

## **Process for the Investigation of Complaints Made Against Faculty, Other Academic Appointees and Postdoctoral Researchers**

What follows is the University's administrative process for investigating and adjudicating complaints that a faculty member, other academic appointee or postdoctoral researcher (collectively, respondents) has engaged in a violation of the University's Policy on Harassment, Discrimination, and Sexual Misconduct (the Policy). The goals are to establish a clear set of processes and standards for the fair and impartial investigation of allegations that a respondent has engaged in discrimination, harassment, retaliation, sexual misconduct, stalking, domestic violence or dating violence under the Policy, and to ensure that complainants and respondents understand what to expect when they are involved in matters that arise under this process. University investigators and disciplinary committees make no assumptions or presumptions (including about the credibility or culpability of the parties to the proceeding or witnesses), and reach decisions as to whether the respondent has violated University policy solely on the basis of the evidence and testimony presented to them.

### **I. Initial Meetings, the Complaint, and Fact-Gathering**

#### **A. Initial Meetings**

Any person who wishes to make a complaint that a respondent has engaged in conduct that violates the Policy should contact the Associate Provost for Equal Opportunity Programs and Title IX Coordinator for the University (the Associate Provost). As feasible, the Associate Provost (or designee) <sup>1</sup> will have an initial meeting to discuss the complaint, this process, including the complainant's right to have a support person's assistance throughout the process, and support and resources and to review, as appropriate, interim measures and accommodations. If the information contained in the complaint and/or any other preliminary information gathered suggest that a Policy violation may have occurred, then the Associate Provost promptly will request a meeting with the respondent and explain the purpose of the meeting. At the meeting, the Associate Provost will provide the respondent with a brief written summary of the allegations, review this process, including the respondent's right to have a support person's assistance throughout the process, and available support resources. The Associate Provost will inform the Faculty Chair of the University-wide Disciplinary Committee (the Faculty Chair) of the initial meeting and will update and confer, as appropriate, with the Faculty Chair throughout the process.

#### **B. The Complaint**

Following the initial meetings, the Associate Provost will provide the complainant and the respondent with an opportunity to provide evidence and to suggest witnesses. The complainant thereafter should submit to the Associate Provost a written complaint, supplementing any written statement that was provided in connection with the initial meeting, that identifies the

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<sup>1</sup> Throughout this process, the Associate Provost and the Faculty Chair may assign their responsibilities to an appropriate designee, as dictated by the circumstances. Accordingly, references to those roles also include their designees.

names of all persons involved, and state with specificity the nature of the alleged misconduct and the surrounding circumstances. A complainant should make every effort to include all relevant facts known at that time and provide all available supporting materials. The complaint will be shared with the respondent, who will be asked to submit to the Associate Provost a written statement that addresses the alleged misconduct, the surrounding circumstances, identifies the names of all persons involved, and should make every effort to include all relevant facts known at the time and provide all available supporting materials.

### C. Fact-Gathering

The Associate Provost will conduct an expeditious inquiry into the facts, which may include but is not limited to interviews, information-gathering, and documentation of evidence. The fact-gathering will proceed regardless of any external process, such as a law enforcement investigation, criminal prosecution, administrative agency investigation, or civil action. Any person who declines to participate in the initial information-gathering process will be foreclosed from participating in the later phases of the process, including any proceeding before the University-wide Disciplinary Committee (UWDC). The Associate Provost will not interview witnesses who seek to provide character information about either party.

At the conclusion of the fact-gathering process, the Associate Provost will consult with the Faculty Chair. The Faculty Chair has the discretion and authority to dismiss the complaint or to formally convene the University-wide Disciplinary Committee to hear the matter. Alternatively, as explained in Section II below, the Associate Provost has the authority to resolve some complaints administratively and with the concurrence of the Faculty Chair.

If the Faculty Chair decides to dismiss the complaint, the complainant may request a review. The request must be made in writing to the Provost no more than fifteen days after the date on which the Faculty Chair's decision was transmitted to the complainant. The only legitimate grounds for review are: (1) that the investigation of the alleged misconduct was materially incomplete; (2) that new and material information unavailable to the Associate Provost and the Faculty Chair bears significantly in the complainant's favor; and/or (3) the prescribed procedures were not followed.

