

**Title: Faculty Discrimination, Harassment, and Retaliation
Grievance/Complaint Procedure**

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I. Purpose

A. Purpose. William & Mary is committed to providing a safe and nondiscriminatory environment for all members of the university community, and to respecting the rights of those accused of misconduct. The purpose of this procedure is to provide a fair and effective investigation and adjudication process. This procedure helps the university implement

- the [Policy on Discrimination, Harassment, and Retaliation](#) (the Discrimination Policy), which defines prohibited discrimination including sexual harassment and explains reporting obligations and options; and
- the Policy on Sexual Misconduct, Dating and Domestic Violence, and Stalking (the Sexual Misconduct Policy).

This procedure also helps William & Mary comply with Titles VI and VII of the Civil Rights Act of 1964,¹ [Title IX of the Educational Amendments of 1972](#),² Sections 503 and 504 of the Rehabilitation Act,³ the Americans with Disabilities Act,⁴ the Age Discrimination in

¹ Title VI, 42 U.S.C. 2000d et seq., prohibits entities accepting federal funding (including federal financial aid for students) from discriminating on the basis of race, color, and national origin. Title VII, 42 U.S.C. 2000e et seq., prohibits employment discrimination based on race, color, religion, sex (including gender and pregnancy), and national origin.

² Title IX, 20 U.S.C. 1681-1688, prohibits discrimination on the basis of sex, including sexual violence and other forms of sexual harassment.

³ Section 503 of the Rehabilitation Act of 1973, as amended, requires W&M, as a federal contractor, to take affirmative action to hire, retain, and promote people with disabilities, including by taking steps to prevent and

Employment Act,⁵ the Equal Pay Act,⁶ the Vietnam Era Veterans' Readjustment Assistance Act,⁷ Federal Executive Order 11246,⁸ the Genetic Information Nondiscrimination Act, and Virginia Executive Order No. 2, by providing a fair, prompt process to respond to reported violations.

B. Summary of Procedure. Under this procedure, reports are assessed by a Review Team to make initial determinations as to the appropriate course of action. If an initial determination to investigate a report is made, the respondent is notified and given an opportunity to respond. If an investigation proceeds, the allegations to be investigated are shared with the parties. Trained investigators interview the parties and witnesses and collect and analyze evidence such as emails and other records and submit a preliminary investigation report to the Provost. Each party may have an advisor of his/her choice, who may attend meetings and interviews. The Provost reviews the report, may request further investigation or clarification of the report, and may attempt to resolve the matter administratively. The final investigation report is shared with the parties, who have an opportunity to respond. If not administratively resolved, the Provost determines whether and which allegations proceed forward to a hearing. The parties have an opportunity to request reconsideration of this determination. The hearing is conducted by a panel of the Faculty Hearing Committee. The hearing panel's determination is based on the preponderance of the evidence, for allegations of sex or gender-based discrimination or harassment,⁹ and clear and convincing evidence, for all other allegations. Either party may appeal the determination to the Provost. The Provost sets sanctions, if appropriate.¹⁰

respond to discrimination and to protect employees from retaliation. Section 504 prohibits entities accepting federal funding (including federal financial aid for students) from discriminating against people with disabilities, and requires such entities to take reasonable steps to accommodate disabilities. The implementing regulations require institutions to adopt “grievance procedures” to address complaints of discrimination. See 41 C.F.R. 60-741.44 and 34 C.F.R. 104.7(b).

⁴ Title I of the ADA, 42 U.S.C. 12111-12117, prohibits employment discrimination against people with disabilities and requires employers to take reasonable steps to accommodate disabilities. Title II of the ADA, 42 U.S.C. 12131-12165, requires public entities to provide physical and programmatic access to their facilities and services for people with disabilities. Title III of the ADA, 42 U.S.C. 12181-12189, prohibits discrimination on the basis of disability in places of public accommodation and requires new construction to comply with specific guidelines designed to provide access to individuals with physical disabilities.

⁵ The ADEA, 29 U.S.C. 621 et seq., prohibits employment discrimination against people 40 and older.

⁶ The Equal Pay Act is part of the Fair Labor Standards Act (FLSA) and appears in 29 U.S.C. 206(d). The EPA prohibits compensation discrimination on the basis of sex, specifically pay discrimination between men and women performing jobs requiring substantially equal skill, effort and responsibility under similar working conditions.

⁷ VEVRAA requires federal contractors to take affirmative action to employ and support certain categories of military veterans and prohibits discrimination against these veterans. See 41 C.F.R. 60-300.44.

⁸ The federal Executive Order, as amended, requires affirmative action in employment and prohibits discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin.

⁹ Sex- or gender-based violence and stalking allegations will be adjudicated based on the preponderance of the evidence if they are determined to be based on sex or gender. See Section VIII(C).

¹⁰ This summary is provided to help readers quickly understand the basic process. If there are any differences between this summary and the more detailed provisions in the body of this policy, the more detailed provisions apply.

II. Scope

This procedure applies to the College of William & Mary, including the Virginia Institute of Marine Science (the university).

This is the procedure for addressing violations of the Discrimination Policy or the Sexual Misconduct Policy that are reported or suspected to have been committed by a member of the faculty (as defined in the [Faculty Handbook](#)¹¹), except as provided in the following paragraph. Any member of the campus community can file a report under this procedure; reporting is discussed in Section III. Different procedures are used for addressing complaints alleging discrimination and harassment by staff, third parties (including but not limited to vendors, contractors, alumni/ae, visitors or local residents), and students.¹²

This procedure may not be used for faculty members or former faculty to appeal or complain of decisions not to renew, tenure or promote. Such decisions must be appealed pursuant to the procedures set forth in Section III(C) of the Faculty Handbook.

