



University Non-Discrimination Policy

For Students, Faculty, Staff, Vendors and Visitors

Office of the President

Effective date: August 1, 2017

TABLE OF CONTENTS

I. POLICY STATEMENT AND JURISDICTION.....	2
II. TERMINOLOGY	3
III. REPORTING DISCRIMINATORY HARASSMENT.....	9
IV. EXPECTATIONS OF PARTICIPATION BY THE PARTIES	10
V. RESOURCES	12
VI. NOTICES AND INFORMATION	12
VII. RESOLUTION PROCESSES	15
VIII. SANCTIONING	21
IX. APPEALS	23

UNIVERSITY OF DELAWARE

NON-DISCRIMINATION POLICY

I. POLICY STATEMENT AND JURISDICTION

The purpose of the policy set forth below (the “Policy”) is to promote an academic and work environment that is free from all forms of discrimination, including harassment. It is designed to ensure a safe and nondiscriminatory environment that protects both the constitutional and civil rights of students, faculty and staff. Acts of discrimination and harassment undermine the University's mission by threatening the careers, educational experiences, and well-being of those associated with the University. This Policy expresses the University's opposition to discrimination and harassment and assists the University to comply with federal, state, and local legal mandates in relation to such misconduct.

The University of Delaware does not discriminate on the basis of race, color, national origin, sex, disability, religion, age, marital status, veteran status, gender identity or expression, or sexual orientation, or any other characteristic protected by applicable law in its employment, educational programs and activities, admissions policies, and scholarship and loan programs as required by Title IX of the Educational Amendments of 1972¹, the Americans with Disabilities Act of 1990, as amended, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964, and other applicable statutes and University policies. The University expressly prohibits such discrimination by anyone on University property. The University also prohibits such conduct committed by students, faculty, staff, volunteers, or vendors off University property, if:

- A. The conduct was in connection with a University or University-recognized program or activity;
- B. The conduct ~~is alleged to have~~ created a hostile environment for a member of the University community;
- C. The Respondent's² conduct disrupts the normal functions and processes of the University and is egregiously offensive to the University's mission; or

¹ The policy and procedures governing Title IX compliance at the University of Delaware, including the reporting of Sexual Misconduct and investigations associated therewith, are not covered under this Policy and are instead governed by the University's Sexual Misconduct Policy, which is available at www.udel.edu/sexualmisconduct.

² Respondent means the person who allegedly committed a violation of this Policy. A Respondent may be a student, employee, faculty member, volunteer, vendor or other individual on campus.

The Respondent's continued presence on campus poses a serious threat to persons or property, regardless of where the activity occurred.

This Policy is intended to ensure that the University community remains free from harassment and discrimination. Anyone, including students, faculty, staff, administrators, vendors, guests, visitors or volunteers, may file a complaint with the Director, regarding the discriminatory conduct of University students, faculty, staff, administrators, vendors, guests, visitors or volunteers. Further, retaliation against an individual who has formally or informally complained about discrimination or harassment, or has cooperated with an investigation of a discrimination or harassment complaint, is prohibited. This Policy expresses the University's opposition to discrimination and harassment; assists the University in complying with federal, state and local mandates in relation to such conduct; and describes the method for responding to such behavior and its reoccurrence.

Inquiries and complaints about discrimination and/or harassment may be brought to the Director of the University's Office of Equity and Inclusion ("OEI"). OEI ensures compliance, with respect to the implementation of the procedures proscribed under this Policy, in response to complaints of discrimination and/or harassment. Any question of interpretation regarding this Policy shall be referred to the Director of OEI.

The University will respond to ~~complaints or reports about conduct prohibited by~~ violations of this Policy with measures designed to stop the behavior, eliminate such behavior, prevent the recurrence of the prohibited conduct and remediate any adverse effects of such conduct on campus or in University-related programs or activities.

II. TERMINOLOGY

The following definitions apply to terms used throughout this policy:

- A. Appellate Board** means the group of people available to hear appeals of decisions and sanctions in cases involving alleged violations of this policy by students or staff. The Appellate Board, in each case where the Respondent is a student, is made up of a faculty member, a staff member, a student and a non-voting chairperson, who may be either a faculty or staff member. The student member is an undergraduate student if the Respondent is an undergraduate student, a continuing education student or an English Language Institute student. The student member is a graduate student if the Respondent is a graduate student.

The Appellate Board, in each case where the Respondent is a staff person, comprises three (3) staff members and a non-voting chairperson, who will also be a staff member.

All members of the Appellate Board serving in any cases under this policy will be trained in adjudicating and reviewing cases involving alleged discrimination, including harassment.

- B. Complainant** means the person who allegedly has experienced the prohibited conduct, regardless of whether that individual makes a complaint or desires disciplinary action. A Complainant may be a student, employee, faculty member, volunteer, vendor, visitor or guest.
- C. Days** means business days when all University offices are open. This does not include weekends, holidays, or inclement weather days when University offices are closed.
- D. Director** refers to ~~Susan L. Groff, Ed. D., the~~ Director of the Office of Equity & Inclusion/ Title IX Coordinator, ~~305 Hullahen Hall, Newark, DE 19716, (302) 831-8063; groff@udel.edu, or her~~ the Director's designee.
- E. Employee** means anyone employed by the University, including but not limited to, administrators, faculty, and staff, part-time and full-time employees and student workers in their capacity as an employee.
- F. Faculty Member or Faculty** means any full- or part-time professor, associate professor, assistant professor, or instructor.
- G. Formal Complaint** means a complaint of discrimination and/or harassment filed with the University whereby the Complainant is requesting use of the Formal Resolution Process to address the allegations.
- H. Formal Resolution Process** means the process for resolving formal complaints of discrimination and/or harassment set forth in Section VIII of these Procedures. The Formal Resolution Process involves the filing of a Formal Complaint, an investigation, a determination as to whether University Policy has been violated and, as appropriate, the imposition of sanctions and remedial measures.
- I. Informal Complaint** means a complaint of discrimination and/or harassment filed with the University whereby the Complainant is seeking use of the Informal Resolution Process to address the allegations.
- J. Informal Resolution Process** means the process for resolving informal complaints of discrimination and/or harassment set forth in Section VII of these Procedures. The Informal Resolution Process is designed to empower the parties to an Informal Complaint to reach a mutually satisfactory agreement.
- K. Interim measures** means steps the University may take before the final outcome of an investigation to ensure equal access to its employment and/or education programs and

activities and to protect the Complainant and the rest of the campus community as necessary. Interim measures may include, but are not limited to:

