



UNIVERSITY of
LOUISIANA
L A F A Y E T T E

Procedures for Reporting and Responding to Violations of the Non-Discrimination Policy

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I. OVERVIEW

This document sets forth procedures for reporting, investigating, and responding to reports of violations of the Non-Discrimination Policy (the “Policy”). For applicable definitions of the italicized terms, please see the Policy.

II. CONFIDENTIALITY

During the *Complaint Process*, the confidentiality of the information received, the privacy of the individuals involved, and the wishes of *Complainant* will be protected to the highest degree possible. The expressed wishes of *Complainant* for confidentiality will be considered in the context of the University’s legal obligation to act on the charge and the right of *Respondent* to obtain information. However, in most cases confidentiality will be strictly maintained by the University and those involved in the *Investigation*. In addition, any notes or documents written by or received by the investigators will be kept confidential to the extent possible and in accordance with any existing state or federal laws.

III. COMPLAINT PROCESSING PROCEDURE FOR EVALUATION AND RESOLUTION

An individual who believes that he or she has been subjected to *Discrimination* or *Discriminatory Harassment* in violation of the Policy and seeks to take action may use either an informal process, formal process, or both. Where applicable, the informal and formal process described in these procedures are not mutually exclusive and neither is required as a pre-condition for choosing the other; however, they cannot both be used simultaneously, and each should be utilized in good faith. Resolutions may include: (1) no further action; (2) redirect to appropriate office; or (3) the initiation of an *Investigation* that may lead to recommended disciplinary action. Regardless of the manner of resolution, a *Respondent* may choose to accept responsibility at any stage in the process.

A. Initial Assessment

When a report is made, the Director, Human Resource Compliance and EEO Programs (“Director”) or his/her designee will conduct an Initial Assessment. The Initial Assessment will determine whether the alleged conduct would present a potential violation of the Policy and whether further action is warranted based on the alleged conduct.

B. Preliminary Meeting

The first step of the *Initial Assessment* will usually be a preliminary meeting between *Complainant* and the Director or his/her designee to gather facts that will enable the Director to:

- Assess the nature and circumstances of the *Complaint*;
- Address any immediate concerns about the physical safety and emotional well-being of the *Complainant* and *Respondent*;
- If the conduct is criminal in nature, notify *Complainant* of the option to notify law enforcement;
- Provide *Complainant* with information about:
 - On and off campus resources, including the availability of medical treatment to address any physical and mental health concerns, including counseling and support, and to preserve evidence, whether or not *Complainant* chooses to make an official report or participate in the institutional disciplinary or criminal process;
 - The available range of *Interim Supportive Measures*; and
 - Procedural options, including *Voluntary Resolution*, *Investigation*, and *Appeal*.
- Discuss *Complainant's* expressed preference for manner of resolution and any barriers to proceeding;
- Discuss the option of pursuing his or her *Complaint* through the formal process or informal process or both;
- Explain the University's policy prohibiting *Retaliation*; and
- Assess potential pattern evidence or other similar conduct.

C. Requests for Confidentiality or No Formal Action

Where a *Complainant* requests that his/her name or other identifiable information not be shared with *Respondent* or that no formal action be taken, the Director will balance this request against the following factors in reaching a determination whether the request can be honored:

- The nature and scope of the alleged conduct;
- The respective roles of *Complainant* and *Respondent*;
- The risk posed to any individual or to the campus community;
- Whether there have been other reports of misconduct by *Respondent*;
- Whether the report reveals a pattern of misconduct at a given location or by a particular group;

- *Complainant's* wish to pursue disciplinary action;
- Whether the University possesses other means to obtain relevant evidence;
- Considerations of fundamental fairness and due process with respect to *Respondent* should the course of action include disciplinary action against *Respondent*; and
- The University's obligation to provide a safe and non-*Discriminatory* environment.

Where possible, based on the facts, circumstances, and the factors listed above, the Director will seek action consistent with *Complainant's* expressed preference for manner of resolution, recognizing that the University must move forward with cases. The University's ability to fully investigate and respond to a report may be limited if *Complainant* requests that their name not be disclosed to *Respondent* or declines to participate in an *Investigation*.

D. Determination of Resolution Route

At the conclusion of the *Initial Assessment*, the Director will determine the appropriate resolution route. Resolution may include: (1) no further action; (2) *redirect to appropriate office*; or (3) the initiation of an *Investigation* that may lead to disciplinary action.

Regardless of the manner of resolution, a *Respondent* may choose to accept responsibility at any stage in the process.

