

UNIVERSITY OF PENNSYLVANIA
OFFICE OF AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY PROGRAMS

PROCEDURE FOR RESOLVING COMPLAINTS
OF DISCRIMINATION AND HARASSMENT

INTRODUCTION

In any large and diverse organization such as the University of Pennsylvania, friction or misunderstandings may arise because of the wide variety of circumstances under which individuals interact. It is, therefore, imperative that mechanisms and resources be provided for individuals to discuss problems so that corrections and adjustments can be made where appropriate. To that end, the procedures outlined below provide methods for addressing and resolving complaints of unlawful discrimination, harassment, and/or retaliation that may arise at the University of Pennsylvania.

RESOURCES

All members of the university community should be aware of the many resources available for those seeking information and counseling about the university's non-discrimination and harassment policies, standards of behavior and available mechanisms, both formal and informal, for resolving complaints.

INFORMATION, COUNSELING AND SUPPORT

Faculty, staff and students may have a need for information, counseling or support, in which case they may be referred to, or may contact directly, the following resource offices:

- ü Office of Staff and Labor Relations
- ü Office of the Ombudsman
- ü Office of the Vice Provost for University Life
- ü African-American Resource Center
- ü Penn Women's Center
- ü Lesbian Gay Bisexual Transgender Center
- ü Student Health Services
- ü Counseling and Psychological Services
- ü Special Services Unit, Division of Public Safety

INFORMAL MECHANISMS FOR MEDIATION AND RESOLUTION

The resource offices listed above, as well as the Office of Residential Living, Department Chairs, and Deans and administrative Directors, are available to assist in the informal resolution of complaints. These informal mechanisms for mediation and resolution are intended to provide an alternative avenue for individuals to pursue. They are not a substitute for a formal complaint of discrimination, harassment, and/or retaliation. Individuals wishing to lodge an official complaint of discrimination, harassment and/or retaliation must pursue the formal mechanisms for complaint resolution listed below.

FORMAL MECHANISMS FOR COMPLAINT RESOLUTION

When informal resolution has been unsuccessful, members of the University community should pursue either formal mediation or a formal complaint of discrimination, harassment and/or retaliation through the Office of Affirmative Action and Equal Opportunity Programs. Formal complaints may also be filed with the Offices of Staff and Labor Relations and the Ombudsman.

FILING A COMPLAINT

A formal complaint under this policy must be made in writing, signed by the Complainant and submitted within 30 days after the alleged violation, if reasonably possible. The *Complaint of Discrimination or Harassment* form, which is available on the web or in the Office of Affirmative Action and Equal Opportunity Programs, must include a detailed statement of the known facts out of which the complaint arises, a request for specific relief, and the names and contact information for any witnesses to the incidents mentioned in the complaint.

Where a complaint is not timely filed, the Investigator may determine that special circumstances exist that excuse the delay, and may consider the complaint as timely filed. In instances involving a student complaint against a faculty member charging harassment or discrimination which occurred in the context of a subordinate-supervisory academic relationship (e.g. teaching, advising, thesis or dissertation supervision or coaching), the time period may be extended until 30 days after the student is no longer under the faculty member's supervision.

VOLUNTARY MEDIATION PROCESS

After receipt of the complaint and the initial consultation, the Investigator will advise the Complainant that voluntary mediation or conciliation of a complaint is available should the Complainant so desire. If the Complainant chooses to pursue this course, and the person charged with discrimination (Respondent) agrees, the Investigator will suspend the formal complaint procedure for up to 60 days (which may be extended with the written consent of all parties) to permit mediation to take place.

The Investigator may appoint a Mediator, or may serve as Mediator. At any time, any of the parties to the complaint, or the person serving as the Mediator, may terminate mediation efforts through notice to the Investigator. Upon receipt of such notification, the Investigator will notify all of the parties and may proceed with a formal investigation, if such a step is deemed warranted.

If the complaint is successfully mediated the Investigator or Mediator will prepare a Mediation Agreement, describing the terms agreed upon by both parties. The Complainant and Respondent will be expected to read and sign the Mediation Agreement, which will state that both parties agree that the dispute is fully and finally resolved, subject to the parties' compliance with any stipulated commitments.

