

Washington and Lee University
Complaints Against Faculty, Staff, and Other Non-Students
University Policy on Prohibited Discrimination, Harassment, Sexual Misconduct
and Retaliation

Any individual (“Complainant”) who believes that s/he has been the object of prohibited discrimination, harassment, sexual misconduct, or retaliation by a member of the faculty, staff, or other non-student (“Respondent”), may raise the concern and bring a complaint through these procedures.

Note: The procedures outlined here for complaints of discrimination, harassment, sexual misconduct, or retaliation against faculty, staff, and other non-students pertain to obtaining information or filing a complaint with the University. They are not intended in any way to preclude any remedies that may be available to a person who has been the object of unlawful discrimination, harassment, sexual misconduct, or retaliation under state or federal law.

1. Definitions of Terms and Acronyms

- **“CAIR”** = Confidential and Impartial Resource. CAIRs are a group of faculty and staff, appointed by the Provost annually, who can provide procedural information and options regarding complaints by or against students under the University Policy on Prohibited Discrimination, Harassment, Sexual Misconduct and Retaliation. CAIRs are available to meet with a student about a complaint against a non-student and to work with the student to access a DPA.
- **“CO-CHAIRS”** = The Vice-President for Finance and Administration and the Provost serve as Co-Chairs of the Investigation and Review Officers (“IROs”). As described fully below, the Co-Chairs receive formal complaints, appoint the Investigator, Review Panel, and Appeal Panel (as needed), notify the parties at various stages in a complaint proceeding, and determine the sanction when a policy violation is found. The Co-Chairs serve as advisors to the IROs on procedural matters.
- **“DPA”** = Discrimination Policy Advisers. The DPAs are a group of 15-20 faculty and staff, representing a cross-section of the campus community. DPAs are peer-nominated, selected by the Co-Chairs, and then invited to serve by the President for three-year staggered terms. DPAs may be invited to serve additional terms without a lapse, but are subject to removal by the President at the request of either Co-Chair. DPAs provide procedural information and options to complainants and respondents regarding complaints by or against faculty, staff or other non-student members of the W&L community under the University Policy on Prohibited Discrimination, Harassment, Sexual Misconduct, and Retaliation. DPAs can also work informally to

resolve matters themselves or bring in others to assist with informal resolution.

- **“DPA COORDINATOR”** = The Co-Chairs will appoint one of the DPAs to serve in this role at the beginning of each academic year (a DPA may serve multiple consecutive years in this capacity if agreed). After these procedures have been in place for two years, the DPA Coordinator will be appointed from the group of DPAs who have served at least two years. The DPA Coordinator is responsible for coordinating training and meetings of the full DPA group, and serves as an adviser to the DPAs and CAIRs on procedural matters related to complaints against faculty, staff, and other non-students. The DPA Coordinator is also responsible for collecting and submitting summary reports to the Co-Chairs on all matters referred to a DPA.
- **“INVESTIGATION AND REVIEW OFFICERS”** = The group of administrators that make up the pool from which the Co-Chairs draw an Investigator, an Investigation and Review Panel (IRP), and (if needed) an Appeal Panel when a formal complaint is filed under these procedures. The IROs consist of the following administrators:
 - **Vice President for Student Affairs and Dean of Students**
 - **Dean of the College**
 - **Dean of the Williams School**
 - **Dean of the School of Law**
 - **Associate Deans of the College (2)**
 - **Associate Dean of the Williams School**
 - **Associate Dean of the School of Law for Academic Affairs**
 - **Associate Dean of the School of Law for Student Services**
 - **Executive Director of Human Resources**
 - **Chief Technology Officer**
 - **Director of Athletics**
 - **Executive Director, Facilities and Capital Planning**

2. **Initial Contact**

a) *Faculty/Staff Complainant*

To raise a concern, a faculty or staff Complainant may contact either: 1) a Discrimination Policy Adviser (“DPA”); 2) the University Ombuds; 3) his/her supervisor; 4) any Dean or Associate Dean; or 5) a representative of the Human Resources Office.

b) *Student Complainant*

A student Complainant may contact either: 1) a Discrimination Policy Adviser (“DPA”); 2) a Confidential and Impartial Resource (“CAIR”); 3) the University Mediator; or 4) another Student Affairs resource (*e.g.* Office of the Vice President for Student Affairs and Dean of Students, Student Health and Counseling Services, Public Safety, Peer Counselors, Residence Life Staff, Office of the

Associate Dean of the Law School for Student Services, or Kirgis Fellows). If the student Complainant chooses to contact a CAIR, the University Mediator, or other Student Affairs resource, that resource will work with the student to access a DPA.

c) *Others*

Anyone may contact a Discrimination Policy Adviser (“DPA”) to raise a concern on their own behalf or on behalf of someone else.

