



OLD DOMINION UNIVERSITY

University Policy

Policy #1005 DISCRIMINATION POLICY

Responsible Oversight Executive: Vice President for Human Resources
Date of Current Revision or Creation: August 6, 2021

A. PURPOSE

The purpose of this policy is to establish uniform guidelines in order to promote a work and education environment that is free from harassment and discrimination, as defined below, and to affirm the University's commitment to foster an environment that emphasizes the dignity and worth of every member of the Old Dominion University community. This policy also details the process to address complaints or reports of retaliation, as defined by this policy.

B. AUTHORITY

[Code of Virginia Section 23.1-1301, as amended](#), grants authority to the Board of Visitors to make rules and policies concerning the institution. Section 7.01(a)(6) of the [Board of Visitors Bylaws](#) grants authority to the President to implement the policies and procedures of the Board relating to University operations.

[Title IX of the Education Amendments of 1972](#)

[Title VII of the Civil Rights Act of 1964](#)

[Title VI of the Civil Rights Act of 1964](#)

[Equal Pay Act of 1963](#)

[The Age Discrimination in Employment Act \(ADEA\)](#)

[Americans with Disabilities Act \(ADA\)](#)

[Section 504 of the Rehabilitation Act of 1973](#)

[The Genetic Information Nondiscrimination Act of 2008](#)

[Virginia Governor's Executive Order Number One \(2018\) - Equal Opportunity](#)

[Virginia Department of Human Resource Management Policy 2.35 - Civility in the Workplace](#)

[Board of Visitor Policy 1001 – The Mission of the University](#)

[Board of Visitor Policy 1012- Resolution Adopting Executive Order Number One \(2018\) “Equal Opportunity”](#)

C. DEFINITIONS

Administrative Leave – Leave granted with the approval of Human Resources to cover periods of investigation of wrongdoing and to provide paid leave during the time management renders a decision on investigative results.

Complainant - A University community member or visitor who files a complaint under this policy.

Complaint - The written document or verbal statement of alleged facts used to initiate action under this policy.

Complaint Commencement Date - The date on which the complainant provides a written complaint or a verbal statement that includes a statement of alleged facts describing the offense.

Consensual Relationship – Two or more individuals (including spouses and partners) involved by mutual consent in a romantic, physically intimate, and/or sexual relationship.

Day - A business day. When the end of a specified period of days falls on a day when classes are not scheduled, that period shall be deemed to end on the next scheduled class day. (Example: A specified time period will not end during spring break or on any day between the end of the last summer session and the first scheduled class day of the fall semester. The specified time period will be continued until the next official class day.)

Discrimination - Inequitable and unlawful treatment based on an individual's protected characteristics or statuses – race (or traits historically associated with race including hair texture, hair type, and protective styles such as braids, locks, and twists), sex, color, national origin, religion, age, veteran status, sexual orientation, gender identity, pregnancy, genetic information, political affiliation, marital status, disability, or any other status protected by law -- that excludes an individual from participation in an educational program or activity, denies the individual the benefits of an educational program or activity, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in an educational program or activity. Discrimination does not have to include intent to harm or involve repeated incidents.

Harassment - A form of discrimination in which unwelcome verbal, written, or physical conduct is directed toward an individual on the basis of his or her protected characteristics or statuses by any member of the University community. Harassment does not have to include intent to harm or involve repeated incidents. Harassment violates this policy when it creates a hostile environment, as defined below or when enduring the conduct becomes a condition of continued employment.

Hostile Environment - May be created by unwelcome conduct that is sufficiently severe, persistent or pervasive and objectively offensive that it interferes with, limits or denies the ability of an individual to participate in or benefit from educational programs, services, opportunities, or activities or the individual's employment access, benefits or opportunities. Mere subjective offensiveness is not enough to create a hostile environment. In determining whether conduct is severe, persistent or pervasive and thus creates a hostile environment, the following factors will be considered: (a) the degree to which the conduct affected one or more individuals' education or employment; (b) the nature, scope, frequency, duration, and location of the incident(s); (c) the identity, number, and relationships of persons involved; and (d) the perspective of a "reasonable person" in the same situation as the person subjected to the conduct. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of a violation.

Respondent - An employee, student or affiliate of the University or visitor against whom a complaint under this policy is filed.

Retaliation - Overt or covert acts of discrimination, harassment, interference, intimidation, penalty, reprisal or restraint against a group or individual exercising rights under this policy or cooperating in an investigation of complaints under this policy. Retaliation shall be deemed to constitute harassment and, therefore, will be considered a separate violation of this policy.