III. Definitions

Discrimination and Harassment are defined in the [Discrimination Policy](#).

A **good faith** report is one made with the honest belief that a violation may have occurred. A report allegation is not made in good faith “if it is made with reckless disregard for or willful ignorance of facts that would disprove the allegation.”¹³

Misconduct is any form of discrimination, harassment, and retaliation, including sexual harassment, sexual misconduct, discriminatory harassment on the basis of race or color, citizenship, national origin or ethnicity, ancestry, religion or creed, political affiliation or belief, age, sex or sexual orientation, gender identity or expression, physical or mental disability, marital status, pregnancy status, parental status, height, weight, military service, veteran status, caretaker status, family medical or genetic information, or other reported violations investigated under this procedure.

Report is any complaint, report, allegation, accusation, or grievance of misconduct.

¹¹ In this procedure “faculty” has the meaning provided in the Faculty Handbook, and does not include professional faculty.

¹² Investigations of alleged misconduct committed by a student are handled under the Sexual Misconduct Procedure or the Student Code of Conduct. Investigations of alleged misconduct by any other type of employee, contractor, or other non-student third party are handled under the Discrimination Grievance/Complaint Procedure.

¹³ See Faculty Handbook, Section III(F).

Reporting party refers to the person who was discriminated or retaliated against, harassed, assaulted, or otherwise personally and directly experienced the misconduct. See Section IV(A) for third-party reports.

Respondent means the person named, suspected, accused, or alleged to have engaged in misconduct. Reports may have multiple respondents.

Review Team is the body that initially reviews a report to make initial determinations as to mandatory reporting and processing of the report, as described in Section V.

Definitions of **sexual misconduct** (including sexual assault and other forms of sexual violence) can be found in the [Sexual Misconduct Policy](#).

IV. Reporting Matters: How, Who and When to Report; Retaliation; Relationship to Criminal Proceedings

This procedure does not detail the reporting obligations of faculty and staff. Reporting obligations are explained in the [Discrimination Policy](#). This procedure also does not describe all the reporting options available to members of the university community; information about these options and various complaint mechanisms is provided in Appendix A.

A. Who May Report a Violation; What is a Report. Any member of the university community who believes they have been discriminated and/or retaliated against may file a report of misconduct under this procedure. Most reports are made by university students, faculty, or staff who report experiencing misconduct. But reports also may be made by someone who is aware of but has not directly experienced misconduct. And reports may be made by people who are not part of the campus community – external or third parties.

Reports will be assessed to determine whether the university has jurisdiction to address the reported misconduct under this procedure, as described in Section V. The university’s jurisdiction is defined by the applicable policy and by the Faculty Handbook and other university procedures.

Reporting Party Not the Person Who Experienced Misconduct. This procedure assumes that the person reporting the misconduct is the person who was discriminated or retaliated against, harassed, assaulted, or otherwise personally and directly experienced the misconduct. However, reports may also be made by people who witnessed or were informed about misconduct or are otherwise aware of misconduct. In those cases, the reporter will typically not have the rights and role of the “reporting party” under this procedure; instead, the person who experienced the misconduct will be treated as the reporting party, if he or she is willing to participate in the procedure.

Reporting Party Requesting No Action or No Action on Report. Typically, the university will not begin an internal administrative investigation or make a referral to law enforcement without the consent or involvement of the reporting party (or, if a different person, the person who experienced the misconduct), but the university must consider its obligation to the campus

community. The Review Team will decide whether an investigation or referral is required after evaluating the Risk Factors, as described in Section IV(A).

Reporting Party Not a Member of the William & Mary Community. Visitors, guests, and other people who experience misconduct from a William & Mary faculty member may report using this procedure. Certain modifications to this procedure, particularly those relating to notifications and disclosure to the reporting party, will be made in such circumstances.¹⁴

B. How & Where to File a Report. Reports may be made to the Chief Compliance Officer (the Compliance Officer) either in person, in writing, by phone, or by email:

Kiersten L. Boyce, J.D., CCEP
108 James Blair Hall
College of William & Mary
Williamsburg, VA 23185
757-221-3146
reportconcern@wm.edu

Information regarding other ways to report and reporting options is provided in Appendix A.

C. Timing of Reports and Availability of Procedures. William & Mary encourages reporting misconduct as soon as possible in order to maximize the university's ability to respond promptly and effectively. Reports must be submitted to the Compliance Officer within 365 calendar days of the most recent occurrence of the alleged misconduct.¹⁵ The Compliance Officer reserves the right to extend the time limits when circumstances justify an extension.¹⁶

D. Retaliation. Under the [Discrimination Policy](#), it is a violation to retaliate against any person making a report of misconduct or against any person cooperating in the investigation (including serving as a witness). Retaliation (as defined in that Policy) should be reported promptly to an investigator or the Compliance Officer and may result in disciplinary action independent of the sanction or interim measures imposed in response to the underlying allegations of misconduct. See Section V(C) for discussion of interim measures and Section VI(D) for further information regarding responding to retaliation arising during the course of an investigation.

For more information about retaliation generally, including examples, please visit the [Compliance website](#).

¹⁴ This procedure gives reporting parties certain rights to information, notifications, and participation in the investigation and resolution process. These rights are not typically afforded to external parties.

