

## OIE Process Standards

These standards support the consistent implementation of The Ohio State University Non-Discrimination, Harassment, and Sexual Misconduct Policy and Youth Activities and Programs Policy by establishing required practices for handling Policy investigations under these policies. These requirements are designed to be read and followed in accordance with the Non-Discrimination, Harassment, and Sexual Misconduct Policy and Youth Activities and Programs Policy.

All individuals and units that conduct investigations and adjudications on behalf of the Office of Institutional Equity (OIE) must comply with these requirements. Further information regarding complaints under the Youth Activities and Programs Policy and/or other allegations such as process abuse that may not have a complainant as defined can be found in the ‘Additional Information’ section at the end of this document.

### Table of Contents

I.	Purpose and Scope .....	2
II.	Jurisdiction, Reporting Options, Privacy and Confidentiality, Prohibited Conduct, and Resources .....	2
III.	Process Standard Modifications.....	2
IV.	Supportive Measures.....	2
V.	Emergency Removal.....	3
VI.	Overview of Resolution Process.....	3
VII.	Overview of Informal Resolution Process .....	5
VIII.	Investigation of a Complaint.....	8
IX.	Hearing and Adjudication.....	9
X.	Sanctions and Corrective Action.....	12
XI.	Written Determination and Notification of Findings.....	14
XII.	Appeals.....	14
XIII.	Additional Information .....	16



## **I. Purpose and Scope**

- A. The Process Standards are intended to be the procedures used to address allegations made against students and employees pursuant to the Non-Discrimination, Harassment, and Sexual Misconduct Policy and Youth Activities and Programs Policy. This document should be read in accordance with those policies.

## **II. Jurisdiction, Reporting Options, Privacy and Confidentiality, Prohibited Conduct, Joint Investigations, and Resources**

- A. Please see the Non-Discrimination, Harassment, and Sexual Misconduct Policy and Youth Activities and Programs Policy for guidance related to these topics, as applicable
- B. Both retaliation and process abuse are serious violations under applicable university policy, including the Non-Discrimination, Harassment, and Sexual Misconduct Policy, independent of the merits of any underlying allegation.
  - i. Retaliation is prohibited by university policy and law. The university will not tolerate retaliation in any form against any individual who makes an allegation, files a report, serves as a witness, assists a complainant, or participates in an investigation of discrimination, harassment, or sexual misconduct. Please see the Non-Discrimination, Harassment, and Sexual Misconduct Policy for more information relating to retaliation prohibited by that policy.
  - ii. It is a violation of university policy to engage in process abuse as described in the Non-Discrimination, Harassment, and Sexual Misconduct Policy.

## **III. Process Standard Modifications**

- A. These Process Standards shall govern all procedures for complaints filed after the effective date. The university will give parties notice of the procedures that will be used. The definitions of prohibited conduct used in a particular matter will be the definitions found in the relevant policy in effect at the time the alleged conduct occurred.
- B. The university reserves the right to modify these Process Standards. Modifications become effective upon approval by the Associate Vice President of the Office of Institutional Equity or designee.

## **IV. Supportive Measures**

- A. Supportive measures are available to both complainants and respondents as defined in the Non-Discrimination, Harassment, and Sexual Misconduct Policy. All parties will have access to a trained Civil Rights Intake Coordinator. Civil Rights Intake Coordinators are responsible for assisting parties in arranging supportive measures. In addition, Civil Rights Intake Coordinators provide assistance with connecting to campus and community resources. Supportive measures are non-disciplinary and non-punitive in nature and offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a complaint or where no complaint has been filed.
  - i. The parties will have an ability to identify any potential conflicts of interest with the Civil Rights Intake Coordinator assigned and present them to the Director of Intake and Investigations or an OIE Director for review. If a conflict of interest is identified, a new Civil Rights Intake Coordinator will be assigned.
- B. Supportive Measures for complainants and respondents will be assessed on a case-by-case basis depending on the circumstances. OIE may consult with other university offices to determine which supportive measures are reasonably available. Supportive measures may include, but are not limited to:



- i. Mutual no contact directives;
  - ii. Referral to campus and community, advocacy, counseling, disability services, financial aid services, health services, immigration services, safety and transportation services;
  - iii. Extensions of deadlines or other class adjustments;
  - iv. Modification of work or class schedules/program cohort placement;
  - v. Change in work or housing locations;
  - vi. Change in reporting relationship;
  - vii. Consideration of leave requests;
  - viii. Assistance with academic petitions;
  - ix. Removal of a program participant, supplier/contractor, volunteer, or visitor;
  - x. Safety planning;
  - xi. Information about protection orders
  - xii. Removal of public directory information; or
  - xiii. Other measures deemed appropriate by OIE.
- C. All individuals are encouraged to report to OIE any concerns about the failure of another to abide by the terms of supportive measures.

