

## **Policy 1324**

### **Title: Discrimination and Retaliation Complaint Procedures (Other than Title IX Sexual Harassment (Policy 1346) and Sexual Misconduct (Policy 1340))**

**Date of Current Revision: January 2023**

**Responsible Officer: Office of Equal Opportunity**

## **1. PURPOSE**

This policy assists the university in its responsibility to administer and enforce applicable federal law, state law, and university policies related to nondiscrimination on the basis of protected characteristics and the investigation of complaints of discrimination and retaliation. This policy provides the procedures for complaints of discrimination or retaliation under Policy [1302](#) other than complaints of sexual misconduct, which is governed by Policy [1340](#), or Title IX Sexual Harassment, which is governed by Policy [1346](#).

## **2. AUTHORITY**

The Board of Visitors has been authorized by the Commonwealth of Virginia to govern James Madison University. See Code of Virginia § 23.1-1301 and 23.1-1600. The Board has delegated the authority to manage the university to the president.

### **STATE OR FEDERAL STATUTE AND/OR REGULATION**

Titles VI and VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, as amended, the Age Discrimination in Employment Act, the Equal Pay Act, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, Federal Executive Order 11246, Genetic Information Nondiscrimination Act of 2008 (GINA), Virginia Executive Order(s), and all other statutes, regulations, rules, and university policies that are applicable.

## **3. DEFINITIONS**

### **Advisor of Choice**

A person who the complainant or respondent chooses to provide support for them while they are participating in procedures under this policy. The advisor of choice may not be serving in any other capacity in the process (e.g. – investigator, witness, hearing panel member, appeal reviewer). For purposes of this policy, an advisor of choice may also be referred to as a Support Person.

### **Affiliate**

An individual who has a formal affiliation with the university, and receives some services from the university, but is not a student or employee of the university, and receives no remuneration from the university. (Formal affiliation means that a necessary relationship exists between the university and the individual to provide a service of value to the university.)

### **Appeal Reviewer**

The individual responsible for deciding an appeal.

### **Business Day**

Days the university is open for business, typically Monday through Friday, 12 months of the

year, excluding university holidays and closures. A day with an unscheduled partial closure, such as delayed opening or early closure, is not a business day.

### **Complaint**

Allegation(s) of discrimination or retaliation, filed in good faith and in accordance with the procedures outlined in this policy.

### **Complaint Commencement Date**

The date on which the complainant definitively conveys to Office of Equal Opportunity that they wish to proceed under formal procedures. This date is relevant for the purposes of formal procedures timeline calculation. In the event that the complainant requests formal procedures, then requests informal procedures, then again requests formal procedures, the complaint commencement date is the later of the elections.

### **Complaint Filing Date**

The date on which the complainant files the complaint under this policy.

### **Complainant**

An individual who files a complaint alleging to have experienced discrimination or retaliation.

### **Complaint Process**

The time period from the complaint commencement date to the final step in informal procedures or formal procedures, whichever is later.

### **Day**

A calendar day. When a substantial portion of a specified period of days falls on a weekend or during a period of time when the university is closed, that portion of the time period shall not be counted, and the time period shall be extended by the number of days falling when the university is closed. Weekends are not considered substantial periods of time, and will not be added to extend a deadline. If a time period is set to end on a day when the university is closed, the time period shall be extended to end when the university reopens. Examples: A specified time period will not end during winter break or when the university is closed for inclement weather. A five-day time period set to begin the first day of winter break will be extended by the number of days for the scheduled winter break, so that the time will actually begin to run upon the first day after winter break. A deadline that falls on a day when the university is closed for inclement weather will be extended until the next day the university opens for business.

### **Discrimination**

Inequitable treatment that conditions any element of a person's employment, enrollment as a student, receipt of student financial aid, or participation in university activities on that person's Protected Characteristics in violation of applicable law. Discrimination also includes denial of a reasonable accommodation for a disability. As used in this policy, discrimination includes harassment and hostile environment.

### **Harassment**

Conduct based upon a person's protected characteristic that is so sufficiently severe, persistent, or pervasive, and objectively offensive that it interferes with the person's work or academic performance or participation in university activities, or creates a working or learning environment that a reasonable person would find hostile, threatening, or intimidating. The conduct can include oral, written, graphic, physical or other conduct. Harassment may also include behavior

directed toward stereotypical notions of how a person in a protected classification should appear or behave, or a failure to conform to stereotypes. Harassment is prohibited in the following situations:

1. Term or condition of employment or education. This type of harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a university activity are conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome conduct, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a university program or activity.
2. Hostile environment. This type of harassment occurs when the actions of another create a hostile environment, as defined herein.

