

# Salisbury University Procedures for Investigating and Adjudicating Complaints of Non-Sex Based Discrimination Against Non-Students

## I. Purpose

These Procedures (“Procedures”) provide a process for the prompt and equitable investigation and adjudication of complaints of discrimination based on marital status, pregnancy, race, color, ethnicity, national origin, age, disability, genetic information, religion, veteran status, or other legally protected characteristics (hereinafter “Non-Sex Based Prohibited Discrimination”)<sup>1</sup> against Salisbury University (“SU” or “University”) faculty, staff, and certain third parties under University control (collectively referred to as “Non-Students”). These Procedures ensure SU’s compliance with Federal and State law, as well as University System of Maryland (“USM”) and SU policies prohibiting non-sex based discrimination based upon an individual’s Protected Status, including, but not limited to, Salisbury University’s Policy Prohibiting Non-Sex Based Discrimination. These Procedures replace any prior SU procedures related to the investigation and adjudication of Non-Sex Based Discrimination.

Any person, including, but not limited to, a student, a member of the faculty, administration or support staff, a visitor or guest to the campus community, campus or local police, or a family member, alleging Non-Sex Based Prohibited Discrimination against a Non-Student may file a complaint or report against such Non-Student with the University as set forth herein. Complaints against students shall not proceed under these Procedures, but pursuant to the [Non-Sex Based Discrimination Procedures for Complaints Against Students](http://www.salisbury.edu/equity/library/docs/DiscriminationProceduresForStudents.pdf) available at: <http://www.salisbury.edu/equity/library/docs/DiscriminationProceduresForStudents.pdf>. The University, on its own, may also initiate, investigate, and adjudicate complaints of Non-Sex Based Prohibited Discrimination against Non-Students under these Procedures. The Procedures also address complaints or reports of Retaliation allegedly committed by a Non-Student in connection with any Non-Sex Based Prohibited Discrimination matter. For example, Retaliation covered by these Procedures could include, but it is not limited to, alleged Retaliation against individuals who have filed complaints or reports, testified, or otherwise participated in connection with a matter of Non-Sex Based Prohibited Discrimination.

These Procedures are effective as of **XX XX, 2015**, and supersede any former University procedures related to complaints or reports of Non-Sex Based Prohibited Discrimination filed against a Non-Student.

## II. Complaints and Reporting

### A. Reporting to SU

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<sup>1</sup> Capitalized terms herein are defined in Salisbury University Policy Prohibiting Non-Sex- Based Discrimination (hereinafter “the Policy” or the “SU Policy Prohibiting Non-Sex Based Discrimination”).

Complaints of Non-Sex Based Prohibited Discrimination against Non-Students should be made to the SU Office of Institutional Equity (“OIE”)/Fair Practices Officer (“FPO”)/Title IX Coordinator. The OIE’s staff members are trained to help individuals find the resources they might need, to explain all reporting options, and to respond appropriately to conduct of concern. All instances of Retaliation should be reported and will be addressed in the same manner. The contact information for the OIE is listed below:

Humberto Aristizabal  
Title IX Coordinator, FPO and Associate Vice President for Institutional Equity  
Office of Institutional Equity  
Holloway Hall Suite 100  
(410) 548-3508  
[hxaristizabal@salisbury.edu](mailto:hxaristizabal@salisbury.edu)

There are several ways to report to the OIE:

1. Leave a private voice message for the OIE;
2. File a complaint or report on the [Fair Practices Complaint Intake Form](http://www.salisbury.edu/equity/library/docs/Fair%20Practices%20Complaint%20Intake%20Form.pdf), which is also available on the following link:  
<http://www.salisbury.edu/equity/library/docs/Fair%20Practices%20Complaint%20Intake%20Form.pdf>;
3. Send a private [email](mailto:equity@salisbury.edu) to the OIE at [equity@salisbury.edu](mailto:equity@salisbury.edu);
4. Mail a letter to the OIE office; or
5. Visit the OIE (it is best to make an appointment first to ensure availability).

If there is a complaint about the OIE or any staff member that is part of the OIE, or if any staff member that is part of the OIE has a complaint, that complaint should be filed with the President of the University. The President will appoint another trained individual to take the place of the OIE for purposes of the complaint.

Individuals may alternatively report to any Responsible Employee (as defined in [Salisbury University’s Policy Prohibiting Non-Sex -Based Discrimination](http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf-update), available at: <http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf-update>).

SU will investigate any report of Non-Sex Based Prohibited Discrimination made to the OIE or Responsible Employees, in accordance with these Procedures.

