



Procedures for Resolution of Reports Against Staff Under Cornell University Policy 6.4 for the Following Acts of Prohibited Conduct:

- Prohibited Discrimination;
- Protected-Status Harassment, including Sexual Harassment;
- Sexual Violence, including Rape, Sexual Assault, Sexual Battery, Sexual Abuse, and Sexual Coercion;
- Retaliation

These procedures apply to all units of the University except for Weill Cornell Medicine, which will administer Policy 6.4 under Weill Cornell Medicine procedures.

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I. DEFINITIONS OF PROHIBITED CONDUCT

A. Prohibited Discrimination

When an employment or academic decision that results in negative and/or different treatment of an individual based upon his or her membership in an Equal Education and Employment Opportunity (“EEO”)–protected class, such as denying an opportunity for which an individual is qualified, not considering a person for an opportunity that is open to others, singling a person or group for different treatment because of her, his or their EEO-protected class status, failure to provide reasonable accommodation for a disability or religious belief or practice; reinforcing the use of stereotypes that unreasonably impacts a person’s environment or opportunities.

B. Protected Status Harassment (see also “Sexual Harassment”)

When an individual is targeted with verbal, written, visual, or physical conduct based on that person's EEO-protected class status that unreasonably interferes with the individual's work or academic performance, or creates an intimidating, hostile, or offensive working or learning environment.

Protected-status harassment, including sexual harassment, occurs when an individual is targeted with verbal, written, visual, or physical conduct based on that person’s EEO-protected status that unreasonably interferes with the individual’s work or academic performance, or creates an intimidating, hostile, or offensive working or learning environment. The conduct constitutes harassment under any of the following conditions:

1. The conduct is direct.
2. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or academic status.
3. Submission to, or rejection of, such conduct by an individual is used as the basis for an employment or academic decision affecting that person.
4. The conduct is sufficiently severe or pervasive to alter the conditions of the victim’s employment or academic pursuits, and creates a work or educational environment that a reasonable person would find abusive.

C. Rape

When, without consent, there is penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or use of a person’s mouth on another person’s genitalia. Rape is a type of sexual assault.

D. Retaliation

To seek revenge, reprisal, or injury to an individual or group who has exercised the right to file a written complaint or make an oral or written report of prohibited discrimination, and/or protected-status (including sexual) harassment, sexual assault or violence, or has participated in an investigation into allegations of such activity, or has opposed discriminatory or sexual harassing conduct, including sexual violence or assault.



E. Sexual Abuse

Touching of the sexual or other private parts of another person by forcible compulsion or without the latter's consent or with someone who is incapable of consent. Sexual abuse is a type of sexual assault.

F. Sexual Assault

A broad category that includes, but is not limited to, public lewdness, rape, sexual battery, and sexual abuse.

G. Sexual Battery

Touching of a sexual nature of a person by another person by forcible compulsion or without the latter's affirmative consent or with someone who is incapable of affirmative consent. Sexual battery is a type of sexual assault.

H. Sexual Coercion

To obtain compliance with sexual acts by using physically or emotionally manipulative actions or statements or expressly or implicitly threatening the person or another person with negative actions. Examples of sexual coercion include statements such as "I will ruin your reputation," or "I will tell everyone," or "your career (or education) at Cornell will be over."

I. Sexual Harassment

A form of protected-status harassment that constitutes unwelcome sexual advances, requests for sexual favors, or other oral, written, visual, verbal or physical conduct of a sexual nature that unreasonably interferes with the individual's work or academic performance, or creates an intimidating, hostile, or offensive working or learning environment under any of the following conditions:

1. Submission to, or rejection of, such conduct either explicitly or implicitly is (1) made a term or condition of an individual's employment or academic status, or (2) used as a basis for an employment or academic decision affecting that person; or
2. The conduct is sufficiently (1) persistent, severe, or pervasive, and (2) has the purpose or effect of altering the conditions of an individual's employment or academic pursuits in a way that a reasonable person would find abusive, hostile, or offensive.