### **Hostile Environment**

A hostile environment is created by oral, written, graphic, physical, or other conduct that is sufficiently severe, persistent, or pervasive, or objectively offensive that it interferes with, limits or denies the ability of a person to participate in or benefit from the institution's educational programs, services, opportunities, or activities or the individual's employment access, benefits or opportunities. Mere subjective offensiveness is not enough to create a hostile environment. In determining whether conduct is severe, persistent or pervasive, and thus creates a hostile environment, the following factors will be considered: (a) the degree to which the conduct affected one or more individuals' education or employment; (b) the nature, scope, frequency, duration, and location of the incident(s); (c) the identity, number, and relationships of persons involved; (d) the perspective of a "reasonable person" in the same situation as the person subjected to the conduct, and (e) the nature of higher education. A hostile environment for a member of the university community can be created by the actions of an employee, a student, an affiliate or a visitor.

### **Good Faith**

Actions taken in the honest, sincere, and reasonable belief in the truth of the matters alleged and without any malice or the desire to defraud or maliciously harm others. An allegation made or information given in an investigation is not in good faith if made with knowing or reckless disregard for the truth.

### **Interim Measures**

Temporary and immediate measures or interventions taken by the university upon receipt of a complaint or initiation of an administrative investigation to ensure a safe environment for the parties and/or the university community. These may include, but are not limited to: no contact orders between the complainant and the respondent; temporary changes of assignments, classes, schedules, or jobs; temporary changes of university-provided housing or office; temporary restrictions on use of facilities; temporary transportation options; temporary suspensions from school or work; paid or unpaid leave; or, any other measure that would provide a safe work and/or learning environment for both parties during the processing of a complaint.

### **Investigator**

The trained and impartial person or persons assigned to gather factual information about a complaint, assess relevance and credibility, synthesize the evidence, and compile this

information into an investigation report. The investigator is the director of equal opportunity or is designated by the director of equal opportunity.

### **Member of the University Community**

Any person with an officially recognized connection to the university, including applicants, employees, students, affiliates, visitors, vendors, and contractors to the university.

### **Office of Equal Opportunity (OEO)**

References to the OEO as an actor indicate that the director of equal opportunity (DEO) or an employee designated by the DEO will carry out an action.

### **Parties**

Refers collectively to the complainant and the respondent.

### **Preponderance of Evidence**

Preponderance of the evidence is the standard of proof used to make determinations for all alleged policy violation(s) of discrimination or retaliation. Preponderance of the evidence means that there is greater than a fifty-percent likelihood that the respondent violated the policy.

### **Protected Characteristic**

Characteristics of an individual that are protected from discrimination in accordance with applicable law: age, color, disability, gender expression, gender identity, genetic information (including family medical history), marital status, military status (including veteran status), national origin (including ethnicity), parental status, political affiliation, pregnancy (including childbirth or related medical conditions), race, religion, sex, sexual orientation, or on any basis protected by law.

### **Relevant Evidence**

Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in determining the outcome of the case. Relevant evidence includes evidence concerning the credibility of a party or witness.

### **Remedies**

Measures implemented after a finding of responsibility in a formal complaint procedure under this policy that are designed to restore or preserve equal access to the university's education program or activity for the complainant and may include the same individualized services described as interim measures.

### **Respondent**

A person who is reported to be the perpetrator of conduct that could constitute discrimination or retaliation.

### **Retaliation**

Intimidation, interference, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege under this policy, or because the individual has made a report or complaint, or has participated or refused to participate in any manner under this policy. Retaliation also includes bringing charges against an individual for policy violations that do not involve discrimination or retaliation, but arise out of the same facts or circumstances as a report or complaint of discrimination or retaliation, or a report or complaint of discrimination or retaliation, for the purpose of interfering with any right or privilege under this policy.

**Third Party**

An individual who did not directly experience discrimination or retaliation, but who witnesses or has information about discriminatory or retaliatory conduct.

**Witness**

A non-party individual who can provide relevant evidence regarding a complaint as determined by the Investigator.

**4. APPLICABILITY**

This policy applies to all members of the university community, including applicants, employees, students, affiliates, visitors, vendors, and contractors to the university. This policy applies to all levels and areas of university operations, programs, and activities, including employment matters and student matters.

**5. POLICY****5.1 Prohibition on Discrimination and Retaliation**

James Madison University does not discriminate and prohibits discrimination in its employment, educational programs, activities, and admissions on the basis of: age, color, disability, gender expression, gender identity, genetic information (including family medical history), marital status, military status (including veteran status), national origin (including ethnicity), parental status, political affiliation, pregnancy (including childbirth or related medical conditions), race, religion, sex, sexual orientation, or on any basis protected by law, unless otherwise permitted or required by law. James Madison University prohibits retaliation directed against a person for making a good faith complaint of discrimination or retaliation, or participating in a complaint process. This retaliation prohibition applies regardless of the ultimate disposition of the underlying complaint.

