

**DISCRIMINATION and HARASSMENT COMPLAINT PROCEDURES for STUDENT
RESPONDENTS - AD91
[Excluding Sex and Gender-Based Complaints]**

Generally, a complaint filed under another University policy cannot also be addressed under this Policy. Individuals must choose between the different complaint processes available to them.

Allegations of Discriminatory Misconduct, as defined in the Student Code of Conduct, against a student respondent, excluding sex and gender-based discrimination and harassment, are resolved in accordance with the procedures set forth herein. Should there be a conflict between the Code and these procedures, the AD91 policy and these procedures will supersede the Code.

Allegations of Discriminatory Misconduct for sex and gender-based harassment, against a student respondent, are resolved in accordance with the procedures set forth in AD85, Title IX Policy. Should there be a conflict between the Code and those procedures, the AD85 policy and procedures will supersede the Code.

Procedures

A. Reporting

Individuals who experience potential violations of Policy AD91 are encouraged to promptly file a complaint with the Office of Equal Opportunity and Access (OEOA). When a student is the respondent, the Chief Ethics and Compliance Officer in the Office of Ethics and Compliance will be responsible for intake and adjudication. Hereinafter “CECO” shall refer to the Chief Ethics and Compliance Officer and any individual assigned by the Chief Ethics and Compliance Officer as their designee.

Supervisors, faculty, and University administrators who receive or become aware of a complaint of conduct in violation of this Policy are encouraged to report it to OEOA for submission to OEC if the respondent is a student. This does not apply to confidential resources on campus, such as CAPS, UHS, R-VOICE, and University Chaplains.

The CECO will review any anonymous complaints OEC receives. However, OEC may not be able to investigate an anonymous complaint unless sufficient information is furnished to enable it to conduct a meaningful and fair investigation.

B. Timeliness

Complaints must be made within ninety (90) days of the incident(s) or the last occurrence of the behavior, in cases where continuing behavior is alleged. The CECO may waive the time limit upon a showing of good cause.

C. Initial Assessment

Written complaints are encouraged but not required. If a verbal complaint is made, the CECO will prepare a written statement of the allegations, and the Complainant will be required to

acknowledge its accuracy in writing. The CECO will acknowledge receipt of the complaint by sending a notification letter or contacting the Complainant directly within five (5) Days of receipt. Prior to the initial assessment, the CECO will hold an initial intake meeting with the Complainant, which may take place in person, by telephone, or via live technology, to understand the nature and circumstances of the complaint and to provide the Complainant with information about resources, procedural options, supportive measures, and an opportunity to discuss the applicable policy and procedures. The CECO will then conduct an initial assessment of the complaint to determine whether the complaint should be investigated and will consider the Complainant's request that the complaint be investigated or not investigated. The CECO will then notify the complainant whether:

- the complaint is appropriately filed with the correct office;
- the complaint has previously been filed under another University policy;
- the complaint is suitable for alternative resolution; and
- the allegations, if true, would constitute a Policy violation.

If it is determined that the complaint is not appropriately filed with the correct office, the Complainant will be informed of the reason and the CECO may inform the Complainant of other possible avenues of redress, such as contacting the Bias Response Network (BRN), or the Office of Student Accountability and Conflict Resolution (OSACR).

D. Alternative Resolution Process

When determined appropriate by the CECO, the Complainant may elect to resolve a complaint through Alternative Resolution. The purpose of Alternative Resolution is to resolve the complaint by conference and conciliation. The CECO shall document efforts to resolve the complaint and whether or not those efforts were successful. When Alternative Resolution is successful, the CECO shall summarize the resolution in writing, have it signed by the parties, and provide signed copies to the respective parties and support persons, as appropriate. The CECO will also monitor implementation of the resolution agreement and/or close the case. When Alternative Resolution does not succeed within forty-five (45) Days of the date the complaint is filed, the CECO will cease that process and begin the investigation process.

E. Standard of Review

In making the determination of whether a Policy violation has occurred, the standard of review is "preponderance of the evidence," which means it is more likely than not that a Policy violation occurred.

