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OFFICE OF HUMAN RESOURCES

OPERATING PROCEDURES

FOR

PROCESSING COMPLAINTS OF DISCRIMINATION AND HARASSMENT

Effective: December 1, 2018

INTRODUCTION

Without changing the substantive provisions of the University’s Equal Opportunity and Anti-Harassment Policies, or curtailing the investigatory authority of the Office of Human Resources (“OHR”), the present practice for processing discrimination complaints has been revised. This procedure is intended to provide those making decisions on discrimination complaints (the “Decisional Authority”) an opportunity to receive and review the facts and to discuss policy and other possible implications throughout to decision making. The revised process will also provide more information on procedures and rights to both (the “Responding Party”) and to those alleged who have violated University policy (the “Responding Party”). Similarly, supervisors and managers and the heads of affected operating units, such as Deans, will receive notice and an opportunity, as appropriate, to provide input into the process. It is expected that these changes to the process will also promote consistency and uniformity in the type, timing, and content of communication shared with all concerned parties. Collective Bargaining Agreements (“CBA”) will be applied as appropriate.

1. THE COMPLAINT

A complaint is an allegation of discrimination based on sex, gender identity, genetic information, gender expression, sexual orientation, race, color, religion, ancestry, national origin, marital status, disability, pregnancy, age, military status and status as a Special Disabled or Vietnam-era veteran or any other type of discrimination in violation of a University policy. For purposes of this procedure, “discrimination” has the same meaning as provided in the Civil Rights Act of 1964 as amended and construed, and by every other non-discrimination law such as the Americans with Disabilities Act, etc.

The allegation may be made by a student, staff member, or a member of the faculty, or by any other person who has been subjected to such discriminatory conduct by a member of the University community, or has been subjected to discriminatory treatment on property owned or operated by the University. Information or awareness of prohibited discrimination developed independently of a complaint may also form an independent basis for commencing a University investigation. It is the expectation that all employees will cooperate with the investigative process. The burden of proof rest with the Reporting Party.

2. RESPONSIBILITY

The following University entities shall have the responsibility for investigating complaints based on the primary status of the Responding Party:

INVESTIGATING ENTITIES

RESPONDING PARTY	OFFICE OF THE DEAN OF STUDENTS	OFFICE OF HUMAN RESOURCES
Student	X	
Student Organization	X	

Faculty		X
Staff		X
Guest/Vendor	X	X

If the Responding Party reports directly to the Board of Trustees, the Chief Human Resources Officer or designee shall have the responsibility for investigating complaints.

When complaints are by or from students involve faculty or staff, the Director of Employee Relations, Professional Development and EEO (Director ER/PD/EEO) or designee shall investigate as appropriate. The Office of the Provost shall be consulted if the complaint involves faculty or if issues involve academic freedom, academic integrity, or other issues that may involve an academic matter. The Office of Accessibility Services may be consulted if the complaint involves actual or apparent disabilities or accommodations of the same. Issues primarily involving Title IX matters will be investigated in a manner determined most appropriate. Additionally, engagement may include discussions with the University's Title IX Coordinator.

The university has an obligation to address allegations and suspected instances of discrimination/harassment when it obtains information that would lead a reasonable person to believe that the University was aware of a policy, which may have been violated.

Complaints where responding Party's involve students, who are not employees, are investigated by the Office of the Dean of Students under the Student Code of Conduct. The university may take appropriate action, including informing the accused of the allegations and pursuing an investigation even in cases when the Reporting Party is reluctant to proceed. The Reporting Party will may be notified in advance when such action is necessary.

INFORMAL RESOLUTION/INVESTIGATION

Upon receipt of a complaint, OHR shall consider whether the matter may be resolved by utilizing an informal resolution process in lieu of a formal investigation. The informal resolution process may be used if OHR determines that it is appropriate.

- A. Examples of types of informal processes or resolutions in which reports may be facilitated are:
 - 1. Informal inquiry
 - 2. Facilitated conversation
 - 3. Referral
 - 4. Mediation
 - 5. Formal investigation

In determining whether an informal resolution process is appropriate for a particular complaint, the Director of Employee Relations, Professional Development and EEO or designee shall consider the following factors:

- B. the severity of the allegation(s) and title IX/VII regulations and guidelines;
- C. whether any prior complaints/allegations have been filed;
- D. whether the alleged harm is easily reparable; and
- E. any other relevant factors consistent with the BGSU Policies.