1. Providing support services to the Complainant;
2. Modifying the Complainant's and Respondent's academic, living or work situations;
3. Ordering the Respondent not to have any contact with the Complainant;
4. Providing increased security at the locations or activities where the conduct occurred;
5. Offering escort services to the Complainant;
6. Interim suspension of the Respondent from the University or housing.
7. Other measures designed to eliminate any hostile environment created by the alleged discrimination and/or harassment, as determined on a case-by-case basis.

Interim measures may remain in place until the case has been investigated and resolved (which may continue through the conclusion of the appeal process) or until lifted by the appropriate University official or designee. The decision about whether particular interim measures are appropriate and when they should be lifted will be made by:

1. the Dean of Students or designee when the Respondent is an undergraduate student, a continuing education student or an ELI student;
2. the Associate Vice Provost for Graduate & Professional or designee if the Respondent is a graduate student;
3. the Vice Provost for Faculty Affairs or designee if the Respondent is a faculty member;
4. the Director of Employee Relations or designee if the Respondent is a staff member; and
5. the Director or designee if the Respondent is a volunteer, visitor or vendor.

L. Investigator means an appropriately trained professional, who may or may not be a University employee, who reviews and investigates reports of violations under this Policy. The investigator(s) will be impartial and unbiased, will disclose any real or reasonably perceived conflicts of interest to the Director as soon as such conflicts are

discovered by the investigator and will have training in investigating and evaluating conduct under this Policy.

M. Offenses prohibited by this Policy

1. Discriminatory harassment refers to any unwelcome verbal or physical conduct toward another that is based on the other's race, color, national origin, age, marital status, disability, religion, veteran status, or any other characteristic protected by law, and that such conduct is
 - a) Sufficiently severe or pervasive to alter an individual's working or academic conditions;
 - b) Creates a hostile or abusive working, living or academic environment; or
 - c) Is sufficiently severe or pervasive to limit an individual's ability to participate in or benefit from an educational program or activity.

Discriminatory harassment goes beyond the mere expression of views or thoughts (spoken or written) that an individual may find offensive. The conduct must be sufficiently severe that it unreasonably limits an individual's ability to participate in or benefit from the activities of the University. Factors which may be considered include the frequency of the unwelcome conduct; its severity; whether it is physically threatening or humiliating; and whether it unreasonably interferes with an individual's work or academic performance.

2. Different treatment of a student, employee, visitor or vendor based on race, color, national origin, disability, religion, age, veteran status or any other characteristic protected by law.
3. Retaliation, as defined in P., below.

The alleged conduct must be evaluated from the perspective of a reasonable person ~~in the alleged victim's position~~, taking into account all of the circumstances involved in a particular matter.

Some examples of conduct that may constitute prohibited discrimination may include, but are not limited to:

- a) Denying a person access to an educational program based on that person's race, color, national origin, age, marital status, disability, religion or veteran's status;

- b) Denying raises, benefits, or promotions on the basis of a person's race, color, national origin, age, marital status, disability, religion or veteran's status;
- c) Preventing or limiting a person's use of University facilities or services because of that person's race, color, national origin, age, marital status, disability, religion or veteran's status;
- d) Instigating or allowing an environment that is unwelcoming or hostile based on a person's race, color, national origin, age, marital status, disability, religion or veteran's status; or
- e) Failing to accommodate a reasonable request for religious accommodation.

Although discrimination and/or harassment described and prohibited by this Policy include a wide range of behaviors, certain discriminatory conduct is addressed elsewhere. For example, sex discrimination and sexual harassment are addressed in the University's Sexual Misconduct Policy³, located at www.udel.edu/sexualmisconduct. Also, complaints based on denial to provide equal access for persons with disabilities in the form of appropriate accommodations, modifications, auxiliary aids, communication access, and/or the inaccessibility of a University program, activity or service, are addressed by the University ADA/Section 504 Grievance Procedure, located at <http://www.udel.edu/DSS/>.

Some conduct alleged to be discriminatory may not be an offense prohibited by this Policy but may nonetheless be unprofessional in the workplace, disruptive in the classroom, or violate other University policies and could warrant remedial actions and/or discipline.

N. Remedial measures may include, but are not limited to: providing an escort to ensure safe movement around campus; ensuring the complainant and respondent do not share classes, work spaces or extracurricular activities; reassignment of residence halls; tutoring or other academic support; arranging for extra time to complete or re-take a class or withdraw from a class without academic or financial penalty; job reassignment; targeted training for a group of students, faculty or staff; and other remedies that can be tailored to the needs of the parties and the University.

O. Respondent means the person who allegedly committed a violation of this Policy. A Respondent may be a student, employee, faculty member, volunteer, vendor or other individual on campus.

³This Policy also includes discrimination on the basis of sexual orientation and gender identity.