E. Informal and Formal Processes for Managing Complaint

Complaints of Discrimination or Discriminatory Harassment may be resolved through either the informal or formal process as described herein. Use of the informal process is generally more expeditious than the formal process. While the University is committed to respecting a *Complainant's* self-selected type of *Complaint Process*, the University reserves the right to initiate a formal *Investigation* regardless of the *Complainant's* selection. Examples of situations in which the University will initiate a formal *Investigation* regardless of the *Complainant's* selection include:

- When the University is required by law to formally investigate an allegation;
- When a formal *Investigation* is determined by the Director to be most appropriate;
or
- When a *Complainant's* selection is outweighed by the University's interest in protecting the safety or rights of others or furthering other legitimate University processes.

When appropriate, the University may take *Interim Supportive Measures* to insure the safety of the individual(s) submitting the *Complaint*. These measures may be taken during the *Investigation*, as a follow-up or prior to any determination regarding whether there has been a violation of University policies.

Regardless of whether the informal or formal *Complaint Process* is used, substantive and, when warranted, procedural developments regarding an *Investigation* will be communicated to the parties.

F. Informal Process

The University recognizes that in some limited circumstances (but never in cases involving violence), voluntary informal resolution options may be an appropriate mean of addressing some behaviors reported in the Policy.

If the informal process is deemed appropriate by the Director, or designee, the *Complainant* will be provided assistance in informally resolving the issue, through a *Voluntary Resolution*.

Voluntary Resolution is a path designed to eliminate the conduct at issue, prevent its recurrence, and remedy its effects in a manner that meets the expressed preference of *Complainant* and the safety and welfare of the campus community. *Voluntary Resolution* does not involve an *Investigation* or disciplinary action against a *Respondent*, and is not appropriate for all forms of conduct under the Policy.

The University shall document the *Voluntary Resolution*. Such documentation shall be retained by the Office of Human Resources as appropriate and will be kept confidential to the extent permitted by law.

Voluntary Resolution

If a *Complainant* requests *Voluntary Resolution through* the informal process, and the Director concludes that *Voluntary Resolution* is appropriate based on the *Initial Assessment*, the Director will take appropriate action designed to protect *Complainant's* access to employment, educational, and extracurricular opportunities and benefits at the University. A *Complainant* may request and decide to pursue *Voluntary Resolution* at any time. In those cases in which the *Voluntary Resolution* involves either notification to or participation by *Respondent*, it is *Respondent's* decision whether to accept *Voluntary Resolution*.

Voluntary Resolution may include: establishing *Interim Supportive Measures*; conducting targeted or broad-based educational programming or training for relevant individuals or groups; providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; facilitating a meeting between *Respondent* and *Complainant* and any other remedy that can be tailored to the involved individuals to achieve the goals of the Policy. In some forms of *Voluntary Resolution*, the remedies will focus on supporting *Complainant* with no participation or involvement by *Respondent*. In other forms of *Voluntary Resolution*, *Respondent* may agree to participate. Depending on the remedy employed, it may be possible for a *Complainant* to maintain anonymity.

Voluntary Resolution may also include the option to allow a *Respondent* to accept responsibility for misconduct and acknowledge harm to *Complainant* or to the University community.

As the title implies, participation in *Voluntary Resolution* is a choice, and either party can request to withdraw and pursue an *Investigation* at any time, including if *Voluntary Resolution* is unsuccessful. Similarly, a *Complainant* can request to end an *Investigation* and pursue *Voluntary*

Resolution at any time. Either party may request *Interim Supportive Measures* regardless of whether any particular course of action is sought.

Voluntary Resolution is not mediation. Mediation is not available for conduct that involves violence or criminal conduct.

G. Formal Process and *Investigation*

Following the *Initial Assessment*, and in consultation with *Complainant*, the University will initiate a prompt, thorough, and impartial *Investigation* of conduct that is a potential violation of the Policy and is not being addressed through *Voluntary Resolution*. The Director or his/her designee will investigate allegations of *Discrimination* and *Discriminatory Harassment* under this Policy, and will coordinate the gathering of information to make an *Investigative Finding* regarding whether the alleged conduct constitutes a violation of the Policy by a preponderance of the evidence. A preponderance of the evidence means that it is more likely than not that the conduct occurred.

Information gathered during the *Investigation* will be used to evaluate the appropriate course of action, provide for individual and campus safety, and identify the need for additional *Interim Supportive Measures* and other remedies to eliminate the alleged conduct and to address its effects.

The Associate Vice President for Administration and Finance and Chief Human Resource Officer (“CHRO”) will oversee the *Investigation* by the Director or his/her designee. The *Investigation* is designed to provide a fair and reliable gathering of the facts by a trained and impartial investigator. All individuals, including *Complainant*, *Respondent*, and any third party witnesses, will be treated with appropriate sensitivity and respect throughout the *Investigation*. The *Investigation* will safeguard the privacy of the individuals involved in a manner consistent with federal law and University policy.

