



Procedures for Resolution of Reports Against Staff under Cornell University Policy 6.4 for the Following Acts of Prohibited Conduct:

- Prohibited Discrimination; and
- Retaliation

These procedures apply to all units of the University except for Weill Cornell Medicine, which will administer Policy 6.4 under Weill Cornell Medicine procedures.

We are a recognized employer and educator valuing AA/EEO, Protected Veterans, and Individuals with Disabilities.

Procedures for Resolution of Reports of Prohibited Discrimination Against Staff Under
Cornell University Policy 6.4
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I. DEFINITIONS OF PROHIBITED CONDUCT

A. Prohibited Discrimination

“Prohibited Discrimination” occurs when an employment or academic decision results in negative and/or different treatment of an individual based upon his or her membership in an Equal Education and Employment Opportunity (“EEOO”)-protected class, such as denying an opportunity for which an individual is qualified, not considering a person for an opportunity that is open to others, singling a person or group for different treatment because of her, his or their EEOO-protected class status, failure to provide reasonable accommodation for a disability or religious belief or practice; reinforcing the use of stereotypes that unreasonably impacts a person’s environment or opportunities.

B. Retaliation

“Retaliation” is adverse action taken against an individual for making a good-faith report of prohibited conduct or participating in any investigation or proceeding under these procedures. Retaliation may include intimidation, threats, coercion, or adverse employment or educational actions. Retaliation may be found even when an underlying report made in good faith was not substantiated. Retaliation may be committed by the respondent, the complainant, or any other individual or group of individuals. Retaliation does not include good-faith actions pursued in response to a report of prohibited conduct.

II. APPLICATION OF UNIVERSITY POLICIES AND PROCEDURES

Appropriate Procedures under Policy 6.4

The University is committed to providing a safe, inclusive, and respectful learning, living, and working environment for its students, faculty, and staff members. To this end, through this Policy and its procedures, the University provides means to address bias, discrimination, harassment, and sexual and related misconduct. The University will take reasonable and necessary actions to prevent discrimination and harassment; to take appropriate action when it learns directly or indirectly of conduct that might violate this policy; and respond promptly and thoroughly to such information, whether or not a Formal Complaint is filed under these procedures.

The University will determine which procedures under Policy 6.4 apply and direct the report or formal complaint accordingly with appropriate notice and information to the complainant (s). To make this determination, the University will consider the status of the respondent and evaluate whether the report or formal complaint concerns interpersonal misconduct (such as sexual violence, sexual related misconduct, sexual and protected status harassment) to be addressed under the separate procedures governing such cases or prohibited discrimination (e.g., disparate



treatment based on membership in a protected class in employment and academic decisions, including, but not limited to: pay, promotion, and job opportunities) to be addressed under these procedures.

For more information, visit: <https://titleix.cornell.edu/procedure/>.

Allegations of Violations of other University Policy

If a party submits a report or formal complaint that alleges a violation of another University policy, the Vice President and Chief Human Resources Officer will determine how these allegations will be handled, such as, but not limited to, incorporated in an investigation under these procedures or referring the allegations of the other policy violation to the proper University official. The parties will be notified of the determination. These determinations are not subject to further appeal or review.

Additional Protections and Remedies:

In addition to the procedures available under University Policy 6.4, students and employees may also choose to pursue legal remedies under the state and federal laws listed below:

- New York Human Rights Law

A complaint can be filed with the New York State Division of Human Rights within one (1) year of the alleged discrimination. A complaint may also be filed in New York Supreme Court within three (3) years of the alleged discrimination. For more information: <https://dhr.ny.gov/contact-us>

- Title VII of the Civil Rights Act of 1964

The Equal Employment Opportunity Commission (“EEOC”) is responsible for enforcement of the federal law prohibiting employment discrimination, Title VII. An individual can file with the EEOC anytime within 300 days from the alleged discrimination. For more information: www.eeoc.gov.

- Title IX

The Office of Civil Rights, the United States Department of Education is responsible for enforcement of Title IX. For more information: OCR@ed.gov or (800) 421-3481.