- P. Retaliation** means any attempt to seek retribution against an individual or group of individuals involved in filing a complaint or report under this Policy, filing an external complaint raising concerns under this Policy, participating in an investigation under this Policy or opposing in a reasonable manner an action believed to constitute a violation of this Policy. Retaliation can take many forms, including violence, threats or intimidation.
- Q. Sanctioning Panel** means the group of people that will decide the appropriate sanctions in cases brought against students under this Policy. The Sanctioning Panel in each case will consist of one faculty member, one staff member, one student and a non-voting staff member from the Office of Student Conduct, who will provide administrative assistance to the Sanctioning Panel. The student member will be an undergraduate student if the Respondent is an undergraduate student, a continuing education student or an English Language Institute student. The student member will be a graduate student if the Respondent is a graduate student. All members of the Sanctioning Panel serving in any cases under this Policy will be trained in adjudicating, sanctioning and reviewing cases involving alleged discrimination, including harassment.
- R. Staff member or administrator** means any non-faculty University employee, whether part-time or full-time, temporary or permanent, exempt or non-exempt.
- S. Student** is any individual who is currently enrolled, was enrolled within the previous two terms or is eligible to enroll for the next term. The word "student" as used throughout this Policy includes Student Organizations. ["Term" is defined as an academic session in which classes are offered. This includes traditional semesters (Fall and Spring) as well as special sessions (Winter and Summer).]
- T. Supervisor** means the Complainant's or Respondent's immediate manager or supervisor, if the Complainant or Respondent is a University employee.
- U. Support person** means a person advising or providing support to the Complainant or Respondent throughout the processing of a complaint under this Policy. A support person may be anyone who is not a party to or witness in the case. The role of the support person will be limited as discussed in Section VI.D.
- V. University Official** means a person such as the Director, the Chief Human Resources Officer, the Provost, Vice Presidents or Deans, etc., or their designees.
- W. Vendor** means a company or individual providing goods or services on the University campus or to the University community through a contractual relationship with the University.

- X. Visitor or Guest** means an individual who is not officially affiliated with the University but is present on campus either independently or as the guest of a University employee or student.
- Y. Volunteer** means an individual who is not employed by the University but is providing goods or services on the University campus or to the University community, at the request of or with the authorization of the University, without receiving compensation from the University.

III. REPORTING DISCRIMINATORY HARASSMENT

A. To the Office of Equity and Inclusion

Any person who believes they have been a victim of, have witnessed, or otherwise wish to report an incident of discrimination may submit an Incident Report within 180 days following the last occurrence of the behavior., available at udel.edu/oei/ - [REPORTING](#). This will be submitted to the University's Office of Equity and Inclusion, located at 305 Hullihen Hall, Newark, DE 19716, (302) 831-8063. The Director may accept a complaint filed after the 180 day time limit for good cause shown, as determined by the Director. The Complainant must indicate whether they are requesting a formal resolution or an informal resolution, pursuant to this Policy.

Upon receipt of a report, the Director will:

1. Ensure that the Complainant is aware of rights and resources available to them;
2. Inform the Complainant of the availability of interim measures and the strict prohibition against retaliation;
3. Inform the Complainant of the University's Non-discrimination Policy;
4. Describe the University's Formal and Informal Resolution processes; and
5. Determine whether a Formal or Informal Resolution is appropriate, based on the Complainant's wishes, the nature of the complaint and the safety of the overall campus community.

As discussed below, there are times when the Director may determine that an investigation is necessary even if a formal complaint has not been made or if the Complainant requests that no investigation or disciplinary action occur. If the Director determines that an investigation is appropriate, the Director will advise the Complainant and assign an Investigator to conduct the investigation pursuant to Section VIII below. The University will use reasonable efforts to prevent any retaliation against the Complainant.

University personnel who are managers and/or supervisors, upon learning or being made aware of alleged incidents of discrimination and/or harassment shall report such incidents to the Director.

B. To the University Police Department or Other Law Enforcement Agency

A report of discriminatory harassment may be filed with the University Police Department (“UDPD”), if the alleged misconduct occurred on campus, or other law enforcement agency, if the alleged misconduct occurred off campus, for a criminal investigation. Filing a report with a law enforcement agency, including UDPD, does not preclude the Complainant from also filing a report with the University, and filing a report with the University does not preclude a Complainant from also reporting the incident to a law enforcement agency, including UDPD. If a report is made to law enforcement, but is found to not meet the statutory definition of a crime, the alleged misconduct may nonetheless be a violation of this Policy or other University policies and could warrant remedial actions and/or discipline.

If a report is made to both the University and a law enforcement agency, the University will, to the extent possible, coordinate its investigation with the law enforcement agency to minimize the burden on the Complainant, Respondent and witnesses.

C. Anonymous Reporting

The University provides anonymous reporting mechanisms through the University Police Department, <http://www.udel.edu/police/forms/submit-a-tip.html>, and through an EthicsPoint Compliance Hotline, <http://www.udel.edu/compliance/>. If identifying information for the Complainant is provided through either reporting mechanism, the Director will determine whether an investigation is appropriate.

D. Diversity forums and other similar events

Public awareness events such as diversity forums, protests, speak-outs or other forums in which Complainants disclose incidents of discriminatory harassment are not considered notice to the University for the purpose of triggering an investigation into any particular incident. The University will make an effort to provide information, including rights and available resources, at these and other similar events.

IV. EXPECTATIONS OF PARTICIPATION BY THE PARTIES

All members of the University community have a responsibility to make the University a safe and supportive environment for everyone. This responsibility includes reporting safety or security concerns and crimes or policy violations, including discriminatory harassment.

In an emergency, members of the University community should immediately call 911 to report any crime or other incident that poses a risk of harm to the University community.

All employees and students have an obligation to cooperate in the conduct of the procedures proscribed under this Policy. In the event that a Complainant chooses not to participate in an interview or declines to provide information requested by the Investigator, the Director may dismiss the complaint. The Director shall provide written notice of such dismissal to the Complainant(s) and the Respondent(s).

In the event the Respondent chooses not to participate in an interview or declines to provide information requested by the Investigator, the Investigator will proceed with the investigation and reach a decision based on the available information.

In the event that the Complainant or Respondent chooses not to participate in the sanctioning or appellate process, if applicable, or declines to provide information requested during the sanctioning or appellate process, the sanctioning and appellate authorities will proceed based on the available information.

Any person who knowingly makes a false statement in connection with the resolution of a complaint under this Policy may be subject to appropriate discipline. Making a good faith report of discriminatory harassment, even if later unsubstantiated, is not considered a false statement.