Matters under criminal investigation and cases involving sexual violence are not eligible for the informal resolution process.

If both parties agree to attempt to utilize the informal resolution process, and OHR determines that this process is appropriate for the complaint, either the Director of Employee Relations, Professional Development and EEO or designee shall meet with the parties and determine whether an appropriate resolution can be reached. Any such resolution can include, if applicable:

- an appropriate remedy
- a plan for ensuring compliance with its terms
- a requirement of confidentiality by the parties involved

If a resolution is reached that both parties agree is appropriate, the resolution shall be reduced to writing and signed by both parties. A record of the resolution shall be kept by the OHR. If the parties are unable to reach a resolution of the complaint, then the formal investigation process shall be used to determine the appropriate resolution of the complaint

INFORMAL RESOLUTION BETWEEN EMPLOYEE AND SUPERVISOR AT THE AREA/DEPARTMENT LEVEL:

1. Employees are encouraged to bring employment disputes to the attention of their supervisor as soon as possible and may seek resolution with other appropriate individuals, including the department head.
2. Supervisors are expected to cooperate with OHR to resolve concerns brought forward by employees or subordinates.
3. The employee or supervisor may enlist OHR at any time during this process.

MEDIATION

This process shall permit the Reporting Party and the Responding Party to reach a mutually agreeable resolution prior to a formal investigatory finding.

1. Must be mutually acceptable to both the Reporting Party and the Responding Party. Investigator meets individually and/or with both, as appropriate. If compromise is reached, it must be approved by OHR, the relevant contracting office, the Vice-President in the supervisory chain, with consultation, if appropriate, with affected supervisor(s).
2. If mediation is not feasible, or if not successful within a reasonable period of time, OHR is to commence a formal investigation. OHR is to forward:

Acknowledgement of Complaint Commencement of Investigation to the Reporting Party and *Notice of Complaint* to the Responding Party and provide verbal notice to the Office of the Provost or appropriate Vice President and those in the supervisory chain, as appropriate under the circumstances.

REPORTING DISCRIMINATION OR HARASSMENT

A. Reports can be made by individuals who are directly involved in, who observe, or who reasonably believe that discrimination/harassment may have occurred. This includes allegations by third parties against members of the “university community,” which includes, but is not limited to, faculty, staff, students, student employees, volunteers, vendors, and any individual deemed to have an affiliation with the university.

B. Incident Reporting avenues may include, but are not limited to the following areas:

1. Office of Human Resources

- a) an online Maxient Discrimination/Harassment Incident Report
- b) contact the OHR by calling 419-372-8421 or visit the office located at 1851 N. Research Drive, Bowling Green, OH 43403

2. Title IX Office

- a) contact the Title IX Coordinator or Deputy Coordinators in cases of sex- and gender-based discrimination or harassment by calling 419-372-8476 or visit the office located at 111 McFall Center

2. Office of the Dean of Students (ODOS)

- a) Submitting a completed Incident report form <http://www.bgsu.edu/dean-of-students/student-conduct/report-an-incident.html>
- b) contact the Office of the Dean of Students by calling 419-372-2843 or visit the office located at 301 Bowen Thompson Student Union

C. Whenever possible, reports of discrimination/harassment should be filed within 180-calendar days of the event(s) or obtained knowledge of an event that gave rise to the complaint.

D. Filing a complaint with the university does not preclude the individual from filing a complaint with external law enforcement or other agencies, nor does it extend time limits with those agencies.

II. EMPLOYEES: MANDATORY DUTY TO REPORT

A. Any employee on BGSU’s payroll who becomes aware of information that would lead a reasonable person to believe that discrimination/harassment has occurred must notify the OHR or Office of the Dean of Students, or the Title IX Coordinator as soon as becoming aware of the information. Failure to report may result in disciplinary action. All faculty and staff employed at

Bowling Green State University are currently mandatory reporters as defined in the sexual misconduct policy [3341-2-41](#).

