

# **INVESTIGATIVE PROCESS FOR INTERNAL COMPLAINTS UNDER THE SEXUAL MISCONDUCT DISCRIMINATION AND HARASSMENT POLICY**

## **I. Who May Utilize this Procedure**

Grievances concerning sexual harassment, sex/gender discrimination, sexual assault/misconduct or violations of the Consensual Sexual Relationship Policy should be filed with the Sexual Misconduct Officer. Additionally, such claims may also be filed with the Institutional Equity Officer-Title IX Officer or his/her designee or with the University's Equal Opportunity Officer-Associate Title IX Coordinators (collectively referred to as the "Sexual Misconduct Officer"). This procedure is available to any person who, at the time of the acts complained of was employed by the University of Oklahoma, or is or was an applicant for employment or was enrolled as a student or an applicant for admission at the University, and the University has control over either the alleged perpetrator or the facility, or context of the event (whether on or off campus). The Sexual Misconduct Officer may, in his or her discretion, dismiss a grievance if he/she determines the person filing the complaint is not entitled to use this procedure.

## **II. Filing of Complaint**

Persons who have complaints alleging sex/gender discrimination, sexual orientation discrimination, discrimination based on gender identity or gender expression, sexual harassment, sexual assault/misconduct or under the Consensual Sexual Relationships Policy may file their complaints in writing with the Sexual Misconduct Officer or his/her designee.

Complainants who exercise their right to use this procedure agree to accept its conditions as outlined. Where multiple issues exist (i.e. sexual harassment and violation of due process or grade appeal), the complainant must specify all of the grounds of the grievance that the complainant should have reasonably known about at the time of filing. A grievance filed under this procedure may normally not be filed under any other University grievance procedure. Depending on the nature of the issues involved, the Sexual Misconduct Officer will advise the complainant about the appropriate procedure(s) to follow (e.g. applicable disciplinary policies and procedures for that campus). Parties to the complaint, including the respondent and/or the complainant may obtain the advice of any advisor/attorney at his/her own expense. Advisors and attorneys may be present during any meetings or hearings, but the witnesses and parties are to participate directly in the process, not the advisors/attorneys.

The Sexual Misconduct Officer in consultation with the Institutional Equity and Title IX Officer may modify these procedures at any time as deemed appropriate for compliance with federal, state, local law or applicable guidance.

### **III. Timing of Complaint**

Generally, to aid in a proper investigation, complaints should be filed with the Sexual Misconduct Officer within 365 calendar days of the act of alleged sexual discrimination, harassment or misconduct to facilitate the ability to gather facts and evidence. However, complaints which exceed this time-frame will be reviewed as well. Individuals are counseled that claims filed after lengthy lapses in time may be more difficult to investigate. The Sexual Misconduct Officer may reasonably extend this and all other time periods, and may, in his or her discretion, dismiss a grievance if the person is not entitled to use this procedure. Nothing herein should be construed to extend or restrict a person's right to file charges, lawsuits or claims with any other agency, law enforcement, or court, and individuals are encouraged to ensure their rights have not expired through these other avenues. Further, to the extent the complainant's allegations involve criminal activity, the Sexual Misconduct Officer may refer such matters to local law enforcement.

### **IV. Administrative Action**

A. The University recognizes its obligation to address incidents of sexual misconduct, discrimination and harassment on campus when it becomes aware of its existence even if no complaints are filed; therefore, the University reserves the right to take appropriate action unilaterally under this procedure, including but not limited to altering housing arrangements, issuing no-contact orders, modification of course-schedules, etc.

B. With respect to students, the University Vice President for Student Affairs and Dean of Students or other appropriate persons in authority may take immediate administrative or disciplinary action deemed necessary for the welfare or safety of the University community.

C. With respect to employees, upon a determination at any stage in the investigation or grievance procedure that the continued performance of either party's regular duties or University responsibilities would be inappropriate, the proper executive officer may suspend or reassign said duties or responsibilities, place the individual on leave of absence, or terminate employment, pending the completion of the investigation or grievance procedure.

### **V. Withdrawal of Complaint**

The complainant may withdraw the complaint at any point during the investigation; however, the Sexual Misconduct Officer may determine in his or her discretion that the issues raised warrant further investigation despite the complainant's desire to withdraw the complaint.

## **VI. Privacy of Proceedings and Records**

Individuals wishing to make legally confidential reports have the option of reporting those matters to the OU Advocates, the University Ombudsperson (for faculty/staff) licensed counselors, health professionals, clergy and attorneys to the extent the complainant engages them in such private capacity.