F. Investigations

1. Notice of Allegations and Investigation (NOAI)

The investigator will send both parties a "Notice of Allegations and Investigation" which will include:

- a. A reasonably detailed description of the alleged behavior including the names of relevant parties, description of the alleged offending behavior(s) and the date, time, and locations of the incident(s), if known.
- b. A statement apprising the parties of their opportunity to present relevant facts and witnesses. Both parties will have an equal opportunity to present information to the investigator, including the names of witnesses and other relevant information.
- c. The range of possible sanctions and remedies.
- d. The bases for appeal and procedures associated with the appeal process.
- e. A statement regarding the University Policy prohibiting Retaliation (See Penn State Policy AD91).

Within five days of receipt of the Notice of Allegations and Investigation, both parties shall provide the CECO written notice of their Support Person's name and contact information, if the parties have chosen to include a Support Person in the process. Once designated, a Support Person may attend meetings and be copied on communications. They are not permitted to act or speak on behalf of the Party, serve as a Witness in the same matter, or disrupt any meetings. A Support Person may be required to leave a meeting, including the Administrative Hearing, if the Support Person engages in unreasonable, disruptive, harassing, or retaliatory behavior.

In all cases, the Respondent is presumed to be not responsible for the alleged conduct unless and until a determination is made of responsibility at the conclusion of the grievance process.

At any point during the investigation and up to the date and time of the administrative hearing (if the CECO convenes a hearing), the Respondent is allowed to accept responsibility for the alleged Prohibited Conduct. If the Respondent accepts responsibility, the Respondent will be deemed "in violation," and the Senior Director of OSACR will impose disciplinary action in accordance with the provisions of the Code of Student Conduct. The Complainant will be provided with notice that the Respondent has accepted responsibility.

2. Expectation of Cooperation

Absent good cause, all parties and identified witnesses shall cooperate during the investigation by being available during reasonable business hours to discuss the complaint and by making available any relevant information requested by the investigator.

3. False Information

Anyone who knowingly files a false complaint under this Policy or who knowingly provides false information to the investigator or CECO during an investigation will be subject to appropriate disciplinary action.

4. Upon the initiation of an investigation, the Complainant and Respondent have the following rights under this Policy:
 - both parties have a right to an impartial investigation;
 - both parties have a right to produce relevant documents, witnesses, and other material they would like the investigation to include; and
 - both parties may have a support person of their choice present to provide advice during the investigative interview and administrative hearing (if applicable); however, the support person may not speak or act on behalf of the party.

An investigation does not begin until a formal Notice of Investigation has been issued. The CECO will assign an investigator who will conduct an adequate, reliable, and impartial investigation of the complaint. As part of the investigation, the investigator will interview the Complainant and the Respondent and any other available relevant witnesses and review available relevant documents.

The investigator has the discretion to determine which parties and witnesses to interview, and the order of party and witness interviews. The investigator also determines the relevance of any proffered information or evidence.

If a party believes that any individual involved in the investigation process, such as the investigator, has a conflict of interest or bias, the parties should contact the CECO immediately upon discovery of the issue, via email at [Amber Leigh Grove](#). Any request must include a description of the conflict or bias. If the CECO determines that a conflict of interest or bias may exist, the CECO will take steps to address the conflict or bias in order to ensure an impartial process.

5. Written Investigative Report

The investigator shall complete a written report that fairly summarizes their investigation, including: (1) a summary of the allegations; and (2) evidence reviewed, including relevant documents and information from the parties and witnesses. The parties will have five (5) days to review the investigative report and provide one (1) written response if they choose to do so before the investigator sends the report to the CECO.

6. Investigation Timeline

The investigator seeks to complete an investigation within sixty (60) Days and the CECO may extend the time frames set forth in this Policy for good cause. Exceptions to this timeframe may vary depending on the complexity of the investigation, access to relevant parties, and the severity and extent of the alleged Discrimination.

G. Administrative Hearing

Within five (5) days of receipt of the investigative report, the CECO will schedule an administrative hearing to determine whether the Respondent is responsible for a violation of Policy AD91.

The administrative hearing is an administrative proceeding not comparable to a criminal or civil trial. Rather, it is a meeting with the CECO to discuss the matter and provide a formal response to the allegations. The opportunity to attend a meeting, including the Administrative Hearing, is satisfied by the opportunity to appear virtually.

Following the administrative hearing, the CECO may conduct additional investigation as they deem appropriate. If new information is gathered, an opportunity to respond will be provided to the parties to that new information before the final determination is made.

Participation: The administrative conference is not open to the public. Generally, the only individuals who may attend are the Respondent, the Support Person of the Respondent, the CECO, and other individuals the CECO deems necessary, such as for logistical support. If the Respondent receives Notice of the administrative conference and does not appear for the conference, the conference will proceed without the Respondent. A Support Person may not appear without, or on behalf of, the Respondent.