III. RESPONSIBILITIES FOR RESOLVING COMPLAINTS

A. OHR responsibilities:

1. Conduct investigations when the Responding Party is an employee.
2. In cases when the Reporting Party is a student, student employee, or 3rd party regarding a student, refer to the Office of Dean of Students will conduct the investigations.
2. Maintain documentation for formal investigation.
3. Provide formal investigation findings to the decisional authority who shall notify the Reporting Party and Responding Party.
4. The CHRO, separate from the fact-finder's process, is a resource to review and/or advise on appropriate action steps and/or corrective actions to the decisional authority.
5. Follow-up with decisional authority who shall be responsible for monitoring action steps and/or corrective action to ensure behavioral change and compliance.
6. Address concerns equitably, promptly and thoroughly.
7. Respect the confidentiality and reputation of all parties involved as feasible.
8. In collaboration with OHR and the Office of the Provost/Department heads, individuals may be referred to university and/or community resources such as the employee assistance program (EAP).
9. OHR investigators are neutral fact finders that has no advocacy role in the process.

B. Provost Responsibilities:

1. All reports or allegations of discrimination/harassment must be reported to OHR. In cases of sex discrimination or harassment between students, it should be reported to the Title IX Coordinator or OHR Deputy Coordinators in a timely manner.
2. Assist Deans, Chairs, Supervisors and employees when an allegation of discrimination or harassment has been disclosed, and if so, refer it to OHR. In cases of sex and gender discrimination or harassment it must be reported to the Title IX Coordinator or OHR Deputy Coordinators contact [BGCares](#).
3. Address all concerns equitably, promptly and thoroughly.
4. Respect the confidentiality and reputation of all parties involved as feasible.
5. Advise individuals of available university and/or community resources.

C. Supervisor, Chair/Director, and Faculty Member Responsibilities:

1. All reports or allegations of discrimination/harassment must be reported to OHR. In cases of sex discrimination or harassment between students, it should be reported to the Title IX Coordinator or OHR Deputy Coordinators in a timely manner.
2. Assist VPs, Deans, AVPs, Chairs, Directors, Supervisors and employees when an allegation of discrimination or harassment has been disclosed, and if so, refer it to OHR. In cases of sex and gender discrimination or harassment it must be reported to the Title IX Coordinator or OHR Deputy Coordinators contact [BGCares](#).
3. Address all concerns equitably, promptly and thoroughly.
4. Respect the confidentiality and reputation of all parties involved as feasible.
5. Advise individuals of available university and/or community resources.

D. Cases involving the collective bargaining agreement (CBA) please refer to nondiscrimination language as outlined in the agreements for faculty (Attachment 1) and police officers (Attachment 2).

IV. FORMAL INVESTIGATION

Upon receipt of a grievance/complaint/concern:

A. The investigator may discuss the following with the Reporting Party, witnesses, and Responding Party:

1. The behaviors and any related issues that gave rise to the complaint.
2. The possible policy violation under which the complaint is alleged.
3. Preponderance of evidence is the standard/burden of proof:
 - a) More likely than not.
 - b) Reasonable person standard is what a reasonable person would find offensive.
 - c) Burden of proof lies with the individual bring forth the complaint.
 - d) An employee who brings a discrimination case under Title VII must have enough evidence to make a prima facie case of discrimination.
4. There is importance in gathering facts during the investigation, and while confidentiality cannot be guaranteed, discretion will be used as best as possible.
5. Retaliation ([3341-5-37](#)) is strictly prohibited.

B. Both parties will be asked to provide written statements. A written complaint is not required if sufficient information has been provided to the investigator to allow an investigation to proceed, but it is preferred.

C. The investigator, in collaboration with the appropriate others, will determine if interim measures are necessary to prevent discrimination/harassment from occurring against the Reporting Party while the investigation is pending.

V. FORMAL INVESTIGATION PROCESS

A. The purpose of the investigation is to evaluate the allegations of discrimination/harassment, formulate a response that addresses the facts as they are determined, and follow up to ensure that the necessary action steps are completed.

The investigation process is not a discipline, but a neutral process that serves to gather and outline facts as obtained by review of allegations with parties' named directly or as potential witnesses.

