

APPENDIX W: DUKE UNIVERSITY/DUKE UNIVERSITY HEALTH SYSTEM HARASSMENT POLICY AND PROCEDURES

Harassment Policy

Effective date: 1/1/1994

Revised: 6/1/1995

Revised: 1/20/2005

Updated 10/31/2012, September 2013, April 2015, June 2016, November 2016

Administrative responsibility for implementing the Duke University Harassment Policy rests with the Office for Institutional Equity (OIE).

I. Introduction

Harassment of any individual for any reason is not acceptable at Duke University. Harassment is a form of prohibited discrimination and 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 age, color, disability, national origin, sex, gender identity, gender expression, race, religion, class, veteran status, institutional status, or sexual orientation—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.

Administrative responsibility for implementing the Duke University Harassment Policy rests with the Office for Institutional Equity (OIE). Dr. Benjamin D. Reese, Vice-President for Institutional Equity has been the Duke University Coordinator for 1) Section 504 of the Rehabilitation Act of 1973 and 2) the Age Discrimination Act of 1975. Howard Kallem, Director of Title IX Compliance, has been designated the Duke University Coordinator for Title IX of the Education Amendments of 1972. They may both be contacted at The Office for Institutional Equity, Smith Warehouse, 114 S. Buchanan Blvd., Bay 8, Durham, North Carolina 27708. You may contact them by telephone at: (919) 684-8222 or by email at ben.reese@duke.edu or howard.kallem@duke.edu.

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/>.

Note: The Duke University Sexual Misconduct Policy is applicable in cases involving sexual or related misconduct by undergraduate, graduate or professional students. This policy is administered by the Duke University Office of Student Conduct, 200 Crowell Hall, (919) 684-6938, conduct@duke.edu. This policy can be viewed at <http://studentaffairs.duke.edu/conduct/z-policies/student-sexual-misconduct-policy-dukes-commitment-title-IX>.

The Student Sexual Misconduct Policy applies to any instance in which any Duke student is alleged to have engaged in sexual or related misconduct, regardless of the complainant's or respondent's sex, gender, sexual orientation, or gender identity. The university may respond to any complaint of sexual misconduct that occurred within a student's career, from matriculation to graduation (including breaks, leaves of absence, or periods of dismissal), whether on or off campus. The disciplinary process is available as an option until an accused student graduates.

If you are a **Duke employee, faculty or physician** and have a concern or question regarding these procedures or any provision of Duke's harassment policy, you may contact OIE at (919) 684-8222, your department chair, supervisor, manager, or director or Duke Human Resources Staff and Labor Relations. In these instances, the Duke Harassment Policy would apply.

If you are a **Duke applicant for employment, applicant for admissions, visitor or patient**, there are resources to assist you with your concern or question involving harassment. You may contact the office or department with whom you directly interacted or you may contact OIE at (919) 684-8222. If you are an applicant for employment, you may also contact Duke Human Resources. If you are an applicant for admission, you may also contact the admissions office of the appropriate school. In these instances, the Duke Harassment Policy and the Duke Non-discrimination Policy would apply.

Anyone can consult directly with The Office for Institutional Equity for guidance at 919-684-8222 or at: <https://oie.duke.edu/>.

II. Definitions¹

Harassment may take two forms:

The first form of harassment is unwelcome 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.

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.

Examples of conduct that may constitute harassment include:

¹ The University and Health System adopt the definitions of harassment found in the Equal Employment Opportunity Commission (EEOC) Guidelines, the Department of Education's Office for Civil Rights and relevant U.S. federal caselaw. The Duke Harassment Policy expands upon those definitions by including, among other things, harassment on the basis of sexual orientation and gender identity.

Moreover, alleged harassing conduct may also be criminal in nature. If you believe you have been subjected to criminal behavior, you may choose to submit a report to Duke Police or a local law enforcement agency. Pursuit of a criminal complaint does not preclude appropriate and responsive University action or action pursuant to this policy.

Other University rules, policies, and manuals (e.g., the Duke University Statement of Nondiscrimination, the Duke Staff Handbook, the undergraduate Duke Community Standard guide) 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, Duke University Office of Student Affairs and/or the Office for Institutional Equity.