### D. Communication with the Complainant and Respondent

The Associate Provost will ensure that the complainant and respondent are updated throughout the investigative process, including timely notice of meetings where they may be present. More specifically, the parties will be given the following written notices: (i) notice that a complaint was dismissed, the matter was resolved administratively, or that an investigation will proceed; (ii) notice of a decision to hold a formal hearing and any information that will be used in the hearing process; (iii) notice of the date and time of the hearing and a list of University-wide Disciplinary Committee members; (iv) after completion of the hearing, notice of the UWDC's findings and, if applicable, sanctions, including an explanation of the review process; (v) notice of whether a request for review has been filed; (vi) notice of the outcome of the request for review, including whether the decision, or sanctions, have been modified or upheld; and (vii) notice when the decision and any sanctions become final.

## **II. Administrative Resolution and Mediation**

The Associate Provost has the authority to administratively resolve allegations of discrimination, harassment, retaliation, sexual misconduct, stalking, domestic violence or dating violence under the following circumstances: (i) at the request of the complainant or respondent, with the approval of the Faculty Chair; (ii) at the request of the Faculty Chair; and (iii) at the initiative of the Associate Provost and with the concurrence of the Faculty Chair. The administrative resolution process normally will follow the guidelines set forth above in Section I. After considering the available information, the Associate Provost will use the preponderance of evidence standard to conclude if the respondent violated the Policy.

The Associate Provost will inform the cognizant dean or director of the finding and provide the cognizant dean or director with the opportunity to submit a written statement, which will be considered by the Faculty Chair in their determination to reject or accept the finding, and accept, reject or modify any sanction. The Associate Provost will then convey the finding and, where appropriate, a recommended sanction, to the Faculty Chair and Provost, along with any written submission made by the dean or director. Recommended sanctions include but are not limited to a written warning, disciplinary probation, and/or the suspension of specific rights, privileges or activities for a designated period. The Associate Provost cannot recommend a disciplinary sanction of suspension or termination of appointment. The Faculty Chair then will review the finding, recommended sanction (where appropriate) and any supporting materials. Using reasoned judgment and applying a preponderance of the evidence standard, the Faculty Chair will reject or accept the finding, and accept, reject or modify any sanction.

No later than seven days after making a decision, the Faculty Chair will provide the parties with simultaneous written notification of the outcome and any sanctions, including information regarding how to request review. If neither party makes a timely request for review, the decision will be transmitted to the Provost and cognizant dean or director and become final and unreviewable within the University. If the respondent violated University policy or regulations, a copy of the written outcome and notice that the respondent has violated University policy or regulations will be placed in the employment record as maintained by the Office of the Provost. The Faculty Chair also will inform the Provost and President of the outcome and any sanctions.

At any time before the Associate Provost concludes the investigation with findings and, if appropriate, sanctions, the Faculty Chair may discontinue the administrative process and refer the matter to the University-wide Disciplinary Committee resolution process described below.

At the request of the respondent, complainant, Associate Provost or Faculty Chair, the parties also may elect to resolve the matter through a mediated process overseen by the Associate Provost. Mediation is an attempt to come to a mutually acceptable or agreed-upon resolution to a complaint. For it to occur, the complainant and respondent must voluntarily agree to mediation. Mediation is not an option, even on a voluntary basis, in matters involving allegations of sexual assault, dating violence, domestic violence, or stalking. If mediation is pursued and is successful, the Associate Provost will inform the Faculty Chair, Provost and President of the outcome.

## **III. Resolution by the University-wide Disciplinary Committee**

As noted, any complaint may be investigated and adjudicated by the University-wide Disciplinary Committee if requested by the Associate Provost and approved by the Faculty Chair, or at the prerogative of the Faculty Chair. Once the UWDC is convened, if the complainant and respondent have already prepared and submitted written statements and any supporting materials under the process described above in

Section I.B., the Associate Provost may use those submissions in lieu of requiring new submissions.

If statements have not already been provided, the Associate Provost will ask the complainant to submit a written statement that identifies the names of all persons involved and provides a narrative account of the specific alleged misconduct and the surrounding circumstances. The complainant should make every effort to include all relevant facts known at that time and provide all available supporting materials. The Associate Provost will inform the respondent of the allegation, give the respondent a copy of this process and the complainant's written statement, and ask the respondent to prepare a written response to the accusations. The Associate Provost may ask pertinent witnesses to appear before the University-wide Disciplinary Committee to answer questions and/or submit a written statement.

Normally, once the UWDC is convened and the complainant and respondent have made their submissions, the submissions cannot be revised to include new or different allegations, responses or supporting materials. Additionally, once the UWDC is convened and the complainant and respondent have made their submissions, then the UWDC may decline to investigate and adjudicate new or different allegations or responses based on facts that were known or should have been known at the time they made their submissions.