Sexual Harassment - A form of discrimination based on sex. It is defined as unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature including: verbal (e.g., specific demands for sexual favors, sexual innuendoes, sexually suggestive comments, jokes of a sexual nature, sexual propositions, or sexual threats); non-verbal (e.g., sexually suggestive emails, other writings, articles or documents, objects or pictures, graphic commentaries, suggestive or insulting sounds or gestures, leering, whistling, or obscene gestures); or physical (e.g., touching, pinching, brushing the body, any unwelcome or coerced sexual activity, including sexual assault). This conduct is sexual harassment when it constitutes a term or condition of employment and/or hostile environment as described above. Sexual harassment can involve persons of the same or different sexes. Sexual harassment may also include sex-based harassment directed toward stereotypical notions of gender identity or a failure to conform to those gender stereotypes.

The types of sexual harassment prohibited by this policy are (1) Term or Condition of Employment (often referred to as "quid pro quo" harassment), which occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity are conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a University program or activity; and (2) Hostile Environment, which occurs when verbal, non-verbal and/or physical conduct is sexual and/or based on sex, gender, gender identity or sexual orientation (actual or perceived), and is sufficiently severe, persistent or pervasive and objectively offensive that it interferes with, limits, or denies the ability of an individual to participate in or benefit from the educational programs, services, opportunities, or activities or the individual's employment access, benefits or opportunities. Mere subjective offensiveness is not enough to create a hostile environment. In determining whether conduct is severe, persistent or pervasive and thus creates a hostile environment, the following factors will be considered: (a) the degree to which the conduct affected one or more individuals' education or employment; (b) the nature, scope, frequency, duration and location of the incident(s); (c) the identity, number and relationships of persons involved; and (d) the perspective of a "reasonable person" in the same situation as the person subjected to the conduct. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of a violation.

D. SCOPE

This policy applies to conduct on property owned, leased or controlled by the University involving students, employees, employees of affiliated organizations who are paid through the University, visitors to the institution, contractors working on campus who are not University employees, and students and employees participating in University-sponsored activities. Students include all persons admitted to the University who have not completed a program of study for which they were enrolled; student status continues whether or not the University's programs are in session. Employees include all staff, administrators, faculty, full- or part-time, and classified or non-classified persons who are paid by the University. Affiliated organizations are separate entities that exist for the benefit of the University through and operating agreement and include the Foundations, the Community Development Corporation, and the Alumni Association. Visitors

include, but are not limited to, vendors and their employees, parents of students, volunteers, guests, uninvited guests and all other persons located on property owned, leased or otherwise controlled by the University. This policy also is applicable to any conduct that occurs on non-University property that has continuing effects that create a hostile environment on campus. To the extent that the alleged conduct would satisfy the definition of sexual harassment under both this policy and the Policy on Title IX, the Policy on Title IX will supersede this policy for resolution of complaints and reports of such alleged conduct.

To the extent that this policy incorporates certain provisions of Virginia's Civility in the Workplace Policy, conduct that violates those provisions and that occurs outside of the workplace may be grounds for disciplinary actions, up to and including termination, when the conduct has a sufficient nexus to the workplace or the University's operations, services, or reputation.

E. POLICY STATEMENT

The University is committed to promoting a work and education environment that is free from harassment and discrimination based on race, sex, color, national origin, religion, age, veteran status, sexual orientation, gender identity, disability, pregnancy, political affiliation, marital status, and genetic information, or based on any other status protected by law. The University will take steps to prevent recurrence of harassment and/or discrimination when incidents occur, remedy any discriminatory effects on the complainant and others (including measures to protect other students, if appropriate), and address complaints or reports of retaliation.

F. PROCEDURES

The Role of the Office of Institutional Equity and Diversity (OIED)

The OIED serves as an impartial resource for the resolution of concerns and complaints under this policy. Therefore, the OIED does not serve as an advocate for either the complainant or the respondent. The OIED will explain to all identified parties the procedures outlined below, including confidentiality. The OIED will provide all identified parties with information regarding the complaint procedure, including the availability of informal resolution options.

The OIED will explain to all involved parties the process of a prompt, reliable, and impartial investigation, including the opportunity for both the complainant and respondent to review and respond to the allegations, identify witnesses, provide other evidence, and review and/or respond to evidence. The OIED will explain to all identified parties the right to have a personal advisor present. Personal advisors may only advise their party and may not participate directly in the complaint process. For instance, advisors may not make oral or written argument or speak on behalf of the party. Finally, OIED will explain to the parties and witnesses that retaliation for reporting alleged discrimination or harassment or participating in an investigation of an alleged violation, is strictly prohibited and that any retaliation should be reported immediately and will be addressed promptly.

