

APPENDIX W: DUKE UNIVERSITY HARASSMENT POLICY AND PROCEDURES

Harassment Policy

I. Introduction

Harassment of any individual for any reason is not acceptable at Duke University. Harassment may arise in situations unique to a given interpersonal relationship or in actions rooted in an attitude toward a group. Sexual harassment is perhaps the most commonly understood form of harassment but it is important to note that harassment on any demographic basis—including race, color, religion, natural origin, disability, veteran status, sexual orientation, gender identity, sex or age—also occurs and is expressly forbidden. Abuse of the relationship between teacher and student, or provider and patient, is of particular concern because of the educational and health care missions of Duke University. In all cases, harassment undermines the University's commitments to excellence and to respect for the dignity and worth of all individuals.

This policy against harassment is consistent with the University's valuation of academic freedom. Duke University is committed to the free and vigorous discussion of ideas and issues, which the University believes will be protected by this policy. This Harassment Policy shall be applied in a manner that protects the academic freedom of all parties to a complaint. Academic freedom and the related freedom of expression include, but are not limited to, the civil expressions of ideas, however controversial, in the classroom, residence halls, and other teaching and student living environments.

In addition to this Harassment Policy and Procedures, Duke University and Duke University Health System also provide educational programs to raise the level of understanding about the nature of harassment and ways to prevent its occurrence. These programs may be found on the web site of the Office for Institutional Equity: <http://www.duke.edu/web/equity/>.

II. Definitions¹

Harassment may take two forms:

The first form of harassment is verbal or physical conduct—which may or may not be sexual in nature—that, because of its severity and/or persistence, interferes significantly with an individual's work or education, or adversely affects an individual's living conditions.

The second form of harassment occurs if a person uses a position of authority to engage in unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

- submission to such conduct is explicitly or implicitly made a term or condition of an individual's employment or education; or
- submission to or rejection of such conduct is used as a basis for decisions affecting an individual's education or employment.

¹ The University and Health System adopt the definitions of harassment found in the Equal Employment Opportunity Commission (EEOC) Guidelines and relevant U.S. Supreme Court decisions. The Duke Harassment Policy expands upon those definitions by including, among other things, harassment on the basis of sexual orientation and preference.

Other University rules, policies, and manuals (e.g., the Duke University Equal Opportunity Policy, the Duke Staff Handbook, the Undergraduate Bulletin of Information and Regulations) may prohibit behavior that is not definable as harassment per se. Persons who believe they have been subject to inappropriate behaviors not covered by this Harassment Policy, or who are unclear about whether those behaviors constitute harassment, are encouraged to seek assistance from their supervisors, Duke Human Resources, Staff and Labor Relations, and/or the Office for Institutional Equity.

The conduct alleged to constitute harassment under this Policy shall be evaluated from the perspective of a reasonable person similarly situated to the complainant and in consideration of the context of the behavior.

Harassment must be distinguished from behavior that, even though unpleasant or disconcerting, is appropriate to the carrying out of certain instructional, advisory, or supervisory responsibilities.

As used herein, *complainant* refers to the person making an allegation or complaint of harassment.

The term *respondent* refers to the person against whom the allegation or complaint of harassment is made.

An *allegation* is a statement by a complainant that he or she believes an act of harassment has occurred. An allegation is handled through the informal resolution process.

A *complaint* is a formal notification, either orally or in writing, of the belief that harassment has occurred. A complaint is handled through either the informal or formal process for resolving claims of harassment.

III. Scope

Duke Staff, Faculty, Students

This Harassment Policy applies to all persons who are enrolled at or employed by Duke University and Duke University Health System, including their entities and subsidiary organizations, while they are on university property or are participating in a university-related activity off-campus. All aspects of the Harassment Procedures described below apply to situations in which both complainant and respondent are enrolled or employed at Duke University or its subsidiaries, except in those cases in which the respondent is a Duke undergraduate.² Claims by or against a member of the Office for Institutional Equity will be handled by the Office of the President or his or her designate.