3. **Informal Resolution**

a) *Ombuds*

The University Ombuds may informally resolve concerns without any report or other record of the specific matter. Alternatively, the Ombuds may refer a Complainant to a supervisor, Dean, Human Resources representative or DPA for informal resolution or to a DPA for initiation of a formal complaint process.

b) *DPA*s

DPA’s may informally resolve concerns themselves or may bring in others (with consent of the parties) as appropriate to assist with resolution. A DPA may alternatively refer the matter to the University Ombuds, a supervisor, Dean, or Human Resources representative for informal resolution if the Complainant does not wish to pursue a formal complaint. If a DPA resolves a matter informally, s/he submits a written summary report to the DPA Coordinator.

c) *Human Resources Office*

A Human Resources representative may informally resolve concerns or may bring in others (with consent of the parties) as appropriate to assist with resolution. A Human Resources representative may alternatively refer a complainant to a DPA, the University Ombuds, a supervisor or Dean for informal resolution if the Complainant does not wish to pursue a formal complaint. If a Human Resources representative resolves a matter informally, s/he then contacts the DPA Coordinator to prepare a summary report.

d) *Role of Supervisors/Deans*

A staff supervisor or Dean (in his/her role as faculty supervisor) may attempt to informally resolve concerns or may bring in others (with consent of the parties) as appropriate to assist with resolution. A supervisor or Dean may alternatively refer a Complainant to the University Ombuds, a DPA, or a Human Resources representative for informal resolution if the Complainant does not wish to pursue a formal complaint. If a supervisor or Dean resolves a matter informally, s/he then contacts the DPA Coordinator to prepare a summary report.

4. Formal Complaint

a) *Initiation of Formal Complaint*

A formal complaint must be initiated through a DPA and should be brought forward promptly to allow the most effective investigation. A Complainant – or any other concerned individual wishing to bring a formal complaint – may contact a DPA directly, or may be referred to a DPA by the University Ombuds, a supervisor/Dean/Human Resources representative, the University Mediator, or a CAIR or other Student Affairs resource (in the case of a student Complainant). The complaint should be brought by submitting a signed writing to a DPA.

b) *Submission of Complaint / Notification to Respondent*

The DPA submits the formal complaint, along with any questions about the process or concerns about the need for interim measures during the investigation and review of the complaint (see section 10), to the appropriate IRO Co-Chair (Provost if the Respondent is a faculty member; Vice President for Finance and Administration if the Respondent is a staff member) – except as noted below in subsections 4(d) and (e). The appropriate Co-Chair will then notify the Respondent and explain the general nature of the complaint and the complaint process. The Co-Chair will advise the Respondent of the University's non-retaliation policy, and will inform the Respondent of his/her right to choose a DPA, if desired.

c) *Preliminary Actions by Co-Chair*

The appropriate Co-Chair will appoint an IRO to serve as the Investigator, and will make a preliminary selection of three IROs to serve as the members of the three-person Investigation and Review Panel. If an IRO is the Respondent or the Complainant, the process operates as usual, with that IRO not being involved in any capacity other than as a party.

d) *Complaint By or Against an IRO Co-Chair*

If one of the Co-Chairs is the Respondent or Complainant, the President will serve in the role of that Co-Chair and the process will operate as usual. In this situation, any appeal would go to the Chair of the Audit Subcommittee of the Finance Committee of the Board of Trustees ("Audit Subcommittee").

e) *Complaint Against the President and/or a Trustee*

If the Respondent is the President or a member of the Board of Trustees, the complaint is filed directly with the Audit Subcommittee by delivery of a sealed written complaint to the Secretary of the University, Washington Hall, W-25, labeled "Complaint to the Audit Subcommittee under the University Policy on

Prohibited Discrimination, Harassment, Sexual Misconduct, and Retaliation.”
The Secretary of the Board will deliver the sealed written complaint intact to the Chair of the Audit Subcommittee and the Audit Subcommittee will handle or direct all further proceedings.