III. INITIAL ASSESSMENT

A. Initial Assessment

Upon receipt of a report of alleged prohibited conduct by a staff member, the Office of Institutional Equity and Title IX (“Institutional Equity”) will make an initial assessment of the reported information. This initial assessment will include (1) whether the reported information is



subject to these procedures or subject to the employee procedures for the resolution of reports alleging protected status harassment or sexual or related misconduct, and (2) an analysis of whether immediate reasonable steps have been taken or should be recommended to the unit or college to address the concerns raised by the report. These reasonable steps are determined on a case-by-case basis and are dependent on the conduct alleged and an evaluation of the work environment. The reasonable steps could include, for example, a separation of the parties, including a change in assignment, shift, or work location or administrative leave. Reasonable steps may also include a recommendation to the responsible unit and/or human resource professionals that they offer counseling and/or training for the affected individuals. These immediate reasonable steps do not preclude additional interim measures or the complainant's or the University's pursuit of a resolution under these procedures.

1. Where the Complainant's Identity Is Known

Where the identity of the complainant is known, they will be provided an explanation of available resources and options and will be offered the opportunity to meet promptly with Institutional Equity to discuss those resources and options.

2. Where the Complainant's Identity Is Unknown

Where a report is filed but the identity of the complainant is unknown, Institutional Equity will assess the nature and circumstances of the report, including whether it provides information that identifies the potential complainant, the potential respondent, any witnesses, and/or any other third party with knowledge of the reported incident, and take reasonable and appropriate steps to respond to the report of prohibited conduct consistent with applicable federal and state laws and these procedures, including referring the report to the Department of Inclusion and Workforce Diversity ("DIWD.")

IV. ALTERNATIVES TO FILING A FORMAL COMPLAINT

A. Informal Resolutions

Members of the Cornell community have an option to resolve concerns of prohibited discrimination without an investigation under this policy by acting through Institutional Equity who will work with the appropriate university officials to achieve a resolution under applicable policy/ protocol. If the matter is resolved, no complaint may be filed and no appeal may be taken.

B. Mediating a Concern

The primary objective of mediation is to permit the parties to resolve the dispute on their own, quickly and confidentially. Both the complainant and alleged respondent must agree to



mediation. At any stage during or upon the conclusion of the mediation process, either party may decide to proceed by formal investigation.

If a complainant and the alleged respondent agree to proceed by mediation, a trained individual designated by the vice presidents for Human Resources, or their designee(s), will interview the complainant to determine the factual allegations on which the allegation of discrimination is based, and the terms satisfactory to the complainant upon which the complaint may be conciliated. The mediation process must be completed within twenty (20) working days, but is subject to extension as necessary or upon a showing of good cause. Both parties must respect the confidentiality of the mediation process.

If the complaint is mediated successfully, a mediation agreement will be prepared presenting the agreed-upon terms that comply with university policies and procedures. The two parties must sign the agreement to indicate the dispute is fully and finally resolved. If a party fails to comply with this agreement, the agreement may be used as evidence in any subsequent investigations relating to charges of prohibited discrimination.

No written record of the mediation process will be retained with the exception of the mediation agreement, which will be made available to the parties upon request.

C. Interim Measures

At the request of the complainant or at its own discretion, Institutional Equity may recommend to the appropriate university official under applicable staff or academic policy interim measures to protect the safety and well-being of members of the university community. These measures may include no-contact orders, change of housing or place of employment or schedule, change of class schedule or location, change of supervision, temporary suspension, or otherwise.

V. FILING A FORMAL COMPLAINT AGAINST A STAFF MEMBER

A. Time Limits for Filing a Formal Complaint

Complaints brought against staff members must be filed with Institutional Equity within one (1) year of the alleged action.

B. Formal Complaint Process

An individual or group may file a formal complaint with Institutional Equity. CUPD may investigate alleged criminal matters and assist in investigations of alleged policy violations.

The complainant may be a single person or several individuals. If there are several individuals, and they cannot agree on an approach or desired outcome, the complaint will be divided into two or more complaints. Each complainant must describe verbally or in writing the alleged act



or acts, identify the person or persons purportedly responsible, and indicate the date or approximate date on which the prohibited conduct occurred.