¹⁵ This procedure is not intended to impair or limit the right of anyone to seek remedies available under state or federal law. Since federal and state procedures require that complaints be filed within specific deadlines from the onset of the discriminatory behavior, individuals who pursue the internal complaint procedures described in this procedure may fail to meet state and federal guidelines for filing a complaint. Accordingly, a complaint may be filed with an external agency in order to meet state and federal agency deadlines without jeopardizing one's right to university process.

¹⁶ For example, a report based on information or evidence that previously was not available to the reporting party.

E. Relationship to Criminal Proceedings. Because misconduct, particularly sexual misconduct, may constitute both a violation of university policy and criminal activity, the university encourages people who have experienced sexual misconduct to report the incident promptly to law enforcement. The university is also required to report certain matters directly to law enforcement and/or the prosecutor with jurisdiction, as described in Section IV below.

The standards for finding a violation of criminal law are different from the standards for finding a violation of this policy. This means that conduct may violate university policies even if it is not a crime or law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute.

This procedure is independent of any criminal investigation or proceeding. The university generally will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation and impose interim measures to protect the reporting party and the university community, although the university will consider law enforcement requests to delay temporarily (generally no more than seven (7) days).

V. Initial Assessment of Report

A. Sexual Violence. In accordance with Virginia law, upon receipt of a report of sexual violence¹⁷ or in any other way becoming aware of information that an act of sexual violence “may have been committed against a student attending the institution or may have occurred on campus” or another part of the university’s [Clery Act geography](#), the Compliance Officer/Title IX Coordinator will convene the Title IX Review Team to conduct an initial assessment and provide any information, including personally identifiable information, received to the Team. The Compliance Officer or other Team members may also conduct confidential, preliminary inquiry, not including interviews, to verify enrollment or employment status, to help determine jurisdiction and/or the appropriate procedure under which to process the complaint. The Title IX Review Team, pursuant to Virginia law, consists of the Title IX Coordinator or designee, a representative of the W&M Police, the Dean of Arts & Sciences or designee, and, if a student is involved, the Dean of Students.¹⁸ The Team meets within 72 hours and makes an initial assessment as described in this Section.¹⁹

The Title IX Review Team will review the report and any other available relevant information to assess the threat posed by the reported misconduct and to determine whether external reports are

¹⁷ Virginia Code 23-9.2:15 defines sexual violence as physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent.

¹⁸ The Title IX Review Team operates pursuant to Va. Code §23-9.2:15 & Va. Code §23-9.2:10 and has access, under Virginia law, to certain otherwise confidential information, including law enforcement records and criminal history information, as provided in Va. Code §19.2-389 and §19.2-389.1; health records, as provided in Va. Code §32.1-127.1:03; university disciplinary, academic and/or personnel records; and prior reports of misconduct maintained by the Title IX Coordinator. The team will have access to all available facts and circumstances and may seek additional information about the reported incident through any other legally permissible means.

¹⁹ This meeting may be conducted by telephone or through other technology to permit prompt assessment.

required.²⁰ The Title IX Review Team will make this determination based upon the following factors (the “Risk Factors”):

- Whether the respondent has prior arrests, reports and/or complaints of related misconduct or has any history of violent behavior;
- Whether the respondent has a history of failing to comply with any related university protective or disciplinary measures, and/or any judicial protective order;
- Whether the respondent has threatened to commit violence or any form of sexual misconduct;
- Whether the reported misconduct involved multiple respondents;
- Whether the reported misconduct involved physical violence. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking and brandishing or using any weapon;
- Whether the report reveals a pattern of misconduct (e.g., by the respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location);
- Whether the misconduct was facilitated through the use of drugs or intoxicants;
- Whether the misconduct occurred while the reporting party was unconscious, physically helpless or unaware that the misconduct was occurring;
- Whether the reporting party is (or was at the time of the reported incident) a minor (under 18); and/or
- Whether any other aggravating circumstances or signs of predatory behavior are present.²¹

The Title IX Review Team also considers

- the reported misconduct;
- any information provided or collected;
- applicable law and policy, determining which university procedure has jurisdiction over the reported misconduct;
- the reporting party’s preference(s), if stated; and
- any evidence that a report is baseless or not made in good faith.

²⁰ In cases involving alleged act of sexual violence would constitute a felony violation of Section 18.2-61 of the Virginia Code, the W&M Police representative on the Review Team must consult with the Commonwealth’s Attorney and/or the prosecutor with jurisdiction within 24 hours and provide the information received by the Review Team, withholding any personally identifiable information about the parties. If the Review Team cannot reach consensus, the W&M Police representative on the team shall make the determination as to whether the report is required. In some instances, the notification would be in the form of an incident report to W&M Police.

²¹ Adopted with permission from the University of Virginia.

Upon completion of the initial assessment, the Title IX Review Team will determine the appropriate course of action:²²

- No further action under this procedure. No action may be appropriate for reports that do not allege conduct that violates applicable university policy, reports for which there is insufficient information to initiate an investigation, reports where the person reported to have experienced the misconduct has requested no action and the Review Team’s assessment concludes that this request may be honored (see below), or reports of matters for which the university does not have jurisdiction. No action may also be appropriate when there is evidence that a report is baseless or not made in good faith, although more typically some investigation is required to make such a determination.
- Remedial but not disciplinary action. Remedial actions may include remedies offered to the reporting party as well as actions designed to address possible areas of concern such as educational or awareness activities, targeted training, or increased oversight of specific departments or activities. This course of action may be appropriate for reports that do not have sufficient information to initiate an investigation, reports where the person reported to have experienced the misconduct has requested no investigation and the Team’s assessment concludes that this request may be honored, or reports that do not allege conduct that violates applicable university policy but do allege conduct not consistent with university expectations, such as harassing conduct that has not become severe or pervasive enough to create a hostile environment.
- Further action under this procedure (or the procedure used for reports of misconduct by students, staff or third parties, as applicable). The Faculty Hearing Committee will be notified so that investigators may be identified as described in Section VI(A).