Complaints and Reporting

Complaints of discrimination and harassment should be made to the OIED. The OIED is responsible for overseeing the investigation of all complaints and reports of alleged discrimination, harassment, and retaliation and is trained to help individuals who file complaints find resources, investigate complaints, and informally resolve matters as appropriate. Complaints under this policy can be filed by using the online [complaint form](#).

An individual who is no longer a member of the University community or a visitor, but who was a

member or a visitor when at least a substantial portion of the alleged wrongful behavior occurred, is eligible to file a complaint. A complaint filed by a complainant who has no further connection with the University, or against a respondent who has no further connection with the University, may be dismissed by the OIED if the University has no means to take appropriate steps to eliminate the discrimination/harassment, prevent its recurrence, or address its effects.

Complainants are encouraged to report matters to the ODU Police Department or local law enforcement in instances involving a possible criminal violation and will not be dissuaded by the University from doing so at any time. The University also strongly encourages all individuals who may witness or otherwise know of a suspected violation of this policy to report it to the appropriate University official.

Anonymous complaints may also be filed by using the [complaint form](#) which can be submitted online or hand-delivered. Complaints may also be initiated by scheduling a meeting with an OIED investigator and providing a verbal statement. Nevertheless, individuals who believe they have been the subject of conduct in violation of this policy are encouraged to make detailed written statements of the facts, including the name(s) of the offending individual(s) and any witness(es), promptly after an incident. It is a violation of this policy for a student or an employee to interfere with an individual's right to file a complaint under this policy.

Complainants will be contacted within three business days after the date of the complaint or report by a member of OIED. Third-party reporters will be contacted as necessary to gather additional information.

Criminal Reporting and Coordination

The OIED will make all complainants aware of the right to also file a report with the Old Dominion University Police Department (ODUPD) or local law enforcement agency in cases involving potential criminal activity. The University will comply, to the fullest extent legally permissible, with all requests by the ODUPD or local law enforcement for cooperation in investigations. Such cooperation may require the OIED to briefly suspend the fact-finding aspect of a TIX investigation detailed in the procedures below while the ODUPD or the local law enforcement agency gathers evidence. The OIED will promptly resume any investigation once the University is informed that the ODUPD or local law enforcement has completed the evidence-gathering phase of the criminal investigation. Otherwise, the OIED's investigation will not be altered or precluded on the grounds that criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

Confidentiality, Privacy, and Anonymity Requests

Every effort will be made to respect and safeguard the privacy interests of all individuals involved in a manner consistent with the need for a careful assessment of the allegation and any necessary steps to eliminate the conduct, prevent its recurrence, and address its effects. Information related to a report or complaint under this policy will only be shared with those individuals who need to know in order to assist in the active review, investigation, or resolution of the concern. While not bound by confidentiality, these individuals must be discreet and respect the privacy of all individuals involved in the process. OIED may be limited in the ability to investigate an anonymous complaint unless sufficient information is furnished to enable the OIED to conduct a meaningful and fair investigation.

If the complainant requests confidentiality, anonymity, or that an investigation not be conducted, the University may be limited in the actions it is able to take and its ability to respond while

respecting the request. The OIED will take all reasonable steps to respond to the complaint consistent with the request.

Timely Warnings

The University is required by Federal law to issue timely warnings for reported incidents that pose a substantial threat of bodily harm or danger to members of the University community. The University will ensure [to every extent possible] that a victim's name and other identifying information is not disclosed, while still providing enough information for members of the University community to make decisions to address their own safety in light of the potential danger. For more information on Timely Warning see [University Policy 3012 - Safety and Security Policy](#).

Consensual Relationships

Employees, whether faculty or staff, shall not engage in a consensual relationship with students when the employee has a “position of authority” with respect to the student in such matters as teaching or otherwise evaluating, supervising, advising, or coaching a student as part of a University program or employment situation. Likewise, a supervisor and an employee shall not engage in a consensual relationship. The University views such relationships as a conflict of interest. Employees have a duty to comply with the University’s Conflicts of Interest policy.

A faculty member or graduate assistant who enters into a consensual relationship with a student or supervisor who enters into a consensual relationship with an employee where a “position of authority” exists should be aware that, if a charge of sexual harassment is subsequently filed, it will be exceedingly difficult to prove a defense on the grounds of mutual consent.