Generally, complaints will only be investigated when the complainant signs a formal complaint. In extraordinary circumstances, however, Institutional Equity may determine on its own to investigate prohibited conduct that interferes with the University's ability to provide a safe and non-discriminatory environment. In such circumstances, Institutional Equity may also recommend to the appropriate university official interim steps to protect the safety and well-being of members of the university community. In addition, if a complainant does not elect to pursue any process under this policy, the appropriate university official may request an investigation under this policy. In such cases, the complainant will be advised of the steps being taken and may be asked to serve as a witness in the investigation process but shall not be treated as a party with rights of appeal, etc.

If Institutional Equity determines that the complaint describes an alleged violation of the prohibited conduct governed by these procedures, it will notify the respondent that he or she has been named in a complaint and proceed under these procedures.

C. Dismissal of Formal Complaint/ Possible Referral to Other Office and Policies

If Institutional Equity determines that the formal complaint does not describe an alleged violation of the prohibited conduct governed by these procedures, it will notify the complainant that the complaint is dismissed, and the complainant will be informed of his or her right, if any, to appeal under this policy, pursue remedies under another University procedure or policy and/or to seek external avenues of complaint resolution.

If the complainant's concerns are unrelated to prohibited discrimination or other prohibited conduct Institutional Equity may refer the complainant to or cooperate with another university office to investigate and/or address such unrelated concerns.

D. Retention of Documents if Complainant does not Pursue Complaint

When a complainant does not pursue a complaint that he, she, or the group has filed, Institutional Equity will maintain confidentially materials obtained during the complaint filing for at least three (3) years, or until any external agency investigation or legal action is concluded, whichever is later. These records cannot be considered for any purpose in the mediation, investigation, or adjudication of future discrimination cases.

E. Investigation of a Formal Complaint

The purpose of the investigation is to gather evidence relating to the alleged prohibited conduct and to determine whether the respondent engaged in the prohibited conduct by a

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preponderance of the evidence (i.e., it is more likely than not that the respondent has engaged in the prohibited conduct.)

The investigator conducts these formal investigations, subject to extension by the investigator as may be necessary or for good cause. During investigations, the investigator will keep both parties informed on the investigation's status, as appropriate. Additional information about the investigation process under these procedures is included in Section V below. Throughout the investigative process, the investigator may consult the provost, vice president for human resources, vice president for student and campus life, dean of faculty, other appropriate university officials, subject-matter experts, and/or university counsel.

Throughout the investigative process, the complainant and respondent may seek the advice of personal attorneys and advisors. Such representatives may attend their own clients' or advisees' investigative interview, but may not respond to questions for their clients or advisees, and may not pose questions. Adversarial hearings (including confrontation, cross-examination by the parties, and active advocacy by attorneys) are not permitted during the investigative process.

F. Duty to Cooperate with Investigation

University faculty, staff members, and students must cooperate with investigations of prohibited discrimination occurring in the context of employment and academic appointment, and in relation to a university activity. A faculty or staff member or student who has relevant information, but refuses to cooperate after being asked to do so during an investigation, may be subject to disciplinary action.

Note: If parties choose not to discuss the matter with the investigator, the matter will proceed without their participation.

G. Resolution by Agreement

At any point in the investigation or the formal complaint process, the investigator or any of the parties may suggest a settlement of the matter based on the investigation up to that point. The investigator or his or her designee will serve as an impartial communicator so the parties will not have direct contact. Any information provided or discussions with the investigator or designee in attempts to settle the matter may not be considered part of the investigation. If the parties do not come to an agreement regarding settlement, the formal complaint process continues, as described herein.

H. Investigator's Report of Investigation Findings

1. Investigator's Report:

Upon concluding an investigation, the investigator must produce a written investigation report, which must include the following:



- The scope of the investigation;
- A summary of the findings;
- Recommendations for any corrective actions and/or sanctions, including disciplinary action; and
- Any non-punitive, preventative remedies for the complainant.

2. Disciplinary Action:

Disciplinary action for prohibited discrimination may include an oral or a written warning, a written reprimand, a requirement to attend training, work restrictions, salary reduction or limitation, suspension, dismissal/termination, community work, fine, probation, educational classes, counseling, papers, directed study, letters of apology, restitution, orders to perform or to stop certain actions, or other educational sanctions. The appropriate university official determines such action based on the recommendations in the investigation report.