- *Continued unwelcomed questioning about intimate or personal matters outside the scope of work or learning*
- *Unwelcome touching or physical acts outside the scope of work or learning*
- *Unwelcome comments or jokes of a sexual or explicit nature*
- *Unwelcome comments or conduct regarding an individual's race, color, religion, sexual orientation, gender identity, age, disability, etc.*
- *Sending e-mails that contain unwelcome, extreme or persistent messages, images or language*
- *Persistently joking about an individual's age, disability, country of national origin, color, sexual orientation, religion, gender identity, etc.*

Harassment can occur outside of conduct sexual in nature. Harassment may also be verbal, non-verbal or physical and the above list is not exhaustive, but intended only to provide general examples of possible prohibited conduct. In considering whether conduct has violated the harassment policy, the totality of the circumstances is examined. Members of the Duke community are encouraged to bring specific questions and concerns to the attention of the appropriate Duke University administrator, as set forth in subsequent sections of this policy.

Allegations of sexual misconduct committed by undergraduate, graduate, and professional students (including peer-on-peer misconduct) are addressed through the Duke University Student Sexual Misconduct Policy: Duke's Commitment to Title IX. This policy may be found at: <https://studentaffairs.duke.edu/conduct/z-policies/student-sexual-misconduct-policy-dukes-commitment-title-IX>. For more information regarding this policy, you may contact Duke University Office of Student Conduct at (919) 684-6938.

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.

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. However, the Duke University Student Sexual Misconduct Policy: Duke's Commitment to Title IX is applicable in cases involving student peer-to-peer physical sexual misconduct. 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 complaints described under the Procedures for Evaluation and Resolution of Claims of Harassment under Section III ("Management of Harassment Complaints"), Subsection D ("Informal vs. Formal Process for Managing Complaints of Harassment").

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.

Individuals who have questions about the Harassment Policy or who wish to file a complaint of harassment should contact the Office for Institutional Equity, Director of Harassment Prevention, Smith Warehouse, 114. S. Buchanan Blvd., Bay 8, Box 90012, Durham, North Carolina 27708, by telephone at 684-8222 or visit the OIE website: <https://oie.duke.edu/>.

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. A complaint against a student may be filed at any time and is actionable under the university's disciplinary process up to the point the accused student graduates. For all other respondents, a complaint must be filed no 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 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 for 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.

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

Any individual who believes s/he has been subjected to harassing conduct is encouraged and has the right to seek support, utilize available resources and come forward with his/her concern or complaint. Fear of retaliation should never be an obstacle to reporting an incident of alleged harassment. The Duke Harassment Policy, as well as Title IX, Title VI and other applicable federal laws prohibit retaliation against a complainant or an individual who participates in an investigation of or follow-up to a complaint of harassment. This policy prohibits 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.

VII. 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

I. 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). However, other University and Health System personnel are also available to provide consultation and assistance. For example, Human Resources Staff and Labor Relations representatives, as well as department managers, directors and supervisors can assist employees. Academic department chairs, school deans and academic advisors can work with faculty and students in providing guidance about responding to situations that may constitute harassment. **Harassment Prevention Advisors**, who are trained by OIE, are available to assist students with harassment and/or Title IX concerns. The names and contact information for Harassment Prevention Advisors are available on the OIE website (<https://oie.duke.edu/>).

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. Some forms of harassment may also be criminal in nature. A complainant may choose to utilize the complaint handling processes below, report the alleged conduct to Duke Police and/or local law enforcement or both. Any internal process proceeds without regard to an external process unless University Counsel instructs otherwise.

II. Informal Resolution

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 “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 should cease.
2. **Intervention by Supervisor.** The complaining party may contact an individual with supervisory authority and request assistance in addressing the behavior.
3. **Intervention by Harassment Prevention Advisors (HPAs).** A student may contact the Office for Institutional Equity (OIE) and request the intervention of an HPA or contact an HPA directly to assist with the offending conduct.

4. **Facilitated Conversation or Mediation.** A complainant may contact the Office for Institutional Equity (OIE) and request the assistance of a facilitator or mediator.

Note: Allegations of sexual assault cannot be addressed through the informal resolution process.

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, 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 should be consulted with in any case involving a complaint of harassment.

III. Management of Harassment Complaints

A. Filing a Complaint

1. By an individual

This process begins with the filing of a complaint. The complaint may be submitted to several resources, including OIE, HR Staff and Labor Relations, your department supervisor, manager or director. Students who wish to file a complaint may contact OIE, their department chair, school dean, academic advisor, an HPA or the Office of Student Conduct. If a complaint is filed with any Duke office, department or school other than OIE, the respective office or department is required to convey a record of the complaint to OIE. The department is also required to communicate with OIE with respect to how it intends to respond to the complaint and convey in writing how the matter was resolved.