If the respondent makes a complaint under the Policy against the complainant, the Associate Provost or University-wide Disciplinary Committee may investigate the complaint at or about the same time the complainant's complaint is investigated. If the Associate Provost investigates the matter, then with the approval of the Faculty Chair, the Associate Provost may recommend that the UWDC adjudicate one complaint, both complaints, or neither complaint.

#### A. Composition and Training of the University-wide Disciplinary Committee

As directed by the Faculty Chair, the UWDC will convene to conduct the disciplinary proceeding. The UWDC consists of five faculty members appointed by the Provost for three- year terms (with the possibility of reappointment) and the Student Ombudsperson. The Faculty Chair and two other faculty members from the UWDC constitutes a quorum. The Associate Provost does not vote but sits ex officio with the Committee.

As required by law, all members of the UWDC shall attend a minimum of eight hours of annual training on issues related to sexual violence, domestic violence, dating violence, and stalking and how to conduct the University's complaint resolution procedures, in addition to annual survivor-centered and trauma-informed response training.

#### B. Format and Order of Proceedings

1. Information Considered by the University-wide Disciplinary Committee and the Role of the Support Person

In connection with the proceeding, the complainant and the respondent will receive the same materials, subject to compliance with the Family Educational Rights and Privacy Act (FERPA, which may require redaction of certain identifying information), as received by the members of the Panel. With regard to persons summoned to appear before the UWDC, if the UWDC hears from other individuals, the respondent and the complainant both have the right to be present.

The complainant and the respondent may bring to the disciplinary proceeding a person of their choice whose role during the entire investigation and hearing is limited to providing personal support, advice, guidance and counsel. The Associate Provost will develop a list of University academic appointees, staff employees and students who are willing to serve as support persons. Although the complainant and respondent are free to select any support person, whether or not on the list, they will be given a reasonable opportunity to select a support person from the list.

The support person does not function as an advocate or participate directly in any way before, during or after the proceeding, but the support person has full latitude to directly advise, guide and counsel the complainant or respondent. If the support person is a lawyer, a representative of the University's Office of Legal Counsel also will attend the hearing. Regardless of whether a complainant, respondent or witness is represented by counsel, at all times they are expected to speak for themselves, directly communicate with the University personnel involved in the investigatory and adjudicative processes, and submit their own written statements.

## 2. General Process

To reach a fair and reasonable resolution of the complaint, University-wide Disciplinary Committee proceedings will generally follow this outline:

1. The UWDC assumes no facts or conclusions and reaches its decision as to whether the respondent violated the Policy solely on the basis of the information before it.
2. University-wide Disciplinary Committee proceedings are closed. The only individuals who may be present in the hearing room during the proceeding are: Panel members, the Associate Provost, the complainant and respondent (and their respective support persons), witnesses (when called), and other necessary University personnel. The Associate Provost will work with other University personnel so that any individual whose presence is required may participate in the hearing.
3. The Faculty Chair reminds all present that the collegiality and trust that binds all members of the University community entails an obligation of candor on the part of all involved in disciplinary proceedings. The Faculty Chair also notes that University disciplinary proceedings are distinct from traditional legal and judicial process.
4. The Faculty Chair notes that cell phones and any other recording devices may not be used during any part of the proceeding, and reminds those present that the University-wide Disciplinary Committee may set reasonable time limits for any part of the proceeding and will determine the relevance of, place restrictions on, or exclude any witnesses or information.

5. The Faculty Chair restates the complaint and charges the University-wide Disciplinary Committee with the responsibility of determining whether the respondent engaged in conduct that violated the Policy and, if so, the nature of the sanction to be imposed.
6. The University-wide Disciplinary Committee normally asks the respondent and complainant each to make an opening statement to the UWDC about the allegations. If the respondent refuses to appear, the UWDC shall proceed without the respondent.
7. University-wide Disciplinary Committee members may ask questions of the complainant, respondent and others coming before the Panel and may conduct further inquiry.
8. If the UWDC hears other individuals, the respondent and complainant have the right to be present.
9. Only the University-wide Disciplinary Committee may ask questions of the respondent, complainant and others who appear before it; the complainant and the respondent may not cross-examine or otherwise directly engage one another or others, but may, at the discretion and direction of the Faculty Chair, submit in writing suggested questions to be posed by the University-wide Disciplinary Committee. The UWDC may revise or decline to ask any or all submitted questions.
10. The Faculty Chair has the authority to move forward in the proceeding at any point if any participant's actions cause undue delay. The Faculty Chair can exclude anyone who fails to respect the limitations of their role, engages in active advocacy, or harasses, abuses, or intimidates any participant in the proceeding. The proceeding will continue in their absence. The Faculty Chair will always also be mindful of the necessity of hearing reasonable and relevant points from participants, especially the complainant and the respondent.
11. To ensure the integrity of the process, until the University-wide Disciplinary Committee renders a decision, any witnesses who speak to the UWDC during the hearing must maintain confidentiality regarding what was said and must not communicate about the statements with anyone participating in it or with others outside the proceeding. Confidentiality obligations more generally are addressed below in Section V.
12. At the conclusion of the proceeding, the University-wide Disciplinary Committee normally gives the complainant and respondent the opportunity to make concluding remarks of a reasonable duration.
13. At the completion of the proceeding, the University-wide Disciplinary Committee will deliberate confidentially to consider the information obtained in the course of the proceeding and decide whether the respondent violated the Policy and, if so, the appropriate sanction. In reaching an outcome, the UWDC will apply a preponderance of evidence standard. Namely, the UWDC will decide whether, in consideration of all of the information before it, it is more likely than not that the respondent's conduct violated the Policy.
14. Decisions are by majority vote.