## V. Emergency Removal

- A. The Associate Vice President in the Office of Institutional Equity or an OIE Director will determine if an emergency removal is warranted as outlined in the Non-Discrimination, Harassment, and Sexual Misconduct Policy
- i. Emergency removal may be warranted if after review of relevant information known at the time, the university determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of discrimination, harassment, or sexual misconduct justifies removal.
  - ii. Notice to the respondent may be initially given verbally and will be formally communicated in writing, which will outline the steps a respondent can take to challenge the decision immediately following the removal.
  - iii. The respondent can then immediately challenge by submitting in writing their rationale for challenging the emergency removal. The challenge will then be considered by the OIE Associate Vice President or an OIE Director, who will respond by the end of the next business day.
- B. Violation of an emergency removal will be grounds for discipline, which may include dismissal.
- C. Nothing precludes the university from imposing administrative leave, interim suspension, reassignment, or other appropriate action as outlined in the Non-Discrimination, Harassment, and Sexual Misconduct Policy and other applicable policies.

## VI. Overview of Resolution Process

- A. Overview of Resolution Process: The resolution process is initiated when the university receives a report of a potential violation of the Non-Discrimination, Harassment, and Sexual Misconduct Policy. Alleged violations of the Youth Activities and Programs Policy follow this resolution process only when the respondent's employment or student status may be impacted. Please see 'Additional Information' below for the resolution process regarding guests and volunteers.



- B. After receiving a report, OIE will conduct an initial assessment. An initial assessment may include, but is not limited to, evaluating whether the report implicates a policy enforced by OIE, whether the parties are within the jurisdiction of OIE, and whether the report implicates a safety threat.
  - i. It is important to note that to comply with federal, state and local laws, as well as Ohio State policies, some information may be required to be shared with appropriate staff members, law enforcement, or other agencies.
- C. Consolidation of complaints: The university, at its discretion, may consolidate complaints. This consolidation may include some or all of the investigation, resolution, or hearing at the university's discretion.
- D. OIE will then determine the most appropriate means for addressing the report after contacting the complainant (i.e., the alleged victim of the misconduct reported). Options include:
  - i. Receipt of Supportive Measures: A complainant may elect not to file a complaint and simply receive supportive measures. The university will defer to a complainant's request in this respect unless an OIE Director determines that a complaint should be filed. See section VI.D.ii.b.1. below for a description of the factors used to determine if a complaint should be filed.
  - ii. Complaint: A complainant will have the opportunity to learn about the investigation process. If the complainant wishes to initiate an investigation, the complainant will submit a complaint.
    - a. OIE will determine the type of complaint based on the information reported:
      - 1. Title IX complaint: For a Title IX complaint, a complainant must be participating in or attempting to participate in the university's education program or activity at the time of filing the complaint.
      - 2. OIE complaint: Harassment, discrimination, or sexual misconduct that does not fall under Title IX as outlined by the policy.
      - 3. A complaint will also be used to initiate an investigation under the Youth Activities and Programs Policy.
    - b. In a case where a complainant does not wish to file a complaint, an OIE Director may file a complaint when deemed appropriate, as provided by the applicable policy. OIE may ask a complainant if they will participate in an investigation if the university files a complaint.
      - 1. Factors used to determine if an OIE Director should file a complaint without a participating complainant include, but are not limited, to the following:
        - a. The totality of the known circumstances;
        - b. The complainant's interest in the university not pursuing an investigation or disciplinary action and the impact of such action on the complainant;
        - c. Whether the university possesses other means to obtain relevant evidence;
        - d. Whether there is an available remedy, outside of an investigation, that would be an appropriate resolution;
        - e. The severity of the conduct, including whether the reported behavior involves violence or the threat of violence;
        - f. Allegations regarding a pattern;
        - g. Assessment for potential for pattern of continued harmful behavior;
        - h. Prior reports against the respondent;
        - i. The impact on the work or educational environment;