The university reserves the right to investigate any allegation of discrimination or retaliation. In the event that a student, employee, or third party engaged in prohibited discrimination or retaliation, the university will take steps to prevent recurrence of any discrimination and retaliation and to correct its effects.

**5.2 Confidentiality**

The university will respect and maintain confidentiality in carrying out procedures under this policy within the context of all applicable state and federal laws and university policies. The university does not restrict the First Amendment rights of participants in procedures under this policy. A request for confidentiality regarding discrimination or retaliation will be honored to the extent practicable, unless there is a valid reason for setting aside this request. A valid reason includes circumstances that suggest there is an increased risk to the safety of the university community, or if necessary, in order to provide appropriate supportive measures.

Other factors that will be considered in assessing a request for confidentiality include whether the incident involved the presence or threat of a weapon, the age or vulnerability of the complainant, and whether the university possesses other means to obtain relevant evidence.

**5.3 Good Faith**

The university presumes individuals participating in procedures under this policy are acting in good faith. Failure to act in good faith in bringing an allegation under this policy; failure to act in good faith in participating during the investigation, panel, or appeal; or in any other capacity

concerning this policy constitutes a form of misconduct and may result in sanctions separate from, and not dependent on, the outcome of any report or complaint filed under this policy.

#### **5.4 Reporting to Law Enforcement and Filing Criminal Charges**

A complainant may choose to file a complaint with the OEO and may also choose to make a report to law enforcement. A complainant may pursue either or both of these options at the same time. A complainant who wishes to pursue criminal action should contact law enforcement directly. The existence of criminal proceedings will not unnecessarily delay or interrupt the procedures outlined in this policy, unless the law enforcement agency or prosecution advises that the university procedures be suspended, in which case the university will determine whether and for how long to suspend its procedures. Evidence and information gathered during the university's investigation of a complaint may be shared with law enforcement agencies as permitted by law.

#### **5.5 Interim Measures**

The university will offer appropriate and reasonably available interim measures to assist and protect the complainant and other members of the university community during the complaint process. Interim measures may be implemented upon receipt of a report and will be reassessed on an ongoing basis. The investigator will coordinate the designation, implementation, and cessation of interim measures.

#### **5.6 Academic Freedom and Freedom of Speech**

This policy does not restrict the rights of individuals with regard to academic freedom or impair the exercise of rights protected under the United States Constitution such as the right to free speech. (See [Faculty Handbook, Section III.A.2.](#); Policy [1121](#)). Academic freedom carries with it responsibilities, including the responsibility to refrain from discrimination and retaliation.

#### **5.7 Resources**

Any JMU community member who believes they have been subjected to discrimination or retaliation may contact the OEO to inquire about resources and supportive measures that may be available through the university such as counseling, medical services, and academic assistance. The opportunity to inquire about resources and options is available to any JMU community member, regardless of eligibility to file a complaint.

#### **5.8 Communication**

Unless otherwise provided by this policy, communication, including meetings and interviews, may be conducted in person or electronically by audio, video, or email. The investigator may terminate any communication during which the investigator determines the electronic audio or video communication is unsatisfactory, and will promptly reschedule.

#### **5.9 Individuals with Disabilities**

The university is committed to providing reasonable accommodations for parties or witnesses to a complaint with documented disabilities. Individuals are encouraged to request reasonable accommodations as early in the complaint process as possible to identify and plan for specific accommodations.

### **6. PROCEDURES**

#### **6.1 Complaint Filing**

## a. Who May File a Complaint

Any member of the university community who believes they have been discriminated or retaliated against may file a complaint under this procedure. Complaints may also be filed by someone – including individuals external to the university community – who is aware of conduct that may be discriminatory or retaliatory but who has not directly experienced this conduct.

**Third Party.** While Policy [1324](#) assumes the individual who experienced the prohibited discrimination or retaliation files the complaint, complaints may also be made by third parties. Third parties who file a complaint will not have the rights of a complainant, (who is directly impacted by the prohibited conduct); rather, the person who experienced the prohibited conduct will be treated as the complainant if the individual is willing to participate in the informal or formal procedures. The complaint will be evaluated and the OEO will determine whether the complaint meets the criteria under 6.3(b) complaint evaluation and, if so, will determine whether the individual who experienced the alleged discrimination or retaliation would like to file a complaint or if the university should undertake an administrative (University-initiated) Investigation.

**Complainant.** A complainant may file a complaint on their own behalf.

**Administrative (University-Initiated).** The decision to initiate a complaint will generally rest with the complainant. If, for example, the university determines there is an elevated risk to individual or campus safety, the university may elect to override the preference of a complainant and direct the OEO to move forward with initiating the formal complaint process. The OEO may consult with appropriate university administration to make this decision.