15. If the University-wide Disciplinary Committee finds the respondent has violated the Policy, the Associate Provost will inform the UWDC of the findings and sanctions of any past matter in which the respondent was found to have violated the Policy. The UWDC will decide sanctions that are fair and reasonable given the facts and circumstances.

### C. Sanctions

The University-wide Disciplinary Committee may impose the following sanctions singly or in combination and may also devise different sanctions that it deems appropriate. The same sanction options are available to the Provost. In determining the appropriate sanction, the UWDC and the Provost may consider prior sanctions imposed on a respondent for violating the Policy.

*Warning:* The University-wide Disciplinary Committee may issue a warning letter to the respondent and placed in the respondent's employment file as maintained by the Office of the Provost.

*Probation:* The University-wide Disciplinary Committee may place the respondent on disciplinary probation, which is for a defined period during which the respondent may continue to enjoy all the rights and privileges of an academic appointee except as the UWDC recommends.

*Loss of University Privileges:* The University-wide Disciplinary Committee may remove from the respondent certain rights and privileges for a defined period, such as access to certain University buildings, events, organizations, or administrative roles.

*Discretionary Sanctions:* The University-wide Disciplinary Committee may require the respondent to complete an educational assignment, community service, or pay a restitution/fines.

*Suspension:* The University-wide Disciplinary Committee may decide to suspend the respondent's employment for a definite period.

*Termination of Employment:* The University-wide Disciplinary Committee may recommend that the respondent's academic appointment be terminated.

No later than seven days after the hearing concludes, the Panel or its designee will provide the complainant and respondent with simultaneous written notification of the outcome and any sanctions, including information regarding how to request review. If neither the complainant nor respondent make a timely request for review, the University-wide Disciplinary Committee's finding and any sanction will be transmitted to the Provost and cognizant dean or director, and become final and unreviewable within the University, unless the UWDC found that the respondent violated the Policy and imposed a sanction of termination of appointment/employment, in which case if the respondent is an appointee under Statute 11.1, then the matter will next proceed under the process set forth in Statute 11.4.

A copy of the written outcome and notice that the respondent has violated University policy or regulations will be placed in the employment record as maintained by the Office of the Provost. The Faculty Chair will notify the President and the Provost of the findings and sanctions, if any.

## **IV. Requests for Review**

### **A. Review of the Administrative Resolution Process**

Within 15 days of being informed, in writing, of the decision under the Administrative Resolution Process, the complainant and respondent may ask the Provost to review the outcome and/or any recommended sanctions. The request must be in writing and the only recognized grounds for review are: (i) the prescribed procedures were not followed; (ii) the discovery of new and material information unavailable to the Associate Provost at the time of the investigation bears significantly in favor of the party seeking review; and/or (iii) the sanction is disproportionate to the violation. Using reasoned judgment, the Provost acts on the basis of the entire record and may confirm or reject the finding and reduce, increase, modify or strike any sanction upon finding (i), (ii) and/or (iii). Additionally, if the Provost is satisfied that the new and material information not available to the Associate Provost more likely than not would have resulted in a different decision, they may require the Associate Provost to re-open the administrative resolution process and consider the new information. Using reasoned judgment, the Provost will decide whether to confirm or reject the finding and reduce, increase, modify or strike any sanction, and will provide the Associate Provost, the parties with written notification of the decision. The complainant and the respondent shall be notified in writing of the outcome of the request for review within 7 days after the conclusion of the review. The Provost's decision is final and unreviewable within the University. The President will be notified of the outcome of the review process.