3. Restoring Respondent's Reputation upon a Dismissal of a Formal Complaint

If warranted, the investigator may recommend action to restore the respondent's reputation, such as notifying persons who participated in the investigation, and/or a public announcement of the outcome.

I. Dismissal of Case by Investigator

The investigator may dismiss a complaint and close the case where the complaint:

- Is not reported or filed in a timely manner.
- Is not supported by sufficient facts, lacks merit based upon the available evidence, or does not fall within the jurisdiction of the investigator.

Similarly, the investigator may dismiss a complaint and close the case under any of the following circumstances:

- The complainant fails or refuses to appear or to be available for interviews or conferences as necessary.
- The complainant cannot be located after reasonable efforts have been made, and has not responded for at least ten (10) calendar days to a notice sent by the investigator to his or her last known residence, office, or email address.
- The complainant fails to provide requested, necessary information.
- The complainant fails or refuses to cooperate with the investigation to the extent that the investigator is unable to reasonably resolve the charge.

If the investigator determines that a complaint should be dismissed, the complainant will be informed of that decision, and given an opportunity to submit a written response to the reviewer (unit head) within ten (10) working days. If the dismissal is affirmed by the reviewer, the complainant shall have a right of appeal under the appeal procedures, herein. Furthermore, the



disposition will include, if appropriate, an attempt to restore the reputation of the respondent (such as deletion of records, and, unless the respondent otherwise requests, notification to persons who participated in the investigation of the charge, and/or public announcement of the outcome consistent with any applicable requirements under the Family Education Rights and Privacy Act ("FERPA").

J. Review of Investigative Report and Decision

Before making any decision following the investigation, the reviewer (unit head) must forward to the complainant and respondent, copies of the summary of the investigation report, and provide both parties a reasonable opportunity to submit written comments within ten (10) working days unless extended by the unit head.

The reviewer to whom the investigation report summary is forwarded ultimately may accept, modify or reject the determination or recommended sanctions and/ or remedial measures, or return the report for further investigation.

During this review, the reviewer may consult confidentially with university counsel, appropriate university officials, and with the respondent's supervisor or department head if disciplinary actions are recommended, concerning the sufficiency of the investigation and the findings or any recommendations.

The reviewer shall issue a final determination in writing, simultaneously, to all complainants and respondents.

K. Opportunity to Object to Reviewer's Decision

The complainant or respondent may object to the final determination of the reviewer within ten (10) working days (unless otherwise extended).

L. Implementation of Remedies and Sanctions

If there is no objection to the final determination of the reviewer and the reviewer agrees that the charges and sanctions and/or remedial measures presented therein are valid, the vice president, or equivalent unit head will review and implement the sanctions and/or remedial measures recommended in the investigation report within ten (10) working days, except for good cause shown.

M. Appeals by Complainant

Appeals by a complainant from a determination that a complaint of alleged prohibited conduct is not meritorious, or that a discipline or remedy is inadequate, must be made within ten (10) working days of the determination to the vice president for human resources or a designee, when the respondent is a member of the academic or nonacademic staff (other than faculty).



No appeal shall be heard by a university official who is a respondent, and in such cases, an appropriate university official will be designated by the president, or a designee, to hear the appeal.

Appeals may be grounded on any of the following bases:

1. The remedial actions awarded the complainant are not commensurate with the injury or is unjust.
2. The sanction is not commensurate with the violation or is unjust.
3. The investigator or reviewer violated the fair application of relevant university procedures and such violation may have had a prejudicial effect upon the outcome.
4. The investigator or reviewer committed a prejudicial error in interpreting the policy or procedures.
5. The investigator or reviewer rendered a decision clearly against the weight of the evidence.
6. New evidence was discovered after the decision and could not have readily been discovered before the decision, which would change the outcome.

The appeal shall be conducted in accordance with procedures to be established by the office hearing the appeal, including scheduling any meeting on the appeal, but shall commence with the requirement that the complainant submit a written statement of the basis for the appeal, setting forth the grounds for the appeal and the reasons therefore, accompanied by a copy of the determination being appealed. A written decision shall be made by the vice president of human resources, or designee, for appeals brought within thirty (30) days after submission, or any meeting on the appeal, whichever is later, unless extended for good cause. The decision shall be final and binding on all parties.

