

Findings will be based on the totality of circumstances surrounding the conduct complained of, including but not limited to: the context of that conduct, its severity, frequency, whether it was physically threatening, humiliating, or was simply offensive in nature.



## **E. Findings and Recommendations**

1. Upon conclusion of the investigation, the investigator will evaluate the complaint and the totality of the evidence in accordance with standards set forth in applicable federal and state law, including case law, and University policies, procedures, and codes of conduct, if applicable, and shall make a finding regarding the allegations. OIE findings are made based on the preponderance of the evidence. The "preponderance of evidence" simply means that the evidence on one side outweighs the evidence on the other side. A finding of a violation of University policy does not entail a finding of a violation of state/federal law.

2. If the investigator finds a policy violation, the investigator should also propose recommendations regarding appropriate remedial measures (including sanctions) up to and including termination and/or other corrective action deemed appropriate, such as education and training. In cases involving complaints where hostile work environment, discriminatory or sexual harassment is found, the investigator shall make recommendations of steps reasonably calculated to end any harassment and to prevent recurrence.

## **F. Report of Findings and Recommendation - Complaints against Non-Students (including faculty, staff, student-employees, visitors, and contractors):**

1. Upon conclusion of the investigation, the OIE investigator will prepare a written report regarding the complaint. The report will set forth:

- a. factual determination(s);
- b. recommendations as to whether the respondent is responsible for alleged violations using a preponderance of the evidence standard; and
- c. recommendations as to appropriate sanctions/remedial actions, if any.

2. The written report will be submitted to the appropriate Vice-President, or designee, for a final decision regarding the merits of the complaint and the appropriate sanctions/remedial actions.

The appropriate Vice-President to render a final decision on complaints against University employees (faculty and staff) will be the Vice-President of the division/unit in which the respondent is employed. The appropriate Vice-President to render a final decision on complaints against visitors and contractors will be the Vice-President for Diversity and Community Engagement (DDCE). If a complaint is directed against a Vice-President who would otherwise act on a complaint, or another legitimate conflict of interest is present, the function assigned to that Vice-President will be delegated to another Vice-President.

3. The appropriate Vice-President will promptly notify the complainant and the respondent that the Office for Inclusion and Equity's investigation has been completed and attach a copy of the written report.

4. Within ten (10) working days from the date of the Vice-President's notification, the complainant and the respondent may submit, for consideration by the appropriate Vice-President, such comments and corrections as they may have to the written report.

5. Within ten (10) working days of the time in which the complainant and the respondent may submit comments and corrections, the appropriate Vice-President and the OIE investigator should meet to discuss the findings, and review the record, along with any comments and proposed corrections submitted by the complainant and the respondent.

6. Within fifteen (15) working days from that meeting, the appropriate Vice-President shall take one of the following actions: i) request further investigation into the complaint; ii) dismiss the complaint if the results of the completed investigation are inconclusive or there is insufficient reasonable, credible evidence to support the allegation(s); or iii) find a University policy and/or code violation, and implement appropriate remedial measures.

7. If the Vice-President determines that the respondent's conduct/behavior constitutes a University policy violation, the Vice-President, following consultation with the OIE investigator and/or other knowledgeable persons as appropriate, shall determine an appropriate remedial/disciplinary action that is appropriate for the severity of the conduct. Remedial/disciplinary actions can include, but are not limited to, written reprimands, the imposition of conditions, reassignment, suspension without pay, and/or termination.

8. The Vice-President shall inform the complainant and respondent, and the appropriate unit head in writing of his/her decision, and shall attach a copy of the final statement of findings. Copies of the Vice-President's final determination letter should be sent to the Office for Inclusion and Equity.

### **G. Retaliation Prohibited**

The University will take reasonable action to ensure that the complainant, the respondent, witnesses, and those participating in investigations, are protected from retaliation. A student, employee, or agent of The University who retaliates against such persons will be subject to disciplinary action up to and including dismissal. This disciplinary action can be taken at any time during or following an investigation. See Section IV ("Retaliation" definition) above for more information.

### **H. Interference with an Investigation**

Any person who knowingly and intentionally interferes with an investigation conducted pursuant to University policy is subject to disciplinary action up to and including dismissal or separation from the University. Interference with an investigation may include, but is not limited to:

- Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- Removing, destroying, or altering documentation relevant to the investigation; or
- Providing false or misleading information to an investigator, or encouraging others to do so.

## **Chapter 5: MISCELLANEOUS PROVISIONS**

### **A. Relationship of Complaint Process to Outside Agency Time Limits**

The filing of a complaint with the Office for Inclusion and Equity does not extend the time limits for filing a complaint with external state and/or federal agencies. Complainants are urged to contact the applicable state/federal agency directly for more information regarding their time limits.

### **B. The Family Educational Rights and Privacy Act**

As required by federal law, any disclosure of the findings and decision of the Office for Inclusion and Equity and the Office of the Dean of Students will be governed by the provisions of the Family Educational Rights and Privacy Act (FERPA).

**C. Effect on Pending Personnel Actions**

The filing of a complaint with the Office for Inclusion and Equity will not stop or delay any evaluation or disciplinary action related to a complainant who is not performing up to acceptable standards or who has violated University rules or policies.

**D. Relationship to Grievance Procedure**

This complaint procedure shall also constitute the grievance procedure for complaints alleging unlawful discrimination. As used herein, "complaint" is synonymous with "grievance."

**E. Time Frames**

Time frames mentioned in these procedures may be extended for good cause, such as holidays or when classes are not in session, or when it has proven difficult to contact witnesses or otherwise investigate the complaint.