

INDIANA UNIVERSITY-PURDUE UNIVERSITY INDIANAPOLIS

OPERATING PROCEDURES

FOR

PROCESSING COMPLAINTS OF DISCRIMINATION

INTRODUCTION

Without changing the substantive provisions of the University's Equal Opportunity and Sexual Harassment Policies, the present practice for processing complaints involving discrimination, harassment and related retaliation has been revised. This document describes the procedures and rights of Complainant and to those alleged to have violated University policy (the "Respondent"). This document also describes the role, as appropriate, of the "Decisional Authority" (DA) such as the Dean of Faculties and/or designee, Vice/Assistant Chancellors, Deans, as well as the heads of affected operating units in the process.

IUPUI is subject to and governed by the [Indiana University Policy Against Sexual Harassment](#), adopted by the Indiana University Board of Trustees on June 15, 1998, which sets forth the general definitions, provisions and enforcement principles regarding sexual harassment on all IU campuses. The Equal Opportunity Policy at IUPUI prohibits discrimination against anyone for reasons of race, color, religion, national origin, sex, sexual orientation, marital status, age, disability, or status as Vietnam-era or special disabled veterans. Consistent with the IUPUI Equal Opportunity Policy, and federal and state nondiscrimination legislation, the following operating procedures have been established to address complaints of unlawful discrimination.

1. THE COMPLAINT

A complaint is an allegation of discrimination/harassment based on race, color, ethnicity, national origin or ancestry, sex (including sexual harassment), sexual orientation, age, disability status, religion, veteran status, or marital status or a retaliation complaint that stems from the filing of a complaint alleging such discrimination/harassment in violation of the University's policy. The allegation may be made by a student, staff member, faculty member, or by any other person who has been subjected to such discriminatory conduct by a member of the University community, or has been subjected to discriminatory treatment on property owned or operated by the University. Information or awareness of prohibited discrimination discovered independently of a complaint may also form an independent basis for commencing a University investigation.

2. ROLE AND RESPONSIBILITIES OF THE OFFICE OF EQUAL OPPORTUNITY

The Office of Equal Opportunity (OEO) shall have the responsibility for investigating all complaints of harassment and discrimination. When complaints involve students, the Vice Chancellor for Student Life and the Director of OEO shall consult and coordinate their respective activities. The Office of the Executive Vice Chancellor & Dean of Faculties shall be consulted if the complaint involves faculty, deans, chairs, and/or is likely to involve issues of academic freedom, academic integrity, or other issues that may involve an academic matter. Adaptive Educational Services shall be consulted if the complaint involves, or is likely to involve, actual or apparent disabilities or accommodations of the same. The Office of Human Resources Administration will be consulted when the complaint involves non-faculty employment-related issues. The Office of Diversity, Equity & Inclusion shall be consulted regarding the resolution of campus-related diversity issues.

3. NOTICE OF THE COMPLAINT

The Office of Equal Opportunity (OEO) has developed a three-pronged approach to categorizing complaints: 1) an **Consultative Approach** to resolving the complaint which could include verbal conversations between the complainant and the respondent, as appropriate; 2) **Mediation** which is an intervention to work with both the complainant and the respondent to help them reach a mutually agreed upon resolution; and 3) a **Formal Investigation** that includes a comprehensive investigative approach. OEO will make a determination on the classification of the complaint.

(a) OEO Matters:

- (1) **Consultative Approach** – OEO will consult, make an assessment, and intervene as appropriate, which may include facilitated discussions. No notice of complaint will be issued.
- (2) **Mediation** – OEO will assess the situation to determine whether mediation is appropriate. Either the Complainant or the Respondent may refuse mediation or, once commenced, end mediation at any time. No adverse inference is to be drawn from any such decision. OEO will send notification via:
 - (i) Form A – *Acknowledgement of Complaint, Mediation to Complainant (Mediation)*
 - (ii) Form B – *Notice of Complaint to the Respondent (Mediation)*

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- (3) **Formal Investigation** – OEO will make a preliminary assessment that the issues raised warrant a formal investigation. OEO will provide notification to the relevant parties and Decisional Authority, as appropriate. If OEO determines a need for immediate interim action, e.g. removal, reassignment, administrative leave, or suspension, such actions will be administered by the Decisional Authority. OEO will send notification via:

(i) Form C – *Acknowledgement of Complaint Commencement of Investigation*

(ii) Form D – *Notice of Complaint*, to the Respondent

4. ROLE AND RESPONSIBILITIES OF THE COMPLAINANT AND RESPONDENT

The University is committed to protecting individuals who come forward to complain of conduct that may violate the Policy. Members of the University community who believe that they have been subjected to sexual harassment in violation of the Policy are urged to come forward and file a complaint. It is a clear violation of our Policy to retaliate, against any person, in any way, for initiating an inquiry or complaint, or for cooperating with this investigation. Such retaliation constitutes independent grounds for disciplinary action regardless of the merits of the underlying claim of discrimination. Failure to abide by these requirements will result in disciplinary action.