- j. Whether the report concerns a historic complaint; and
      - k. Evidence of prior training or intervention;
      - l. Whether parties are still members of the university community;
      - m. Where it is otherwise required by law.
  - iii. Dismissal of an OIE or TIX complaint
    - a. OIE or Title IX complaints may be dismissed as provided by the Non-Discrimination, Harassment, and Sexual Misconduct Policy.
      - 1. See the Non-Discrimination, Harassment, and Sexual Misconduct Policy (procedure section II.B. & C.) for a full list of the bases for dismissal.
    - b. Complaints initiated pursuant to the Youth Activity and Programs Policy may be dismissed as determined appropriate by the Director of Youth Protection or designee.
  - iv. Investigative Resolution Process: If an investigation resolution proceeds, it can include four stages: Investigation, Adjudication (which may include a hearing), Sanction, and Appeal.
- E. OIE is committed to providing a prompt, fair, impartial, and equitable resolution of all matters referred for investigative resolution.
  - i. Timeframes. A typical investigation will vary depending on factors such as the complexity of the investigation and the severity and extent of the alleged discrimination, harassment, and sexual misconduct. Parties will be updated on the status of the investigation. Major steps of the process and approximate timeframes for completion include:
    - a. Conducting the investigation, which includes interviewing parties and witnesses and reviewing documentation (90 business days). This period includes but is not limited to:
      - 1. Providing parties an equal opportunity to inspect and review any evidence, as outlined in the policy (10 business days);
      - 2. Providing parties the opportunity to submit a written response to the investigative report (10 business days)
    - b. Scheduling and conducting hearing (if applicable) and written determination issuance or preparation and finalization of investigative report (45 business days).
    - c. Appeals (30 business days)
  - ii. The timeframes listed above are an approximation; the investigation resolution process could be longer or shorter. Other factors may affect one or more parts of the timeframe, including and not limited to, the complexity, severity, and extent of the alleged sexual misconduct, discrimination, or harassment. The process may be extended as determined appropriate by OIE if necessary for reasons such as illness, holidays, unavailability of parties or witnesses, complexity of the case, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.
  - iii. Extension requests. A written extension request for any part of the investigative or resolutions process will be reviewed for reasonableness, which may include the timing and rationale for the request, to determine whether the request will be granted.

## VII. Overview of Informal Resolution Process

- A. Overview of Informal Resolution Process: Informal Resolution is intended for parties who would prefer to resolve complaints without an investigative/hearing process. Informal Resolution is a



voluntary process designed to eliminate prohibited conduct, prevent its recurrence, and remedy its effects while maintaining safety through facilitating an agreed resolution between parties. Participation in Informal Resolution does not necessarily require a finding of “responsible” for any policy violation. This process focuses on restoring access to education/employment and educating parties on the impact of reported behavior to decrease the risk of reoccurrence.

- B. Required Elements for Participation: Informal Resolution will be considered when requested by both parties, if applicable, and approved by the Resolutions Officer and applicable OIE Director. The parties may request Informal Resolution at any time after a complaint has been approved prior to the start of a hearing or other adjudication. Either party can withdraw from Informal Resolution at any time prior to finalization of an Informal Resolution agreement and the matter will revert to the Investigative Resolution process. If the parties cannot reach a resolution, the matter will be referred to the applicable OIE Director to return to the Investigative Resolution process.

Additional elements of Informal Resolution:

- i. Both the complainant and the respondent must voluntarily consent to the Informal Resolution Process.
  - ii. OIE will approve or deny a request for an Informal Resolution Process based on information available, and OIE reserves the right to terminate an Informal Resolution Process at any time.
  - iii. Participation in the Informal Resolution Process will suspend the Investigative Resolution Process, including investigation and adjudication of the complaint, while the Informal Resolution Process is ongoing. If a party believes that suspension of the Investigative Resolution Process could result in relevant evidence being lost, they should notify OIE to discuss options for preserving that evidence.
  - iv. Either the complainant or the respondent may withdraw from the Informal Resolution Process and resume the Investigative Resolution Process at any time prior to finalization of an Informal Resolution Agreement. An Informal Resolution Agreement is finalized when signed by the parties and approved by an OIE Director. Informal resolutions involving faculty respondents must also be reviewed and approved by the Office of Academic Affairs prior to being finalized.
  - v. Once an Informal Resolution Agreement has been finalized, the complaint will be considered resolved, and both parties will be precluded from resuming the Investigative Resolution Process involving a complaint arising from the same allegations.
  - vi. OIE may create or maintain records of the Informal Resolution Process, including but not limited to: written notice of the allegations, the Informal Resolution Request Form, the Informal Resolution Agreement, and documentation of completed outcomes or failure to comply with agreement terms. Such records, and information shared or gathered during the Informal Resolution Process, are considered private and will not be used in a subsequent hearing if the Investigative Resolution process related to the complaint is resumed.
  - vii. In accordance with the Non-Discrimination, Harassment, and Sexual Misconduct Policy, information and records may be shared with individuals whom the university determines are necessary to conduct an appropriate resolution, to provide assistance and resources to parties, to perform other appropriate university functions, or in accordance with applicable law. Resolutions Officers are required to comply with mandatory reporting policies provided by university policy and applicable law.
- C. Considerations for Use of Informal Resolution Process: The applicable OIE Director will consider a number of factors when determining if Informal Resolution is appropriate, including but not limited to:
- i. The conduct alleged and other known facts;
  - ii. Respondent’s disciplinary history;
  - iii. Whether the respondent has had multiple allegations and/or reports;



- iv. Whether the allegations involve threats, weapons, and/or force;
- v. Whether it is alleged that physical bodily injury occurred;
- vi. Whether the alleged incident was committed by multiple perpetrators;
- vii. Whether the allegations suggest that the respondent is an ongoing safety risk; and
- viii. The power differential between the complainant and respondent, including whether the complainant is a minor.