J. Sexual Violence

A broad term that refers to physical acts perpetrated without consent or when a person is incapable of giving consent. This includes rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

II. ALTERNATIVES TO FILING A FORMAL COMPLAINT

A. Informal Resolutions

Members of the Cornell community have an option to resolve concerns of prohibited harassment and discrimination without an investigation under this policy by acting through Workforce Policy and Labor Procedures for Resolution of Reports Against Staff Under Cornell University Policy 6.4

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Relations (“WPLR”) who will work with the appropriate university officials to achieve a resolution under applicable policy/ protocol. If the matter is resolved, no complaint may be filed and no appeal may be taken.

B. Mediating a Concern

Note: In cases involving allegations of sexual violence, mediation is not appropriate, even on a voluntary basis, and will not be used to resolve sexual violence complaints.

The primary objective of mediation is to permit the parties to resolve the dispute on their own, quickly and confidentially. Both the complainant and alleged respondent must agree to mediation. At any stage during or upon the conclusion of the mediation process, either party may decide to proceed by formal investigation.

The mediation process may be particularly suitable when the alleged respondent’s conduct was unintentional or unknowingly offensive.

If a complainant and the alleged respondent agree to proceed by mediation, a trained individual designated by the vice presidents for Human Resources, or their designee(s), will interview the complainant to determine the factual allegations on which the allegation of discrimination or harassment is based, and the terms satisfactory to the complainant upon which the complaint may be conciliated. The mediation process must be completed within twenty (20) working days, but is subject to extension as necessary or upon a showing of good cause. Both parties must respect the confidentiality of the mediation process.

If the complaint is mediated successfully, a mediation agreement will be prepared presenting the agreed-upon terms that comply with university policies and procedures. The two parties must sign the agreement to indicate the dispute is fully and finally resolved. If a party fails to comply with this agreement, the agreement may be used as evidence in any subsequent investigations relating to charges of prohibited discrimination or protected-status harassment.

No written record of the mediation process will be retained with the exception of the mediation agreement, which will be made available to the parties upon request.

C. Interim Measures

At the request of the complainant or at its own discretion, WPLR may recommend to the appropriate university official under applicable staff or academic policy interim measures to protect the safety and well-being of members of the university community. These measures may include no-contact orders, change of housing or place of employment or schedule, change of class schedule or location, change of supervision, temporary suspension, or otherwise.

III. FILING A FORMAL COMPLAINT AGAINST A STAFF MEMBER

A. Time Limits for Filing a Formal Complaint



Complaints brought against staff members by students must be filed with WPLR within one (1) year of the alleged action. Complaints brought by staff members against staff members or faculty must be filed with WPLR within six (6) months of the alleged action.

B. Formal Complaint Process with WPLR

An individual or group may file a formal complaint with WPLR. CUPD may investigate alleged criminal matters and assist in investigations of alleged policy violations.

The complainant may be a single person or several individuals. If there are several individuals, and they cannot agree on an approach or desired outcome, the complaint will be divided into two or more complaints. Each complainant must describe verbally or in writing the alleged act or acts, identify the person or persons purportedly responsible, and indicate the date or approximate date on which the prohibited conduct occurred.

Generally, complaints will only be investigated when the complainant signs a complaint. In extraordinary circumstances, however, WPLR may determine on its own to investigate prohibited conduct that interferes with the University's ability to provide a safe and non-discriminatory environment, e.g., acts of violence, use of a weapon, involvement of minor child, even when the complaining party does not wish to pursue a complaint. charges. In such circumstances, WPLR may also recommend to the appropriate university official interim steps to protect the safety and well-being of members of the university community. In addition, if a complainant does not elect to pursue any process under this policy, the appropriate university official may request an investigation under this policy. In such cases, the complainant will be advised of the steps being taken and may be asked to serve as a witness in the investigation process but shall not be treated as a party with rights of appeal, etc.

If WPLR determines that the complaint (a) describes an alleged violation of this policy, it will notify the respondent that he or she has been named in a complaint and proceed under this policy; or, (b) does not describe an alleged violation of this policy, it will notify the complainant that the complaint is dismissed, and the complainant will be informed of his or her right, if any, to appeal under this policy and/or to seek external avenues of complaint resolution.

If the complainant's concerns are unrelated to prohibited discrimination, protected- status harassment or other prohibited conduct WPLR may refer the complainant to or cooperate with another university office to investigate and/or address such unrelated concerns.