In those circumstances, the complainant, if known, will be informed of the decision of the university and provided the opportunity to participate in the investigation and any subsequent campus adjudication processes. The OEO will send the Parties notice of the allegations, including the identities of the parties, if known. The OEO may open an administrative investigation even if the identity of the respondent is unknown.

## b. Timing of Complaints and Timeline

The university encourages the filing of complaints as soon as possible to maximize the university's ability to respond promptly and effectively and to gather accurate information. A complaint should be filed within 180 days of the most recent event, particularly for resolution through formal procedures. The OEO will consider a request to extend the timeline if the complaint filing was delayed due to circumstances beyond the filer's control, if a pattern of ongoing discrimination and retaliation may exist, or other good cause.

### 1. University Filing Options

Complaints must be in writing and, whenever possible, filed through the online form on the [OEO website](#). OEO will also accept written complaints through the following methods:

- Email to: [oeo@jmu.edu](mailto:oeo@jmu.edu)
- Hand delivery to:  
Office of Equal Opportunity

JMU Administrative Complex #2  
1017 Harrison Street, Room A100  
Harrisonburg, VA 22807

- Mail to:  
Office of Equal Opportunity  
James Madison University  
MSC 5802  
Harrisonburg, VA 22807

The complaint should include the following information:

- complainant's name;
- complainant's contact information;
- \*If the complaint is filed by a third party, the third-party filer's name and contact information;
- respondent's name;
- approximate date, time, and location of the alleged incident(s);
- a description of the alleged incident(s);
- the protected characteristic(s) that is (are) the basis of the complaint; and
- the impact on the learning and/or working environment at JMU of the complainant

Individuals who may not be able, for any reason including the need for reasonable accommodations, to file a complaint in the format recommended in this policy should contact the OEO for assistance and reasonable accommodations.

## **6.2 Impartiality Required of Investigators and Decision-Makers**

The investigators and decision-makers must be impartial, which also includes having no conflict of interests or bias.

If an investigator or decision-maker believes that their previous contact with the case, the parties, or witnesses involved will prevent them from being impartial, that investigator or decision-maker must request that they not be assigned to the case.

Upon receiving notification of the assigned investigator or decision-maker, a party may request that the investigator or decision-maker be replaced if the party can demonstrate to the Director of OEO or designee the investigator or decision-maker's partiality. To make such a request, a party must contact the investigator immediately, setting forth in writing their basis for asserting the investigator or decision-maker's partiality. The OEO will review all requests. Any decision to unassign an investigator or decision-maker is at the discretion of the OEO or designee.

## **6.3 Initial Procedures**

### **a. Determination of Need for Interim Measures**

Beginning with complaint receipt, the OEO will determine whether interim measures are appropriate.

To assess and determine the need for interim measures, the OEO will consider the nature and severity of the allegations, the ongoing safety threat to the complainant or the



community, and the totality of the circumstances. OEO will consult with university administration to determine appropriate interim measures, if any. OEO will notify university administration of any interim measures.

## **b. Complaint Evaluation**

Within ten business days of the complaint filing date, the OEO must conduct an initial evaluation to determine whether to proceed with or dismiss the complaint, or any portion thereof, and whether Policies [1340](#) or [1346](#) would also apply. The OEO, in the complaint evaluation stage, is not assessing or determining responsibility. The presumption is that no policy violation has occurred unless proven otherwise pursuant to the formal procedures process by a preponderance of the evidence.

### **1. Initial Evaluation Factors**

The OEO will review the complaint to make a threshold determination as to whether the complaint is eligible for a complaint investigation. If the conduct alleged in a complaint meets any of the following criteria, the complaint must be dismissed as to that conduct according to the factors bulleted below.

- The alleged conduct would not constitute discrimination or retaliation as defined by this policy.
- The alleged conduct does not involve as a respondent, a member of the university community.
- The alleged conduct does not involve, as a complainant, a member or former member of the university community, provided the complainant was a member of the university community at the time of the alleged events.
- The alleged conduct does not involve at least one of the following criteria:
  - occurred in connection with any level or area of university operations, programs, or activities;
  - occurred on university-owned, university-leased or university-controlled property; or
  - has an impact on the complainant's ability to participate in the programs or activities of the university, including the working or learning environment.
  - The complaint was filed after the deadline (see section 6.1(b)) and the OEO determines there is not good cause to extend the deadline.