Complaints and reports should be made as soon as possible after an incident. The OIE coordinates and tracks all complaints, reports, and trends under these Procedures.

## **B. Duties of the Responsible Employee Receiving a Complaint**

Any Responsible Employee, as defined in [Salisbury University's Policy Prohibiting Non-Sex Based Discrimination](http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf-update), available at: [http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf - update](http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf-update), who receives a complaint or report under these Procedures must do the following:

1. Advise the Complainant of the existence of [Salisbury University's Policy Prohibiting Non-Sex Based Discrimination](http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf-update), available at: [pdf-update](http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf-update), and these Procedures, as well as where to find the same.
2. Advise the Complainant of the existence of the OIE and its role in the complaint resolution process.
3. Advise the Complainant of the Responsible Employee's duty to report the Complainant's allegations to the OIE within 24 hours to ensure the Complainant is fully informed of their rights and responsibilities under [Salisbury University's Policy Prohibiting Non-Sex Based Discrimination](http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf), available at: <http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf>.
4. Make written notes of the allegations.
5. Notify the OIE of the complaint within 24 hours of receiving the report.
6. As soon as reasonably possible, and preferably concurrently with notice to the OIE, complete and submit to the OIE the [Fair Practices Complaint Intake Form](http://www.salisbury.edu/equity/library/docs/FairPracticesComplaintReceipt.pdf), available at: <http://www.salisbury.edu/equity/library/docs/FairPracticesComplaintReceipt.pdf>.
7. Failure to comply with these requirements and obligations may result in sanctions, as appropriate.

## **C. Criminal Reporting & Emergency Response**

Please remember that if someone is in immediate danger or needs immediate medical attention, the first place to call for help is 911. You may also call for help and make a report to the University regarding Non-Sex Based Prohibited Discrimination by calling the Salisbury University Police (410-543-6222). Some forms of Non-Sex Based Prohibited Discrimination may be a crime. In addition to the OIE reporting set forth above, the University strongly encourages any victim of a potential crime to report such potential crime to the appropriate law enforcement agency, even if it is uncertain whether the particular conduct is a crime. Calling local law enforcement can help you: obtain emergency and nonemergency medical care; get immediate law enforcement response for your protection; understand how to provide assistance in a situation that may escalate to

more severe criminal behavior; arrange a meeting with a victim advocate service; find counseling and support; initiate a criminal investigation and help to secure valuable evidence; and answer questions about the criminal process.

### **III. Jurisdiction and Role of the OIE**

#### **A. OIE's Jurisdiction**

The OIE has jurisdiction to investigate and resolve complaints alleging Non-Sex Based Prohibited Discrimination and related Retaliation. Under these Procedures, OIE's jurisdiction extends to Non-Sex Based Prohibited Discrimination alleged against Non-Students. Allegations against Non-Students will be adjudicated in accordance with these Procedures. If any individual files or reports allegations against a third party who is not affiliated with the University community, under SU control, or subject to University Policies, OIE will take reasonable steps to convey the allegation to the proper individual or entity for investigation and will take any available and reasonable steps at SU to address the Non-Sex Based Prohibited Discrimination and limit its discriminatory effects. Allegations against students will be adjudicated in accordance with the Salisbury University Procedures for Investigating and Adjudicating Complaints of Non-Sex Based Prohibited Discrimination Against Students, which is found in the SU Student Code of Conduct and also available at:

<http://www.salisbury.edu/equity/library/docs/DiscriminationProceduresForStudents.pdf>.

#### **B. OIE's Role**

The OIE is charged with coordinating the University's compliance with applicable federal and state civil rights laws, and does not act as an advocate for any party. Upon receipt of a complaint or report, the OIE will ensure that the Complainant is provided with a copy of the relevant SU policies and Procedures.

The OIE will explain to the parties the following:

1. The informal and formal resolution options and the Confidentiality provisions outlined below.
2. As appropriate, provide to both parties information about options for obtaining medical and counseling services, information about making a criminal report, information about receiving advocacy services, information about other helpful campus and community resources. The OIE will provide the parties a list of available resources also located at the [OIE Web site](http://www.salisbury.edu/equity/library/docs/OIE%20Resource%20Document%20List.pdf) at the following link:  
<http://www.salisbury.edu/equity/library/docs/OIE%20Resource%20Document%20List.pdf>.
3. Offer to coordinate with other campus officials, when appropriate, to implement interim remedial measures such as no-contact orders, rearrangement of living or working arrangements, or academic accommodations.

