

OEO Hearing Panel Guidelines for Investigations Under Policy 1324

Adjudication:

JMU prohibits harassment and discrimination based on protected characteristics found in Section 3 of [Policy 1302](#) including retaliation for participating in a protected activity. The responsibility for overall coordination, monitoring and information dissemination about JMU's Equal Opportunity and Non-Discrimination Policy is assigned to the Director of the Office of Equal Opportunity. The OEO oversees and conducts the investigation from Formal Complaints arising out of alleged violations of Policy 1302 Equal Opportunity and Non-Discrimination and qualifies for investigation under Section 6.3(b) of [Policy 1324](#).

The information contained in this procedural guidance is only applicable to those participating in the OEO Hearing Panel Adjudication Process as a result of alleged violation(s) of the Equal Opportunity and Non-Discrimination Policy 1302.

Procedures set forth in the OEO Hearing Panel Adjudication Process apply when a Complainant and Respondent are defined in the definitions section of Policy 1324.

Selection of panelists:

1. Designation of the hearing panelists:
 - a. Policy 1324 6.5 (e)(1):
 - i. 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.

- b. Each Division including athletics will designate members to serve as hearing panelists (designated above)
2. Hearing panelists
 - a. OEO will maintain a list of hearing panelists for each division
 - b. The information will contain a signed hearing panelist agreement form for each panelist.

Training of panelists:

1. OEO will conduct at least one training for returning and new panelists to cover the procedures, policies, roles, responsibilities, conflicts of interest, sanctions and determining if a policy has been violated or not.

Impartiality for Panelists:

1. OEO will work with each panelist regarding conflicts of interest concerns
2. Both the complainant and respondent are notified of the names and roles of the panelists
 - a. To provide feedback regarding perceived conflict of interest
 - b. Each party can communicate with OEO to ask for a panelist to be removed from adjudicating their case
 - c. If asked to remove a panelist, the OEO would select a new panelist
3. A panelist can recuse themselves if there's a potential, direct or perceived conflict of interest within the case.

Sanctions

Taking into consideration the totality of the circumstances surrounding the case and all evidence provided at the time of the OEO Hearing Panel, Hearing Panelists in student adjudication, Supervisors for employee adjudication, or the appropriate Vice President may assign any sanction listed in the "Types of Sanctions" section of Policy 1324. Suspension or expulsion from the university may only be assigned if the case was deemed eligible for that potential outcome when the Complainant/Respondent received email notification of the alleged violation(s).

Guidelines for Assigning Sanctions

To balance consistency and fairness in sanctioning, guidelines have been developed as a starting point for Hearing Panelists in student adjudication, Supervisors for employee adjudication or the appropriate Vice Presidents to consider when determining sanctioning for a Respondent found responsible for a policy violation. However, the totality of the evidence, the severity of the incident, and the perspectives of the participants involved may result in the severity of the sanction being higher or lower than the guidelines listed below. Hearing Panelists in student adjudication, Supervisors for employee adjudication, or the appropriate Vice President have the ability to increase or decrease the severity of the sanction when making a decision in a case; however, suspension or expulsion from the university may only be assigned if the case was deemed eligible for that potential outcome when the email notification of alleged policy violation(s) was sent to the Complainant/Respondent.

Policy 1324 Section 6.5 (e)(3)

1. 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.

****All parties will be provided the Notice of Outcomes determined by the hearing panel. The OEO will provide the Notice of Outcomes to OSARP for the implementation of sanctions and accountability when applicable.****

Appeals:

Policy 1324 Section 6.5(f)

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.