If the reporting party has requested that there be no investigation or requested to remain anonymous or is not participating in the process, the Title IX Review Team will determine whether an internal investigation under this procedure is necessary to protect the health and safety of the campus community or individual faculty members or to fulfill the university’s obligations to provide a campus environment free from discrimination, harassment, and retaliation. In making this determination, the Title IX Review Team will consider the Risk Factors and any evidence showing that the respondent made statements of admission or otherwise accepted responsibility for the misconduct, the existence of any independent information or evidence regarding the misconduct, and any other available and relevant evidence other than the reporting party’s testimony. If a determination is made to proceed with an investigation against the request of the reporting party, the Compliance Officer will notify the reporting party promptly.

²² If the Title IX Review Team cannot reach consensus, the Title IX Coordinator shall make the determination with respect to an internal investigation. In all cases, the W&M Police representative makes the notification to law enforcement.

If a reporting party has requested an investigation or disciplinary measures and the Title IX Review Team has determined that the information available does not provide a reasonable basis for conducting an investigation under this procedure or that this procedure is not applicable, the Compliance Officer will notify the reporting party promptly. The Title IX Review Team may change its determination based on additional information, at any time.

B. All Other Reports (Non-Sexual Violence). Upon receipt of a report other than those sexual violence reports described under Paragraph A, the Compliance Officer, in consultation with the appropriate administrator(s), will conduct an initial assessment with the Equity Review Team. The Equity Review Team consists of the Compliance Officer, the appropriate administrator, and, if a student or staff member is involved, the Dean of Students or Chief Human Resources Officer, respectively. The appropriate administrator is the relevant department Chair, the Dean to whom the faculty reports, or the Provost. The Equity Review Team may conduct confidential, preliminary inquiry, not including interviews, to verify enrollment or employment status, to help determine jurisdiction and/or the appropriate procedure under which to process the complaint.

The Equity Review Team makes an initial determination as to the appropriate course of action after considering

- the reported misconduct;
- any information provided or collected;
- applicable law and policy, determining which university procedure has jurisdiction over the reported misconduct;
- the reporting party's preference(s), if stated; and
- any evidence that a report was not made in good faith or is baseless.

The appropriate course of action may be:²³

- No further action under this procedure. No action may be appropriate for reports that do not allege conduct that violates applicable university policy, reports for which there is insufficient information to initiate an investigation, reports where the person reported to have experienced the misconduct has requested no action and the Equity Review Team's assessment concludes that this request may be honored (see below), or reports of matters for which the university does not have jurisdiction. No action may also be appropriate when there is evidence that a report is baseless or not made in good faith, although more typically some investigation is required to make such a determination.
- Remedial but not disciplinary action. Remedial actions may include remedies offered to the reporting party as well as actions designed to address possible areas of concern such as educational or awareness activities, targeted training, or increased oversight of specific

²³ If a consensus is not reached, and either the Compliance Officer or the appropriate administrator believes that an investigation should be conducted, the investigative process will continue. If a consensus is not reached, and either the Compliance Officer or the appropriate administrator believes that remedial action should be taken rather than no action, remedial action will be taken.

departments or activities. This course of action may be appropriate for reports that do not have sufficient information to initiate an investigation, reports where the person reported to have experienced the misconduct has requested no investigation and the Equity Review Team's assessment concludes that this request may be honored, or reports that do not allege conduct that violates applicable university policy but do allege conduct not consistent with university expectations, such as harassing conduct that has not become severe or pervasive enough to create a hostile environment.

- Further action under this procedure (or the procedure used for reports of misconduct by students, staff or third parties, as applicable). See Section VII.

If the reporting party has requested that there be no investigation or requested to remain anonymous or is not participating in the process, in most cases this request will result in no action being taken. The Equity Review Team shall consider, however, whether an internal investigation or some action under this procedure is necessary to protect the health and safety of the campus community or individual faculty members or to fulfill the university's obligations to provide a campus environment free from discrimination, harassment, and retaliation. If a determination is made to proceed with an investigation against the request of the reporting party, the Compliance Officer will notify the reporting party promptly.

If a reporting party has requested an investigation or disciplinary measures and the initial assessment determined not to conduct an investigation, the Compliance Officer will notify the reporting party promptly. The Equity Review Team may change its determination based on additional information, at any time.

C. Interim Measures. The Compliance Officer, in consultation with the relevant Review Team and with approval from the Dean of Students, the relevant Dean, the Provost²⁴ and/or University Counsel as needed, will take or cause to be taken interim steps to minimize the impact of the process on the reporting party, protect the safety and well-being of members of the university community, protect the integrity of the investigation (if any), and avoid retaliation. These steps may be taken upon initial receipt of report, after the initial assessment, or at a later point in the process. Interim measures may be adjusted in response to new or additional information, an updated risk assessment, or other developments.

Examples include:

- placing the respondent on administrative leave, in the event of allegations of egregious conduct such as assault;
- issuing a no-contact order;
- transferring the respondent or, with his or her consent, the reporting party, to another department;
- modifying the work schedules of either party;

²⁴ The Faculty Handbook specifies the process and approvals required to, as an interim measure, place a faculty respondent on administrative leave (suspension), transfer the respondent, or make changes to teaching or other significant duties.