All Others

Situations that involve other individuals (*e.g.*, visitors, patients, graduates of Duke University, applicants for admission or employment, or former employees) who believe they have been harassed by someone either employed by or enrolled at Duke University or Duke University Health System, either on campus or in a university-related activity, may be addressed only through the informal process for handling an allegation (described below in section VIII. A.1.).

Situations in which Duke University or Duke University Health System employees or students believe they have been harassed by visitors to the University or contractors or vendors serving the University will be resolved through the informal process for handling an allegation (described below in section VIII. A. 1.).

Individuals who have questions about the Harassment Policy or who wish to file a complaint of harassment should contact the Office for Institutional Equity at 684-8222 or visit the OIE website: <http://www.duke.edu/web/equity/>.

IV. Statute of Limitations

An allegation or complaint of harassment should be submitted to the appropriate individual or office as soon after the offending conduct as possible, but in no event more than one year after the most recent conduct alleged to constitute harassment. While the Office for Institutional Equity may grant a reasonable extension of any *other* deadline established in the following procedures, the one year limit in which complainants may submit an allegation or complaint shall not be extended. This statute of limitations is intended to encourage complainants to come forward as soon as possible after the offending conduct and to

² Claims of harassment against Duke undergraduate students are handled by the Office of Student Conduct. The office can be reached by telephone at: 684-6938 and its website address is: <http://conduct.studentaffairs.duke.edu>.

protect respondents against complaints that are too old to be investigated effectively. If the nature of the allegation or complaint is particularly egregious, as determined by the Office of Institutional Equity, OIE has the authority to act as complainant beyond the one-year statute of limitations, provided that this office initiates the complaint within a year of learning about the alleged incident(s) and the evidence is available to support an effective investigation. (See “Procedures,” IX. A. 2.)

V. Confidentiality

Duke University and Duke University Health System recognize that confidentiality is important. Breaches of confidentiality compromise the ability of the University to investigate and resolve claims of harassment. Duke University and Duke University Health System will attempt to protect the confidentiality of harassment proceedings to the extent reasonably possible. All participants in the process (including the complainant and respondent, witnesses, advisors, mediators, members of hearing panels) are expected to respect the confidentiality of the proceedings and circumstances giving rise to the dispute. Until resolution has been achieved, participants are expected to discuss the matter only with those persons who have a genuine need to know.

Although the University and Health System are committed to respecting the confidentiality and privacy of all parties involved in the process, they cannot guarantee complete confidentiality. Examples of situations in which confidentiality cannot be maintained include:

- when the University or Health System is required by law to disclose information (such as in response to legal process)
- when disclosure of information is determined by the Office for Institutional Equity and/or the department to be necessary for conducting an effective investigation of the claim
- when confidentiality concerns are outweighed by the University or Health System’s interest in protecting the safety or rights of others.

VI. Retaliation

Against the Complainant: It is a violation of Duke’s Harassment Policy to retaliate against a complainant for making a claim of harassment. If warranted, the appropriate senior administrator may monitor performance review, promotion, reappointment, grading, or other evaluation—or, to the extent possible, may reassign the supervisory relationship—to ensure that retaliation does not occur.

Against the Respondent: A claim of harassment is not proof of prohibited conduct. A claim shall not be taken into account during performance review, promotion, reappointment, or other evaluation unless a final determination has been made that the University’s Harassment Policy has been violated. If necessary and appropriate, such decisions shall be deferred until the claim is resolved.

Against a Witness or Participant in the Investigation: It is also a violation of the Duke Harassment Policy to retaliate against individuals providing information related to a complaint.

Claim of Retaliation: A claim of retaliation by a complainant, respondent or witness may be pursued using the steps followed for an allegation or complaint of harassment. (See sections VIII and IX, below.)

False or Malicious Complaints: Knowingly filing a false or malicious complaint of harassment or of retaliation is a violation of the Harassment Policy. Such conduct may be pursued using the steps followed for a complaint of harassment.