Additionally, the OEO will review the complaint to determine whether, in addition to Policy [1324](#), Policy [1340](#) or [1346](#) may apply given the conduct alleged. When a complaint also implicates Policy 1340 or Policy 1346, the OEO will also consult with the Title IX Coordinator. Generally, the allegations will be investigated together under appropriate procedures for P1340 and/or P1346, unless the Title IX Coordinator determines that a combined investigation would unduly delay resolution of the Policy 1340 and/or Policy 1346 allegations. When the allegations will not be investigated together, the OEO will notify the complainant in writing which policies and procedures will be used to investigate which allegation(s). Allegations that are investigated together may be adjudicated separately.

## 2. Initial Evaluation Determination and Report

- i. The initial evaluation process concludes with the OEO determination of whether to proceed with or dismiss the complaint, or any portion thereof. The OEO will provide written notification of the initial evaluation determination to:
  - the complainant regarding allegations dismissed, allegations to proceed and allegations referred and
  - the respondent and respondent's (supervisor if applicable) regarding allegations to proceed. Notice regarding allegations to be investigated will comport with the Notice of Investigation procedure in 6.5(d)(1), below.

The initial evaluation report shall include the following, and may include additional information as the OEO deems appropriate:

- That a complaint has been filed alleging that the respondent has engaged in conduct prohibited by Policies [1302](#) and [1324](#) (and any other relevant, applicable policies), and proceed in accordance with Policy 1324 (and any other relevant, applicable policies)
  - That information related to the complaint is confidential, and will only be shared as needed in compliance with Policy 1324 (and any other relevant, applicable policies)
  - A general summary of the complaint and the nature of the allegations, including (if known) date, time, and location
  - A copy of Policy 1324
  - Contact information for OEO to receive additional information, and the date by which such contact must occur
  - The right of the complainant and respondent to not participate in proceedings
  - A statement that retaliation is prohibited
- ii. If, at any point during the process, the OEO determines that the allegations or any part of the allegations, are not within OEO's jurisdiction, but nonetheless involve concerning events, the OEO may, while maintaining confidentiality to the extent possible, refer such allegations to the appropriate administrator or office. The complainant will be notified of any such referral.
  - iii. The respondent's/respondent's supervisor's notification under this section may occur after the 6.3(c)(2) procedure selection such that the respondent is simultaneously notified of the complaint and the initially selected procedures.

### c. Initial Meeting with Complainant: Confirmation of Factual Allegations; Procedure Selection

After notifying the complainant that OEO will proceed with the complaint or any portion thereof, OEO will meet with the complainant for the purposes stated below. Following the initial meeting with the complainant, the OEO will notify the parties in writing of the complainant's procedure selection, and next steps in the process.

#### 1. Confirmation of Factual Allegations

The OEO will meet with the complainant to confirm the factual allegations that form the basis of the complaint.

## 2. Procedure Selection

OEO will discuss the procedure options with the complainant, and the complainant will be asked to indicate whether they prefer to resolve the complaint through informal procedures or formal procedures. This decision may subsequently be altered by the complainant.

### 6.4 Informal Procedures

Initial attempts to resolve complaints at the lowest level through the relevant administrative structure of the employment unit or academic unit are encouraged. Certain types of discriminatory or retaliatory conduct may be more appropriately and efficiently resolved through one of the forms of informal resolution outlined below. However, some reports of prohibited discriminatory conduct, particularly those implicating violence or particularly severe harassment, may not be appropriate for resolution under the informal procedures and the University reserves the right to proceed with formal investigation or administrative investigation at any time.

Pursuing resolution under the informal procedures does not preclude subsequent recourse to the formal procedures if the attempts at informal procedures fail to adequately resolve the reported concern, nor does one type of informal procedure need to be attempted prior to use of another informal procedure. Complainants are not required to follow the informal procedures before initiating formal procedures.

Informal procedures may involve individual and/or community remedies that are designed to address discrimination or retaliation. Any combination of the options offered under the informal procedures may be utilized in any order.

- **One-on-One Communication:** complainants who prefer to address alleged discriminatory or retaliatory conduct with a respondent without the direct involvement of a third party may communicate directly with the respondent. This option is appropriate only if the complainant has not been threatened, there is no risk of physical harm, and the complainant reasonably believes the one-on-one communication will be productive. Complainants are encouraged to notify the OEO of plans to engage in one-on-one communication so that the OEO is aware and so that the OEO may offer educational materials in effective communication. Complainants are NOT required to engage in one-on-one communication before seeking third party assistance or other help.
- **Facilitation Assistance of a Third Party:** In addition to seeking facilitation assistance from OEO staff, the complainant may seek out a university employee at the AUH/Director level or above to provide facilitation assistance. For cases involving a student, the complainant may seek out facilitation assistance from any university employee as approved by OEO. Any of the foregoing third Parties must consult with OEO before engaging in informal resolution facilitation and before taking action to resolve a report of discriminatory or retaliatory conduct.
- **Interventions:** Resolution under informal procedures may also include other interventions, such as broad-based educational programming or training for relevant individuals or groups. Educational programming or training must be approved in advance by OEO to ensure it complies with university policy and aligns with OEO's goals.
- **Remedies:** Resolution under informal procedures may also include other remedies, such as broad-based educational programming or training for relevant individuals or groups. Educational programming or training must be approved in advance by OEO to ensure it complies with university policy and aligns with OEO's goals.