- temporarily modifying supervisory relationships;
- monitoring/increasing supervision of the respondent; and/or
- notifying William & Mary Police to address any safety/security concerns.

In deciding on interim actions, the Review Team considers the Risk Factors as well as factors such as:

- The nature and severity of the reported misconduct. Reported quid pro quo harassment makes a more urgent case for strong interim action such as transfer of a party than a complaint about a performance evaluation.
- Whether it is possible for a party to do their job in a different department or under a different supervisor.

VI. General Procedural Considerations

A. Advisors/Silent Supporters. Each party may have an advisor of his or her choice, who may be a lawyer. Each party may also have a silent supporter. The advisor may attend meetings and interviews to advise and support the party, but may not actively participate. Silent supporters are not permitted to attend meetings or interviews, but may attend the hearing (if any).

- An advisor may accompany the party he or she is advising to that party's interviews, meetings, and the hearing, but may not actively participate or intervene. If an advisor has questions or concerns, he or she may request to meet separately with the investigator or other university official. An advisor may quietly and briefly confer with or advise the faculty member he or she is advising. An advisor who disrupts a meeting, interview or proceeding will be required to leave the proceeding.
- Parties may share records and investigation communications with their advisor, if the advisor agrees to maintain confidentiality.
- Because of the importance of prompt processing of reports, advisors are expected to modify their schedules to attend meetings and hearings. The university will typically not reschedule hearings or grant extensions to accommodate advisor schedules. Arrangements may be made to allow participation by phone or other technologies.

B. Confidentiality, Need-to-Know, and Records Retention. Inquiries about and reports of discrimination, harassment, or retaliation shall, whenever possible, be treated with confidentiality. Normally, confidential information will be disclosed to others outside the process only when required by law or when personal safety is at risk. However, an investigation may require disclosure of information.²⁵ See the university's [Discrimination Policy](#).

This procedure specifies notification or consultation with various offices and individuals. In addition, the following disclosures may be made:

²⁵ The Compliance Resource website "[Privacy and Confidentiality – For Students and Employees](#)" provides further information on privacy policies relating to employees.

- Limited disclosure to the respondent's and/or reporting party's Department Chair, Program Director, and/or Dean, to inform them that an investigation is being conducted, enlist their assistance with interim measures and retaliation prevention. Such individuals may also be witnesses.
- Disclosure to the Office of University Counsel, for the purposes of obtaining legal advice.
- Limited disclosure to individuals as needed to obtain approval for or implement interim measures and prevent retaliation.
- Disclosures required by law such as in response to subpoenas or Freedom of Information Act requests.

Records produced or collected pursuant to this procedure shall be maintained in accordance with federal and state law, including the Records Retention Schedules of the Library of Virginia, which implement the Virginia Public Records Act. Under General Schedule GS-103, Series 100479, investigative files relating to discrimination complaints against an employee are to be retained for three years.

Precautions are taken to protect sensitive, confidential information including the investigation report and related communications, such as use of secure file transfer technology. Additional steps may be taken when sharing information with people who are not university employees or students, such as providing access to documents rather than copies.

C. Timeline. All time periods, unless otherwise specified, are in working days, i.e. days the university's administrative offices are open for business. The university aims to conclude the investigation and adjudication, including notification of outcome, but not including any appeal(s), within a sixty (60) day time period. The time period for the resolution of allegations of misconduct can be extended as necessary for appropriate cause by the Compliance Officer with notice to the parties. The timeline for resolution begins with notice to a mandated reporter or the filing of a report with the Compliance Officer.

D. Retaliation, Witness Intimidation, or Other Abuse of Process. Respondents who contact witnesses or parties to intimidate them, influence testimony, harass, or circumvent the process in any way, may be responsible for retaliation or other misconduct under the Faculty Handbook.

If reports or evidence of retaliation or misconduct relating to the investigation itself (witnesses collaborating, for example) arise during the course of the investigation, the investigator or other administrator becoming aware of the behavior will notify the Provost. The Provost or designee will consult with the Compliance Officer to determine whether additional interim measures are necessary to respond to the reported retaliation or misconduct, and to decide whether to address the reported retaliation or misconduct as a separate matter or as part of the current investigation. If they are addressed as part of the current investigation, the investigation may take additional time to conclude. See the university's [Discrimination, Harassment, and Retaliation Policy](#).

E. Meetings, Interviews, Communications and Notifications. Unless otherwise provided in this procedure, meetings and interviews may be conducted telephonically, using skype or other technology, or through written communication, to permit prompt complaint resolution.

All notifications and communications are made in writing and sent simultaneously to each party unless otherwise noted.

See paragraph B for confidentiality.

F. Combined or Multiple Violations. In cases where more than one faculty member is charged with misconduct for the same, or substantially similar, misconduct or incidents, the university may address the misconduct through a consolidated investigation process.²⁶ If a hearing is held or determinations made, the findings will be specific to each faculty member. See also Section VII(F).

G. Rules of Evidence. University proceedings are not bound by strict rules of legal evidence. Reasonable efforts will be made to obtain the most reliable evidence available. Information that does not come from a first-hand source (hearsay) may be considered. Lie detector/polygraph evidence is not permissible. Except as specifically provided in this procedure, the university is not required to consider evidence or decide which evidence to exclude or consider.

H. Individuals with Disabilities. The university is committed to providing reasonable accommodations for students and employees with documented disabilities, in accordance with the [Accommodation Policy and Procedure](#). Such accommodations may include, but are not limited to, administrative assistance, additional time, and/or an alternative to the formal hearing process. Reporting parties or respondents with disabilities who need reasonable modifications to address a suspected violation of the Discrimination, Harassment, and Retaliation Policy are encouraged to meet with the Compliance Officer/ADA Coordinator as early in the process as possible to identify and plan specific accommodations.