Procedures for Evaluation and Resolution of Claims of Harassment

VII. Introduction

Responsibility for implementing the Duke University and Duke University Health System policy and procedures regarding harassment rests with the Office for Institutional Equity (OIE). Other University and Health System personnel are also available to provide consultation and assistance. For example, Staff and Labor Relations representatives within Human Resources are trained to assist either with the handling of allegations or the filing of complaints. Supervisors of employees, and senior academic administrators who work with faculty and students, can also provide guidance about responding to situations that may constitute harassment. **Harassment Prevention Advisors** trained by OIE are available to assist students with harassment concerns. The names of HP Advisors are available on the OIE website (www.duke.edu/web/equity).

Some forms of harassment may violate federal and state laws, and a complainant or respondent may choose to invoke external processes to resolve his or her concerns instead of or in addition to pursuing the procedures set forth herein. Any internal process proceeds without regard to an external process unless University Counsel instructs otherwise.

VIII. Informal Resolution of Allegations Prior to or in Lieu of Filing a Complaint

A. Range of Possible Mechanisms for Informal Resolution

Although none of the actions set forth below is required before an individual may file a complaint, the University and Health System encourage use of these mechanisms for informal resolutions. This list is not exhaustive. Actions taken utilizing any of these mechanisms do not necessarily constitute a finding of harassment. Should the following mechanisms fail to resolve the matter satisfactorily, a complaint may be filed as outlined in section IX, "Management of Complaints of Harassment."

1. **One-on-One Meeting.** The complaining party, either alone or with another person, may choose to meet with the individual whose behavior is disturbing, discuss the situation, and make it clear that the behavior is unwanted and must cease.
2. **Intervention by Supervisor.** The complaining party may contact an individual with supervisory authority and request assistance to stop the behavior.
3. **Intervention by Harassment Prevention Advisors.** A student complainant may contact the Office for Institutional Equity (OIE) and request the intervention of a trained harassment prevention advisor to end the alleged harassment.
4. **Facilitated Conversation or Mediation.** A complainant may contact the Office for Institutional Equity (OIE) and request the assistance of a facilitator or mediator.

B. Achievement of Resolution

The informal process shall extend no longer than 45 business days after the allegation is made. Any resolution achieved may include, but is not limited to, withdrawal of the allegation without the right to reassert it; an agreement to terminate and not repeat specific conduct; an apology; and/or participation in education, training, or counseling. Where appropriate, the Office for Institutional Equity (OIE) shall review resolutions to ensure that the parties fully understand the terms. If there is any sanction agreed to as part of the resolution, the official responsible for implementing the sanction must maintain a record. Resolution need not imply an admission of culpability.

All resolutions must be agreed to, and signed, by both parties. They are binding in that a formal complaint may not be filed later on the same set of circumstances. However, any conduct admitted by the respondent as part of the resolution may be considered in any future harassment proceedings. Any breach of the terms of an informal resolution agreement may result in disciplinary action or a further claim of harassment.

C. Consultation with Office for Institutional Equity

The Office for Institutional Equity is available for consultation in any case involving an allegation of harassment.

IX. Management of Complaints of Harassment

A. Filing a Complaint

1. By an individual

Before filing a complaint, parties are encouraged to utilize one or more of the means set forth above in section VIII for the resolution of an allegation of harassment. If one chooses to proceed with a complaint, the process begins with the filing of a complaint with either the department or OIE. If the complaint is filed with the department, the department must convey a record of the complaint to OIE. The complaint may initially be communicated either orally or in writing. In either case, the filing of the complaint will be documented in writing and signed by the complainant.³

2. By the Office for Institutional Equity

OIE may file a complaint of harassment against any individual this office has a compelling reason to believe has engaged in harassment.⁴ Under these circumstances, OIE shall function as the complainant. In connection with such a complaint, the Chancellor, Provost, or Executive Vice-President, or his or her designate, shall perform all functions assigned to OIE in the process for formal resolution of harassment complaints as outlined in section IX. D. 2., "Formal Process for Managing Complaints of Harassment."