Informal Resolution is not permitted for complaints involving an employee respondent and a student complainant.

D. Available Resolution Options: The Resolution process is facilitated by a trained Resolutions Officer within the Office of Institutional Equity. Resolution options include:

- i. Accept Responsibility: If a Respondent accepts responsibility for a policy violation a Resolution Officer will work with the parties to determine an appropriate sanction based on the facts of the case and the policies in question.
- ii. Shuttle Negotiation: A negotiated process facilitated by a Resolutions Officer with individual conversations with Complainant and Respondent to come to an agreed outcome. The parties will not meet directly in this process.

The Resolutions Officer will schedule a preliminary meeting with each party to discuss the process and their expectations and to answer any questions. Individuals may be accompanied by an advisor at any meetings related to Informal Resolution.

E. Informal Resolution Agreements: Any Informal Resolution Agreement reached will be documented by the Resolutions Officer and must be approved by the applicable OIE Director. Once the applicable OIE Director approves an Agreement, the parties are bound by its terms.

Informal Resolution Agreements may include, but are not limited to:

- i. Educational opportunities;
- ii. Individualized assessments;
- iii. Restricted access to specific University programs, activities, or spaces; and/or
- iv. Other outcomes agreed to by both parties.

Informal Resolution Agreements will include details as to the consequences should a party fail to comply with the agreement.

In order to meet applicable legal requirements and/or address possible safety concerns, the Resolutions Officer or applicable OIE Director may determine that specific terms must be included in an Informal Resolution Agreement in order for it to be approved. Should any party choose not to agree to a term required by the university, the Informal Resolution Process will be terminated, and the Investigative Resolution Process will resume.

F. Documentation of Informal Resolution: The following records will be maintained by OIE related to the Informal Resolution process:

- i. Written notice disclosing the allegations;
- ii. Documentation of parties' request for Informal Resolution;
- iii. Resolution Agreement signed by both parties, and
- iv. Documentation of completed outcomes.

H. Timeline for Informal Resolution Process: The goal of Informal Resolutions is to sign a Resolutions Agreement within 90 business days from receipt of request by both parties. However, the process may



be extended for good cause as determined by the Resolutions Officer. A Resolutions Officer can end the Informal Resolution Process for cause at any time.

## VIII. Investigation of a Complaint

### A. Written Notice

- i. If a complaint is filed, OIE will send the respondent(s) and the complainant(s) written notice of allegations that may be presented by email to the respondent's official university email address or by text message (which may direct the respondent to view the notice on a secure website), by other form of electronic communication specific to the respondent's contact information on file with university, by placement in the respondent's residence hall mailbox, or by hand-delivery to any employee or student respondent.
- ii. Additionally, when the written notice of allegations is sent to the parties, OIE will:
  - a. Provide a copy of the applicable university policy and OIE Process Standards;
  - b. Identify the Civil Rights Investigator(s) who will conduct the investigation;
    - i. The parties will have an ability to identify any potential conflicts with the Civil Rights Investigator and present them to the OIE Director of Intake and Investigations or an OIE Director for review. If a conflict is identified, a new Civil Rights Investigator will be assigned.
  - c. Identify the Civil Rights Intake Coordinator who can assist with supportive measures;
- iii. A complaint may be dismissed or consolidated based on the parameters identified in the Non-Discrimination, Harassment, and Sexual Misconduct Policy.
- iv. Non-participation. Because the most accurate and fair review of the facts can best be accomplished when all parties are present, all parties and witnesses are strongly encouraged to attend and participate. If an individual chooses not to attend a hearing, the matter will be reviewed as scheduled on the basis of the information available, and a decision will be made. No inference may be drawn against a party for failing to attend a hearing or remaining silent. When a hearing is held, the conclusion will be based on the relevant evidence presented and that is not otherwise excluded by operation of these procedures and/or relevant policies. No decision shall be based on the failure of the respondent or the complainant to attend the hearing or answer the allegations.

### B. Evidence and Fact Gathering

- i. The university, not the complainant or the respondent, is responsible for gathering relevant evidence to the extent reasonably possible.
- ii. Both parties will have the opportunity to meet with the investigator and provide a statement and will be given the opportunity to identify fact and expert witnesses, provide other relevant inculpatory and exculpatory information, such as documents, communications, photographs, and other evidence.
  - a. Evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such evidence about the complainant's prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
  - b. Exculpatory evidence may include evidence that a party acted in self-defense. Self-defense is when a person who is not the primary aggressor in an encounter uses the minimum force required to remove their own self or another from an immediate risk of harm. Actions that escalate or continue the encounter will not be considered self-





defense.