I. Reporting Party Withdrawal of Participation or Request to Halt Investigation or Adjudication Process. If a reporting party wishes to cease involvement in the process, or no longer wants the process to continue, the Compliance Officer will consider carefully whether the university is obligated to proceed forward or whether the party's wishes may be respected, based on the factors described in Section III(A).

J. Roles. The individuals specified in this process may recuse themselves or delegate their roles to others as necessary to ensure impartiality or to accommodate leave or professional or personal conflicts.

VII. Investigation

The following steps occur after a determination has been made to conduct an investigation under this procedure, as described in Section V.

²⁶ For example, two faculty members alleged to have engaged in conduct that collectively created a hostile work environment.

A. Initial Meetings with Parties. The Compliance Officer meets with the reporting party to:

- discuss the complaint or concern;
- discuss other reporting options, if applicable;
- discuss preservation of evidence;
- provide information about the [administrative procedure\(s\)](#); and
- discuss interim measures including retaliation protections and support services, if applicable.

In some instances, this meeting will take place upon the initial filing of the report, prior to the initial assessment. In other instances, multiple meetings may occur.

The Compliance Officer meets with the respondent to:

- notify him or her that a report has been made and an initial determination made to conduct an investigation
- identify the reporting party and describe the nature of the initial allegations to be investigated, e.g.,
 - racial harassment of [reporting party]
 - age discrimination against faculty within the department
 - disability discrimination through failure to accommodate [reporting party];
- provide the respondent with an opportunity to provide information or an initial response;
- discuss or communicate interim measures (see Section IV(C));²⁷ and
- provide the respondent with information about the process and their rights and responsibilities.

If the Compliance Officer receives information in the course of these initial meetings relevant to the allegations or the decision to investigate, the Officer will consult with the Review Team and the initial determination may be changed. The parties will be notified of any significant change, such as a decision not to investigate.

If the investigation proceeds, the Compliance Officer will notify the Faculty Hearing Committee (FHC) and two investigators will be selected.²⁸ The Compliance Officer documents the allegation(s) and provides them to the investigators together with the investigation log, copies of correspondence, and any evidence collected. The Compliance Officer also provides a copy of the allegations to each of the parties, who have the opportunity to provide a response to the allegations to the investigators.

B. Investigators. The investigators are objective, neutral parties responsible for the collection of evidence.

²⁷ It may be necessary to take interim measures relating to the respondent prior to this meeting.

²⁸ The investigation is typically conducted by two members of the FHC selected by the FHC. Investigators must have completed training satisfying minimal standards designed to satisfy federal requirements. If adequately trained faculty investigators are unavailable, Title IX staff or external investigators will be used. External investigators may also be used as needed to ensure an unbiased, prompt investigation, such as when investigating allegations of misconduct by a senior academic administrator.

All investigators receive training in investigation technique, relevant law, university policies and procedures, impact of trauma on memory, rape myths, evaluating credibility, and other relevant topics.

The investigators' job is to gather evidence relevant to the allegations, and to document their investigation and the evidence collected in an investigation report. The investigators do not make a determination of responsibility.

- The investigation includes interviews with the parties and any other witnesses whom the investigators believe may have relevant information. The investigators carefully consider witnesses suggested by the parties, but have discretion to determine which witnesses appear likely to offer relevant evidence.
- Each party may suggest witnesses at any during the investigation – people whom the party believes to have relevant evidence. The party should specify the nature of the information the witness may have to provide.
- Each party may submit evidence at any time during the investigation. Parties are not required to themselves uncover and produce evidence; if a party has cause to believe certain evidence exists, he or she should discuss the issue with an investigator.
- The investigators may modify the allegations over the course of the investigation in response to information collected or additional incidents of misconduct reported or detected. The investigators will notify the parties of any significant modifications to the allegations and provide them with an opportunity to respond. If the modification would add a new respondent, the investigators will consult with the Compliance Officer and Provost to determine whether to add the respondent to the existing investigation or whether a separate investigation should be initiated. See Section VI(F).

The investigators are supported by and work with the Compliance Officer and Provost or designee to respond to issues that may arise during the investigation such as retaliation concerns (see paragraph D) or the need for modification to interim measures.

When the investigation is complete, the investigators will provide the Provost with a draft investigation report summarizing the investigation process and the relevant evidence collected. Parties will be notified when the report is submitted to the Provost. The report typically will:

- describe the allegations investigated including the elements of each alleged policy violation,
- provide relevant information regarding the parties, key witnesses (if any), and other contextual matters such as locations or specific events,
- describe the investigation, i.e., the witnesses interviewed and evidence collected
- include a timeline of events, if useful, and
- summarize the relevant evidence discovered, outlining which elements of each allegation are contested and relevant corroborating or contradicting evidence. As an example, a report may state that sexual contact was not disputed and that the only disputed issue is whether effective consent was given/received, then proceed to summarize the evidence found (witness statements, records, etc.) relevant to the existence of effective consent.

The draft investigation report will not include conclusions as to whether there has been a violation of law or policy, but may include the investigator's assessment of the credibility of witnesses and strength of specific evidence.

The university aims to complete the investigation and submit the investigation report within [fifteen] days of receiving the allegations and other information from the Compliance Officer.

C. Cooperation with Investigation. Faculty are expected to comply with all parts of this procedure throughout the investigation and resolution process.