B. Initial Management

The complaint shall include the names of the complainant and the respondent and the details of the conduct alleged to constitute harassment. In order to make the determination about the appropriate process for management of the complaint, OIE will examine the initial complaint and may request a written response from the respondent. In this case, OIE will mail or provide a copy of the complaint to the respondent within five business days of its receipt; within ten business days thereafter, the respondent must submit a written response to the charges of harassment to both the complainant and OIE.⁵ Within five business days after receiving the response (or, if no response was called for, within five business days of receiving the complaint), OIE will, after consultation with the complainant, initiate the process to be followed in handling the complaint.

C. Relevance to Future Proceedings

As is the case with informal resolution of an allegation (see section VIII.B., above), any conduct admitted to by the respondent as part of the resolution of a complaint may be used against him or her in a future proceeding.

³ In some cases, the Office for Institutional Equity or the supervisor may have an obligation to investigate the complaint whether or not the complainant's signature is obtained when the complaint is reduced to writing.

⁴ The University's responsibility to appropriately address instances or patterns of harassment is not limited to the Office for Institutional Equity. If a manager, supervisor, or other individual with oversight responsibility becomes aware of possible harassment, either through an allegation or by observation, he or she has an obligation to respond to it, even without the complainant's desire to proceed.

⁵ In extenuating circumstances, OIE has the discretion to extend this deadline for response.

D. Informal vs. Formal Process for Managing Complaints of Harassment

Complaints of harassment may be resolved through either the informal or formal process as described below. Use of the informal process is generally more expeditious and less polarizing than the formal process. The Office for Institutional Equity will discuss with the complainant the options for handling the complaint through either the informal or formal process. In cases in which the matter clearly falls outside the purview of this Harassment Policy, OIE shall make the appropriate referrals. (See fn. 1, p. 2.)

1. Informal Process

In the informal process for managing complaints of harassment, the Office for Institutional Equity and/or the department will investigate and manage the complaint. Tools available for managing the complaint in this informal process include, but are not limited to, one-on-one meetings, supervisory intervention, mediation, and/or education and training. (See section VIII.A. above for more detail.) The informal process shall take no longer than 45 business days from the time of the filing of the complaint.

2. Formal Process

a. Harassment Hearing Procedures

(1) Structure of the Hearing Panel

If, on the basis of consultation between the Office for Institutional Equity and the complainant, a determination is made by the complainant to initiate a formal hearing process, within ten business days OIE shall appoint a hearing panel selected by lot from the membership of the Harassment Grievance Board.⁶ With one exception, hearing panels will consist of five members. These panelists will reflect the categories of the complainant and respondent (i.e., faculty, non-faculty staff, student). Two representatives from each party's category will be drawn from the membership of the Harassment Grievance Board. One additional member will be drawn from a category not represented by either party to the complaint. If the category of the complainant and the respondent is the same, a panel of three members is permissible. All members of

⁶ The Grievance Board shall consist of twenty-eight members, selected as follows from the University and its subsidiary organizations:

Twelve members of the Board shall be appointed by the Executive Committee of the Academic Council from among the various regular-rank faculties, including four from the clinical or research faculty of the Duke Health System.

Eight members of the Board shall be selected from among the non-faculty staff of the University by the Executive Vice President.

Four members of the Board shall be selected by the Duke Student Government (DSG) from the undergraduate student population, and four members shall be selected by the Graduate and Professional Students Council (GPSC) from the graduate/professional student population.

The appointing authority for each category of members shall consult with the Office for Institutional Equity prior to selecting any member to the Board to ensure that the members selected within each category reasonably represent the population of the University and its subsidiaries.

All members of the Board shall serve for a renewable two or three year term. Vacancies on the Board shall be filled in the same manner as members are selected. A member of the Board appointed to fill a vacancy shall serve the remaining term of the member being replaced.

OIE shall maintain the roster for each category of Board membership (faculty, non-faculty staff, and students) and coordinate training for members of the Board.

such panels will be voting members and will participate in all activities of the hearing and the deliberation, including voting on the findings and recommendations for possible sanctions if a respondent is found to be in violation of the Duke University and Duke University Health System Harassment Policy. The chair of the hearing panel shall be elected by the members of the panel.