N. Grievance from Disciplinary Action Resulting from Investigation against Staff

Human Resources Policy 6.11.4, Staff Complaint and Grievance Procedure, governs grievances of contested employment action. The grievance procedures provided in the collective bargaining process apply to unionized employees. Non-faculty academic employees, such as librarians, may seek recourse under applicable grievance procedures.

VI. ADDITIONAL DEFINITIONS RELEVANT TO PROHIBITED CONDUCT UNDER POLICY 6.4

A. Formal Complaint

A formal written statement filed with Institutional Equity alleging discriminatory activity as defined in these procedures.



B. Investigator

A representative from Institutional Equity that has been trained and charged to review complaints of prohibited discrimination or retaliation with an outcome of developing recommendations for addressing the formal complaint.

C. Reviewer

A university official who reviews investigation reports and makes a final determination under this policy of (1) whether a complaint is meritorious, and (2) if so, what sanctions shall be imposed. Review of complaints against staff under this policy shall be by a vice president, or equivalent unit head with authority over the respondent(s). The reviewer shall have access to the entire record on which the investigation report is based and shall receive appropriate training for this function. When a vice president is the respondent, the summary will be forwarded to the provost or his or her designee. If the provost is the respondent, the investigation report is forwarded to the university president or his or her designee. If the university president is the respondent, the investigation report is forwarded to the board of trustees through university counsel and secretary of the corporation.

VII. THE INVESTIGATION PROCESS

A. The Investigation Process: Features and Steps

Investigations¹ conducted by Institutional Equity will be guided by the following process:

1. Identify the individual alleged to have discriminated against the complainant (the respondent).
2. Thoroughly ascertain all facts in connection with the alleged incident, including interviewing the complainant and the respondent.
3. Determine how the complainant responded to the alleged discrimination and determine what efforts were made, if any, at informal resolution and/ or interim measures, such as separating the individuals.
4. Determine whether the complainant informed other parties or supervisors of the situation and what response, if any, the complainant received from these individuals.

¹ The process for investigating complaints of prohibited discrimination is distinct from the mediation process. The same person may not perform the functions of mediator and investigator in a single case.



5. Determine the frequency and type of the alleged discrimination and, if possible, the dates and locations where the alleged discrimination occurred.
6. Develop a thorough understanding of the professional or personal relationship, degree of control, and amount of interaction between the two parties.
7. Determine whether the complainant knows of or suspects that the respondent has discriminated against other individuals.
8. During the first interview with the respondent, inform the respondent of all of the charges being made, along with the evidence supporting them, remind the respondent of the university's policy against retaliation for making a complaint of discrimination and ask for the respondent's explanation of the alleged behavior.
9. Present to the parties information learned in the course of the investigation that will be germane to the outcome of the investigation.
10. Receive any other evidence that parties wish to present; and thoroughly examine and evaluate the rebuttals made them.
11. Interview, as appropriate, witnesses identified by complainant or respondent or who observed, or were told about, the alleged discrimination.
12. Remind all parties and witnesses on a case by case basis of the need for process privacy, consistent with the requirements of Policy 6.4.
13. Review, as appropriate, personnel files maintained by departments and/or administrative units; previously concluded mediation agreements; previous records of findings for reports or formal complaints of discrimination; other records obtained pursuant to university policy and procedure; and, after giving notice to the individual(s) to whom the files or records pertain and an opportunity for that individual(s) to raise objections, other relevant files and records not in Institutional Equity's possession. The vice president for human resources will rule upon any objections.

B. Challenge to Investigator

When a Policy 6.4 complaint is brought against a staff member acting in the scope of their University employment, including as an investigator of complaints under Policy 6.4, the University reserves the right to determine the scope of the investigation and whether the claim is ripe for investigation under this policy. If there is a process that is not yet completed, a final decision has not yet been made, and/or a clear alternative path for a complainant's concerns to be addressed in a different process, the University may choose to conduct a limited investigation under this policy or wait before commencing an investigation under this policy. That determination will be made by the Director of Institutional Equity.