Upon receiving a report of an alleged violation of this Policy, the Director shall determine whether to proceed with an investigation. The Director will ensure that the Complainant is aware of rights and resources available to them.

Requesting Confidentiality or Anonymity after Reporting an Incident: How the University Will Consider the Request and Respond

If the Complainant requests that the University not conduct an investigation or asks that their name be held in confidence, the Director will weigh each request very carefully. Among the factors the University will consider in assessing a Complainant's request are:

- A.** Whether the alleged conduct was criminal in nature;
- B.** Whether the Respondent has been identified as a Respondent in another alleged incident of discriminatory harassment;
- C.** Whether the University possesses other means to obtain relevant evidence (for example, if the University has surveillance camera footage that shows the incident, the University may be able to proceed without the involvement of the Complainant); and
- D.** Whether the University has credible evidence that the Respondent has committed one or more prior violations of this Policy.

The Director will advise the Complainant if the University intends to proceed with the Investigation against the Complainant's wishes. If the Complainant requests that the University inform the Respondent that the Complainant asked the University not to investigate or seek discipline, the University will do so and inform the Respondent that the University decided to proceed with the investigation.

V. RESOURCES

The University of Delaware offers several campus resources for members of the University community, below:

Professional Counselors

The following are the professional counselors on the University campus:

Center for Counseling and Student Development (for students)

261 Perkins Student Center/Laurel Hall

Newark, DE 19716

Phone: (302) 831-2141/302-831-1001 (24/7/365 hotline)

Website: www.udel.edu/counseling/

The University's employee assistance program is a confidential resource for full-time benefitted employees who participate in certain major medical plans offered by the University⁴, and may provide assistance with obtaining additional confidential counseling sessions:

HMS (Health Advocate) EAP+Work/Life

(800) 343-2186 (24/7 support)

VI. NOTICES AND INFORMATION

A. First Amendment and Academic Freedom Protections

The University is committed to free expression and academic freedom. We are equally committed to creating and maintaining an environment free from discrimination and harassment for all members of the University community. Members of the University community are free to examine and discuss all questions of interest to them and to express their opinions. ~~Academic freedom is the freedom to teach, to conduct research and other scholarly or creative activities, and to publish or otherwise disseminate the results, even if the conclusions are unpopular or contrary to public opinion.~~

⁴ Please contact the University of Delaware's Human Resources department with inquiries about health care benefit plan options and/or coverage at hrhelp@udel.edu.

Nothing in this policy is intended to infringe upon the First Amendment rights of University employees and students. Nor is this policy meant to infringe upon academic freedom protections set forth in the Faculty Handbook [\(3.1.1 & 4.2.1\)](#) and in the Collective Bargaining Agreement [\(Article II\)](#) between the University and the American Association of University Professors (AAUP).

The University will consider First Amendment rights and academic freedom protections in the consideration and investigation of reports of discrimination, including unlawful harassment.

B. Protection from Retaliation

The University will take all appropriate steps to ensure that a person who in good faith reports or complains about discriminatory harassment or who participates in a discriminatory harassment investigation will not be subjected to retaliation by the Respondent or by anyone else with knowledge of the underlying report. The University will also take all appropriate steps to ensure that the Respondent will not be subjected to retaliation by the Complainant or anyone else with knowledge of the underlying report.

Anyone who believes they are experiencing retaliation is strongly encouraged to report that to the University Police, the Director, the Dean of Students Office or the Office of Student Conduct so appropriate action can be taken.

C. Privacy

Individuals involved in investigations or disciplinary proceedings under this Policy are encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation. The investigation shall be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances.

Medical and counseling records are privileged and confidential documents that parties will not be required to disclose.

D. Support Person

The Complainant and Respondent each have the opportunity to have up to two (2) Support Persons during the Formal Resolution Process at any meeting related to the review of the reported discriminatory harassment, which may include a union representative consistent with applicable collective bargaining agreements. The Complainant and Respondent may also choose to proceed without a Support Person or with only one (1) Support Person. Support Persons may not stand in place of either the Complainant or Respondent, act as legal counsel for a party or otherwise actively participate in any of the proceedings.

The Complainant and Respondent must inform the Investigator of the identity of the Support Person(s) they plan to bring to an interview or other meeting.

The Support Person is expected to have reviewed this Policy and be aware of their obligations prior to the meeting or interview. If a Support Person fails to comply with this Policy or is otherwise disruptive to the process, the Investigator may ask that Support Person to leave the room and continue with the interview without the Support Person present.

E. Concurrent Investigation

If a report is made to both law enforcement and to the Director, a concurrent investigation may take place. The University, however, may delay its discriminatory harassment investigation for a limited time while the law enforcement agency is conducting its fact gathering. Even in situations with a concurrent investigation, the University will use its best efforts to complete its process within sixty (60) days of the date of the report or complaint.

F. Standard of Proof

The standard of proof in all matters under this Policy will be preponderance of the information. This standard requires the Investigator to conclude that it is more likely than not that the Respondent violated this policy in order for there to be a finding of responsible. Under this standard, individuals are presumed not to have violated this Policy unless a preponderance of the information supports a finding of responsible

This standard of proof differs from the higher standard used in criminal cases, which is beyond a reasonable doubt. Therefore, there could be instances when the criminal justice system declines to prosecute a case criminally but a finding of responsible is reached under this Policy.

G. Policy Interpretation and Revisions

Any questions regarding the Policy should be addressed to the Director, who is responsible for updating and interpreting this Policy. The Director may extend any time limits or deadlines set forth in this Policy, with appropriate notice to the Complainant and Respondent.

The University conducts regular reviews and updates to this Policy. The University may, due to legal or institutional need, make changes to the Policy at any time as deemed appropriate by University officials. The Policy posted at <http://sites.udel.edu/oei/non-discrimination-policy/> is the current and active version.