- iii. For Title IX matters, the investigator will obtain a party's voluntary, written consent in order to access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, in the investigative resolution process.

C. Review of Evidence

- i. Following the fact gathering, the Civil Rights Investigator will provide parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a complaint, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- ii. The access to evidence will be provided in an electronic format.
- iii. The parties will have ten (10) business days to submit a written response to the review of evidence, which the investigator will consider prior to completion of the investigative report.
  - a. OIE may gather additional evidence based on the written responses of the parties.
    - 1. If the matter does not require a hearing pursuant to the applicable policy, and OIE determines the new evidence is material to the investigation, the parties will be given five (5) business days to review the new evidence and submit an additional written response.
    - 2. If the matter proceeds to a hearing, the investigation report review procedure will proceed as outlined below in section VIII.D.ii.

D. Investigation Report

- i. If the matter does not require a hearing pursuant to the applicable policy, the investigator will prepare a written investigative report that includes a summary of the facts gathered during the investigation, analysis, and findings.
- ii. If the matter does require a hearing pursuant to the applicable policy, the investigator will provide the investigative report to the Director of Resolutions or designee to facilitate a hearing.
  - a. Following the submission of written responses, if not waived, by both parties, the Civil Rights Investigator will provide an investigative report that fairly summarizes relevant evidence, in an electronic format at least ten (10) business days prior to a hearing to each party and each party's advisor, if any, for their review and written response.
  - b. After the delivery of the investigation report, the matter will proceed to hearing, where applicable, unless both parties voluntarily agree to informal resolution in lieu of a hearing, pursuant to the requirements listed in the relevant policy.

## IX. Hearing and Adjudications

- A. Hearings are available for OIE complaints involving student respondents and Title IX complaints. Alleged violations of the Youth Activities and Programs policies that could impact a respondent's student status will be referred to Student Conduct for investigation and adjudication as appropriate.
  - i. Notice of Hearing



- a. If a hearing is to be held, written notification will be provided to the respondent and the complainant. The notice will be given to the parties no fewer than ten (10) business days prior to the hearing. Unless already provided to the respondent, the notification will include the relevant policy, OIE Process Standards, date, time, and location of the hearing, and the designated resolutions officer.
- ii. Postponement
  - a. The respondent and the complainant may request a postponement for reasonable cause to the OIE Director of Resolutions, the resolutions officer, or an OIE Director. A request for a postponement for reasonable cause must be made in writing, include supporting rationale and be received by the person sending the hearing notification within (3) business days of receiving a hearing notification, absent extraordinary circumstances. The university reserves the right to reschedule the hearing for the first available date.
  - b. While the university recognizes that the parties and their advisors have professional and personal obligations outside of this process, postponements are not automatic and will generally be of limited duration. The university encourages parties to consider their advisor's availability for a hearing and other stages of the process when choosing an advisor.
- iii. Resolutions Officer
  - a. The resolutions officer may be a university administrator or an external adjudicator.
  - b. Any person serving as a resolutions officer must be impartial and free from actual bias or conflict of interest for or against either party or bias for or against complainants and respondents, generally.
  - c. The parties may identify any potential conflicts of interest with the resolutions officer prior to the hearing and present them to the OIE Director of Resolutions or an OIE Director for review. Notice of potential conflicts should be raised as soon as the party becomes aware. If a conflict of interest is identified by the OIE Director of Resolutions or an OIE Director, a new resolutions officer will be assigned.
  - d. Any person serving as a resolutions officer must be adequately trained to resolve cases of alleged sexual misconduct in accordance with applicable policies and procedures. (Training material can be found at <https://titleix.osu.edu/navigation/policy/title-ix-regulations-training.html>.)
  - e. Any person serving as a resolutions officer, or involved in a hearing procedure, must be adequately trained regarding all applicable hearing procedures and any technology used.
- iv. Attendance
  - a. Because the most accurate and fair review of the facts can best be accomplished when all parties are present, all parties and witnesses are strongly encouraged to attend and participate. If an individual chooses not to attend a hearing, the hearing will proceed as scheduled and a determination of the complaint will be made based on the relevant and admissible evidence presented at the hearing. No inference may be drawn against a respondent for failing to attend a hearing or for remaining silent. No decision shall be based on the failure of the respondent or the complainant to attend the hearing or answer the allegations.
  - b. Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the university's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.