Where the University is made aware that there is a concurrent criminal investigation, the Director will coordinate with law enforcement so that any University processes do not interfere with the integrity or the timing of the law enforcement investigation. At the request of law enforcement, the University may agree to defer the fact-finding portion of its *Investigation* until after the initial stages of a criminal investigation. The Director will nevertheless communicate with *Complainant* and *Respondent* regarding resources and accommodations, procedural options, anticipated timing, and the implementation of any necessary *Interim Supportive Measures* for the safety and well-being of all affected individuals.

All University community members, including students, faculty, and staff, are expected to cooperate with the Director or designee during the *Investigation*, as well as any *Appeal*, to assure fairness and procedural due process. The Director or designee may request the appearance of persons from the University community who can provide relevant evidence. Either *Complainant* or *Respondent* may decline to participate in proceedings under the Policy.

University email is the University’s primary means of communication with faculty, staff, student workers, and students. All faculty, staff, student workers, and students are responsible for all communication delivered to their University email address and are responsible for abiding by timelines set forth by the Director.

If at any point, a *Complainant* fails to cooperate with the process, the *Investigation* may be closed without prejudice.

In the event *Respondent* declines to participate in proceedings or voluntarily resigns from the University, the *Investigation* and *Appeal* may proceed without *Respondent*.

I. Notifications

After the Director initiates an *Investigation*, the CHRO will notify *Complainant* and *Respondent* of the *Investigation*, which constitutes the formal process. The notification will include a summary of the allegation or conduct at issue, the range of potential violations under the Policy, and the range of potential sanctions.

The Director or designee will provide the *Respondent* with a formal *Complaint* notification letter summarizing this information. The notification letter informing the *Respondent* of the formal *Complaint* shall include a statement advising the *Respondent* that *Retaliation* against the *Complainant* and those participating in the *Investigation* is strictly prohibited. The *Respondent* shall be given the opportunity to provide information and to be heard concerning the *Complainant's* allegations, including the opportunity to submit a written response to the *Complaint*. The Director or his/her designee will also notify the *Respondent's* Dean, Department Head, and or Supervisor, about the formal *Complaint*.

Once the notification has been made to *Complainant* and *Respondent*, the *Investigation* phase begins.

J. Investigative Process

Upon notification, or at any stage in the process, *Respondent* may choose to accept responsibility for the Policy violation. Even if *Respondent* accepts responsibility for the Policy violation, the Director may continue the *Investigation* as necessary to determine appropriate disciplinary action(s) or sanction(s).

The Director will also inform *Complainant* and *Respondent* that they may to challenge the Director on the basis of an actual conflict of interest, bias, or lack of impartiality. Any such challenge must be submitted in writing to the CHRO within three (3) business days of the notification. The challenge must clearly state the grounds to support a claim of bias, conflict of interest, or an inability to be fair and impartial. Failure to timely object eliminates the possibility of any later appeal or objection based on the assertion that the Director had a conflict of interest, was biased, or lacked impartiality.

During the *Investigation*, *Complainant* and *Respondent* will have an equal opportunity to be heard, to submit information, and to identify witnesses who may have relevant information. The Director will speak separately with *Complainant*, *Respondent*, and other individuals willing to participate and who have relevant information. As part of the *Investigation*, the Director may gather or receive information that is relevant to the determination of an appropriate recommended action, sanction, or remedy, including information about the impact of the alleged incident on *Complainant* and *Respondent*. The Director will gather any available physical or documentary evidence, including prior statements by *Complainant*, *Respondent*, or witnesses, any communications between the *Complainant* and *Respondent*, email messages, social media messages, text messages, and other records as appropriate and available.

1. Relevance

The Director has the discretion to determine the relevance of any witness or other evidence to the finding of responsibility, and may exclude information in preparing the *Investigation* report if the information is irrelevant, immaterial, or more prejudicial than informative. The Director may also exclude statements of personal opinion by witnesses and statements as to general reputation for any character trait, including honesty. The Director will not exclude direct observations or reasonable inferences drawn from the facts.