VII. RESOLUTION PROCESSES

A. Decision to Proceed

When a report is made by a Complainant, the Director will conduct a preliminary assessment to determine whether the alleged conduct, as presented by the report, would present a potential violation of this Policy and whether further action is warranted based on the alleged conduct. The Director may consult with a team of advisors to make this determination. A Complainant's decision to maintain confidentiality or not to pursue an investigation will severely limit the University's ability to respond to the alleged conduct.

The Director may determine:

1. No further action is necessary and the matter will be closed; or
2. Further action is warranted, but only if the Complainant chooses to pursue the complaint and participate in the University's process; or
3. Further action is warranted whether or not the Complainant chooses to participate in the process.

The Director will communicate its decision to the Complainant and will determine the most effective method of reviewing and addressing the concerns raised in the Incident Report. In all cases, the University will respond to the report in a prompt, thorough, fair, impartial and effective manner.

If the Director determines that the conduct, as alleged by the Complainant, is not a violation of this Policy, the matter still may be a violation of another University policy. The Complainant may then have other avenues of assistance available, including reporting the matter to the Office of Student Conduct, the Graduate Office, the Office of Human Resources, the Office of the Provost, law enforcement or a supervisor.

B. Informal Resolution Process

To file an Informal Complaint, a Complainant must complete an Incident Report, which is located at udel.edu/oei/ - [REPORTING](#), indicating that they would like their complaint resolved via the Informal Resolution Process. Participation in the Informal Resolution Process is voluntary, and the parties may ask to terminate the process at any time. In some circumstances, the University may offer services and/ or interim measures as described below in Section VIII. A and B.

1. Processing of Informal Complaints

The Director, in consultation with the Vice Provost for Faculty Affairs, Chief Human Resources Officer, or Dean of Students, or an appropriately trained designee, shall take appropriate steps to resolve the Informal Complaint. Possible resolutions by agreement of the parties may include, but are not limited to: an apology to the Complainant; assisting the Respondent to better understand the effects of his or her conduct and ways in which this behavior could be changed; participation in educational programs about equal opportunity or harassment; or other interventions or actions aimed at ending the discrimination or harassment, preventing its recurrence and addressing its effects.

Prior to completing the Informal Resolution Process, and/or upon request of either party, the Director may determine that no purpose is served by pursuing or continuing the Informal Resolution Process and may refer the complaint to the Formal Resolution Process. Support persons may not be present in the room during any meeting or attempt to mediate during the Informal Resolution Process.

2. Conclusion of the Informal Resolution Process

The Informal Resolution Process is designed to empower the parties to an Informal Complaint to reach a mutually satisfactory agreement. The Informal Resolution Process will be concluded by one of the following: (1) a decision to stop further action on the Informal Complaint, (2) a resolution of the Informal Complaint by signed written agreement of the parties or (3) initiation of the Formal Resolution Process.

The Director will attempt to conclude the Informal Resolution Process within thirty (30) days from the date the complaint was received. If a mutually agreed upon resolution is reached using this process, the Complainant forfeits the right to raise the same concern in the future. The Director shall monitor compliance with any agreement arising out of the Informal Resolution Process, in consultation with the Chief Human Resources Officer, Dean of Students Office, or Vice Provost of Faculty, or their designee(s).

If the outcome of the Informal Resolution Process is the initiation of the Formal Resolution Process, the Director will meet separately with the Complainant and the Respondent to provide information regarding the next steps of the process.

C. Formal Resolution Process

A Formal Complaint may be filed as the first course of action or following an Informal Complaint if there is no mutually acceptable resolution during the Informal Resolution Process. The University may also initiate an investigation in the absence of a Formal Complaint by a Complainant, pursuant to Section VII of this Policy.

To file a Formal Complaint, a complainant must complete an Incident Report, which is located at udel.edu/oei/ - [REPORTING](#), indicating that they would like their complaint resolved via the Formal Resolution Process. The Formal Complaint must be dated by the Complainant and describe the alleged incident(s) with the relevant date(s), name(s) of the Respondent(s) and name(s) of witness(es).

Upon receipt of a report of potential policy violation, the University will generally proceed as described below.

1. Services

Once the University is on notice of a possible policy violation, the Complainant will be offered appropriate support, advised of available resources, including the availability of interim measures and notified of applicable University policies.

The University will take appropriate steps to prevent or address retaliatory conduct following a report of alleged conduct in violation of this Policy.

2. Interim Measures

The University may implement interim measures, which may include those listed in Section II.K., as appropriate for the individuals involved and the overall University community.

The interim measures may remain in place until the end of any appeal process (at which time the interim measures may become permanent measures) or may be modified at any time if appropriate as determined by the appropriate University official.

If the Respondent is placed on interim suspension, the University will use its best efforts to proceed as quickly as possible with the investigation, while respecting its compliance and due process obligations..

A Complainant's decision to maintain confidentiality or not to pursue an investigation may severely limit the University's ability to implement interim measures.

3. Informing the Respondent

If the decision is made to pursue the complaint, the Director will meet with the Respondent to provide information about the complaint and the process. The Respondent will be advised in advance of this meeting that the respondent may be accompanied to this and any other meeting regarding the complaint or investigation by up to two support persons. If the Respondent is a member of a collective bargaining unit at the University, the Respondent will be advised, in advance of the meeting, of their right to be accompanied to the meeting by a union representative as their Support Person.

During the meeting, the Respondent will be given written notification of the charge(s), which will outline the incident(s) on which the complaint is based, and a list of resources available to the Respondent including University employees who have volunteered to serve as Support Persons to Respondents in these cases. In addition, the Respondent will be advised of the rights of Respondents in cases brought under this Policy and the investigation process will be explained to the Respondent. The Respondent will also be advised of any interim measures implemented that affect the Respondent.