Although University officials will maintain an individual's privacy to the best of his or her ability, individuals should know that University officials (outside the context of licensed counselors and health professionals hired in their private capacity) may not be able to maintain legal confidentiality of the complainant, but will maintain his or her privacy as noted herein. The University's ability to investigate may be limited if a complainant insists his or her name not be disclosed to the alleged perpetrator. The University must weigh such requests for privacy against its duty to provide a safe and nondiscriminatory environment. Investigators and those involved with the investigation are individually charged to preserve privacy with respect to any matter investigated or heard. A breach of the duty to preserve privacy is considered a serious offense and may subject the offender to appropriate disciplinary action. Parties and witnesses are also admonished to maintain privacy with regard to these proceedings, and if they are University employees, failure to maintain said privacy may result in appropriate disciplinary action. Furthermore, federal law prohibits retaliation against those who file complaints, and the University will take responsive action if such retaliation occurs, up to and including termination and/or expulsion.

Except with respect to hearings before the Faculty Appeals Board or an applicable student disciplinary procedure, all records involving discrimination or harassment, upon disposition of a complaint, shall be transmitted to and maintained by the Institutional Equity Office as confidential records except to the extent disclosure is permissible or required by applicable law or University policy. It should be noted that under the Family Educational Rights to Privacy Act and the Clery Act that final disciplinary actions as well as the rationale and sanctions shall be reported to the complainant as well as reported in accordance with the Clery Act reporting requirements, where appropriate, to the extent the sanctions directly relate to the complainant. The University shall inform complainants if it is unable to ensure privacy.

## **VII. Proceedings**

### **A. Investigation**

Upon receipt of a complaint, the Sexual Misconduct Officer will notify complainant of the receipt of the complaint, and the officer is empowered to investigate the charge, to interview the parties and others, and to gather any evidence he or she deems pertinent. Generally, the Sexual Misconduct Officer interviews the complainant and any relevant witnesses identified by the complainant or the Sexual Misconduct Officer. Once sufficient information is gathered, the Sexual Misconduct Officer will then notify the charged individual of the allegations. With permission from the complainant, the Sexual Misconduct Officer shall advise the charged individual of the name of the complainant. Where a complainant does not wish to be identified, the extent of the investigation may

be limited; however, some form of limited investigation will be attempted while maintaining confidentiality of the complainant's identity. The Sexual Misconduct Officer will interview the charged individual and any witnesses the officer or charged individual identifies as relevant.

Additional evidence may be sought from any relevant party or witness, including but not limited to, email communications, social media postings, text messages, etc. Parties are expected to cooperate and provide this information. Failure to cooperate with an investigation may result in separate disciplinary proceedings. Parties should be aware that as members of the University community, their access to University resources has very limited privacy rights, and the University may obtain information through the University's resources and informational technology system with or without the individual's cooperation. The investigation and findings generally should be completed within 60 calendar days of receipt of the complaint, preferably sooner as practical.

Once the Sexual Misconduct Officer has gathered the information, he/she shall discuss his/her findings, where appropriate, with the Title IX Officer and/or the Equal Opportunity Officer or Associate Title IX Officer for a determination whether sufficient grounds exist to issue a finding of impropriety and/or to refer the matter to the appropriate administrative official.

At all times, through the proceedings, the original complainant shall have all rights afforded to the charged individual.

## **B. Finding**

After the joint Title IX consultation, the Sexual Misconduct Officer shall render a finding based on the evidence as a whole, the totality of the circumstances, and the context in which the alleged incident(s) occurred, utilizing a preponderance of the evidence standard, i.e. the facts complained of are more likely true than not.

Upon completion of the investigation, the Sexual Misconduct Officer is authorized to take the following actions:

- 1. Satisfactory Resolution** - The matter is resolved to the satisfaction of all parties. Provided, however, there will be no direct mediation between the parties. If a resolution satisfactory to the parties is reached, the Sexual Misconduct Officer may prepare a written statement or other applicable document indicating the resolution (e.g. issuing a no contact order). At that time, the investigation and the record shall be closed.

- 2. Dismissal** - The Sexual Misconduct Officer finds that no policy violation occurred and dismisses the complaint, giving written notice of said dismissal to each party involved. Within five (5) University business days of the date of the notice of dismissal, the complainant may, in writing, ask the Title IX Officer or his/her designee to reconsider the finding. The request for reconsideration of the

finding must indicate how and why the finding was inaccurate. If after reconsideration, the Title IX Officer determines that additional evidence not available at the time of the report would materially alter the findings, he/she may remand the matter to the Sexual Misconduct Officer for additional investigation and report or may take appropriate action. If no appeal is filed within the five (5) University business-day period or the Title IX Officer does not act on the appeal within five (5) University business days, the case is considered closed and the Sexual Misconduct Officer's findings are final. All appropriate administrative officials and parties shall be notified in writing that the matter is closed.