A complaint filed with OIE, including Title IX sexual harassment complaints, should be directed to either one of the following OIE administrators:

Director of Harassment Prevention
Office for Institutional Equity
114 S. Buchanan Blvd., Bay 8
Box 90012
Durham, North Carolina 27708
(919) 684-8222

or

Duke University Title IX Coordinator
Office for Institutional Equity
114 S. Buchanan Blvd., Bay 8
Box 90012
Durham, North Carolina 27708
(919) 684-8222

The complaint may initially be communicated either orally or in writing. In either case, the filing of the complaint will be documented in writing.²

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.³ 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 “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.⁴ 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, 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.

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.

When appropriate, the University may take interim preventive measures to insure the safety of the individual(s) submitting the complaint. These measures may be taken during the investigation or follow-up and prior to any determination regarding whether there has been a violation of the harassment policy.

Regardless of whether the informal or formal complaint handling process is used, substantive and, when warranted, procedural developments regarding an investigation will be communicated to the parties. All individuals involved in the resolution of complaints, whether through the formal or informal process, will receive training on the Policy and Procedures and on harassment standards and principles.

In cases in which the matter clearly falls outside the purview of this Harassment Policy, OIE shall make the appropriate referrals.

1. Informal Complaint Process

In the informal process for managing complaints of harassment, the Office for Institutional Equity and/or the department (in consultation with OIE) 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

² 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.

³ 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, as well as notify OIE of the possible harassment.

⁴ In certain circumstances, OIE has the discretion to extend this and other deadlines within this policy. In such cases, OIE will notify the parties of the extension.

meetings, appropriate investigation or follow-up, supervisory intervention, mediation, (although not for complaints of sexual assault), and/or education and training. The informal process shall take no longer than 45 business days from the time of the filing of the complaint; if the process will take longer, the parties will be notified (including as to the reasons for the delay). All parties will be given the opportunity to provide and to review information obtained during any investigation.

If an investigation is undertaken and there is a finding that the respondent violated the University's Harassment Policy, a recommendation regarding appropriate disciplinary action(s) will be made to a responsible official taking into consideration all of the circumstances of the current incident(s) as well as any prior admissions and/or findings of harassment. Examples of the types of remedial action that may be recommended 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/termination from the University.

After consultation with OIE, the responsible official shall explain in writing the reason(s) for imposing any sanction(s) and remedies other than those recommended. Such written explanation shall be provided to OIE and maintained with OIE's record of the case, which shall be treated as a confidential document. OIE shall verify that all sanctions have, in fact, been imposed.

In addition to the aforementioned disciplinary action, the resolution of the complaint shall include an examination by the responsible official of what actions may be taken to reasonably remedy any negative consequences flowing from a violation of the harassment policy, as well as what actions can be taken to reasonably minimize the recurrence of such conduct.

The parties will be notified in writing of the outcomes concurrently within 15 business days of the completion of the investigation, including the findings and (consistent with the Family Educational Records Privacy Act, if applicable) any sanctions and other remedial actions.

2. Formal Complaint 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.⁵

⁵The 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.

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 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 because of perceived conflict of interest, bias, or prejudice. 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.

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 be completed 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. 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 to show that the conduct at issue was substantially similar to previous and/or subsequent behavior or that the conduct at issue was part of a pattern.
- Both parties have the right to question all witnesses, subject to reasonable limits imposed by the panel. However, the parties cannot question each other directly, but must submit their questions through the hearing panel.

(4) Standard of Proof

A violation of the harassment policy must be established by a preponderance of evidence. A preponderance of the evidence standard means that in the best judgment of the hearing panel or fact-finder, more likely than not a violation of the Harassment Policy 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 and/or disciplinary 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.

In addition to the aforementioned disciplinary action, the resolution of the complaint shall include an examination by the responsible official of what actions may be taken to reasonably remedy any negative consequences flowing from a violation of the harassment policy, as well as what actions can be taken to reasonably minimize the recurrence of such conduct.

(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. Within 10 business days of receipt, 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.⁶ The Provost will be notified of the resolution of all cases involving faculty.

a. Implementation of Corrective/Disciplinary Action(s)

Within fifteen business days after receiving the panel's report, the responsible official shall decide upon and (consistent with the Family Educational Records Privacy Act, if applicable) notify the parties in writing of corrective and/or disciplinary 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.

b. Appeals Process

The findings of the panel shall become final ten business days after delivery of the report on the findings unless either the respondent or complainant 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
- (2) **Non-Faculty Staff:** Duke Staff Handbook, Dispute Resolution Process
- (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.

c. 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.

⁶If 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 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 Student Affairs Office of Student Conduct.

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.