1. When applicable, and at the request of either party, the university will provide for the hearing to occur with the parties located in separate rooms with technology enabling the resolutions officer or designee(s) and parties to simultaneously see and hear the party or the witness answering questions.
- v. Record of Proceedings
  - a. Hearings will be audio recorded. Parties may request the audio recording for inspection and review.
- vi. Evidentiary Standards
  - a. Standard of Evidence.
    1. A respondent will only be found in violation if a preponderance of evidence supports the alleged conduct.
    2. A finding of responsibility by a preponderance of the evidence means it is more likely than not, based on all the evidence and reasonable inferences from the evidence, that the respondent violated the policy.
    3. If the evidence weighs so evenly that the resolutions officer is unable to say there is a preponderance of evidence on either side, the resolutions officer must determine there is insufficient evidence to conclude a violation of the policy occurred.
- vii. Sexual history in sexual misconduct cases
  - a. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- viii. Other evidentiary considerations
  - a. Prior act/pattern evidence. The investigator and/or the resolutions officer will review available information related to prior misconduct if relevant and probative to the alleged conduct at issue, such that it demonstrates a pattern of the alleged behavior. In such circumstances, the prior information may be used as evidence in the resolution process.
  - b. Self-defense. Exculpatory evidence may include evidence that a party acted in self-defense. Self-defense is when a person who is not the primary aggressor in an encounter uses the minimum force required to remove their own self or another from an immediate risk of harm. Actions that escalate or continue the encounter will not be considered self-defense.
- ix. Questioning of Witnesses
  - a. Except as provided below in section xi.b., the respondent and the complainant have the opportunity to ask direct questions of all witnesses and each other as provided by the Non-Discrimination, Harassment, and Sexual Misconduct policy. The resolutions officer may also ask questions of the parties and all witnesses. Direct examination of a party by their advisor is not permitted. The resolutions officer may ask participants to rephrase questions that are abusive and may limit questions that are repetitive.
  - b. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the resolutions officer or designee(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.



- x. Expert Witnesses
    - a. The resolutions officer may appoint individuals with appropriate expertise to serve as consultants to the resolutions officer. The consultant may be present and provide information at the hearing, as deemed relevant by the resolutions officer.
    - b. Parties can also provide expert witnesses to be interviewed and serve as witnesses at a hearing.
      - 1. The testimony of an expert witness must be deemed relevant by the resolutions officer to be included in the hearing.
  - xi. Advisor Participation
    - a. A party's advisor must adhere to the requirements and expectations outlined in the Non-Discrimination, Harassment, and Sexual Misconduct Policy and Advisor Form, which includes the advisor acknowledgement.
    - b. For a Title IX hearing, parties are required to have an advisor to conduct cross examination. If a party does not have an advisor present at the hearing, the university will provide, without charge to that party, an advisor of the university's choice to conduct cross-examination.
- B. Adjudication of OIE Complaints Not Involving Student Respondents.
- i. For OIE complaints where a hearing is not provided pursuant to the applicable policy, the investigator will prepare a written investigative report summarizing the facts gathered during the investigation, analysis, and findings.

## **X. Sanctions and Corrective Action**

### **A. Sanctioning for Students**

- i. In cases resulting in a hearing, the OIE Director of Resolutions, OIE Resolutions Officer, or designee will determine the sanctions.
- ii. Any sanctions implemented by OIE will be managed by the OIE Director of Resolutions. Managing sanctions includes:
  - a. Monitoring deadlines,
  - b. Responding to requests for extensions,
  - c. Verification of satisfactory completion of educational sanctions and compliance with stipulations,
  - d. Identifying appropriate supportive resources to assist students throughout the sanctioning period and, if applicable, upon the return to campus after a period of suspension,
  - e. Maintaining disciplinary records resulting from the investigatory and adjudicatory process in accordance with OIE retention and reporting policies.
- iii. Sanctions should be commensurate with the determined violation(s). When imposing the sanction(s), the resolutions officer and/or OIE Director of Resolutions or designee should account for any mitigating and/or aggravating factors including, but not limited to:
  - a. The facts and circumstances of the underlying conduct,
  - b. Past misconduct by the student,
  - c. Failure of the student to comply fully with previous sanctions,
  - d. Actual and potential harm caused by the violation,
  - e. Degree of intent and motivation of the student in committing the violation,