**3. Determination of Impropriety** - The Sexual Misconduct Officer makes a finding of impropriety and notifies the parties and appropriate administrative officer of the finding and may recommend actions to be taken.

**4. Referral to Faculty Appeals Board** - In the case of a complaint against a faculty member, the Sexual Misconduct Officer in consultation with the Provost, may determine that the evidence is sufficiently clear and serious, warranting the immediate commencement of formal proceedings as provided in the Abrogation of Tenure, Dismissal before Expiration of a Term Appointment, and Severe Sanctions sections of the respective campuses *Faculty Handbook*.

Norman campus:

<https://apps.hr.ou.edu/FacultyHandbook/>

HSC campus:

<http://www.ouhsc.edu/provost/documents/FacultyHandbookOUHSC.pdf>.

If the President concurs with the finding of the Sexual Misconduct Officer and Provost, the case may be removed from the grievance proceedings contained herein and further action in the case shall be governed by the Abrogation of Tenure, Dismissal before Expiration of a Term Appointment, and Severe Sanctions section in the *Faculty Handbook*.

## **C. Appeal of the Sexual Misconduct Officer's Findings**

### **1. Appropriate Appellate Procedures**

#### **a. Findings of Impropriety Against Students**

Where the Sexual Misconduct Officer determines a student has violated the Sexual Misconduct Policy, he/she shall refer the finding and the matter to the Student Conduct process. Any appeal of the finding shall be heard through the Student Conduct process: See [www.judicial.ou.edu](http://www.judicial.ou.edu).

**b. Findings of Impropriety Against Faculty Members**

**i. Severe Sanctions**

Where the Sexual Misconduct Officer determines a faculty member has violated the Sexual Misconduct Policy and based on consultations with the appropriate administrative officials, a severe sanction of abrogation of tenure, dismissal or summary suspension is imposed or recommended as noted in the respective faculty handbooks:

Norman campus:

<http://www.ou.edu/content/dam/provost/documents/ouncfb.pdf>

HSC campus:

<http://www.ouhsc.edu/provost/documents/FacultyHandbookOUHSC.pdf>.

**ii. Other Than Severe Sanctions**

Where the Sexual Misconduct Officer determines a faculty member has violated the Sexual Misconduct Policy and based on consultations with the appropriate administrative official, a sanction less than abrogation of tenure, summary suspension or dismissal is recommended or imposed, the faculty member only may appeal the finding and sanction through the process noted in the applicable faculty handbooks. No additional complaints or grievances regarding the same subject matter may be filed with the Faculty Appeals Board.

**c. Findings of Impropriety Against Employees**

Where the Sexual Misconduct Officer determines an employee has violated the Sexual Misconduct Policy, the employee may appeal the finding and recommended or imposed sanction through the process noted below.

**d. Findings of Impropriety Against Third Parties**

Where the Sexual Misconduct Officer determines a third party has violated the Sexual Misconduct Policy, the third party may request the Title IX Officer or his/her designee in consultation with the appropriate

executive officer over the area reconsider the findings. If after reconsideration, the officers determine a remand is warranted, the matter will be referred to the Sexual Misconduct Officer for further investigation or modification. If the officers determine the findings are appropriate, the findings shall be final and binding on the third party without further appeal.

## **2. Request for an Appeal Through This Process**

- a.** Where the matter is not otherwise referred to other University procedures for review and action (e.g. Student Conduct process or Faculty Appeals Board process for severe sanctions), and if the appeal is permissible as noted above, the party accused of impropriety may appeal the finding in writing to the Equal Opportunity Office staff within five (5) University business days of the finding.
- b.** The request for appeal must contain the particular facts upon which the appeal is based. The Equal Opportunity Office staff or the University's designee, shall provide a copy of the request to the proper respondent(s) and the original complainant, and request a written response from the respondent.
- c.** Generally, the respondent will be the Sexual Misconduct Officer, and the initial complainant shall be a witness in the appellate proceedings, rather than a "respondent". In this type of appeal, all references to "respondent" in the appellate procedures shall refer to the Sexual Misconduct Officer and/or relevant members of the University administration. Provided, however, the initial complainant shall be entitled to all rights and procedures available to any party during the appellate process and shall be included in the definition of parties.
- d.** An appropriate University official/employee may be identified by the administration to manage the appeals process if the Equal Opportunity Office staff is also involved as the respondent along with the Sexual Misconduct Officer, where appropriate.