If resolution is reached through one of these informal procedures and OEO does not believe that an administrative investigation is warranted, the matter will be considered closed. If resolution is not reached, and/or OEO determines that further action is necessary, or if a respondent fails to comply with the terms of any agreed to resolution, the matter will be referred for investigation under the formal procedures. Failure to comply with the terms of any agreed-to resolution may also form the basis for disciplinary action for that failure.

## **6.5 Formal Procedures**

### **a. Overview**

Formal procedures involve an investigation, a final determination, and, if applicable, sanctions and remedies. A formal procedures investigation will be adequate, reliable, and impartial. Major stages of the formal procedures process are designated below and have reasonably prompt time frames. During the investigation, Parties will have the opportunity to present witnesses and other evidence. The university will take steps reasonably calculated to prevent recurrence of any discrimination or retaliation, and to correct its effects. The findings letter will articulate the panel's determination of whether the respondent's conduct constituted prohibited discrimination or retaliation. Employee sanctions, if appropriate, will be determined by the respondent's supervisor. Student sanctions will be determined by the panel. An appeal is permitted in certain circumstances. Remedies, if appropriate, will be determined by the OEO.

### **b. Standard of Proof**

Preponderance of the evidence will be the standard of proof used to make recommendations regarding and determinations for all alleged violation(s) of Policy [1302](#) investigated through Policy [1324](#) procedures.

### **c. Presumption of Non-Responsibility**

The presumption is that no policy violation has occurred unless proven otherwise by a preponderance of the evidence.

### **d. Investigation**

Complaint investigations will be adequate, reliable, and impartial, to include the opportunity for parties to present witnesses and other evidence.

#### **1. Notice of Investigation**

Following the OEO's initial evaluation determination that the complaint can proceed, the OEO will provide the respondent with notice of the formal investigation and copy the respondent's direct supervisor (employee and affiliates), Office of Student Accountability and Restorative Practices (OSARP) (student), or sponsoring office (visitors). The notice of investigation will include the nature of the allegations, investigation procedures, and a statement prohibiting retaliation.

The notice of investigation shall include the following information and may include additional information as the OEO deems appropriate:

- That a complaint has been filed alleging that the respondent has engaged in conduct prohibited by Policies [1302](#) and [1324](#) (and any other relevant, applicable policies), and will be investigated in accordance with Policy 1324 (and any other relevant, applicable policies)

- That information related to the complaint is confidential, and will only be shared as needed in compliance with Policy 1324 (and any other relevant, applicable policies)
- The nature of the allegations, including (if known) date, time, and location
- That the complaint will proceed under the formal procedures
- A copy of Policy 1324 investigation procedures and/or other procedures relevant to the investigation
- Parties may select an advisor of their choice
- Contact information for OEO to receive additional information, and the date by which such contact must occur
- The right of the complainant and respondent to not participate in proceedings
- A statement that retaliation is prohibited

## **2. Evidence Gathering**

The Investigator will make every reasonable effort to gather all relevant evidence; however, participation by parties and witnesses is voluntary.

Relevant evidence may include, but is not limited to: electronic messages; text messages; messages through apps and social media sites; voicemails; videos; and photographs. Additionally, the investigator may ask, but not require, for specific corroborating evidence to be submitted.

All parties and witnesses will meet with the investigator separately. The investigator will conduct an interview of the complainant and of the respondent. Each party will have an equal opportunity to provide relevant information and corroborating evidence, identify witnesses who may have relevant information, and to submit to the investigator questions they believe should be asked of the other party or any witness. The investigator may interview or otherwise gather evidence from parties and witnesses multiple times, as necessary.

## **3. Investigation Time Frame**

The university seeks to resolve matters promptly. The time frame begins with the proper filing of the complaint. The university strives to provide a final determination within 90 business days of the complaint commencement date, and within ten additional business days following receipt of any appeal. Timelines may be extended as necessary to ensure the integrity and completeness of the investigation and/or for good cause, though all major stages must occur within reasonably prompt time frames. Reasons for extending the time frame may include, but are not limited to: availability of witnesses; compliance with a request by law enforcement; case complexity; volume of information to be reviewed and analyzed.