### **B. Review of the University-wide Disciplinary Committee Process**

Within 15 days of being informed, in writing, of the decision of the University-wide Disciplinary Committee, the complainant and respondent may ask the Provost to review the outcome and any sanctions. The request must be in writing and the only recognized grounds are: (i) the prescribed procedures were not followed; (ii) the discovery of new and material information unavailable to the University-wide Disciplinary Committee at the time of the proceeding bears significantly in the complainant's or respondent's favor; or (iii) the sanction is disproportionate to the violation. As required by law, the Provost shall receive a minimum of eight hours of annual training on issues related to sexual violence, domestic violence, dating violence, and stalking and how to conduct the University's complaint resolution procedures, in addition to annual survivor-centered and trauma-informed response training. In making a decision, the Provost does not conduct a new disciplinary proceeding and normally does not interview witnesses or seek additional information from the person seeking review or witnesses, although the Provost has the authority to do so and may seek additional information regarding the proceeding from the Panel Chair and/or the Associate Provost.

The Provost, acting on the basis of the entire record, may confirm or reject the finding and reduce, increase, modify or strike any sanction upon finding (i), (ii) and/or (iii) above. Additionally, if the Provost is satisfied in its reasoned judgment that the new and material information not available to the University-wide Disciplinary Committee more likely than not would have resulted in a different decision, the Provost may require the University-wide Disciplinary Committee to reconvene and consider the new information. The complainant and the respondent shall be notified in writing of the outcome of the request for review within 7 days



after the conclusion of the review. The President will be notified of the outcome of the review process.

Unless the respondent is an appointee under Statute 11.1 and the sanction is termination of appointment/employment, the Provost's decision is final and unreviewable within the University. If the respondent is appointed under Statute 11.1 and the Provost has decided to impose the sanction of termination of employment, then the matter will next proceed under the process set forth in Statute 11.4.

## **V. Confidentiality, Time Limits, Interim Measures/Accommodations, and Conflicts of Interest**

The University, including its agents (like members of the University-wide Disciplinary Committee), has a legal obligation under federal law to maintain the confidentiality of student education records, including records used in the disciplinary process that include identifiable student information, except as required or permitted by law, e.g., as authorized by the student or compelled by a subpoena or court order. Although faculty respondents, student witnesses and support persons are not bound by the federal law applicable to the University and its agents, they are expected and encouraged to use good judgment when sharing information with third-parties, as some disclosures and related statements may give rise to legal claims against them by persons who believe that the disclosures or statements are false, invade privacy rights or cause reputational damage.

Although there is no time limit for filing a complaint under this process, complainants should report as soon as possible to maximize the University's ability to respond promptly and effectively. Delayed reporting often results in the loss of relevant evidence, and/or in faded and unreliable memories; it also impairs the University's ability to summon witnesses, assess evidence, and, if appropriate, adjudicate claims and impose sanctions and other remedies. Further, if the respondent is no longer affiliated with the University, it is likely that the University will be unable to summon the respondent or take any disciplinary action, although it will take reasonable steps to understand the facts, assess whether the respondent poses a present or ongoing risk of safety to the University community, and take any measures necessary to mitigate safety risk.

Also, at the discretion of the Associate Provost and/or the Deputy Title IX Coordinator for Students, interim protective measures and accommodations may be available to any affiliated complainant pending the resolution of a complaint, after a complaint is resolved, and/or if the complainant chooses not to move forward with the process. These measures can include issuance of a no-contact directive, housing accommodations, and academic accommodations. Complainants who wish additional information regarding interim protective measures and accommodations should consult the Policy or contact the Title IX Coordinator for the University or Deputy Title IX Coordinator for Students.

At all times, the Provost, the Faculty Chair, members of the University-wide Disciplinary Committee, and the Associate Provost must maintain independent judgment and an open mind about matters under consideration, and must be committed to a fair and impartial process and associated decision-making. The Provost, the Faculty Chair, members of the University-wide Disciplinary Committee, and the Associate Provost must not have a conflict of interest with either party and must recuse themselves if a conflict of interest exists. The Associate Provost will notify

the complainant and the respondent of the identity of the members of the University-wide Disciplinary Committee as soon as practicable before the hearing. Either party may request a substitution if the participation of any individual on the Committee poses a material conflict of interest as judged by the Faculty Chair. Conflict of interest-related requests must be made in writing to the Associate Provost within two days of receiving notice of the identity of the members of the Panel, and must identify with specificity the alleged nature of the conflict.

If there is any material conflict between the provisions of this Process and the Policy, the Policy's provisions control.

Effective October 1, 2018