## **3. Response to Request for Appeal**

If a hearing is requested, the respondent's written response to the request for a hearing must be sent to the Equal Opportunity Office's staff or the University's designee within five (5) University business days of receiving notice that a hearing has been requested. The Equal Opportunity Office's staff shall provide a copy of the response to the party requesting the hearing. The initial complainant may likewise provide a written response within this timeline if he/she desires.

#### **4. Selection of a Hearing Panel**

Within two (2) University business days following receipt of the written request for a hearing, the Equal Opportunity Office's staff or the University's designee shall contact the parties informally and initiate the process to determine the members of the Hearing Panel.

##### **a. Panel**

A five (5) member hearing panel will be chosen by the parties to the complaint from the following groups:

- on the Health Sciences Center campus and for HSC-based programs at the Tulsa campus, the 24-member Committee on Discrimination and Harassment. Provided, however, students may not sit on these hearing panels.

- on the Norman campus and for Norman-based programs on the Tulsa campus, from the 16-member Committee on Discrimination and Harassment with faculty representation from the 50-member Faculty Appeals Board. Provided, however, students may not sit on these hearing panels.

##### **b. Process of Panel Selection**

The Equal Opportunity Office's staff or University designee shall contact the parties informally to select the panel. The appellant and the respondent (in conjunction with the original complaint) will select five (5) names each from the pool, excluding students. The names will be listed in rank order with name number one (1) on each list being the preferred panelist.

The Equal Opportunity Office's staff or the University's designee will contact the individuals in the order selected. The first two (2) names on each list of who is available to serve will comprise the hearing panel.

Those individuals selected will choose a fifth name from the entire pool to serve as a panel member and who will serve as chair. If the individuals forming the hearing panel cannot agree on the fifth name and/or his or her service as chair, the Equal Opportunity Office's staff or University designee shall appoint the fifth name and the chair.

Any party to the complaint may ask the Equal Opportunity Office's staff or the University's designee to disqualify any member of the hearing



panel. Such requests will be in writing and show sufficient grounds for removal. Furthermore, no panelist shall be expected to serve if he or she feels that a conflict of interest exists. Replacements shall be selected in the same manner as the original panel.

**D. Orientation Conference/Pre-hearing**

Within ten (10) University business days of receiving notice of service on the Hearing Panel, or sooner if feasible, the chair shall attend an orientation and review the finding and response to determine whether there exist adequate grounds for a formal hearing.

**1. Orientation**

A member of the Equal Opportunity Office and/or the University's designee shall be present during the orientation, where he or she will provide the chair with a copy of the hearing guidelines, the written complaint, the request for a hearing, the written responses, and the Sexual Misconduct Officer's report.

**2. Prehearing**

Once the orientation is concluded, the chair shall review the materials, in private, to determine whether a formal hearing should be held. This is known as the prehearing. During the prehearing, the chair shall review the Sexual Misconduct Officer's report and the response documents and all relevant materials, and shall determine whether a formal hearing is warranted.

**3. Determination of Formal Hearing**

Whether a formal hearing is warranted shall be within the chair's discretion and based on the appellant's written appeal. To determine whether a formal hearing is warranted, the chair shall base his/her decision on whether (a) there was insufficient evidence, utilizing a preponderance of the evidence standard, to support the Sexual Misconduct Officer's finding; or (b) additional evidence not previously available exists that substantially would have altered the Sexual Misconduct Officer's findings. Based on this review and analysis, the chair within its reasonable discretion shall determine whether a formal hearing is warranted, and shall immediately notify the parties in writing and the Equal Opportunity Office staff or University designee of its decision. A determination that a formal hearing is warranted does not necessarily imply the Sexual Misconduct Officer's finding was erroneous.

**4. Determination Not to Hold a Formal Hearing**

If the chair determines that adequate grounds for a hearing do not exist in his/her reasonable discretion, then he/she immediately shall notify the Equal Opportunity

Office staff, who in turn, immediately shall notify the parties and appropriate executive officers in writing. The Hearing Panel's services shall be concluded and the Sexual Misconduct Officer's findings shall be final.

The appropriate executive officer shall render his or her decision and notify the parties and the Equal Opportunity Office staff and Title IX Officer within five (5) University business days of the chair's notification to the executive officer of his/her decision. Any party may appeal the executive officer's decision in writing to the President within five (5) University business days of notice of the decision. If the President does not act within five (5) University business days of the request, the executive officer's decision is final.