(a) Use of former members of the Harassment Grievance Board

When the number of Harassment Grievance Board members able or willing to serve on a panel is insufficient, panel members may be selected from former members of the Harassment Grievance Board.

(b) Right of Objection to the Composition of the Hearing Panel

Each party may object to the potential appointment to the hearing panel of any member of the Grievance Board. In naming the members of the hearing panel, the Office for Institutional Equity will take these objections, along with any concerns raised about conflicts of interest, into account in finalizing the panel. Members of the hearing panel must disclose any potential conflict of interest; no member of the panel may hear a case involving a party who is from his or her hiring unit. Any member who has a conflict of interest shall be replaced by lot from the pool of members in the same category.

(2) Initial Steps of Harassment Panel

After appointment of the hearing panel, the panel will convene to select its chair and to determine the most appropriate manner in which to proceed with the case.

The panel will review the documents and determine whether the complaint warrants a formal hearing procedure. If the panel decides that the case should be handled via the informal resolution process, it will remand the case to OIE for management. If it decides that the case warrants a formal hearing procedure, it will arrange the ensuing steps of the process. A decision by the hearing panel to forgo a formal hearing process is subject to appeal. (See IX.D., below).

Prior to the hearing, or at any point during the proceedings, the chair may consult with the Office for Institutional Equity about the complaint to determine the need for any consultants to assist the panel. At the chair's request, OIE may assign an appropriate consultant to assist the panel with technical issues relating to the type of harassment alleged. The chair may also arrange consultation with the University's legal counsel.

(3) Conduct of Hearing Process

Within the hearing process, all parties to the complaint must conduct themselves in a civil manner.

In all hearings, the following procedures are intended to protect the rights of both parties and to assure the fairness of the process:

- The hearing must commence no later than fifteen business days after the panel is appointed, except for good cause or by agreement of the parties. The panel chair shall give parties written notice of the time and place of the hearing.
- Both parties shall attend the hearing. Neither party may be compelled to testify. The panel shall not draw a negative inference from the failure of either party to testify.
- The hearing is not a legal proceeding, but an internal mechanism for resolving complaints of harassment. Accordingly, each party has the right to one representative, who must be from the student body, faculty, or staff of Duke University. This representative may help with preparation of the case, may be present when the case is heard, and may confer with the party during the hearing. The representative may address the hearing panel or question witnesses.

- Both parties have the right to present evidence, including a written opening statement or summary of their case, and to call a reasonable number of witnesses as determined by the hearing panel. Witnesses may be present only when testifying.
- Using a general standard of relevance to the complaint being heard, the panel shall determine what testimony will be permitted at the hearing. In most cases of alleged sexual harassment, the only sexual history admissible as evidence is that of the parties with each other.
- Both parties have the right to question all witnesses, subject to reasonable limits imposed by the panel.

(4) Standard of Proof

A violation of the University and Health System’s policy against harassment must be established by a preponderance of evidence, meaning that in the best judgment of the hearing panel a violation of the Harassment Policy has occurred. The complainant has the burden of proof.

(5) Deliberation of the Hearing Panel

a. Reaching a Finding – A majority vote of the panel shall decide whether a violation of the Duke University and Duke University Health System Harassment Policy has occurred. For a panel of five members, at least three votes constitute a majority; for a panel of three, two votes.

b. Considering Prior Admissions and/or Findings of Acts of Harassment - Before recommending corrective action, the panel may hear testimony regarding any prior determination that the respondent violated the University’s Harassment Policy, including any prior admissions and/or findings of harassment. The panel may also consider information concerning any prior findings of harassment at another institution. Any such prior determination may be considered by the panel in its recommendation of corrective action(s).

c. Recommending Corrective Action(s) - If the panel finds that the respondent violated the University’s Harassment Policy, it shall recommend appropriate corrective action(s), taking into consideration all of the circumstances of the current incident(s) as well as any prior admissions and/or findings of harassment. The panel has the power only to recommend and not to determine corrective actions. (See “Implementation of Corrective Actions,” below.) Examples of the types of remedial action that the panel may recommend in cases involving respondents who are faculty or non-faculty staff are the following: participation of the respondent in counseling; prohibition of the respondent from participating in grading, honors, recommendations, reappointment and promotion decisions, or other evaluations of the complainant; letter of reprimand placed in the respondent’s personnel file; restrictions on the respondent’s access to University facilities; limitations on merit pay or other salary increases for a specific period; or suspension or dismissal from the University.