Written notice will be sent to schedule an appointment to discuss allegations of policy violation. The responding party will be notified of the policy alleged to be violated and the allegation at the time scheduling a meeting occurs. The responding party will receive bullet points, and/or a copy of a written report if submitted to the university in writing, at the time of the meeting, noting some information may be redacted as necessary.

Interviews shall be conducted at a reasonable hour, preferably but not limited to the timeframe employee is working and/or under contract. In the case of an investigation meeting being scheduled, all employees (staff and faculty) are expected to participate in an investigation or questioning and shall understand that his/her refusal to answer questions or participate in such investigation, will not stop an investigation from continuing with the information received, with findings being concluded accordingly.

B. Method of investigation.

1. Interview Reporting Party
2. Interview witnesses
3. Interview the Responding Party
4. Interview other individuals as deemed appropriate
5. Gather relevant documentation evidence, which may include emails, texts, and photos, etc.
6. Other investigatory actions as may be determined by the investigator

During the investigation, the investigator may interview the parties and witnesses who have first-hand knowledge of the events and gather relevant documents. After analyzing all the information, the investigator will prepare a case report with findings.

Prior to the release of the case report, the Chief Human Resources Officer will review the report and discuss the report and findings. After this review, the case report will be delivered to the decisional authority. The decisional authority, Chief Human Resources Officer and/or designees, and other appropriate individuals will meet to discuss the findings.

C. Presence of support persons. The Reporting Party and the Responding Party may have a support person present during an investigation meeting. Although the support person may be present, the support person shall not actively participate in the meeting by, for example, asking questions, suggesting answers, etc. The support person will not be provided with documentation during or after the meeting. Should a supporting person not comply with these rules the meeting shall be ended at the investigator's discretion.

1. Notice of Support Person. A Reporting Party or Responding Party shall give reasonable advance notice to the investigator that a support person will be attending the meeting. If the identified support person is to be a union representative, the employee must notify the investigator at least 48 hours in advance. If an attorney is to attend the meeting, notification to the investigator must be at least 48 hours in advance.

D. Time period for resolution of an allegation. Investigations should be concluded within a reasonable time from the date a report is made. Many factors influence resolution timeframes, including availability and responsiveness of the charging or responding parties, witnesses and investigator schedule.

E. Preponderance of the evidence shall be the standard used when investigating complaints. The terminology that will be used in written findings will be "more likely than not" of a policy violation.

1. Findings:

- a) The findings may substantiate or not substantiate policy violation. In rare cases, an inconclusive finding may occur.
- b) The investigator will prepare a written summary of the findings.

2. Concluding the investigation.

At the conclusion of the investigation, the decisional authority will inform the appropriate Reporting Party, and Responding Party of the outcome via a PDF written report of findings.

1. Reconsideration may occur through two methods. A party may first request reconsideration of the Decisional Authority within seven (7) calendar days of notice of the decision.
 - a. A party may request reconsideration of the Decisional Authority's decision only once a request in writing and addressed to the Decisional Authority, with a copy provided to the other party. A request for reconsideration may only be based on one or both of the following:
 - i. newly discovered evidence that was previously unknown and that could affect the outcome
 - ii. irregularity in the process that affected the finding of a material fact or that could have otherwise affected the outcome.

- b. If a party fails to satisfy one of the two reasons, the Decisional Authority will decline the reconsideration and indicate to both parties that the request failed to demonstrate a basis for reconsideration. The Decisional Authority will have ten (10) calendar days from the date of receipt to respond to a request for reconsideration.
 - c. Thereafter, the disputing party may appeal to the President within seven (7) calendar days of the issuance of the decision on the reconsideration request.
 2. In lieu of asking for a reconsideration, a party may appeal directly to the President within seven (7) calendar days of notice of the decision.
 3. Notice of the decision will also advise the parties that an appeal of the findings of the Decisional Authority will be overturned only if the President determines that there was no circumstance under which a reasonable person could reach the same conclusion based on the evidence presented. The sanctions imposed in a case will not be modified unless the President determines that they are materially disproportionate to the severity of the violation or not supported by the conclusions of the Decisional Authority. In all other cases (except for those involving a recommendation for the revocation of tenure), the President's decision is non-appealable and not subject to further review.