## **4. OEO Investigative Report**

### **i. OEO Investigative Report Contents**

Within 20 business days of the complaint commencement date and upon investigation completion, the investigator writes an investigative report. The investigative report articulates the relevant evidence gathered pertaining to each allegation, and includes all such evidence as appendices. The draft investigative report does not include a recommended finding, nor recommended sanctions.

**ii. Optional Review and Response by Parties**

Both parties have an opportunity to review the draft investigative report in the OEO office, and provide additional relevant evidence within five business days. The investigator provides each party's response, if any, to the other party.

**iii. Finalization of the OEO Investigative Report**

Within five business days of OEO's receipt of the parties' optional responses, the investigative report is finalized. The Investigator notifies the parties of the finalized investigative report. The parties have five business days from the time the notification of the available finalized investigative report is sent to review the report and submit a response to OEO. OEO will provide the other party a copy of any response. This concludes the submission window for the parties and witnesses.

The OEO disseminates the final investigative report, including all cited evidence and the parties' responses to the final report, if any, to the panel chair for adjudication.

**e. Adjudication of Formal Complaints**

The final determination of whether each alleged policy violation(s) occurred is made by a designated panel. For students who are determined to have violated policy, the panel will also determine sanctions.

**1. Panel Designation**

The panel consists of three members, and selects a chair from among the three members. The chair serves as an administrator for the panel, receiving and sending communication, scheduling meetings, and other administrative duties as needed. Otherwise, the chair is the equal of the other panel members. Parties will be notified of the panel members assigned to their complaint upon the assignment. Each division will be responsible for identifying two-to-three employees generally representing the various employee classifications to serve as panelists for a two-to-three-year renewable term. For the purposes of this policy, divisions are: Academic Affairs; Access and Enrollment Management; Administration and Finance; Advancement; Diversity, Equity, and Inclusion; Student Affairs; and, Athletics. Any person serving on the panel must be a full-time employee of the institution, successfully complete initial and ongoing training as determined by the OEO, and must be impartial.

The OEO is responsible for maintaining the list of panelists; coordinating training opportunities for panelists; notifying the panel chair when a complaint investigation is in process and concluded for scheduling purposes; and disseminating the investigation report, responses, and all evidence to the panel chair for final determination.

**2. Adjudication Process**

Student Respondent: Adjudication of alleged discrimination or retaliation for student respondents will be handled by the panel under procedures published on the OEO website.

Employee, Affiliate, and Visitor Respondent: Adjudication of alleged discrimination or retaliation for employee, affiliate, and visitor respondents will be handled by the panel under procedures published on the OEO website.

### **3. Sanctions**

Sanctions are permitted only when the final determination is that the respondent engaged in the alleged discriminatory or retaliatory conduct. Sanctions shall be commensurate with the severity and/or frequency of the conduct.

Student Respondent: Sanctions for students are determined by the panel following the panel's determination that the student is responsible for the alleged policy violation(s), and will be handled in accordance with procedures published on the OEO website. Sanctions may include, but are not limited to suspension or expulsion from the university and/or issuance of a no-trespass notice. Educational sanctions may be imposed for students found responsible for violations of this policy instead of, or in addition to, the applicable sanctions listed above. Determination of sanctions for students shall generally align with the OSARP Student Handbook: Sanctioning and General Case Outcomes.

Employee, Affiliate, and Visitor Respondent: The respondent's supervisor will determine appropriate sanctions in accordance with procedures published on the OEO website. Sanctions may include, but are not limited to, termination of employment, removal of affiliate status, exclusion from working opportunities at the university, and/or issuance of a no-trespass notice.

### **f. Appeals**

The panel's determination of whether a respondent has violated applicable policy is not appealable, unless either party alleges material procedural error; 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; or investigator or panel partiality. Respondents may appeal the sanctions on the basis of material procedural error or partiality. The appeal must be in writing and should include a detailed rationale and any supporting relevant evidence the party wishes to have considered. The appeal reviewer is the vice president (VP) or director of athletics (AD) within the respondent's administrative line, as described below. Any appeal will be handled by the appeal reviewer under procedures published on the OEO website.

#### **1. Appeal by Either Party of the Final Determination**

The appeal must be sent via email pursuant to the instructions in the Notice of Outcomes within ten business days of distribution and to the applicable Vice President as follows:

- Students: VP for Student Affairs, with a copy to OEO.
- Employees and Affiliates: VP/AD over the respondent, with a copy to OEO.
- Visitors: VP/AD over the office most closely associated with the visitor, with a copy to OEO.

OEO will provide the other party with a copy of an appeal of the Notice of Outcomes. For student respondents OEO will provide OSARP a copy of any appeal.

The appeal reviewer is the applicable VP. Upon receipt of the appeal the appeal reviewer will, within five business days of receipt, determine whether the appeal meets the criteria for submission outlined above and notify the parties separately, with a copy to OEO. Within ten business days of receipt the appeal reviewer will consider the appeal; determine whether to uphold or revise the determination. The appeal reviewer's decision is final.