4. The process of a fair and impartial investigation. The OIE will explain the right of the parties to have similar and timely access to information the OIE will consider during the adjudication process.
5. The right to have an Adviser present during any stage of the process.
6. That, if an individual does not want to pursue a complaint, the OIE will inform the individual that the University may be limited in the actions it can take without the cooperation of the individual.
7. That Retaliation for reporting Non-Sex Based Prohibited Discrimination or participating in an investigation of Non-Sex Based Prohibited Discrimination is strictly prohibited and that any Retaliation should be immediately reported to OIE to be promptly addressed. There is a Good Faith Requirement in connection with allegations of Non-Sex Based Prohibited Discrimination and the University will impose penalties if an investigation reveals that any allegation was made in bad faith.
8. The University's right and/or legal obligation to investigate the complaint in some cases, even if the Complainant does not choose to pursue it, if such an investigation is necessary to protect the University or the Community.

### **C. OIE Initial Assessment**

When a report of Non-Sex Based Prohibited Discrimination is made to SU, the FPO or designee(s) will conduct a prompt initial assessment. The assessment, which typically consists of an initial meeting between the OIE and the Complainant, as well as OIE consultation with relevant SU officials, will determine whether the alleged conduct would present potential Non-Sex Based Prohibited Discrimination under OIE jurisdiction and whether further OIE action is warranted based on the alleged conduct. In its initial assessment, the OIE will work with relevant SU officials to determine the risk of harm to the broader campus community and take steps necessary to address any risks, implement any Interim Measures, assess the nature and circumstances of the allegation, assess for pattern evidence or other similar conduct by the Respondent, assess Complainant's expressed preference regarding resolution and any request for confidentiality, and assess whether the matter needs to be referred to the SUPD for timely warning notification under the Clery Act.

If an initial assessment reveals that the OIE lacks jurisdiction over any alleged action, the OIE will, if warranted and available, forward the complaint to any appropriate body at SU or, if appropriate, a third party outside of SU, for consideration and action.

## **IV. Confidentiality**

### **A. Confidentiality of Complaints, Reports and Outcomes**

The University understands that the Complainant, Respondent, and Witnesses involved in any Non-Sex Based Prohibited Discrimination matter desire Confidentiality during the investigation and adjudication of such matters. While the University will keep these matters Confidential to the extent possible and as required by law, the University cannot ensure complete Confidentiality, or even the Confidentiality requested by parties, in all cases. The OIE will, to the best of its ability, keep confidential the complaint, report, Witness statements, and any other information provided by the Complainant, Respondent, or Witnesses, and will disclose this information only to any individual who needs to know and/or is allowed to know by law. For example, the OIE will need to disclose the basis of the allegations to the Respondent and allow the parties similar and timely access to information to be used during the process. In addition, the OIE may need to disclose information to law enforcement consistent with state and federal law; to other University officials as necessary for coordinating Interim Measures, for health, welfare, safety, and other appropriate reasons, as well as to government agencies who review the University's compliance with federal and state law.

Any OIE investigation report and any written decision from the OIE will be disclosed to the Complainant and Respondent only as allowed by law. For example, see [Salisbury University Policy Prohibiting Non-Sex Based Discrimination](http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf), V.B.5, available at: <http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf>, for FERPA allowed disclosures. Under certain circumstances, University Officials, including members of the OIE, may have obligations to keep information they learn confidential, subject to limited exceptions, for example, when necessary to protect health, welfare or safety and/or any other appropriate reasons. Information about complaints and reports, absent personally identifiable information, may be reported to University officials as needed and/or to external entities for statistical and analysis purposes pursuant to applicable federal and state law, and University policy. Confidential assistance for victims of discrimination may be available at the University through the [Counseling Center](#) at 410-543-6070 and the [Student Health Services](#) at 410-543-6262 or via other resources listed in the [Salisbury University's Policy Prohibiting Non-Sex Based Discrimination](#) at the following link: <http://www.salisbury.edu/equity/library/docs/Other%20Forms%20Discriminatory%20Harassment%20Policy.pdf>. Confidential and Non-Confidential Resources are available at the following link: <http://www.salisbury.edu/equity/library/docs/OIE%20Resource%20Document%20List.pdf>.