5. Investigation

The investigation is conducted solely by the appointed Investigator, who will interview the parties and other witnesses as necessary. The Investigator will inform the parties and witnesses of the requirement of ongoing confidentiality regarding the matter being investigated and the University’s policy prohibiting retaliation against any person involved in a complaint process.

6. Investigative Report; Party Responses; IRP Appointment

a) Investigative Report

Upon conclusion of his/her investigation, the Investigator will prepare and submit to the appropriate Co-Chair a written investigative report, reaching a conclusion as to whether a violation of the University Policy on Discrimination, Harassment, Sexual Misconduct, and Retaliation occurred. The Complainant and Respondent will each be provided with a written summary of the report (redacted to remove witness names and personally identifiable statements), not to be copied or distributed, but which the party may share with his/her DPA.

b) Party Responses

The parties will each have five (5) business days from the day of their receipt of the summary investigative report to prepare and submit a written response to the appropriate Co-Chair.

c) IRP Appointment

The appropriate Co-Chair will then notify the parties of which IROs have been selected to make up the Investigation and Review Panel (IRP) and will designate one of them as IRP Chair. The parties must submit any concerns about the IRP composition to the Co-Chair in writing within one (1) business day of receipt of notice. The Co-Chair may follow-up with the parties and/or IRP members regarding any stated concerns, as needed. The Co-Chair will notify the parties and IRP members of any change to the composition of the IRP if the Co-Chair concludes that one or more of the designated IRP members should not serve on that panel.

7. IRP Review

The IRP will review the investigative report regardless of whether the Investigator concluded a violation occurred.

If the IRP has any questions, it may meet with the Investigator in person and/or may request that the parties separately meet with the IRP. If the IRP finds that any other follow-up is needed with witnesses, the Investigator will conduct the follow-up and submit an addendum to the written summary report, which will be sent to the IRP. In such instances, the parties will be given an opportunity to view a redacted summary of the addendum, consistent with the parties' opportunity to review the original investigative report (see subsection 6(a)).

Once the IRP has determined that it has sufficient information to make a decision, it will discuss the matter outside the presence of the Investigator and the parties. The IRP will then reach a decision on whether the policy was violated, and (if so) will make a written recommendation of sanctions to the appropriate Co-Chair (see format of IRP report in Section 8 below). The IRP may make recommendations for appropriate follow-up actions (including training, counseling, or other educational opportunities) in the absence of a finding of a policy violation.

If, after the initiation of a formal complaint but before the issuance of the investigative report, the Respondent acknowledges inappropriate conduct and proposes a resolution/sanction agreeable to the Complainant, the IRP will review the conduct acknowledged and the proposed resolution/sanction. If the IRP finds the resolution/sanction reasonable, it will be recommended and sent to the appropriate Co-Chair for implementation. If the IRP finds the proposed resolution/sanction unreasonable given the nature and circumstances of the conduct acknowledged or alleged, it may reject the proposed resolution/sanction and conduct a normal IRP review.

8. Co-Chair Notifies Parties of Final Decision and Sanction

The IRP's decision about whether the policy was violated is binding on the Co-Chair, but subject to appeal by either party. However, the Co-Chair has the discretion to determine the final sanction if the IRP has found a policy violation. If the individual found to have violated the policy is a faculty member and the Co-Chair concurs with an IRP sanction recommendation of termination, the case will proceed in accordance with the "for cause" dismissal proceedings set forth in the Faculty Handbook where applicable. In such a case, the Co-Chair (Provost) is ineligible to serve as the President's designee under the "for cause" dismissal process.

The Co-Chair will meet separately with each party (and his/her DPA, if applicable and desired by the party) to review the ongoing confidentiality obligations, the prohibition

against retaliation, and the appeals process. In this meeting, the Co-Chair will provide the two page IRP report in the following manner: the first page (which contains the findings on the allegations of a policy violation) will be provided to each party; the second page (which contains the IRP-recommended sanction(s) or follow up actions and the Co-Chair's decision on sanction(s) or follow up actions) will be provided solely to the Respondent, unless the sanctions or follow up actions are such that they directly involve the Complainant (e.g. a "no contact" requirement) or where required by federal law to be disclosed to the Complainant in the case of certain criminal sexual offenses covered by the Campus Security Act. The DPA will schedule a follow up meeting with his/her party to discuss the process and answer any questions the party may have.