When a complainant does not pursue a complaint that he, she, or the group has filed, WPLR will maintain confidentially materials obtained during the complaint filing for at least three (3) years, or until any external agency investigation or legal action is concluded, whichever is later. These records cannot be considered for any purpose in the mediation, investigation, or adjudication of future discrimination or harassment cases.

C. Investigation of a Formal Complaint

The purpose of the investigation is to gather evidence relating to the alleged prohibited conduct and to determine whether the respondent engaged in the prohibited conduct by a preponderance of the evidence (i.e., it is more likely than not that the respondent has engaged in the prohibited conduct.)



The investigator conducts these formal investigations, subject to extension by the investigator as may be necessary or for good cause. During investigations, the investigator will keep both parties informed on the investigation's status, as appropriate. Additional information about WPLR investigations is included in Section V below. Throughout the investigative process, the investigator may consult the provost, vice president for human resources, vice president for student and campus life, dean of faculty, other appropriate university officials, subject-matter experts, and/or university counsel.

Throughout the investigative process, the complainant and respondent may seek the advice of personal attorneys and advisors. Such representatives may attend their own clients' or advisees' investigative interview, but may not respond to questions for their clients or advisees, and may not pose questions. Adversarial hearings (including confrontation, cross-examination by the parties, and active advocacy by attorneys) are not permitted during the investigative process.

D. Duty to Cooperate with Investigation

University faculty, staff members, and students must cooperate with investigations of prohibited discrimination and protected-status harassment occurring in the context of employment and academic appointment, and in relation to a university activity. A faculty or staff member or student who has relevant information, but refuses to cooperate after being asked to do so during an investigation, may be subject to disciplinary action.

Note: If parties choose not to discuss the matter with the investigator, the matter will proceed without their participation.

E. Resolution by Agreement

At any point in the investigation or the formal complaint process, the investigator or any of the parties may suggest a settlement of the matter based on the investigation up to that point. The investigator or his or her designee will serve as an impartial communicator so the parties will not have direct contact. Any information provided or discussions with the investigator or designee in attempts to settle the matter may not be considered part of the investigation. If the parties do not come to an agreement regarding settlement, the formal complaint process continues, as described herein.

F. Investigator's Report of Investigation Findings

1. Investigator's Report: Upon concluding an investigation, the investigator must produce a written investigation report, which must include the following:

- The scope of the investigation;
- A summary of the findings;
- Recommendations for any corrective actions and/or sanctions, including disciplinary action;
- Any non-punitive, preventative remedies for the complainant.

If warranted, recommended action to restore the respondent's reputation, such as notifying persons who participated in the investigation, and/or a public announcement of the outcome.

2. Disciplinary Action: Disciplinary action for prohibited discrimination and protected-status harassment, including sexual violence/assault, may include an oral or a written warning, a written reprimand, a requirement to attend training, work restrictions, salary reduction or limitation, suspension,



dismissal/termination, community work, fine, probation, educational classes, counseling, papers, directed study, letters of apology, restitution, orders to perform or to stop certain actions, or other educational sanctions. The appropriate university official determines such action based on the recommendations in the investigation report.

G. Dismissal of Case by Investigator

The investigator may dismiss a complaint and close the case where the complaint:

- Is not reported or filed in a timely manner.
- Is not supported by sufficient facts, lacks merit based upon the available evidence, or does not fall within the jurisdiction of the investigator.

Similarly, the investigator may dismiss a complaint and close the case under any of the following circumstances:

- The complainant fails or refuses to appear or to be available for interviews or conferences as necessary.
- The complainant cannot be located after reasonable efforts have been made, and has not responded for at least ten (10) calendar days to a notice sent by the investigator to his or her last known residence, office, or email address.
- The complainant fails to provide requested, necessary information.
- The complainant fails or refuses to cooperate with the investigation to the extent that the investigator is unable to reasonably resolve the charge.

If the investigator determines that a complaint should be dismissed, the complainant will be informed of that decision, and given an opportunity to submit a written response to the reviewer within ten (10) working days. If the dismissal is affirmed by the reviewer, the complainant shall have a right of appeal under the appeal procedures, herein. Furthermore, the disposition will include, if appropriate, an attempt to restore the reputation of the respondent (such as deletion of records, and, unless the respondent otherwise requests, notification to persons who participated in the investigation of the charge, and/or public announcement of the outcome consistent with any applicable requirements under the Family Education Rights and Privacy Act [FERPA]).