Live Hearing: When the Respondent may be subject to suspension or expulsion, the Respondent may elect to have their Administrative Hearing conducted as a live hearing. The following only applies to an Administrative Hearing when it is a live hearing:

- When there is a Complainant, they are permitted to participate in the Administrative Hearing.
- When a Complainant chooses to participate in the Administrative Hearing, the Parties may submit questions, in writing, to be posed to the other. Questions which are deemed relevant will be asked by the CECO.
- The Parties may ask questions of any Witness who chooses to attend the Administrative Hearing.
- Specific protocols and rules of decorum for the live hearing are provided to Parties and other participants in advance of the Administrative Hearing.

Digital Recording: Generally, the Administrative Hearing will be audio and/or video recorded by the University. When a recording is created, it shall be the sole property of the Pennsylvania State University. No other person (including the Respondent, a Complainant, a Witness, and/or a Support Person) is permitted to record any part of the Administrative Hearing.

H. Letter of Finding

If the Respondent is found responsible, the CECO will send a copy of the Letter of Finding to the Director of OSACR, for the purpose of imposing disciplinary action in accordance with the provisions of the Code of Student Conduct. The Director of OSACR will levy sanctions and notify the CECO of the sanctions within five (5) Days of receipt of the Letter of Finding.

Within two (2) days of receipt of the sanctions, or as soon as possible thereafter, the CECO then will issue the *Notice of Outcome* to the parties.

I. Confidentiality and Privacy

The University makes every effort to protect the privacy of individuals who participate in the investigation process, including witnesses. OEC cannot guarantee confidentiality or anonymity to anyone participating in the investigation process, including Complainants and Respondents. Information related to a complaint under this Policy will only be shared with those individuals who need to know in order to assist in the assessment, investigation, or resolution of the complaint.

J. Appeal

The Complainant and/or Respondent may appeal the finding and/or sanction(s) within five (5) Days of the date of receipt of the *Notice of Outcome* by submitting to the CECO at [Amber Grove](#) a written appeal that includes the stated grounds. The scope of the appeal is limited to the grounds set forth below. Mere dissatisfaction with the finding is not a valid basis for appeal. If an appeal is received by the CECO, the other party will be notified and given five (5) Days from the date of receipt of that notice to respond by submitting a written statement to the CECO at alg6440@psu.edu. All appeals and responses shall include the case name, number, and the party's name and contact information. Appeals filed by more than one party will be considered together in one appeal review process. All appeal documents submitted by a party will be shared with the other party.

If neither party submits an appeal, the decision will be considered final five (5) Days after the last date either party received the *Notice of Outcome*. Appeals submitted after five (5) Days shall be denied, except upon a showing of good cause.

Grounds for Appeal

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility was made has come to light that could affect the outcome of the matter;
3. The sanction(s) imposed was/were not justified by the nature of the violation.

Review

The appealing party has the burden of proof, and the standard of proof is preponderance of the evidence. Appeals are not intended to allow for a review of the entire investigation, with the exception of new evidence, as referenced above. The appellate review will be based on the written record; parties are not entitled to a hearing or meeting with the reviewing administrator or designee.

The appeal officer for undergraduate students is the Associate Vice President for Undergraduate Education or their designee.

The appeal officer for graduate students is the Vice Provost for Graduate Education and Dean of the Graduate School or their designee.

Outcome

Upon receipt of the appeal and response, the CECO will forward them to the respective appellate officer. Within five (5) Days, the appellate officer will issue a written determination stating whether the Appeal was granted or denied, including a summary of its rationale (the “Appeal Outcome”). The Appeal Outcome shall either:

- affirm the finding,
- overturn and reverse the finding, or
- remand the case back to the CECO with specific directions to reconsider the finding.

The decision of the appellate officer or designee as set forth in the Appeal Outcome shall be final. The appellate officer shall forward a copy of the Appeal Outcome to the CECO via email at [Amber Grove](#). Within five (5) days of receipt, the CECO will forward a copy of the Appeal Outcome to the parties and Director of OSACR (only if the appeal decision affected the disciplinary outcome).

K. Records Retention

The CECO will maintain the records relating to the investigation. OSACR will maintain any disciplinary records in accordance with the University’s records retention schedule.