If, through informal resolution or Co-Chair decision upon a finding of no violation, a Respondent has been advised to receive training, counseling, or some other professional development, or to take some other follow up action(s), the Co-Chair will oversee fulfillment of this obligation, though s/he may delegate coordination of the details to Respondent's supervisor. If a Respondent has been sanctioned for a violation, the appropriate Co-Chair will oversee fulfillment of the sanction.

9. Appeals Process

Either the Complainant or Respondent may appeal a finding of a policy violation/non-violation and/or a sanction. Appeals must be in writing, specifying in detail the basis for the appeal, and must be filed with the Co-Chair who issued the original decision within five (5) business days of receipt of the decision. An Appeal Panel (comprised of three IROs who were not involved in the original investigation or panel) will be appointed by the other Co-Chair (who was not involved in the original review or sanctioning process). The appeal review will then be conducted as soon as possible.

The Appeal Panel will not substitute its judgment for the IRP or Co-Chair if it finds there was a reasonable basis for appealed aspects of the decision. In making such a determination, the Appeal Panel may speak with the Investigator, the appropriate Co-Chair, or the parties as the Appeal Panel deems necessary.

If the Appeal Panel affirms a "no-violation" finding made by the IRP, or affirms a finding of a violation and the sanction, the Appeals Panel will issue a brief written decision to that effect and submit it to the Co-Chair who issued the original decision, who will then meet each party (and his/her DPA, if applicable and desired by the party) to advise of the Appeal Panel's decision, which is final.

If the Appeal Panel overturns a "no-violation" finding, the matter is sent back to the appropriate Co-Chair for the original review proceeding, who will then make a decision on the sanction and meet with the parties (and their DPAs, if applicable, and desired by

the party) to share the two-page Appeal Panel decision. The first page (which contains the basis for the overturning of the “no-violation” finding) will be provided to both parties; the second page (which contains the Co-Chair’s decision on sanction) will be provided only to the Respondent, unless some part of the sanction directly involves the Complainant or unless required by federal law to be disclosed to the Complainant in the case of certain criminal sexual offenses covered by the Campus Security Act. The Co-Chair’s decision on sanction is appealable by Respondent within five (5) business days of receipt of the sanction decision. Such an appeal must be in writing, filed with the Co-Chair who issued the decision, and must specify in detail the basis for the appeal.

If the Appeal Panel concurs with a violation finding but finds a sanction is without reasonable basis, the Appeal Panel should first consult the appropriate Co-Chair to review the sanction. If no consensus decision can be reached, both the Appeal Panel and the appropriate Co-Chair will submit their separate recommendations in writing to the President, who will make the final determination by accepting one of the two recommendations and signing off on that recommended sanction. Thereafter, the Co-Chair will meet with the Respondent (and his/her DPA, if applicable and desired by the party) to advise him/her of the President’s decision on sanction and will also advise the Complainant when the sanction involves the Complainant or when required by federal law in the case of certain criminal sexual offenses covered by the Campus Security Act. The President’s decision on sanction is final.

If the Appeal Panel overturns a violation finding, the matter is sent back to the appropriate Co-Chair for the original review proceeding, who will then remove the sanction(s) issued, decide any appropriate follow up action(s), and meet with the parties (and their DPAs, if applicable, and desired by the party) to share the two-page Appeal Panel decision. The first page (which contains the basis for the overturning of the violation finding) will be provided to both parties; the second page (which contains the Co-Chair’s removal of sanction and decision on any follow up actions) will be provided only to the Respondent, unless some part of the sanction directly involves the Complainant or unless required by federal law to be disclosed to the Complainant in the case of certain criminal sexual offenses covered by the Campus Security Act.

10. Interim Measures

If, at any point in a complaint process, the appropriate Co-Chair believes that the respondent represents a danger to individuals or a disruption to campus operations, the respondent may be placed on administrative leave with pay pending the outcome of the complaint and appeals process.

11. Confidentiality and Recordkeeping

The facts about individual cases and their dispositions are to remain confidential to the extent possible. In order to protect the privacy of all involved and to promote the effectiveness and credibility of these procedures, no one involved in a complaint process should discuss any information regarding the case except with those who have a legitimate need to know. Any member of the campus community who violates the confidentiality provisions of these procedures, and/or the confidentiality directives of the administrators handling complaints, will be subject to discipline.

The Co-Chairs will maintain written records of complaints and resolutions under these procedures in accordance with applicable University record retention schedules.

Adopted: August 2009