H. Review of Investigative Report and Decision

Before making any decision following the investigation, the reviewer (unit head) must forward to the complainant and respondent, copies of the summary of the investigation report, and provide both parties a reasonable opportunity to submit written comments within ten (10) working days unless extended by the unit head.

The reviewer to whom the investigation report summary is forwarded ultimately may accept, modify or reject the determination or recommended sanctions and/ or remedial measures, or return the report for further investigation.

During this review, the reviewer may consult confidentially with university counsel, appropriate university officials, and with the respondent's supervisor or department head if disciplinary actions are recommended, concerning the sufficiency of the investigation and the findings or any recommendations.



The reviewer shall issue a final determination in writing, simultaneously, to all complainants and respondents.

If the complainant or respondent does not object to the final determination of the reviewer within ten (10) working days (unless otherwise extended) of it being sent to him or her, and reviewer agrees that the charges and sanctions and/or remedial measures presented therein are valid, the vice president, or equivalent unit head will review and implement the sanctions and/or remedial measures recommended in the investigation report within ten (10) working days, except for good cause shown.

I. Appeals by Complainant

Appeals by a complainant from a determination that a complaint of alleged prohibited conduct is not meritorious, or that a discipline or remedy is inadequate, must be made within ten (10) working days of the determination to the vice president for human resources or a designee, when the respondent is a member of the academic or nonacademic staff (other than faculty).

No appeal shall be heard by a university official who is a respondent, and in such cases, an appropriate university official will be designated by the president, or a designee, to hear the appeal.

Appeals may be grounded on any of the following bases:

1. The remedial actions awarded the complainant are not commensurate with the injury or is unjust.
2. The sanction is not commensurate with the violation or is unjust.
3. The investigator or reviewer violated the fair application of relevant university procedures and such violation may have had a prejudicial effect upon the outcome.
4. The investigator or reviewer committed a prejudicial error in interpreting the policy or code.
5. The investigator or reviewer rendered a decision clearly against the weight of the evidence.
6. New evidence was discovered after the decision and could not have readily been discovered before the decision, which would change the outcome.

The appeal shall be conducted in accordance with procedures to be established by the office hearing the appeal, including scheduling any meeting on the appeal, but shall commence with the requirement that the complainant submit a written statement of the basis for the appeal, setting forth the grounds for the appeal and the reasons therefore, accompanied by a copy of the determination being appealed. A written decision shall be made by the vice president of human resources, or designee, for appeals brought within thirty (30) days after submission, or any meeting on the appeal, whichever is later, unless extended for good cause. The decision shall be final and binding on all parties.

J. Grievance from Disciplinary Action Resulting from Investigation against Staff

Human Resources Policy 6.11.4, Staff Complaint and Grievance Procedure, governs grievances of contested employment action. The grievance procedures provided in the collective bargaining process apply to unionized employees. Non-faculty academic employees, such as librarians, may seek recourse under applicable grievance procedures.



IV. ADDITIONAL DEFINITIONS RELEVANT TO PROHIBITED CONDUCT UNDER POLICY 6.4

A. Consent

Words or actions that show a voluntary agreement to engage in mutually agreed upon sexual activity. Consent is not present when one is incapable of consent, subject to coercion or threat of coercion, or subject to forcible compulsion.

An individual may not presume consent by silence or context alone. Consent for one act does not imply consent for another act.

B. Discrimination/Harassment Complaint

A formal written statement filed with the Office of Workforce Policy and Labor Relations (WPLR) alleging discriminatory and/or harassing activity prohibited under this policy that calls for official action or treatment in response.

C. Forcible Compulsion

Forcible compulsion is use of physical force or a threat, express or implied, that places a person in fear of physical harm to, or kidnapping of, himself, herself, or another person.

D. Incapable of Consent

A person who is (1) less than seventeen (17) years of age, (2) mentally disabled, (3) mentally incapacitated, (4) physically helpless, or (5) physically unable to give affirmative consent.

E. Investigator

A representative from WPLR that has been trained and charged to review complaints of prohibited discrimination, protected-status (including sexual) harassment, sexual assault/violence, or prohibited retaliation with an outcome of developing recommendations for addressing the complaint.