The investigators, are neutral parties who analyze facts, they do not make final decisions about outcomes.

VI. FINDINGS

A. When the investigation is complete, the findings will be documented in writing. Findings may be more likely than not that *policy violation occurred*; or more likely than not that *policy violation did not occur*. In rare cases, an inconclusive finding may occur. The CHRO will submit the findings to the decisional authority for review. Matters that need a point(s) of clarification by the decisional authority should occur as soon as possible with the Office of Human Resources.

VII. CONFIDENTIALITY

A. The university recognizes the importance of confidentiality. To the extent possible, information received in connection with the filing, investigation, and resolution of allegations will be treated as confidential except when necessary to conduct an appropriate investigation, to provide assistance and resources to Reporting Party, to perform other appropriate university functions, or when required to do so by law. When requests for confidentiality arise, they will be evaluated by OHR. The Title IX Coordinator will be consulted in cases of student on student sex or gender-based discrimination or harassment. All individuals involved in the process should observe the same standard of discretion and respect for everyone involved in the process.

VIII. RETALIATION

A. The university will not tolerate retaliation in any form against any individual who makes an allegation, files a report, serves as a witness, assists a Reporting Party, or participates in an investigation of discrimination/harassment.

University policy, state, and federal law prohibit retaliation against an individual for reporting discrimination/harassment, or for participating in an investigation. Retaliation is a serious violation that can subject the offender to discipline, up to and including termination of employment, independent of the merits of the underlying allegation. Allegations of retaliation should be directed to OHR, Office of the Dean of Students (ODOS), or in cases of sex or gender discrimination, to the Title IX Coordinator. The university has a policy separate policy that prohibit retaliation.

IX. RECORD KEEPING

A. The OHR will maintain a written record of the investigation, and all other appropriate documents. Investigation records will be maintained in accordance with the Records Retention Schedule. When a complaint is filed outside the university, information gathered in the course of the internal investigation may be disclosed to the investigating agency.

B. Separately from the OHR process, if the decisional authority issues corrective action, a letter documenting the action should be included in the discrimination/harassment investigation file. If or when corrective action is taken by the decisional authority, the Office of Human Resources and/or the Office of the Provost as noted will have a file of the case report, letters of findings, and corrective action documents placed in the personnel file.

DEFINITIONS

For purposes of these Procedures, the following terms shall have the ascribed meanings:

Reporting Party – the individual who is the subject of alleged discriminatory, harassing, or related retaliatory action.

Discrimination – impeding the access to educational programs and activities without regard to race, sex, sexual orientation, gender identity, gender expression, color, national origin, ancestry, genetic information, pregnancy, religion, age, disability, or status as a veteran.

Harassment – any physical or verbal behavior that subjects an individual to an intimidating, hostile, or offensive, employment, or living environment.

Responding Party – the individual whose conduct is alleged to be a discriminatory, harassing, or related retaliatory action.

Retaliation – Occurs when an individual or group takes an adverse action against a person because they made good faith report of Prohibited Conduct or participated in a proceeding under University policy.

Third Party Reporter – An individual who reports alleged discrimination, harassment, or related retaliation, but is not the subject of such discriminatory, harassing, or related retaliatory action.

Witness – An individual who provides information to the University regarding alleged discriminatory, harassing, or related retaliatory action.

Decisional Authority – Responsible administrator to make determinations, based upon the material facts established to constitute a violation of policy, and if so, what sanctions are to be imposed.