The appeal reviewer will provide written notification their determination and the rationale for an outcomes appeal, to both parties separately, with a copy to OEO.

## **2. Appeal by Respondent of Sanctions**

The appeal must be sent via email pursuant to the instructions in the Sanctions Determination within ten business days of distribution and to the appeal reviewer as follows:

- Students: the VP for Student Affairs, with a copy to OEO.
- Employees and Affiliates: the VP/AD over the respondent, with a copy to OEO.
- Visitors: VP/AD over the office most closely associated with the visitor, with a copy to OEO.

Upon receipt of the appeal the appeal reviewer will, within five business days of receipt, determine whether the appeal meets the criteria for submission outlined above and notify the respondent, with a copy to OEO.

Within ten business days of receipt the appeal reviewer will consider the appeal; determine whether to uphold or revise the sanctions; and notify the respondent, with a copy to OEO. The appeal reviewer's decision is final.

### **g. Remedies**

Remedies are permitted only when the final determination is that the respondent engaged in the alleged discriminatory or retaliatory conduct. The OEO determines appropriate remedies, and oversees their implementation.

## **6.6 Record Keeping**

Records and such information shall be maintained by OEO in accordance with university policy and as confidential information not to be disclosed, except as permitted by law. The university may use any information obtained in carrying out procedures under this policy to defend itself against any claims, complaints, or allegations brought against it.

Student Respondent: If the final outcome of the formal procedure for a student respondent results in the student being found responsible for a violation under this policy, the student will be considered to have a disciplinary record. The OSARP is the main point of contact for the university for student disciplinary records. The OEO will provide OSARP with a copy of the notice of final outcome, which will include the name of the student respondent, the name of the violation the student was found responsible for, and the imposed sanction(s). OSARP will handle and maintain the notification of final outcome and reporting responsibilities in accordance with their procedures as outlined in the Student Handbook.



If the final outcome of the formal procedure for a student respondent is not responsible, OSARP will not receive any notice of final outcome because the student will not be considered to have a disciplinary record.

Employee, Affiliate, or Visitor Respondent: a copy of the respondent notice of outcomes will be provided to Human Resources, the respondent's direct supervisor (who may share this within the administrative line as appropriate), and OEO. For visitor respondents, a copy of the respondent notice of outcomes will be provided to the office most closely associated with the visitor, with a copy to OEO.

### **6.7 Post-Adjudication Rights**

Nothing in these procedures abrogates post-adjudication rights as provided by state and federal law (e.g., State Grievance Procedures pursuant to Code of Virginia 2.2-3000 et seq., the U.S. Department of Education Office for Civil Rights, U.S. Equal Opportunity Employment Commission).

### **6.8 Referral of Potential Policy Violations Other Than Discrimination or Retaliation**

Nothing in these procedures prevents the OEO, panel, or appeal reviewer from referring to the appropriate supervisor or office allegations of policy violations other than those within OEO's jurisdiction that came to light during these procedures for appropriate investigation and disposition.

### **6.9 Administrative Investigation Procedures**

OEO may exercise its discretion to conduct an administrative investigation into allegations of discrimination or retaliation, even in the absence of a complaint or complainant. Administrative investigations may review allegations pertaining to an individual, department, or other area of the university. Administrative investigations will follow the formal procedures to the extent practicable, except that investigations of departments and other areas of the university without an individual respondent will result in investigative reports with recommendations that are provided to that department/other area's head and that person's supervisor. The supervisor may share the report within the administrative line as needed to ensure university compliance with non-discrimination and non-retaliation laws.

### **6.10 Complaints to External Agencies**

Refer to Policy [1302](#) 6.3 for information regarding filing complaints with external agencies.

## **7. RESPONSIBILITIES**

Responsibilities in this policy are as described throughout.

## **8. SANCTIONS**

Sanctions for violations of this policy will be commensurate with the severity and/or frequency of the offense and may include employee sanctions up to and including termination of employment, student sanctions up to and including suspension or expulsion, and affiliate sanctions up to and including removal of affiliate status.

## **9. EXCLUSIONS**

Sexual misconduct that falls under Sexual Misconduct, as defined by Policy [1340](#), shall be

governed by university policy 1340 Sexual Misconduct.

Effective August 14, 2020, sexual misconduct that falls under Title IX Sexual Harassment, as defined by federal law and policy [1346](#), shall be governed by university Policy 1346 Title IX Sexual Harassment.

## **10. INTERPRETATION**

The authority to interpret this policy rests with the president and is generally delegated to the director of equal opportunity.

**Previous version:** August 2016

**Approved by the president:** August 2012