4. Investigation

If the Director determines that an investigation is appropriate, the University will conduct a thorough fact-finding investigation by one or more investigators assigned by the Director. The investigator(s) will be charged with investigating the complaint and reaching a finding of responsible or not responsible for violating this policy, in consultation with the Director. If the matter involves students, and the Investigator(s) discover violations that may also violate the University's Student Code of Conduct during the investigation, the Investigator(s) will share that information with the Office of Student Conduct. If the matter involves faculty or staff members, and the Investigator(s) discover(s) potential violations of other University policies during the investigation, the Investigator(s) will share that information with the Chief Human Resources Officer and/or the Vice Provost for Faculty Affairs, as applicable.

The investigation will include the Investigator(s) meeting separately with the Complainant (if the Complainant is participating in the investigation), the Respondent, the person who made the report (if different from the Complainant) and relevant witnesses. As discussed in Section VI.D., the Complainant and the Respondent may each be accompanied to these meetings by two (2) Support Persons. The Investigator will review any other information deemed relevant to the report and

investigation and to which the Investigator has access. This may include surveillance camera footage, photographs, documents, text messages, social media postings, electronic mail messages or other materials provided to the Investigator by any person participating in the process or otherwise obtained by the Investigator. The Investigator will give the Complainant and Respondent the opportunity to present questions they believe should be asked of the other party and witnesses and the opportunity to respond to statements made by others, if deemed appropriate by the Investigator. During the investigation, the Complainant, Respondent or any witnesses may provide a written statement, other supporting materials or identify other potential witnesses regarding the reported discriminatory harassment.

The University will complete its review of the complaint within a reasonable time period. If the Investigator believes that the review will take longer than thirty (30) calendar days, the investigator shall inform the Director and the parties to the complaint.

If at any time during the course of the investigation the Complainant withdraws from participating in the process, the University may proceed with the investigation without the Complainant's participation or may determine that it is appropriate to dismiss the charges.

The Formal Investigation of a complaint that began under the Informal Resolution Process will be allowed the full thirty (30) day calendar review period from the start of the Formal Investigation.

5. Findings of the Investigation and Notification

The burden of proof rests with the Complainant and a finding must be based on the preponderance of the information available to the Investigator. This means in order to find the Respondent responsible, the Investigator must conclude that it is more likely than not that the Respondent violated the University's Non-Discrimination Policy. If the Investigator cannot reach such a conclusion, then the finding must be "not responsible." If the Investigator concludes that the Complainant filed the report falsely or maliciously, then the University may take disciplinary action against the Complainant.

Draft Report

When the Investigator(s) completes the investigation, the Investigator will provide the draft report to the Director, and notify the Complainant and Respondent via email that the draft report is available for their review. The Complainant and Respondent may contact the Investigator to make an appointment, accompanied by their Support Persons if desired, to review a copy of the Investigator's draft report, which may be redacted as necessary to protect the privacy interests of the Complainant, Respondent or other witnesses. The parties and their respective Support Persons may review the draft report in the presence of the Investigator and take notes on the content, but may

not copy or photograph the draft report or take a copy with them. The Director will provide each of the parties a written summary of the draft report, redacted only as necessary to protect the privacy interests of the Complainant, Respondent or other witnesses.

Opportunity to Respond to the Draft Report

No later than seven days after the notice of the availability of the Investigator's draft report is sent to the parties, the Complainant and the Respondent may each provide to the Investigator(s) a written response to the investigator's report, limited to five typewritten, double-spaced pages on 8.5" x 11" paper with 12- point font and 1-inch margins. The response may include, but is not limited to, additional questions the parties believe should be asked of the other parties or witnesses, new evidence they believe is relevant, and the impact the situation has had on them. The written response may not include citations to outside authorities or character evidence.

Final Report

Following the receipt of any comments submitted and any additional investigation flowing out of those comments or after the seven (7) day period has lapsed without comment, the Investigator will prepare the final report, which will include a finding of responsible or not responsible on each alleged violation of this Policy. The final report, along with the parties' written responses to the draft report, will be delivered to the Director. The final report may be redacted as necessary to protect the privacy interests of the Complainant, Respondent or other witnesses.

The final outcome derived from the report of the Investigator(s) will be shared with the parties at the same time in writing via email to include information about next steps as well as an invitation to review the final report. The parties and their respective Support Persons will be invited to review the final report in the presence of the Director and take notes on the content, but may not copy or photograph the report or take a copy with them. The Director will provide each of the parties a written summary of the final report, redacted only as necessary to protect the privacy interests of the Complainant, Respondent or other witnesses.

Finding of Responsible

If the Investigator finds the Respondent responsible for violating this Policy, the Complainant and Respondent will receive written notification of the outcome and will be invited to meet with the Director to discuss the findings and learn about the next steps in the process. The Investigator's report, along with the responses to the draft report, will be forwarded to the appropriate sanctioning authority, depending on

the status of the Respondent, as set forth in Section VIII. A finding of responsible may be appealed after the sanctioning decision is made.

Finding of Not Responsible

If the Investigator finds the Respondent not responsible for violating this Policy, the Complainant and the Respondent will receive written notification of the outcome and will be invited to meet with the Director to discuss the finding and learn about appeal rights. The Complainant may appeal the Investigator's decision as set forth in Section IX. If violations of other University policies are discovered during the investigation, the Director will refer the Investigator's report, and the responses to the draft report, to the appropriate University official.

VIII. SANCTIONING

If the Respondent is found responsible for any violations of this Policy, the University will initiate a sanctioning process designed to eliminate the misconduct, prevent its recurrence and remedy its effects. Sanctions may also serve to promote safety or deter individuals from engaging in similar behavior in the future. For students found responsible, the sanctions can range from written reprimand up to and including expulsion. For faculty and staff found responsible, the sanctions can range from written reprimand up to and including termination of their employment. Vendors, volunteers, visitors or guests found responsible can be banned from campus.

Remedial measures may be imposed to ensure the hostile environment experienced by the Complainant has been eliminated will be decided on a case-by-case basis.