2. Special Considerations

- a. **Character Evidence.** Character evidence is information that does not directly relate to the facts at issue, but instead, reflects upon the reputation, personality, qualities, or habits of an individual. In general, information regarding the character of *Complainant*, *Respondent*, or any witness is not relevant to the determination of whether there is a Policy violation.
- b. **Consultation of Other Administrative Units.** In reaching these determinations, the Director will consult with other administrative units with information relevant to the *Investigation*.
- c. **Consolidation of Reports.** At the discretion of the University, multiple reports may be consolidated in one *Investigation* if the information related to each incident would be relevant and probative in reaching a determination on the other incident. This includes, but is not limited to, matters where the evidence of the other conduct is inextricably intertwined with the Code of Conduct and Ethical Behavior Policy.

3. Time Frame for Resolution

The Director may set reasonable time frames for required actions under the Policy.

Time frames may be extended for good cause to ensure the integrity and completeness of the *Investigation*, comply with a request by external law enforcement, accommodate the availability of witnesses, *Complainant*, or *Respondent*, account for University breaks, or address other legitimate issues, including the complexity of the *Investigation* and the severity and extent of the alleged conduct. *Complainant* and *Respondent* will be given periodic status updates throughout the process. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

K. Investigative Finding, Recommendations, and Remedies

1. Investigative Finding

Upon the conclusion of the *Investigation*, the Director will make an *Investigative Finding*, by a preponderance of the evidence, regarding whether a Policy violation occurred.

2. Recommendations and Sanction(s)

In keeping with the University's commitment to foster an environment that is safe, inclusive, and free of *Discrimination* and *Discriminatory Harassment*, the Policy provides the Director, under the direction of the CHRO, with wide latitude in the imposition of recommendations, which may include sanction(s) tailored to the facts and circumstances of each violation of the Policy, the impact of *Discrimination* and/or *Discriminatory Harassment* on *Complainant* and surrounding community, and accountability for *Respondent*. The imposition of sanction(s) is designed to eliminate *Discrimination* and *Discriminatory Harassment*, prevent its recurrence, and remedy its effects, while supporting the University's mission and federal and state obligations. Sanction(s) may include educational, restorative, rehabilitative, and punitive components, including suspension or termination of employment.

The Director, is responsible for determining the appropriate sanction(s).

In determining appropriate sanction(s), the following factors shall be considered:

- The nature of the conduct at issue;
- The impact of the conduct on *Complainant*;
- The impact or implications of the conduct on the University community;
- Prior misconduct by *Respondent*, including *Respondent's* relevant prior discipline history, both at the University or elsewhere, including criminal convictions;
- Whether *Respondent* has accepted responsibility for the conduct;
- Maintenance of a safe and respectful environment conducive to working and learning; and
- Any other mitigating, aggravating, or compelling circumstances to reach a just and appropriate resolution in each case.

Restorative outcomes may also be considered that, taking into account the safety of the University community as a whole, allow *Respondent* to develop insight about his/her responsibility for the behavior, learn about the impact of the behavior on *Complainant* and the community, and identify how to prevent or change the behavior.

3. Remedies

The Director may identify short and long-term or permanent remedies to address the effects of the conduct on *Complainant* and ensure there are no barriers to *Complainant's* ability to benefit from the University's employment or educational opportunities. Such remedies should seek to restore to *Complainant*, to the extent possible, all benefits and opportunities lost as a result of the *Non-Discrimination Policy*. The Director will also identify remedies to address the effects of the conduct on the University community, such as conducting targeted or broad-based educational programming or training for relevant individuals or groups; providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; and any other remedy that can be tailored to the campus community to achieve the goals of the Policy.

The Director will consider the appropriateness of remedies, including *Interim Supportive Measures*, on an ongoing basis to assure the safety and well-being of the parties throughout the process. Long-term remedies may include extending or making permanent any *Interim Supportive Measures* or implementing additional measures tailored to achieve the goals of the Policy. Many of the remedies and supports that a *Complainant* might need after a finding of a Policy violation will have already been provided as *Interim Supportive Measures*. The Director will, in all cases, consider whether there is a need for additional remedies. Additional remedies or supports may include reassignment or removal of *Complainant* and/or *Respondent* as deemed appropriate.

4. Notification of Investigative Finding, Recommendations, and Remedies

The Director or designee will prepare and submit a written report to the CHRO upon conclusion of *Investigation*. The report will summarize the information gathered, synthesize the areas of agreement and disagreement between *Complainant* and *Respondent* with any supporting information or accounts, and include an *Investigative Finding* whether a Policy violation(s) occurred.