**E. Formal Hearing**

**1. Scheduling**

If the chair determines a formal hearing is warranted, the chair will schedule the formal hearing to be held within 30 calendar days of his/her decision to hold a formal hearing, preferably sooner. The chair shall immediately notify the Equal Opportunity Office staff and Title IX Office in writing, who in turn, shall notify the parties in writing of the date, time and location of the formal hearing.

The Equal Opportunity Office staff or University designees shall notify the parties in writing of the date, time, and location of the hearing, along with other relevant information concerning the hearing process. Parties are responsible for giving such notice to their witnesses. The hearing shall be scheduled to reasonably ensure that the appellant, respondent, original complainant and essential witnesses are able to participate. However, the chair may ultimately schedule all relevant deadlines and hearings.

**2. Procedures**

The Hearing Panel procedures shall be established with reference to the Hearing Guidelines provided by the Equal Opportunity Office staff or the University's designee at the orientation conference, and as determined by the chair in consultation with the University Legal Counsel, where appropriate. All parties shall be provided with a copy of the Hearing Guidelines simultaneously with the notice of formal hearing. Any party shall be entitled to present relevant evidence as determined by the chair of the Hearing Panel.

The parties shall present their own cases. Again, where the Sexual Misconduct Officer has found a policy violation, the Sexual Misconduct Officer presents the case on behalf of the original complainant and the original complainant is simply a witness. Should a complainant wish to present his/her case as well, they may do so and have equal rights under this policy.

Advisors and counsel may be present during the hearings and meetings, but may not directly participate. The parties reasonably may request a recess to consult with his or her advisor outside of the hearing.

The parties may call relevant witnesses to testify. However, the parties may not cross-examine one another. Alternate testimonial methods may be permitted, e.g. Skype, testifying behind a screen, etc. in the chair's discretion. The parties may submit questions to the hearing panel for the panel to ask each party, if relevant, as determined in the panel's discretion. The hearing shall be closed. Audiotape recordings of the proceedings shall be arranged by the chair and paid for by the University. Copies of the recording will not be provided. Transcripts may be charged to the requesting party; the original version of the recording shall remain the property of the University.

### **3. Standard of Review**

At the formal hearing, the appropriate standard of review is whether by a preponderance of the evidence, the report, or its result

(a) is supported by any evidence, or

(b) substantially would have been altered by the new evidence that was not previously available.

The chair acts as a monitor of the process and as a non-voting member except in cases of a tie vote. In such cases, the chair will act as the tie-breaker.

### **4. Resolution Prior to Conclusion of Hearing**

If the matter is resolved to the satisfaction of all parties prior to completion of the hearing, a written statement shall indicate the agreement recommended by the parties and the statement shall be signed and dated by each party and by the chair. The recommendation will be referred immediately to the Institutional Equity and Title IX Officer and/or Equal Opportunity Office staff, who in turn, shall immediately notify, in writing, the appropriate executive officer for final determination.

The executive officer shall notify the parties of his/her final determination within three (3) University business days of notification of the agreed resolution. Assuming the executive officer agrees with the resolution, the matter shall be closed. To the extent the executive officer disagrees with the resolution, he/she may render his/her decision and immediately notify the parties.

Any party may appeal the executive officer's decision in writing to the President with a copy to the Institutional Equity and Title IX Officer, and/or Equal Opportunity Office staff and all other parties. The President shall render a

decision within five (5) University business days of notice of the appeal. If the President does not act within five (5) University business days of notice of the appeal, the executive officer's decision shall be final.

## **5. Findings and Recommendations**

In the event that no solution satisfactory to the parties is reached prior to the completion of the hearing, the Hearing Panel shall determine by majority vote, in writing, whether the finding should be upheld or modified or remanded for further action, and shall notify the Equal Opportunity Office staff of its findings and recommendations within three (3) University business days of the hearing (unless the Hearing Panel determines that because of unforeseen circumstances additional time is needed). The Equal Opportunity Office staff will immediately notify the proper executive officer, in writing, of the decision with copies to the President.

## **6. Executive Officer's Decision**

### **a. Appellate Times**

Within three (3) University business days of receipt of the Hearing Panel's findings and recommendations, the appropriate executive officer shall inform the complainant and the respondent of the findings of the Hearing Panel and the executive officer's decision as permitted by applicable law. A copy of the executive officer's decision shall be immediately transmitted to the chair of the Hearing Panel, with copies to the President and the Equal Opportunity Office staff.

### **b. Appeal to the President**

Any party (including the original complainant) may appeal the executive officer's decision to the President within three (3) University business days of the decision. If the President does not act to change the decision within three (3) University business days of receiving the appeal, the executive officer's decision shall be final under the executive authority of the President.

Effective September 1, 2014