- f. The severity and pervasiveness of the conduct that constituted the violation,
      - g. Impairment resulting from voluntary use of alcohol or drugs (i.e., other than medically necessary) will also be considered an aggravating, and not a mitigating, factor.
    - iv. One or more of the following sanctions may be issued when a student has been found to have violated university policy:
      - a. Formal reprimand
        - 1. A written letter of reprimand resulting from a student's misconduct.
      - b. Disciplinary probation
        - 1. This probationary condition is in effect for a specified period of time and may involve the loss of specified privileges. Further violation of university rules, policies, standards, or guidelines during the probationary period will additionally be viewed as a violation of the probation, which shall result in further action up to and including suspension or dismissal.
      - c. Suspension
        - 1. Suspension is a sanction that terminates the student's enrollment at the university for a specified period of time. Satisfactory completion of specified stipulations may be required for readmission at the end of the suspension period.
        - 2. Suspension in Abeyance. Under special circumstances, the hearing body (i.e. OIE Resolution officer) may hold the imposition of suspension in abeyance, which would allow for the student's continued enrollment so long as the student adheres to all stipulations, restrictions, or conditions imposed by the hearing body.
      - d. Dismissal
        - 1. Dismissal is a sanction which permanently separates a student from the university without opportunity to re-enroll in the future.
  - v. Conditions of suspension and dismissal
    - a. Unless a student is otherwise notified in writing, a suspension or dismissal will not take effect until after the appeal period. A student who has been dismissed or suspended from the university shall be denied all privileges afforded a student (including, but not limited to participation in university sponsored or sanctioned events or activities) and shall be required to vacate campus at a time determined by the resolutions officer.
    - b. In addition, after vacating campus property, a suspended or dismissed student may not enter upon campus and/or other university property at any time, for any purpose, in the absence of expressed written permission from the Associate Vice President of the Office of Institutional Equity or an OIE Director. To seek such permission, a suspended or dismissed student must file a written petition to the Associate Vice President of the Office of Institutional Equity for entrance to the campus for a limited, specified purpose or to have the terms of this condition modified or reduced.
  - vi. Other sanctions and remedies
    - a. Other appropriate sanctions may be imposed by a hearing body (i.e. OIE Resolutions Officer) singularly or in combination with any of the above-listed sanctions. Examples include, but are not limited to, making restitution for property damage or misappropriation of university property or services, or the property of any person, residence hall contract termination or reassignment to another room, restriction of access to specified campus facilities and/or property, research assignments,



community service projects, special workshop participation, and/or a risk assessment or other referral to medical resources or counseling personnel.

**B. Corrective Action and Discipline for Employees**

- i. For both Title IX complaints (hearing provided) and OIE complaints (no hearing provided), if there is a finding that the Non-Discrimination, Harassment, and Sexual Misconduct Policy has been violated:
  - a. In cases involving staff, the appropriate corrective action will be determined by Employee and Labor Relations and implemented in collaboration with the employee's supervisor and any other appropriate Human Resources professionals, in accordance with the Corrective Action and Involuntary Termination policy, Student Employment policy, and /or applicable collective bargaining agreements.
  - b. In cases involving faculty, discipline regarding policy violations must be implemented in accordance with Faculty Rule 3335-5-04, and non-disciplinary measures may be implemented by the faculty member's chair, dean, or other university official if appropriate. The parties will be informed of the outcome and any imposed sanctions or corrective action.
- ii. For both Title IX complaints (hearing provided) and OIE complaints (no hearing provided), if there is a finding that the respondent has not violated the Non-Discrimination, Harassment, and Sexual Misconduct Policy and Youth Activity and Programs Policy:
  - a. The matter may be forwarded to the appropriate Employee Relations or Human Resources professional may evaluate whether if the employee-respondent engaged in inappropriate or unprofessional conduct and what action or response is appropriate.
- iii. Regardless of whether an employee respondent is found not responsible or responsible for violating the policy, a referral to other investigative units and/or additional resolution processes may be appropriate if the alleged conduct may violate another university policy or constitute inappropriate or unprofessional conduct. Other options, including supportive measures, remain available to both the complainant and the respondent.

**XI. Written Determination and Notification of Findings**

- A. Pursuant to the Non-Discrimination, Harassment, and Sexual Misconduct Policy and Youth Activity and Programs Policy, the parties will receive a written determination regarding responsibility.

**XII. Appeals**

- A. Both parties may appeal a determination regarding responsibility and a dismissal of a complaint or any allegations therein, on the following bases:
- i. Procedural irregularity that affected the outcome of the matter;
  - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
  - iii. The OIE Director, investigator(s), or resolutions officer or designee(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent specifically that affected the outcome of the matter; and/or
- B. Additional bases may apply for matters involving a faculty member respondent in accordance with University Faculty Rule 3335-5-04.
- C. The party requesting the appeal must clearly articulate that their request falls within one of the bases



for appeal. The Director of Resolutions or designee, so long as that person is not involved in the case as the assigned investigator or resolutions officer, will perform an initial review of the appeal.