(a) **Complainant:**

A Complainant may supplement a complaint with additional relevant facts, documents, and the names (with accompanying addresses and telephone numbers) of individuals who may have direct and relevant information about the specific allegations.

In addition to supplementing the complaint, a Complainant may also provide a written analysis of whether the facts support a finding that the Respondent has violated one or more specific standards contained in the Policy.

It is suggested, however, that a Complainant's written analysis and/or supplement to the complaint, if either or both are prepared, be submitted to the Office at least two workdays prior to the scheduled interview.

The University will act impartially and consider any and all relevant information that a Complainant can supply to help ensure that we reach a sound conclusion.

(b) Respondent:

Allegations are not considered proven and no disciplinary actions are taken against a Respondent unless and until there is a final administrative finding of culpability or an admission by the Respondent that the allegations made are true.

The Respondent has the right to be informed of the complaint and to submit a written response to the allegations. That written response may be as long as the Respondent deems appropriate, but should contain only those relevant statements and materials that reasonably support the important facts. In a written response the Respondent is urged to submit the names (with accompanying contact addresses, including email addresses, and telephone numbers) of individuals who may have direct and relevant information about the specific allegations. Such information should relate to the witness' personal experience or observation and should tend to establish either the truth or falsity of the allegations.

In addition to addressing the important facts contained in the allegations, the Respondent may also provide a written analysis of whether the facts support a finding that the Respondent violated the standards contained in the Policy.

Finally, the Respondent will also be afforded the opportunity to verbally present their position to the Office during a personal interview. It is suggested, however, that the Respondent's written response, if any, to the allegations be submitted to us at least two workdays prior to the scheduled interview.

It is the Respondent's decision whether to seek the advice and assistance of legal counsel to help prepare a position statement during the investigation. The University will not reimburse legal fees or the cost associated with retaining the services of a personal attorney.

Respondent may elect to have personal counsel present during the interview; however, such counsel will not be permitted to answer questions for Respondent, to make statements on Respondent's behalf, to otherwise participate in the interview, or to delay or interrupt the interview. If Respondent's counsel elects not to observe these conditions, he/she will

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be excused from the remaining portions of the interview. Finally, if Respondent's counsel is present at the interview, counsel for the University will also be present.

The Decisional Authority will be responsible for approving any disciplinary or remedial measures recommended by The OEO and notify the Respondent of the decision and what, if any, disciplinary or remedial measures may be imposed or implemented.

5. CONSULTATIVE APPROACH

(a) OEO Matters:

- (1) OEO will assess whether a facilitated conversation with relevant parties or other interventions is the appropriate means to attempt to resolve the matter. This approach will concentrate on building relationships and bridging communication gaps.

6. MEDIATION

(a) OEO Matters:

- (1) Must be mutually acceptable to both the Respondent and the Complainant. A mediator is assigned to the case, and schedules and implements the mediation process. If the mediation is successful, the Complainant and the Respondent will sign the closing agreement and the matter will be considered concluded. Both parties are reminded of their obligation to comply with the agreement.
- (2) If mediation is not feasible, or if not successful within a reasonable period of time, OEO may commence with a formal investigation. OEO will forward: *Acknowledgement of Complaint Commencement of Investigation* – Form C to the Complainant and *Notice of Complaint* to the Respondent – Form D and provide verbal notice to the appropriate Decisional Authority.

7. INVESTIGATION

(a) OEO Matters:

- (1) OEO investigator will conduct fact finding through interviews with Complainant, Respondent and other witnesses, and the

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examination of written statements from the parties, documents, and any other relevant evidence. Investigator will identify provisions of applicable policies that may be violated if the allegations prove more likely true than not.

- (2) Witnesses, including the Complainant and the Respondent, may have counsel at interviews, but counsel will not be allowed to participate in the interview and may be asked to leave the interview site if disruptive.
- (3) All members of the University are required to cooperate fully with the OEO investigative process. Failure to do so may result in discipline up to and including termination, pursuant to applicable University policy and procedure.

8. REPORT OF INVESTIGATION

(a) OEO Matters:

- (1) Issuance of a *Report of Investigation* by OEO (Form E). Report will be confined to applicable University policy and findings of fact. No legal conclusions will be presented in the Report as to the applicability of law or as to whether a particular law was violated.
- (2) Report will be forwarded to the Decisional Authority and copied to the Office of the Vice President and General Counsel ("OGC").
- (3) The Decisional Authority may consult OEO as well as the OGC for a range of options legally available to apply the findings of fact to such policies.

9. CONSULTATION

For cases investigated by OEO, prior to making a decision, consultation is to take place among the Decisional Authority (or designee), OEO and OGC. Other parties (e.g. immediate supervisor) may be invited, as appropriate, to participate in the consultation. The purpose of the consultation will include OEO's presentation of its report and a discussion of the range of options to address the findings contained in OEO's report.