(6) Hearing Panel Report

Within ten business days following the conclusion of the hearing, the panel shall deliver to the Office for Institutional Equity a written two-part report. Part one shall summarize the information considered in the deliberative process and shall record the vote of the panel on the findings; the second part of the report shall detail, and record the vote on, the recommended corrective action(s), if any. Each part shall be signed separately by all members. As soon as practicable, OIE shall forward a summary of the findings, but not the recommended corrective action(s), if any, to the complainant and respondent, and a copy of both the findings and the recommended corrective action(s) to the official responsible for implementing the panel’s decision.⁷ The Provost will be notified of the resolution of all cases involving faculty.

⁷ If the respondent is a member of the faculty, the responsible official is the dean of the school to which the respondent belongs or her or his designate. If the respondent is a non-faculty clinician or staff, the responsible official is the senior level officer within the respondent’s area of employment, or her or his

b. Implementation of Corrective Action(s)

Within fifteen business days after receiving the panel's report, the responsible official shall decide upon corrective actions. In all cases in which a respondent is found to have violated the Harassment Policy, the responsible official may adopt in whole or in part the panel's recommendations for corrective action(s) or may impose any other lawful sanction(s) that the official deems appropriate, based on the panel's findings of fact. The finding itself is not subject to review by the responsible official.

After consultation with the Office for Institutional Equity, the responsible official shall explain in writing the reason(s) for imposing any sanction(s) other than those recommended by the panel. Such written explanation shall be provided to OIE and maintained with OIE's record of the case. Members of the hearing panel shall have access to a copy of the responsible official's written explanation, which shall be treated as a confidential document.

OIE shall verify that the sanction has, in fact, been imposed.

c. Appeals Process

The findings of the panel shall become final ten business days after delivery of the report on the findings unless the respondent files a written notice of appeal with the appropriate body (see 1-4 below) within that time. Appeals shall be made according to, and on the grounds allowed by, existing appeals procedures as follows:

(1) Faculty: The Faculty Hearing Committee (Faculty Handbook, Appendix N, pp. 1-2, Section III.A.8).

(2) Non-Faculty Staff: "Nonexempt Employee Grievance Procedure" (Personnel Policy Manual, D-25) or "Exempt Staff Member Dispute Resolution Procedure" (Staff Benefits Guide, Appendix A). Appeals shall go directly to arbitration.

(3) Undergraduate Students: Appellate Board procedures outlined in the Bulletin of Information and Regulations.

(4) Graduate/Professional Students: The judicial procedures of the individual schools. If no such procedures exist, the dean of the graduate or professional school to which the student belongs.

d. Record Keeping and Monitoring

Whenever there has been a finding of violation of the Duke University and Duke University Health System Harassment Policy, the responsible official will prepare a summary statement of the final disposition, which will become a part of the respondent's departmental file or disciplinary record; as such it is subject to the same rights to access, privacy, and confidentiality as other items in such files.

The Office for Institutional Equity shall maintain a file on each case in which it is aware of an evaluation of alleged harassment, whether the case has been handled through an informal or formal process. This file shall include a written statement of the final disposition of the case. The file shall be subject to the confidentiality provisions of the Harassment Policy.

designate. If the respondent is a graduate or professional student, the responsible official is the Dean of the Graduate School or the professional school to which the student belongs. If the respondent is a post-doctoral fellow, research associate, or individual not otherwise categorized above, the responsible official is the senior level officer vested with professional oversight of the area or department, or her or his designate. Respondents who are undergraduate students utilize the process within the Office of Student Conduct.