## **B. Reporter or Complainant Requests No Investigation/Adjudication**

If a reporter or Complainant requests that an investigation not be conducted, or that a specific adjudication process or part thereof not take place, the OIE will consider the reasons for the request, including concerns about continued safety of the person reportedly harmed and members of the campus community. The OIE must also balance considerations about the continued health and safety of members of the community, or for any other expedient reason, against a reporter's or Complainant's desire not to have



the report investigated. In cases when a reporter or Complainant does not want to have a report investigated, but the OIE has concerns that not taking formal or informal action might violate law and/or endanger the health or safety of any individual, the OIE will initiate confidential consultation with appropriate individuals to analyze the situation and assist in determining appropriate measures to take. Consultation may occur with appropriate and relevant University officials, including, but not limited to, the Provost, the Chief of SU Police or designee, the chair(s) of the Behavioral Assessment Team (BAT), psychological health professional(s), the Associate Vice President of Human Resources, and legal counsel. The OIE will make the ultimate decision about whether to conduct a formal investigation or respond to the report in another manner, including taking informal actions, such as those described herein.

### **C. Anonymous and Third Party Reporting**

The OIE accepts anonymous and third-party reports of alleged Non-Sex Based Prohibited Discrimination and will follow up on such reports. The individual making the report is encouraged to provide as much detailed information as possible to allow the OIE to investigate and respond as appropriate. The OIE may be limited in the ability to investigate and respond to an anonymous report unless sufficient information is furnished to enable the OIE to conduct a meaningful and fair investigation.

## **V. Immediate Actions, Resources and Interim Measures**

Any participant in the investigation process may request, and the University, on its own or at a party's request, may take Interim Measures to assist or protect the parties during the grievance process, as necessary. Such measures for a Complainant may include, but are not limited to, assistance in obtaining no-contact or protective orders, enforcing existing and lawful no-contact or protective orders, and changing academic, transportation, residential, and working situations, if such accommodation is reasonably available. More information on obtaining Interim Measures may be found in section V.A. of [the Salisbury University Policy Prohibiting Non-Sex Based Discrimination](http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf), available at: <http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf>.

OIE will also advise the participants in the investigation of existing options for counseling, health, mental health, victim advocacy, and other services available on and off campus for the parties during any investigation of Non-Sex Based Prohibited Discrimination. A list of available resources is located at the [OIE Web site: http://www.salisbury.edu/equity](http://www.salisbury.edu/equity).

## **VI. Patterns**

The OIE shall be responsible to identify policies, practices or patterns of behavior that exhibit Non-Sex Based Prohibited Discrimination under this policy. The OIE shall report these observations and findings to the appropriate unit officials and recommend appropriate action to eliminate the alleged Non-Sex Based Prohibited Discrimination. In the event the OIE is unsuccessful in eliminating the alleged Non-Sex Based Prohibited Discrimination, the OIE may report the matter to the appropriate Vice President for further resolution.

## VII. Advisers

Parties to a matter involving an allegation of Policy Violation are entitled to an Adviser of their choice, which means a member of the University community who is not acting as an attorney, who has been chosen by a Complainant or Respondent, and who has agreed to provide advice, review documents, and generally provide moral support. Advisers may accompany advisees to any interviews or hearings that result from this Policy. Advisers are bound by the same confidentiality requirements applicable to the parties, are not permitted to speak on behalf of their advisees, and are not to represent themselves as speaking on behalf of the University with respect to the matter on which they are advising. Any individual acting as an Adviser under this Policy who violates confidentiality is in violation of this Policy and subject to disciplinary action up to and including, but not limited to, being barred from acting as an Adviser in future complaints or termination of employment, depending on severity. It is important, when one chooses an Adviser, to ask for the individual's consent to serve in this capacity before divulging any confidential information. Notice of the identity of any Adviser and their expected appearance must be given to the OIE at least 24 hours prior to any meeting or proceeding that an Adviser will attend.

## VIII. Resolution<sup>2</sup>

There are two avenues for resolution of an alleged Non-Sex Based Prohibited Discrimination: informal and formal resolution. The OIE is available to explain the informal and formal resolution Procedures.

### A. Informal Process and Resolution

The Complainant generally has the option to proceed informally at any time during any adjudication process, when permissible per applicable law. However, the Complainant is never required to proceed informally.

Faculty, exempt, non-exempt and contingent employees, as well as students and third parties, should feel free to informally raise a concern about any form of Non-Sex Based Prohibited Discrimination committed by a Non-Student to any Responsible Employee as defined in Section II.I of [Salisbury University's Policy Prohibiting Non-Sex Based Discrimination](http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf), available at:

<http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf>.