D. Third-Party Participation. Third parties other than advisors are not permitted to be present during interviews; interviews are attended by the interviewee, the investigator(s), and, for interviews of a party, the party's advisor (if desired by the party), and a note-taker (in the discretion of the investigator(s)).

VIII. Provost Review/Administrative Resolution

The Provost reviews the investigation report and may request additional investigation, correction or clarification to the report. The Provost aims to complete his review and any further investigation or report revision within [seven] days.

The Provost provides both parties with copies or access to the final investigation report. Each party has the right to submit a written response, which may include additional evidence and identification of issues or statements that they believe to be in error or as warranting additional investigation, to be considered by the Provost and hearing panel (if applicable); see Section IX. Any response must be submitted within [five] days and will be shared with the other party.

In the Provost's discretion and in consultation with the Compliance Officer, he may attempt administrative resolution of the allegations. There are two forms of administrative resolution. Each requires the consent of the reporting party:

- A resolution that does not include a major sanction (see Section III(F)(1)(b)(viii) of the Faculty Handbook and Section XI(B) of this procedure) may be imposed by the Provost. The respondent may request reconsideration of the resolution by filing a request, specifying the reasons or bases for reconsideration, with the Provost within [five] days of notification of the resolution.²⁹
- A resolution that includes a major sanction may be made with the consent of the respondent. This resolution is non-appealable.

Each party is notified of the resolution, the rationale and any sanction; the reporting party is also notified of any remedies offered to him or her.

²⁹ The other party is notified of any such request and has the opportunity to provide information to the Provost to be considered in reviewing the request.

To avoid undue delay, the Provost aims to conclude any administrative resolution within [fifteen] days of the later of receipt of the investigation report or completion of any additional request investigation. For allegations of Title IX violations, the timeline for administrative resolution is shortened to [ten] days.

If administrative resolution is not completed and if the Provost determines that a hearing is warranted, the Provost, in consultation with the Compliance Officer, decides which allegations should proceed to hearing.³⁰ The parties are notified and may request reconsideration of this decision as provided in Section IX(A).

IX. Hearing Preparation and Conduct

The hearing is the process by which the university decides whether university policy has been violated, by deciding whether the allegations are supported by the evidence submitted in the investigation report. The hearing is not a courtroom-like process and is not adversarial in nature.

A. Hearing Preparation. If the Provost determines that an allegation will proceed to hearing, the Faculty Hearing Committee is notified and the Provost submits to the Chair of the Faculty Hearing Committee the final investigation report and any response provided by the parties (see Section VIII). Each party is notified in writing of:

- The allegations proceeding to hearing and the rationale for any allegations not proceeding to hearing.
- The right to request reconsideration of the decision regarding whether and which allegation(s) proceed to hearing.³¹ Such a request must be made within [48 hours] of the Provost's notification, and the hearing preparation will continue while the Provost considers such request.
- The right to request to introduce witnesses at the hearing. These requests must be made within [three] days of the Provost's notification and must be justified by explaining the purpose and relevance of the witness.
- The right to suggest topics to be explored by the hearing panel, by providing such topics in writing to the FHC within [three] days of the Provost's notification.
- The right to request one postponement of the hearing, citing the reasons for the request in a written statement to the Hearing Coordinator at least [72 hours] in advance of the hearing, except in the case of emergency. The party may be requested to provide supporting documentation of the need for delay. The Hearing Coordinator, in his or her discretion, may grant a postponement for good cause.

³⁰ This decision is made on a basis similar to the summary judgment standard used by courts; the Provost views the evidence in the light most favorable to the reporting party and dismisses the allegation if there is no material dispute of fact and the alleged misconduct does not violate university policy.

³¹ The other party is notified of any such request and has the opportunity to provide information to the Provost to be considered in reviewing the request.

The FHC prepares for the hearing as follows:

- The FHC reviews the executive summary of the investigation report.³² FHC members with a conflict of interest or bias are excused and other eliminations made as necessary to establish a five-person hearing panel.³³ The investigators are included in the hearing panel.
- The hearing panel members review the investigation report.
- The hearing panel sets a hearing time and date and notifies the parties of the time, date, location, and composition (names) of the panel. The university will aim to hold the hearing within ten to fifteen days from receipt of the allegations from the Provost.
- The panel reviews any requests for witnesses or topics for exploration submitted by the parties and determines whether and which witnesses it will call and will notify the parties of the witness list at least [48 hours] prior to the hearing.
- The panel reviews any new evidence submitted by the parties and determines whether good cause exists to introduce the evidence at the hearing.

B. Hearing.

- In consultation with the hearing panel, the Provost will designate a trained administrator or faculty member to serve as Hearing Coordinator and summarize the allegations, the investigation, and the relevant areas of dispute for the panel. The Hearing Coordinator also assists in the conduct of the hearing.
- Each party has the opportunity to make a brief statement and/or provide a written statement.
- The panel asks questions of the parties and any witnesses, which may include the investigators.
- Neither party is required to attend the hearing. Each party may request options to allow them to attend without being in close proximity to the other party, such as privacy screen or participating by phone or skype from a nearby location.
- The parties may not question each other directly.
- The panel may call witnesses to provide professional opinion on the elements of university policy, evaluating credibility, and other topics.
- Hearings are private and confidential.

C. Deliberation and Determination. The panel deliberates in private. The panel makes a determination as to whether there was a policy violation by a simple majority vote.

The standard of proof used to make a determination is preponderance of the evidence – more likely than not – for allegations of sex- or gender-based discrimination or harassment, and clear and convincing, in all other cases.³⁴ The panel may make recommendations as to sanctions and remedies. See Section X(B) for possible sanctions.