F. Mentally Disabled

A person whose normal cognitive, emotional, or behavioral functioning renders him or her incapable of appraising the nature of his or her conduct.

G. Mentally Incapacitated

Lack of the cognitive ability to make important life decisions. The incapacitation may be permanent or temporary, and includes situations when the individual has lost cognitive ability due to ingesting alcohol or other drugs, either voluntarily or involuntarily.

H. Physically Helpless

When a person is unconscious or for any other reason is physically unable to communicate willingness to act or is physically unable to give affirmative consent.

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I. Public Lewdness

Intentional exposure of the private or intimate parts of the body in a sexually suggestive manner in public or in private premises when the perpetrator of the exposure may be readily observed. Public lewdness is a type of sexual assault.

J. Reviewer

A university official who reviews investigation reports and makes a final determination under this policy of (1) whether a complaint is meritorious, and (2) if so, what sanctions shall be imposed. Review of complaints against staff under this policy shall be by a vice president, or equivalent unit head with authority over the respondent(s). The reviewer shall have access to the entire record on which the investigation report is based and shall receive appropriate training for this function. When a vice president is the respondent, the summary will be forwarded to the provost or his or her designee. If the provost is the respondent, the investigation report is forwarded to the university president or his or her designee. If the university president is the respondent, the investigation report is forwarded to the board of trustees through university counsel and secretary of the corporation.

V. THE INVESTIGATION PROCESS

A. The Investigation Process: Features and Steps

Investigations¹ conducted by Office of Workforce Policy and Labor Relations (WPLR) or by WPLR with a co-investigator will be guided by the following process:

1. Identify the individual alleged to have discriminated against or harassed the complainant (the respondent).
2. Thoroughly ascertain all facts in connection with the alleged incident, beginning by initially and separately interviewing the complainant and the respondent.
3. Determine how the complainant responded to the alleged discrimination or harassment and determine what efforts were made, if any, at informal resolution and/or interim measures, such as separating the individuals.
4. Determine whether the complainant informed other parties or supervisors of the situation and what response, if any, the complainant received from these individuals.
5. Determine the frequency and type of the alleged discrimination or harassment and, if possible, the dates and locations where the alleged discrimination or harassment occurred.
6. Develop a thorough understanding of the professional or personal relationship, degree of control,

¹ The process for investigating complaints of prohibited discrimination and protected- status (including sexual) harassment, sexual assault/violence is distinct from the mediation process. The same person may not perform the functions of mediator and investigator in a single case.



and amount of interaction between the two parties.

7. Determine whether the complainant knows of or suspects that the respondent has discriminated against, or harassed other individuals.
8. During the first interview with the respondent, inform the respondent of all of the charges being made, along with the evidence supporting them, remind the respondent of the university's policy against retaliation for making a complaint of discrimination or harassment and ask for the respondent's explanation of the alleged behavior.
9. Receive any other evidence that the respondent wishes to present; and thoroughly examine and evaluate the rebuttals made by the respondent.
10. Present to the complainant additional information learned in the course of the investigation that will be germane to the outcome of the investigation.
11. Interview, as appropriate, witnesses identified by complainant or respondent or who observed, or were told about, the alleged discrimination or harassment.
12. Remind all parties and witnesses on a case by case basis of the need for confidentiality, consistent with the requirements of Policy 6.4.
13. Review, as appropriate, personnel files maintained by departments and/or administrative units; previously concluded mediation agreements; previous records of findings for the charge of discrimination or harassment; other records obtained pursuant to university policy and procedure; and, after giving notice to the individual(s) to whom the files or records pertain and an opportunity for that individual(s) to raise objections, other relevant files and records not in WPLR's possession. The vice president for human resources will rule upon any objections.

B. Challenge to Investigator

When a Policy 6.4 complaint is brought against a staff member acting in the scope of their Cornell employment, including as an investigator of complaints under Policy 6.4, Cornell reserves the right to determine the scope of the investigation and whether the claim is ripe for investigation under this policy. If there is a process that is not yet completed, a final decision has not yet been made, and/or a clear alternative path for a complainant's concerns to be addressed in a different process, Cornell may choose to conduct a limited investigation under this policy or wait before commencing an investigation under this policy. That determination will be made by the Director of Workforce Policy and Labor Relations.