In the event that either party fails to comply with the commitments or conditions contained in the Mediation Agreement, the other party may seek the intervention of the Investigator, who may contact the party's manager to assist with enforcement, or may institute an investigation of the underlying complaint.

UNSUCCESSFUL MEDIATION

If either party is dissatisfied with the outcome of the mediation process, or if either party decides to terminate the mediation process, the Office of Affirmative Action and Equal Opportunity Programs will initiate (or re-commence) a formal investigation of the original allegations. The investigation and mediation processes will be separate and distinct from one another and statements made, or records submitted, in the mediation process, other than the original statement of complaint and the Mediation Agreement, will not automatically be introduced into the investigation process.

FORMAL INVESTIGATION

After the initial consultation, the Investigator will determine whether the conduct complained of falls within the scope of this policy and, if voluntary mediation is refused, will conduct a confidential investigation. The investigation will be initiated as soon as possible, consistent with resource availability, and will afford both the Complainant and Respondent an opportunity to be heard. An accused individual will be notified of the complaint allegations and the identity of the Complainant unless disclosure of the Complainant's identity is deemed unnecessary to afford the Respondent a fair opportunity to respond to the allegations. Any person who reports or

complains; participates in an inquiry or investigation; or is accused of harassment/discrimination, will have the right to be accompanied by an individual of his/her choice employed by the University, who will be permitted to attend, but not otherwise participate in, the proceedings; provided that the individual selected is not otherwise involved in the investigation or their presence would not otherwise impede the investigation.

DETERMINATIONS

The outcome of the investigation may be a finding that the allegations are unwarranted or could not be substantiated; a negotiated settlement; or a finding that the allegations have been corroborated by the information presented. If the allegations have been substantiated, recommendations for corrective or disciplinary action will be forwarded to the appropriate University official. The standard of proof for administrative proceedings is that of a “preponderance of evidence” - that is, evidence which, as a whole, shows that the fact sought to be proved is more probable than not.

The Investigator will communicate the final disposition of the complaint to the appropriate University officials, the Complainant and the Respondent. The responsibility for imposing the recommended disciplinary action, will rest with the senior University official with management responsibility for the Respondent.

SANCTIONS

Sanctions imposed on those individuals who have been found to be in violation of the University of Pennsylvania’s discrimination/harassment policies shall be commensurate with the frequency and severity of the conduct, and adequate and sufficient to demonstrate the University’s commitment to taking strong and effective measures to both remedy and prevent the conduct. The sanctions may involve, without limitation, any of the following, singularly or in combination: a requirement not to repeat or continue the discriminatory or harassing conduct; a requirement to attend remedial training; appropriate workplace restrictions; an oral or written reprimand; denial of a merit pay increase; denial of promotion; or reassignment, suspension or separation from the University. Discipline will be enforced against any employee engaging in illegal discrimination or harassment and against any supervisory personnel who knowingly permit the activity or behavior to continue.

FILING AN APPEAL

Either the Complainant or Respondent may file an appeal of any decision concerning the resolution of the complaint. An appeal by either party must be made, in writing, to the President’s Vice President and Chief of Staff within 15 days of receipt of the notice of the resolution or disciplinary decision.

The written appeal must state, in detail, the reason(s) for the appeal and shall address one or more of the following:

- ü If the appeal alleges that the findings of the Investigator included relevant factual errors or omitted relevant facts, the appeal shall specify each factual error and/or details of each relevant fact that was omitted from the investigation
- ü If the appeal alleges substantive procedural errors, the person appealing shall identify each instance of said substantive procedural error
- ü If the appeal alleges relevant or substantive issues or questions concerning interpretation of University policy, the person appealing shall state, in detail, the issues or questions supporting this allegation
- ü If the appeal alleges that new information or evidence exists, the appeal shall specify the reason why this information was not available or not provided to the Investigator during the course of the investigation, including the reason why the information could not have been provided on a timely basis
- ü If the appeal alleges either that action or inaction of the supervisor in response to the findings of the investigation will not prevent future violations of this policy, the person appealing will specify, in detail, the reason(s) and basis for this allegation.