10. DECISION

(a) OEO Matters:

- (1) The decision will be issued by the Decisional Authority (DA). The decision will contain a determination of the material facts established (deemed more probably true than not), whether established facts do or do not constitute a violation of University policy and, if so, what sanctions are to be imposed.
- (2) The DA will separately address notification to the Complainant and Respondent of the decision with copies to OEO and OGC. The Notice is to state that decisions may be appealed to the Chancellor but that reconsideration may be first requested of the Decisional Authority within **ten (10) calendar days** of notice of the decision. The Notice will also state the grounds for reconsideration (see Section 11(a) (1)) and the standards that the Chancellor will use for consideration upon appeal (see Section 12(a) (2)).

(b) Student Life Matters:

- (1) Applicable Student Code of Conduct will be applied.

11. RECONSIDERATION

(a) OEO Matters:

- (1) A Complainant or Respondent that fails to fully cooperate in the OEO process shall not be entitled to reconsideration. A party may request reconsideration of the Decisional Authority's decision based on one or both of the following:
 - a. Newly discovered evidence that was previously unknown and that could affect the outcome.
 - b. Irregularity in the process that affected the finding of a material fact or that could have otherwise affected the outcome.
- (2) Such a request must be in writing (hard copy) and addressed to the Office of Equal Opportunity. OEO will date stamp ("OEO Date Stamp") the reconciliation on the first page of the document and will promptly provide notification of the reconsideration request to concerned parties.

OEO shall inform the Decisional Authority of the expiration date (see paragraph 3 below) by which the reconsideration must be resolved.

- (3) If a party fails to satisfy one of the two reasons, the Decisional Authority will decline the reconsideration and indicate to the requesting party that the request failed to demonstrate a basis for reconsideration.
- (4) The Decisional Authority will have **ten (10) calendar days** after the OEO transmittal to respond to a request for reconsideration. Copies of the decision on a reconsideration request shall be sent to all concerned parties and to the OEO.

12. APPEALS

(a) OEO Matters:

- (1) A disappointed party may appeal directly to the Chancellor through OEO within **ten (10) calendar days** of notice of the decision. A reconsideration decision may also be appealed to the Chancellor through OEO within **ten (10) calendar days** of its issuance.

All appeals to the Chancellor are filed with the OEO who shall apply an OEO Date Stamp to the first page of the document and promptly submit notification to all concerned parties. The Chancellor will render a decision on an appeal within **ten (10) calendar days** from the OEO Date Stamp. Copies of the appeal decision shall be sent to all concerned parties and to the OEO and OGC.

- (2) Upon an appeal to the Chancellor, the findings of the Decisional Authority will be overturned only if the Chancellor determines that there was no circumstance under which a reasonable person could ascertain the same factual conclusion based on the evidence presented. The sanctions imposed in a case will not be modified unless the Chancellor determines that they are materially disproportionate to the severity of the violation or not supported by the factual conclusions of the Decisional Authority. The Chancellor's decision is non-appealable and not subject to further review.

13. TIME LIMIT FOR FILING A COMPLAINT

The Office of Equal Opportunity (Office) encourages prompt reporting of allegations and complaints of discrimination, harassment and retaliation. Prompt reporting is beneficial to ensuring an effective investigation.

The Office has established a reasonable timeframe for students, faculty and staff to file a complaint that is consistent with the Equal Employment Opportunity Commission (EEOC) which is 300 calendar days from the day the discrimination or harassment took place. Job applicants have 45 calendar days from the day the discrimination or harassment took place. Also, if more than one discriminatory event took place, the deadline will usually apply to each event. For example:

Let's say you were demoted and then fired a year later. You believe the Supervisor based their decision to demote and fire you on your race, and you file a charge the day after your discharge. In this situation, only your allegation of discriminatory discharge is timely. Specifically, you must have filed a charge challenging the demotion within 300 calendar days from the day you were demoted. If you didn't, the Office would only investigate your discharge. However, there is one exception to this general rule and that is if you are alleging ongoing harassment.

Moreover, if you plan to file a charge alleging a violation of the Equal Pay Act (gender equity/pay equity in wages and benefits), the deadline for filing a charge is two years from the day you received the last discriminatory paycheck. This may be extended to three years in the case of willful discrimination.

Time limits for filing a charge with the Office generally will not be extended while you attempt to resolve a dispute through another forum such as an internal grievance procedure, a union grievance, arbitration or mediation before filing a charge with the Office. Therefore, all such allegations or complaints should be submitted to the Office as soon as possible after the offending conduct occurs, but no more than 300 days after the most recent act of the alleged conduct. In cases of reports that are brought after 300 days, the Office can at its discretion decide whether or not to act on such complaints based on the nature and severity of the complaint as well as the amount of time that has passed since the alleged conduct occurred.

“Notice: These Operation Procedures do not create a contract or any legal rights. They are subject to change without notice.”

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