A. Student Respondent

Sanctioning Panel

If the Respondent is a student, the Investigator's final report, along with the parties' responses to the draft report, will be provided to the Office of Student Conduct immediately, which will assign an impartial Sanctioning Panel within five (5) days. Members of the Sanctioning Panel may speak with the Investigator, the Director and the Dean of Students while considering the appropriate sanction(s). In addition, the Complainant and Respondent may request to speak separately with the Sanctioning Panel and will be permitted to be accompanied by their respective Support Persons during such meeting.

Once a decision has been reached by majority rule by the Sanctioning Panel, the Office of Student Conduct will issue notification to the Respondent and Complainant, with copies to the Investigator and the Director, sharing the result and sanctions in a manner appropriate to honor due process and privacy considerations. The notification will include information about the appeal process.

Potential Sanctions and Remedial Measures

The sanctions may include any sanctions contained within the Student Guide to University Policies, <http://www1.udel.edu/stuguide/16-17/code.html>, including a combination of disciplinary sanctions, educational sanctions, administrative actions and remedial measures. Disciplinary sanctions may range from reprimand to expulsion from the University. There may also be educational sanctions, such as reflection papers or attendance at relevant seminars. Administrative actions include fees, parental notification, and administrative account holds. In addition, sanctions may include remedial measures, similar to interim measures, which will remain in place for as long as the University believes is appropriate. The severity of the sanction will depend on a number of factors, including the nature of the offense and the Respondent's prior disciplinary history.

B. Staff Member or Administrator Respondent

If the Respondent is a staff member or administrator, the Investigator's written report, along with the parties responses to the draft report, will be provided to the Respondent's Vice President or highest-level supervisor to determine the appropriate sanctions or corrective actions. The Vice President or highest-level supervisor will speak with the Investigator and the Director and may speak with the Complainant and Respondent while considering the appropriate sanction. The Complainant, Respondent, Investigator and the Director will receive simultaneous written notice of the sanctioning decision. The notification will include information about the appeal process.

The sanctions may include a combination of disciplinary sanctions, educational sanctions and remedial measures. Disciplinary sanctions may range from oral reprimand to termination of employment. The severity of the sanction will depend on a number of factors, including the nature of the offense and the Respondent's prior disciplinary history.

C. Faculty Respondent

If the Respondent is a faculty member, the investigator's written report, along with the parties responses to the draft report, will be provided to the Dean of the College in which the Respondent is primarily employed. The Dean will determine the appropriate sanctions or corrective actions. The Dean will speak with the Investigator and the Director and may speak with the Complainant or the Respondent while considering the appropriate sanction. The Complainant, Respondent, Investigator and the Director will receive simultaneous written notice of the sanctioning decision. The notification will include information about the appeal process.

The sanctions may include a combination of disciplinary sanctions, educational sanctions and remedial measures. Disciplinary sanctions may range from oral reprimand to termination of employment. The severity of the sanction will depend on a number of factors, including the nature of the offense and the Respondent's prior disciplinary history.

Vendor or Volunteer Respondent

If the Respondent is a vendor or volunteer, the Investigator's written report will be provided to the Vice President or Dean of the unit or college that retained or authorized the vendor or volunteer. The Vice President or Dean will speak with the Investigator and the Director and may speak with the Complainant and Respondent while considering the appropriate sanction,

which could include banning the vendor or volunteer from the University campus in its entirety. The Complainant, Respondent, and Investigator will receive simultaneous written notice of the sanctioning result.

D. Visitor or Guest Respondent

If the Respondent is a visitor or guest or someone without any direct affiliation with the University, the Investigator's written report will be provided to the Director who may consult with the Dean or Vice President of the unit or college that may have authorized or invited the visitor or guest. The Director will speak with the Investigator and may speak with the Complainant and Respondent while considering the appropriate sanction, which could include banning the visitor or guest from the University campus in its entirety. The Complainant, Respondent, Investigator and Director will receive simultaneous written notice of the sanctioning result.

IX. APPEALS

The Complainant and Respondent both have the opportunity to seek an appeal of the Investigator's decision and the sanction. The avenue of appeal will depend on the status of the Respondent. In any request for an appeal, the burden of proof lies with the party requesting the appeal. The appeal must allege one or more of the following reasons:

1. The factual findings on which the final decision is based are clearly erroneous, meaning that they are not supported by any credible evidence in the record;
2. The decision is contrary to new information not known at the time of the investigation or sanctioning process;
3. Evidence of bias or prejudice by the Investigator or the person or panel imposing the sanction;
4. Procedures were not followed during the process; or
5. One or more of the sanctions imposed are inappropriate or unreasonable.

The failure of the University to adhere to notice requirements or times shall not be cause for dismissal nor grounds for appeal unless such failure materially prejudiced the party submitting the appeal.

A. Student Respondent

The Complainant or Respondent may appeal the Investigator's decision and/or sanctions by submitting an appeal request to the Office of Student Conduct in writing within five (5) days of the date on which the finding of "not responsible" or the sanctioning decision was sent.

The appeal request:

1. Must be computer printed and is limited to five double-spaced pages on 8.5" x 11" paper with one-inch margins and a 12-point font; and
2. Should be limited to the facts of the matter that was investigated and the application of this policy to that matter. Character information and citations to outside authorities should not be included, as that information will not aid the Appellate Board in its decision making process.

Upon receipt of the appeal request, the Director of Student Conduct or designee will send a copy of the request to the Complainant(s) (if appeal written by Respondent), Respondent(s) (if appeal written by Complainant), the Investigator, the Director, the Sanctioning Panel and any other person deemed appropriate by the University. These individuals may submit a response, limited to five double-spaced pages with one-inch margins and a 12-point font, to the Office of Student Conduct within five (5) business days of the date on which the appeal was sent.

The written appeal, responses received from all appropriate parties and all documentation contained within the Investigator's file and the respondent's disciplinary file will be reviewed in a closed meeting by the Appellate Board. At its discretion, the Appellate Board may speak to the Investigator, the Sanctioning Panel or the parties, who may be accompanied by their respective Support Persons. The Appellate Board may disregard all pages beyond the five-page limit or reject the entire appeal if it contains character information or citations to authorities outside the University.