If conduct of a sexual nature has occurred or is occurring in an apparently consensual relationship, and, if a complaint of sexual harassment regarding such conduct is filed by the student against the faculty member or graduate assistant, or by the employee against the University official, then sexual harassment shall be presumed in such cases when:

1. The relationship is between a faculty member or graduate assistant and a student and:
 - a. The faculty member or graduate assistant is in a position to determine the student’s grade or otherwise affect the student’s academic performance or advancement; and
 - b. The relationship began after the faculty member or teaching assistant was in such a position.
2. The relationship is between an employee and a University official who is in a position to supervise the employee or otherwise influence the conditions of the employee’s work, and the relationship began after the supervisor was in such a position.

Informal Resolution Procedure

1. Informal Discussion: The OIED shall encourage an employee or student who has a complaint of alleged discrimination or harassment to discuss the complaint with the individual who took the action that is the basis for the complaint.
2. Informal Resolution: Both parties to the complaint shall attempt to effect a resolution of the complaint through informal discussions. The OIED may advise parties of informal resolution options and may facilitate resolution of the complaint or report.

3. The complainant may request, at any time during the informal process, to proceed with a formal complaint, as described below.

Although there are no time limitations for filing a complaint, the passage of time may impact the University's ability to investigate and/or resolve the complaint.

Formal Resolution Procedure

1. A formal complaint may be submitted either in written format or through a verbal interview of the complainant. The complainant is not required to submit a written complaint to the OIED to commence an investigation. In the case of a reported concern by a third party, a member of the OIED's staff will contact the third party and they will be instructed to refer the alleged victim to the complaint process. The complaint may be supplemented by additional supporting documents, evidence, recommendations for witnesses to be interviewed during the course of the investigation. The complainant must also disclose if a formal complaint has been filed with another university, State, or Federal entity for the same offense.
2. The OIED also will confirm that the matter involves an alleged violation of this policy, thereby conferring jurisdiction to the OIED. If it is determined that the OIED does not have jurisdiction, a referral will be made to the appropriate on-campus or off-campus resources to address the issues.
3. A formal complaint will be assigned to an investigator from the OIED's staff, and co-investigators may be assigned as appropriate. Externally trained investigators may be assigned in certain cases if appropriate. All investigations of complaints alleging violations of this policy shall be overseen by the Director of Equity and EO/AA.
4. The OIED will discuss the complaint with the complainant and the respondent as appropriate, including providing information about the formal investigation procedure and resources. The OIED will explain to the parties that each has the opportunity to provide evidence and to suggest witnesses to be interviewed during the course of the investigation.
5. The OIED will advise each party that they have the right to an advisor and that neither party's advisor will be permitted to speak to participants other than quietly to the advisee in any process. Advisors violating this requirement may be asked to leave or refrain from participation. The advisor is not permitted to question witnesses or make oral or written argument on behalf of the party being advised. If lawyers or other advisors are permitted in any stage of the proceedings, they must be permitted equally for both parties.
6. The investigator(s) will consider whether involvement of other University administrators is appropriate.
7. The investigator(s) will conduct a prompt, adequate, reliable, and impartial investigation of the complaint. All parties will be notified of the expected time frame.
8. Both the complainant and respondent will have the same opportunity to review and respond to evidence obtained during an investigation before the investigation reports are released. The University shall strive to make the process transparent and fair to all parties.
9. The investigator(s) shall prepare a written investigation report fairly summarizing the relevant evidence. The report shall be provided to both the complainant and the respondent concurrently.

10. Reporting the Investigation Results:

- a. In the case of a student respondent, once the investigation is completed, the investigation report shall be provided to the Office of Student Conduct and Academic Integrity for evaluation and determination of responsibility.
 - b. In the case of a faculty member respondent, once the investigation is completed, the investigation shall be provided to the Provost or designee for evaluation and determination of responsibility.
 - c. In the case of all other employees, once the investigation is completed, the investigation report shall be provided to the respective Vice President or designee for evaluation and determination of responsibility.
11. Determinations of responsibility under this policy shall be made using the preponderance of the evidence standard. Preponderance of the evidence means that it is more likely than not, or greater than 50%. The parties will be informed in writing of the determination within 15 business days from the issuance of the investigation report. The written determination should include a rationale explaining the reason(s) for the decision. The OIED shall be provided a copy of the written determination.