Resource Links

http://www.bgsu.edu/equity-and-diversity/university-policies.html
http://www.bgsu.edu/content/dam/BGSU/equity-diversity/documents/university-policies/complaint-procedures.pdf
https://webapp.bgsu.edu/DocumentAccess/?form=OHROfficeFiles
http://www.bgsu.edu/content/dam/BGSU/equity-diversity/documents/university-policies/investigation-complaint.pdf
http://www.bgsu.edu/content/dam/BGSU/general-counsel/documents/Anti-Harassment.pdf
http://www.bgsu.edu/content/dam/BGSU/equity-diversity/documents/university-policies/racial-ethnic-harassment-policy.pdf
http://www.bgsu.edu/content/dam/BGSU/general-counsel/documents/Retaliation.pdf
http://www.bgsu.edu/content/dam/BGSU/general-counsel/documents/Sexual-Harassment.pdf
http://www.bgsu.edu/content/dam/BGSU/equity-diversity/documents/university-policies/amorous-relationships.pdf
http://www.bgsu.edu/title-ix.html
http://titleix.osu.edu/global-navigation/file-a-complaint/report/
http://policies.siu.edu/personnel_policies/chapter4/ch4-all/discrimination_sexualharassmentprocedures.html

ATTACHMENT #1

Collective Bargaining Agreement (CBA)—Faculty

In cases that involve the collective bargaining agreement (CBA) please refer to nondiscrimination language as outlined in the agreements for faculty below.

1. The University and BGSU-FA agree that they shall not discriminate nor tolerate discrimination against any Bargaining Unit Faculty Member in matters of wages, hours, terms and other conditions of employment on the basis of race, color, religion, sex, age, national origin, sexual orientation, gender identity and expression, ancestry, veteran status, military status, disability, marital status, political affiliation or any other characteristics protected by Federal or Ohio Law.
2. The University agrees that it shall not discriminate against any Bargaining Unit Faculty Member because of membership in or activity on behalf of the BGSU-FA.
3. The University and BGSU-FA will not tolerate any form of harassment based on sex, race, or any other category listed in Section 1.
4. Any Bargaining Unit Faculty Member charged with discrimination or harassment by the University is entitled to due process through the discipline procedure (Article 12)
5. Any Bargaining Unit Faculty Member who believes he or she has been discriminated against or harassed on the basis of categories covered by the BGSU Office of Human Resources may seek relief through procedures and policies implemented by the Office of Human Resources before seeking relief through (and without waiving the right to file) a grievance under the terms of this Agreement. Nothing in this Article shall preclude any Bargaining Unit Faculty Member from protecting his or her rights to be free from unlawful discrimination pursuant to any state or federal law, which addresses discrimination, directly, and without resort to the Grievance and Arbitration Procedures contained in this Agreement.

ATTACHMENT #2

Collective Bargaining Agreement (CBA)—Police Officers

In cases that involve the collective bargaining agreement (CBA) please refer to Article 3 nondiscrimination language as outlined in the agreements for police officers

1. It is the intention of the parties that the Agreement shall be administered and interpreted in accordance with laws relating to discrimination on the basis of age, disability, handicap, national origin, race, creed, color, religion, or sex.
2. All references to employees in this Agreement designate both sexes, and wherever gender is used, it shall be construed to include both male and female employees.
3. Neither party shall interfere with, restrain, coerce or otherwise discriminate against any employee in the bargaining unit for exercising his/her right to join or not to join the Union.

BEST PRACTICES RESOURCES

American Association for Access, Equity and Diversity

Complaint Processing, Counseling and Resolution Certification (*certified training course*)

<https://www.aaaed.org/aaaed/default.asp>

College and University Professional Association for Human Resources (CUPA-HR)

<https://www.cupahr.org/knowledge-center/sexual-harassment-resources/>

Society for Human Resource Management (*resources section, membership required*)

<https://www.shrm.org/>

Indian University Purdue University Indianapolis

<http://www.indiana.edu/~affirm/cg.shtml>

Kent State University

<https://www.kent.edu/hr/compliance-eoaa>

<https://www.kent.edu/policyreg/administrative-policy-and-procedures-regarding-complaints-unlawful-discrimination-and>

Owens Community College

<https://cdn.owens.edu/trustees/procedures/proc3358-11-4-17.pdf>

The Ohio State University

<http://titleix.osu.edu/global-navigation/file-a-complaint/report/>

Southern Illinois University

http://policies.siu.edu/personnel_policies/chapter4/ch4-all/discrimination_sexualharassmentprocedures.html

The University of Notre Dame

<https://equity.nd.edu/equity-resources/sexual-and-discriminatory-harassment/policy/investigations/>

University of Michigan

<http://spg.umich.edu/policy/201.89-1>