The panel documents their determination, recommendations, and rationale, in compliance with

³² From this point forward, all references to the investigation report refer to the final investigation report.

³³ Eliminations typically are made based on FHC member availability to prepare for and attend the hearing.

³⁴ Any question as to whether an allegation is a Title IX matter shall be resolved by the Title IX Coordinator.

applicable law.³⁵ This notification is communicated to the Provost and the parties within [two] days of the hearing.

D. Conduct of the Hearing. Faculty who appear before the hearing panel, whether as parties to the proceedings or as witnesses, are expected to provide truthful and accurate information.

Advisors and silent supporters may attend the hearing. They may not actively participate in the hearing, but the advisor may provide support and advice to the faculty member, during recesses or breaks or through written notes.

Sexual History, Character, and Reputation of the Reporting Party.

In general, a reporting party's prior sexual history, character, or reputation is not relevant and will not be admitted as evidence at a hearing. Where there was a relationship between the reporting party and the respondent and consent is at issue, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties or to explain physical evidence. Prior sexual history of the reporting party with other individuals is not relevant and will not be permitted, except to explain injury.

Evidence of Previous or Other Misconduct by the Respondent.

The following types of evidence may be considered, including in a hearing:

- evidence of misconduct similar in nature to the alleged misconduct by the respondent,
- evidence of a pattern or to be considered together with the alleged misconduct in determining whether a hostile environment was created, and/or
- evidence relevant to proving intent, state of mind, or identity.

X. Appeal and Sanctioning

The Provost reviews the panel's determination to impose sanctions and remedies, if appropriate. He also decides any appeals.

A. Appeal of FHC Determination. Either party may appeal the determination of the panel to the Provost, on the grounds of:

- Procedural irregularity that denied the appealing party a fair process.
- Determination inconsistent with the evidence.
- New material evidence previously unavailable.

An appeal must be filed within [three] days. The other party is notified of any appeal and has [three] days to provide a response to be considered by the Provost in reviewing the appeal. The

³⁵ FERPA, VAWA, Title IX, university policy (Statement of Rights and Responsibilities), and state policy regarding personnel records may impose limitations or requirements on what is included or disclosed in a determination notification, depending on the nature of the allegation(s) and the identity (e.g., student or faculty) of the parties. The Compliance Officer and/or University Counsel can advise on these limitations or requirements.

Provost aims to communicate his appeal determination within [seven] days, and will notify the parties of delay beyond this period.

The Provost's determination may be:

1. There is insufficient basis to grant the appeal. The panel's determination stands.
2. Substantial procedural error occurred that denied a party a fair process. The Provost may direct relief or may order a new investigation, a new hearing, or a new deliberation.
3. The panel's determination was not supported by the evidence. The Provost reviews the determination for clear error, including error in evaluation of the evidence. The Provost may modify the determination or may order a new hearing or re-submit the matter to the panel to conduct a new deliberation.

B. Provost Review; Sanctions and Remediation. The Provost reviews the panel's determination and any sanction recommendations, and any appeal filed. If no appeal is filed, the Provost's role is to determine the sanction; if an appeal is filed, he considers the determination of responsibility (policy violation) and, if appropriate, the sanctions. The Provost consults with the Compliance Officer and determines:

- the disposition of the appeal, if any, as described in paragraph A of this Section IX;
- sanctions of the respondent, if relevant;
- any remedies for the reporting party; and
- other remedial actions to be taken.

The purpose of sanctions is to remedy the effects of the misconduct and to prevent future misconduct. Sanctions may or may not be the action that the reporting party requests or prefers. The appropriate discipline will depend on the nature and severity of the conduct, and other factors. The potential sanctions, specified in Section III(F) of the Faculty Handbook, are:

- A warning not to repeat the offending conduct and/or special monitoring of teaching or research;
- Separation of the parties involved;
- Required participation in an educational program (for example, about discrimination);
- A letter of reprimand;
- Removal from a research project (including long-term disbarment), suspension of access to laboratories, or other reassignment of duties;
- Loss of office, travel funds, research funds, etc.;
- Denial of a pay increase;
- Reduction in rank, salary or loss of endowed chair;
- Probation;
- Suspension (administrative leave) with or without pay; or
- Dismissal.³⁶

³⁶ Faculty Handbook Section III(F)(k).

The Provost aims to communicate his determination within [seven] days of the final appeal document (appeal or response to an appeal) being filed or receipt of the panel’s determination, if no appeal is made, and will notify the parties of delay beyond this period. The parties are notified of the determination, appeal outcome, sanctions, and rationale, as permitted by law; the reporting party is notified of remedies offered to him or her.³⁷

XI. Approval, Amendment and Interpretation.

This procedure replaces the procedure formerly included in the Faculty Handbook (Section III(F)(2)). This procedure was approved by the Board of Visitors.

The Board of Visitors has authorized the Provost, with the approval of the Faculty Assembly and the Personnel Policy Committee, to amend this procedure.

The Board of Visitors has authorized the Compliance Officer, with notification to the Provost and the Faculty Assembly, to make minor, technical revisions to this procedure such as updates to office titles, references to other policies, or hyperlinks.

XIII. Related Policies, Procedures, and Other Documents

Appendix: [Reporting Options and Resources](#)
[Faculty Handbook](#)
[Discrimination, Harassment, and Retaliation Policy](#)
[Sexual Misconduct Policy](#)

³⁷ Federal and state law and policies may restrict or, alternatively, require what information is provided to the parties, depending on the identity of the parties, the nature of the adjudication violation, the outcome of the adjudication, and the nature of any sanctions or remedies.