Appeals

1. General Considerations: The parties must have an equal opportunity to present relevant information in the appeals.
2. A complaint involving a student as respondent may be appealed by either party as allowed by the [Code of Student Conduct](#).
3. A complaint involving a faculty member, Administrative and Professional (AP) faculty member, or classified employee as respondent may be appealed to the OIED within 15 business days from issuance of the written determination of finding on the following bases:
 - a. There is new evidence that may change the outcome of the case.
 - b. There was a conflict of interest in either the investigation or the determination of responsibility that affected the outcome of the case.
 - c. There was a procedural inconsistency in either the investigation or the determination of responsibility that affected the outcome of the case.

The Director of Equity and EO/AA will designate an appellate officer to make a final determination on appeal.

4. This policy does not amend any rights that inure to employees arising from Board of Visitor or University policies or the policies of the Commonwealth of Virginia (i.e., Grievance Policies).

Sanctions

1. Sanctions for students will be determined in accordance with student regulations and policies. Sanctions may include, but are not limited to, disciplinary penalties described in the [Code of Student Conduct](#), suspension or dismissal/ expulsion.
2. Sanctions for teaching and research faculty will be determined by the Provost in accordance with the Teaching and Research Faculty Handbook. Possible sanctions include, but are not

limited to, counseling, training, or the initiation of termination proceedings.

3. Sanctions for AP faculty and other non-classified staff shall be determined by the supervisor of the employee in consultation with the Department of Human Resources and in accordance with [Board of Visitors Policy 1490, Administrative and Professional Faculty](#). Possible sanctions include, but are not limited to, counseling, training, reassignment, or the initiation of termination proceedings.
4. Sanctions for classified employees will be determined by the supervisor of the employee in consultation with the Department of Human Resources in accordance with the Commonwealth's Standards of Conduct Policy. Sanctions that may be imposed by the University include, but are not limited to, verbal counseling, additional training, and issuance of a Written Notice, suspension, or termination of employment.
5. The University reserves the right to require a Contractor to remove from campus any employee who violates this policy. Contractors shall assign for duty only employees acceptable to the University.
6. Visitors who violate this policy will be directed to leave campus immediately and may be subject to a permanent ban from campus.
7. The OIED shall be notified of any sanctions imposed. Complainants may not always be informed of sanctions imposed due to applicable privacy laws and personnel practices.

Deferral of Action

Should a discrimination, harassment, or retaliation complaint be raised in another internal procedure (for example, in the student conduct process or faculty grievance process), the other internal procedure may be deferred until the conclusion of this discrimination procedure.

Complainants may pursue external complaints with State and Federal agencies. These agencies include but are not limited to the [Commonwealth of Virginia Department of Human Resource Management](#), the [U.S. Equal Employment Opportunity Commission](#), the [Office for Civil Rights](#), the [U.S. Department of Justice](#), and the [U.S. Department of Labor](#), including the [Office of Federal Contract Compliance Programs](#). Any external complaint of allegations covered by this policy will result in the dismissal of the internal complaint upon notice to the University that an external complaint has been filed.

G. RECORDS RETENTION

The OIED will maintain, in a confidential manner, all complaints, reports, witness statements, documentary evidence, written investigation reports, resolutions, and appeal hearings and associated documents for a period consistent with Federal and State record retention policies for paper or electronic files. Applicable records must be retained and then destroyed in accordance with the [Commonwealth's Records Retention Schedules](#).

H. RESPONSIBLE OFFICER

Interim Assistant Vice President for Institutional Equity and Diversity

I. RELATED INFORMATION

[University Policy 1008 – Policy on Title IX – Sexual Harassment and Sex or Gender-Based Discrimination](#)

[University Policy 6600 - Standards of Conduct for Classified Employees](#)

[University Policy 6602 - Classified Employees Grievance Procedure](#)

POLICY HISTORY

Policy Formulation Committee (PFC) & Responsible Officer Approval to Proceed:

/s/ Ariana Wright
Responsible Officer

July 20, 2021
Date

Policy Review Committee (PRC) Approval to Proceed:

/s/ Donna W. Meeks
Chair, Policy Review Committee (PRC)

April 27, 2021
Date

Responsible Oversight Executive Approval to Proceed:

/s/ September Sanderlin
Responsible Oversight Executive

August 3, 2021
Date

University Counsel Approval to Proceed:

/s/ James D. Wright
University Counsel

July 20, 2021
Date

Presidential Approval:

/s/ Brian O. Hemphill
President

August 6, 2021
Date

Policy Revision Dates: March 16, 2015 (INTERIM); August 11, 2015; August 6, 2021

Scheduled Review Date: August 6, 2026