No disciplinary or other action based upon the original complaint findings shall be taken against the alleged offender during the appeals process, although temporary, interim measures may remain in place.

INTERIM ACTIONS DURING AN INVESTIGATION

In some cases, the alleged conduct specified in a complaint may be such that to protect the Complainant or other members of the University community, the University may, in its discretion, promptly elect to place the alleged offender on administrative leave with or without pay, may implement a temporary reassignment, or may implement other interim remedial measures. This leave, reassignment or other measures will generally remain in effect for the duration of the complaint investigation process.

OTHER EXTERNAL RESOLUTION PROCEDURES

An individual who believes that s/he has been subjected to unlawful discrimination, harassment or retaliation has the right to file a complaint with an appropriate local, state, or federal agency or a court with proper jurisdiction. In the event that a complaint is filed with an external agency or court, the University of Pennsylvania reserves the right to determine, in its discretion, whether the University's complaint resolution procedure described above should be discontinued or continued separately. The University will make such determination to achieve fairness and consistency in the resolution of complaints and to ensure efficient use of internal administrative resources.

STATUTE OF LIMITATIONS FOR FILING EXTERNAL COMPLAINTS

Charges or complaints can be filed with the Office of Civil Rights (OCR), the Pennsylvania Human Relations Commission (PHRC), the Equal Employment Opportunity Commission (EEOC), the Philadelphia Commission on Human Relations (PCHR), or the Office of Federal Contract Compliance Programs (OFCCP), as appropriate. Charges or complaints filed with the PHRC, PCHR, OCR, and OFCCP must be filed within 180 days of the last date of the alleged discrimination. EEOC charges and PCHR complaints must be filed within 300 days of the last act of discrimination. The Complainant should be aware that filing a complaint with the Office of Affirmative Action and Equal Opportunity Programs, or other University resource, does not extend or postpone the deadline for filing with external agencies.

INVESTIGATOR CONFLICT OF INTEREST

The Complainant or the Respondent might allege that the Investigator has a substantial conflict of interest that might impair his/her ability to conduct a fair and impartial investigation of the allegations. In that event, details supporting the alleged conflict of interest must be submitted, in writing, to the Office of Affirmative Action and Equal Opportunity Programs within 5 days of receiving notice of the identity of the Investigator. A determination will be made about the existence of a conflict of interest and, if such a conflict is found to exist, an alternative investigator will be appointed as expeditiously as possible. In the event that a request is made and an alternate investigator must be appointed, any specific time line provided for in the complaint procedure shall be suspended pending the determination and/or appointment.

CONFIDENTIALITY

The University of Pennsylvania shall protect the confidentiality of the identities of, and statements made by, the parties and witnesses involved in a discrimination/harassment report or complaint to the extent permitted by law, and to the extent that continued protection does not interfere with the University's ability to investigate allegations of misconduct brought to its attention and to take corrective action. In addition, all participants in any part of the investigation will be expected not to reveal any information, either shared or learned, during the course of these proceedings. Despite these measures, however, the University can not and does not guarantee that the parties, themselves, or the witnesses will maintain confidentiality.

Confidentiality does not mean that the details of the complaint will be withheld from the Respondent, or that the University is constrained from divulging the proceedings in appropriate circumstances. For example, the University of Pennsylvania may publicly divulge details of the outcome of an investigation if one or more of the parties disclose selective or self-serving portions of the proceedings, or when a lawsuit emerges where the Complainant or Respondent contests the findings or results of the University's investigation.

NON-RETALIATION

Retaliation against an individual who, in good faith, reports, complains about or participates in an investigation of an allegation of discrimination or harassment is prohibited by University of Pennsylvania policy and by federal law. Any individual, who feels that he or she has been retaliated against or has been threatened with retaliation, should immediately file a formal complaint as outlined above.

FALSE ACCUSATIONS

Anyone who knowingly makes a false accusation of discrimination, harassment, or retaliation will be subject to appropriate sanctions which may include, but are not limited to, written warning, demotion, transfer, suspension, dismissal, expulsion or termination.