The Appellate Board, by majority vote, may decide to:

1. Sustain or deny the appeal;
2. Change the sanction(s) applied;
3. Delay a final review of the appeal to receive additional information regarding specific issues raised in the appeal. Responses may be solicited from the Complainant, the Respondent, the Investigator, the Director, the Sanctioning Panel and any relevant witnesses; or
4. Direct the Director to conduct a new investigation, or allow the complainant or respondent to have the case handled beginning at any specific stage of the investigation or sanctioning process.

The Appellate Board's decision is final and will be implemented immediately by the University. The Appellate Board will offer a brief written explanation for its decision on appeal. The Complainant, the Respondent, the Investigator, the Director and the members of the Sanctioning Panel will receive simultaneous written notice of the final decision. A copy of this notice will be entered into the student's disciplinary file and will be maintained in the Office of Student Conduct in accordance with the retention policy, as defined in the Student Guide to University Policies.

B. Staff Member or Administrator Respondent

The Complainant or Respondent may appeal the Investigator's decision and/or sanctions by submitting a request in writing to the Chief Human Resources Officer ("CHRO")/designee and the Director within five (5) days of the issuance of the finding of not responsible by the investigator or the sanctioning decision. The appeal request:

1. Must be computer printed and is limited to five double-spaced pages with one-inch margins and a 12-point font; and
2. Should be limited to the facts of the matter that was investigated and the application of this policy to that matter. Character information and citations to outside authorities should not be included, as that information will not aid the Appellate Board in its decision making process.

Upon receipt of the appeal request, the Director will send a copy of the request to the non-appealing party (or parties), the Investigator and, if appropriate, the person who issued the sanction. These individuals may submit a response, limited to five double-spaced pages with one-inch margins and a 12-point font, to the CHRO and the Director within five (5) business days of the date on which the appeal was sent.

The written appeal, responses received from all appropriate parties and all documentation contained within the Investigator's file will be reviewed in a closed meeting by the Appellate Board. At its discretion, the Appellate Board may speak to the Director, the individual who issued the sanction or the parties, who may be accompanied by their respective Support Persons. The Appellate Board may disregard all pages beyond the five-page limit or reject the entire appeal if it contains character information or citations to authorities outside the University.

The Appellate Board, by majority vote, may decide to:

1. Sustain or deny the appeal;
2. Change the sanction(s) applied;
3. Delay a final review of the appeal to receive additional information regarding specific issues raised in the appeal. Responses may be solicited from the

Complainant, the Respondent, the Investigator, the Director, the sanctioning authority and any relevant witnesses; or

4. Direct the Director to conduct a new investigation, or allow the complainant or respondent to have the case handled beginning at any specific stage of the investigation or sanctioning process.

The Appellate Board's decision is final and will be implemented immediately by the University. The Appellate Board will offer a brief written explanation for its decision on appeal. The Complainant, the Respondent, the Investigator, the Director and the Vice President (if applicable) who issued the sanction will receive simultaneous written notice of the final decision. A copy of this notice will be entered into the employee's disciplinary file and will be maintained in the Office of Human Resources in accordance with the University's document retention policy.

C. Faculty Member Respondent

If the Dean's decision is termination, the termination procedures set forth in the Faculty Senate Committee on Faculty Welfare and Privileges, and as stated in Article 5.10 in the Collective Bargaining Agreement, <http://faesen.udel.edu/Sites/FWP%20Cte/FWP-Policy-Final-Version-As-Amended-During-January-12-2015-Faculty-Senate-Meeting.pdf>, shall apply.

If the Dean's decision is something other than termination or if the finding by the Investigator is "not responsible," the Complainant, if a member of the faculty, or Respondent may appeal the Investigator's decision and/or sanctions by following the procedures set forth in the Faculty Senate Committee on Faculty Welfare & Privileges, Part II, which will then issue an advisory opinion to the Provost. Such a request to the Faculty Senate Committee on Faculty Welfare & Privileges must be made within five (5) days of the issuance of the finding of not responsible by the Investigator or the sanctioning decision.

If the Complainant is not a faculty member, he or she may appeal the *not responsible* finding or the Dean's sanctioning decision, if it is something other than termination, to the Provost within five (5) days of the issuance of the finding of "not responsible" by the Investigator or the sanctioning decision. The appeal request:

1. Must be computer printed and is limited to five double-spaced pages with one-inch margins and a 12-point font; and
2. Should be limited to the facts of the matter that was investigated and the application of this policy to that matter. Character information and citations to outside authorities should not be included, as that information will not aid the Appellate Board in its decision making process.

Upon receipt of the appeal request, the Director will send a copy of the request to the non-appealing party (or parties), the Investigator and, if appropriate, the Dean who issued the sanction and the Vice Provost for Faculty Affairs. These individuals may submit a response, limited to five double-spaced pages with one-inch margins and a 12-point font, to the Provost and the Director within five (5) business days of the date on which the appeal was sent.

The Provost may decide to:

1. Sustain or deny the appeal;
2. Change the sanction(s);
3. Delay a final review of the appeal to receive additional information regarding specific issues raised in the appeal. Responses may be solicited from the Complainant, the Respondent, the Investigator, the Director, the Dean who determined the sanctions and any relevant witnesses; or
4. Direct the Director to conduct a new investigation, or allow the complainant or respondent to have the case handled beginning at any specific stage of the investigation or sanctioning process.

If the Provost decides to increase the sanction to termination, then the termination procedures set forth in the Faculty Welfare and Privileges Procedures will be followed. Otherwise, the Provost's decision is final and will be implemented immediately by the University. The Complainant, Respondent, Investigator, Director, Dean (if applicable) and Vice Provost for Faculty Affairs (if applicable) will receive simultaneous written notice of the final decision. A copy of this notice will be entered into the faculty member's disciplinary file and will be maintained in accordance with the University's document retention policies.