- a. If it is determined that a violation of this Policy has occurred, under the direction of the CHRO, the Director will propose the recommended sanction(s) to the President, Provost, and *Respondent's* Vice President, or supervisor. The sanction will depend on the following factors: a) the severity, frequency, and pervasiveness of the conduct; b) prior complaints made against *Respondent*; c) the weight of the evidence (e.g., first-hand knowledge, credible corroboration; or d) any other relevant information.
- b. If the *Investigation* is inconclusive or if it is determined that there has been no Policy violation, but potentially problematic conduct may have occurred, under the direction of the CHRO, the Director will propose the recommended appropriate sanction to the President, Provost and *Respondent's* Vice President, or supervisor
- c. Once the CHRO receives approval from the President, the Director will meet with *Complainant* and *Respondent* separately, notify them of the findings of the *Investigation*, and inform them of any sanction being imposed.

5. Investigation Outcome Conference

Upon notification to *Complainant* and *Respondent* of the *Investigative Finding*, and where appropriate, recommended sanction(s) and/or remedy(ies), each party will have the opportunity to meet separately with the Director. The Director will share the *Investigative Finding* and, as applicable, the recommended sanction(s) with *Complainant* and *Respondent* and the remedy(ies) with *Complainant*. During the *Investigation* Outcome Conference, *Complainant* and *Respondent* will each have an opportunity to review the *Investigation* report, which may be redacted. *Complainant* and *Respondent* will not, however, receive an electronic or written copy, nor may they photograph or copy the *Investigation* Report.

IV. APPEAL

After an *Investigative Finding*, either *Complainant* or *Respondent* may appeal the *Investigative Finding* and/or sanctions imposed pursuant to the recommendations.

Complainant and *Respondent* must communicate his or her chosen course of action, in writing (e.g., email, facsimile, letter), to the CHRO within five (5) business days after the Outcome Conference in which the findings of the *Investigation* are discussed with that individual. A party's request for an *Appeal* must contain written explanation of the grounds, facts, and circumstances that support the *Appeal*. The parties may *Appeal* the *Investigative Finding* and/or sanction(s) based on the limited grounds of:

- A procedural or substantive error in the operation of the *Investigation* process that substantially impacted the *Investigative Finding*;
- Material new evidence not reasonably available during the *Investigation* that could substantially impact the *Investigative Finding* or sanction(s); and/or
- The sanctions imposed pursuant to the recommendations are substantially disproportionate to the severity of the violation.

The *Appeal* is not a de novo review of *Investigative Finding* and/or sanction(s).

Where neither party requests an *Appeal* within the specified time frame, the *Investigative Finding* and any sanction(s) will become final.

If either party appeals the *Investigative Finding* and/or sanction(s), the Director will issue a Notice of *Appeal* to *Complainant* and *Respondent* and forward the party's request for *Appeal* and report for *Appeal* procedures. The CHRO shall have sole discretion to determine whether any sanctions or remedies are put on hold pending the *Appeal* outcome.

A. Appeal Procedures

The CHRO will conduct an initial review of the written request for *Appeal* to determine if the *Appeal* request states that the *Appeal* is based on the limited grounds and is timely. The CHRO may consult with the Director on any procedural or substantive questions that arise. If CHRO determines that the *Appeal* is not timely or does not state that the *Appeal* is based on the limited grounds, the original *Investigation Finding* and sanction(s) is final.

If the CHRO determines that the *Appeal* has standing, the CHRO will consider the *Appeal*. The CHRO will review the factual findings, *Investigative Finding*, sanction(s), and exhibits in a closed conference. The factual findings, *Investigative Finding*, and any sanctions imposed pursuant to the recommendations are presumed to be correct. The party appealing the *Investigative Finding* and/or sanctions has the burden of demonstrating by a preponderance of the evidence that:

- The *Investigative Finding* and/or sanctions were incorrect because of a procedural or substantive error in the operation of the *Investigation* Process that substantially impacted the *Investigative Finding*;
- There is material new evidence not reasonably available during the *Investigation* that substantially impacts the Investigative Finding or sanction(s); and/or
- The sanctions imposed pursuant to the recommendations are substantially disproportionate to the severity of the violation.

In reaching its decision, the *CHRO* may solicit information from the Director, *Complainant*, *Respondent*, and/or any witnesses as appropriate to ensure a full assessment is completed of the relevant facts. Based on the information presented, the *CHRO* may:

- Affirm, alter, or reverse the *Investigative Finding*; and/or
- Affirm, alter, or reverse the sanction(s) imposed.

The Director will report the *CHRO*'s decision to *Complainant*, *Respondent*, and the appropriate management assigned to the department(s) in which *Complainant* and *Respondent* work. The *CHRO*'s decision will be in writing. If disciplinary action is recommended to be taken, *Respondent* will be informed of the nature of the discipline and how it will be executed.

V. Grievance Procedures

In addition, both faculty and non-faculty employees shall be entitled to utilize the applicable University grievance procedure in place at the time of the lodging of the *Complaint*.