- D. Where the Director of Resolutions or designee finds that at least one of the bases is clearly articulated, the appeal will proceed through the appeals process, which includes:
- i. Assigning an appeals officer who is adequately trained to review appeals in cases of alleged discrimination, harassment, or sexual misconduct, is familiar with applicable policies and procedures, and who does not have a conflict of interest or bias for or against either party or bias for or against complainants and respondents generally;
  - ii. Notifying the other party in writing when an appeal is filed and implementing appeal procedures equally for both parties;
  - iii. Giving both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
  - iv. Issuing a written decision describing the result of the appeal and the rationale for the result; and
  - v. Providing the written decision simultaneously to both parties.
- E. Where the Director of Resolutions or designee does not find that one of the bases is clearly articulated, they will deny the appeal. In such instances, the findings will stand, and the appeal will be retained in the investigation file. A party must provide specific information to articulate that one or more of the grounds of appeal could be met. Vague or blanket assertions or assertions unsupported by specific facts or information will be denied.
- F. Additional Appeal Procedures
- i. The appeal is not intended to re-hear or re-argue the same case and is limited to the specific grounds outlined in the appeal procedures above. The appeal must state the specific grounds for the appeal and should include all supporting documentation.
  - ii. Appeals must be submitted in writing to the OIE Director of Resolutions or an OIE Director within five (5) business days after the notice of finding or outcome is issued.
    - a. Any extensions to the appeal date may be made at the discretion of the OIE Director of Resolutions or an OIE Director.
    - b. Whenever an appeal is submitted, the other party will have the opportunity to respond, and their response will be due five (5) business days after notification is received.
    - c. The appeal officer will decide the appeal based upon a review of the record and supporting documents (e.g. prior disciplinary history).
    - d. All appeals are documentary reviews, no interviews or meetings are conducted.
  - iii. Possible dispositions by the appeal officer. The appeal officer may, after a review of the record:
    - a. Uphold the original decision and/or sanction(s) or corrective action;
    - b. Dismiss the case or individual finding against the respondent and vacate any portion or all of the sanction(s)/corrective action;
    - c. Remand the case for investigation;
    - d. Remand the case to the original hearing body or refer the case to a new resolutions



officer to be reheard. Cases may be remanded for the purpose of considering a specific issue(s) or for a new hearing. If a case is reheard by a resolutions officer and the respondent is found in violation, the sanction/corrective action imposed can be greater or lesser than that imposed at the original hearing.

1. The appeal procedures above apply to the outcome of a remanded investigation and/or hearing.
- iv. Each party shall be limited to one appeal of a decision of an OIE Resolutions Officer and/or a dismissal of a complaint or any allegations therein.
- v. Neither party is required to respond to an appeal. Not responding to an appeal does not imply agreement with the appeal.
- vi. A complaint that is resolved by informal resolution is not subject to appeal unless the right of appeal is included as a specific part of the informal resolution.
- vii. A respondent, through an informal resolution, who has accepted responsibility for violating the Non-Discrimination, Harassment, and Sexual Misconduct Policy waives the right to appeal.
- viii. The decision of the appeal officer is final. Additional procedures may apply for matters involving a faculty member respondent in accordance with University Faculty Rule 3335-5-04.

### **XIII. Additional Information**

- A. Designees for Investigative Resolution Process: The Associate Vice President of the Office of Institutional Equity or designee may designate, at its discretion, internal or external designees to perform any of the aforementioned functions outlined in this process including, but not limited to, investigations, adjudications, informal resolutions, and appeals. The designee must adhere to the requirements of applicable university policy and the Process Standards.
  - i. The Associate Vice President of the Office of Institutional Equity or designee retains the discretion to determine whether the use of an internal or external designees to conduct investigations, adjudications, or any other provision of the Non-Discrimination, Harassment, and Sexual Misconduct Policy is appropriate. The Associate Vice President of the Office of Institutional Equity or designee may consult with other appropriate university offices to determine whether use of an internal or external designee is warranted as well as the appropriate manner in which to engage such designee.
  - ii. Any internal or external designees shall have adequate training and qualifications, as determined by the university, to conduct a prompt, fair, impartial, and equitable investigation, adjudication, or any other provision of the Non-Discrimination, Harassment, and Sexual Misconduct Policy.
  - iii. Any internal or external designee(s) that is designated to address an allegation must adhere to the requirements of applicable university policy, the Process Standards, and applicable law.
- B. Complaints without an identified complainant
  - i. Certain allegations may be investigated without a complainant identified. Examples of such allegations may include, but are not limited to, process abuse or allegations under the Youth Activities and Programs Policy.
- C. Pursuant to the Youth Activities and Programs policy, OIE may deny or remove (pending appropriate corrective action) the ability of any individual covered under this policy to volunteer or work in youth activities and programs at any time. This action is to be applied in conjunction with other applicable university policies and rules. Except as otherwise provided by university policy or law, denial or





removal of the ability of an individual to volunteer or work in youth activities and programs is within the discretion of the Director of Youth Protection or designee.

**History**

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