Upon notification of any informal or formal complaint of Non-Sex Based Prohibited Discrimination, University Responsible Employees must notify the OIE in writing within 24 hours of receiving the complaint. The University Responsible Employee approached by a faculty or staff member for an informal complaint should take notes to document the conversation, even if the Complainant objects, and should forward those notes to the OIE as part of the notification. Any legally recognized form of privileged communication is exempt from this requirement. The Complainant and the OIE will thereafter work together to decide additional steps necessary to resolve the complaint, and in appropriate

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<sup>2</sup> Individuals choosing to file a complaint are encouraged to complete "Internal Fair Practices Complaint Intake Form" attached as Appendix A.



instances, a complaint may be resolved informally. Informal complaints may be resolved by one of the following:

1. A decision to stop further action on the informal complaint;
2. A resolution of the informal complaint by agreement of the parties and the approval of the OIE; or
3. Initiation of the formal complaint process.

A Complainant or Respondent always has the option to participate in any informal resolution and the Complainant also has the option to request a formal investigation and/or adjudication at any point in the informal process. The OIE also always has the discretion to initiate a formal investigation. If, at any point during the informal process, the Complainant, the Respondent, or the OIE wishes to cease the informal process and to proceed through formal grievance Procedures, the formal process outlined below will be invoked.

The informal resolution must adequately address the concerns of the Complainant, as well as the rights of the Respondent and the overall intent of the University to stop, remedy and prevent Non-Sex Based Prohibited Discrimination. Informal actions might include, but are not limited to: providing training to an individual or group; having an informal discussion with an individual whose conduct, if not stopped, could rise to the level of discrimination or hostile environment harassment; establishing agreed upon Interim Measures; increased monitoring or security at specified locations; or facilitating a confidential conversation with the parties; and any other remedy that can be tailored to the parties to achieve the goals of the relevant Policy.

## **B. Formal Process**

### **1. How to Start the Formal Process**

A person wishing to initiate a formal process (i.e., a formal investigation and adjudication) should generally file his/her complaint in writing and in person with the OIE as promptly as possible to permit the University to accurately investigate the allegations and appropriately remedy any violation(s). The University will review all complaints in compliance with applicable policies and these Procedures. The complaint should be signed by the Complainant and should include the following information: a description of the allegations with relevant dates, places and statements made, the name(s) of the person(s) involved, the names of any Witnesses to the events in question, any documentation to support and substantiate the claim, and the remedy requested. If the complaint is not available in writing, the OIE may document the Complainant's statements and attempt to obtain the Complainant's signature on those notes to signify that the Complainant agrees with the description of the alleged Non-Sex Based Prohibited Discrimination as recounted by the OIE. Complainants will be provided by the OIE with an intake form to facilitate the process of collecting

germane information on their complaint. The Internal Fair Practices Complaint Intake Form (Appendix C) is also available at:

<http://www.salisbury.edu/equity/library/docs/Fair%20Practices%20Complaint%20Intake%20Form.pdf>. If the Complainant refuses to cooperate with the investigation, is reluctant to pursue the investigation or for any reason refuses to sign the alleged complaint, the OIE may go forward with these Procedures, as required, to address the allegations in an effort to end Non-Sex Based Prohibited Discrimination or related Retaliation, prevent its recurrence, and remedy its effects on the Complainant and the University Community.

**a. Notice of Investigation**

The Respondent, the person accused in the complaint, shall be notified in writing of the initiation of the formal process by the OIE and will be invited to submit a written response to the OIE within ten (10) University business days of receiving the notification. If the University is not the Complainant, the Complainant will also be notified. The OIE shall also notify the Associate Vice President of Administration and Finance for Human Resources and the Vice President of the appropriate unit(s) in a Non-Student Respondent's chain of command.

**b. Investigation & Timeline**

Upon receipt of the written complaint, the OIE shall begin an investigation into the claims by appointing one or more trained investigators from the OIE staff or, if appropriate, an external investigator. During the investigation, the OIE or designee is not permitted to discuss the investigation with anyone except as circumstances warrant on a need-to-know basis. The investigator's communications with legal counsel to the University are exempt from this requirement. The investigation ordinarily will include a discussion with the Complainant, a discussion with the Respondent, interviews of any Witnesses to the events, a review of any pertinent documents and any other actions deemed appropriate by the investigator(s). OIE may schedule an interview with Complainant or Respondent during and/or after any pending Respondent written response period in Section B.1.a. The OIE and/or investigator(s) shall make every effort to keep the investigation confidential, although this cannot be guaranteed, and all participants in the investigation shall be subject to the requirement that all parts of the investigation remain confidential. The privacy of all parties to a complaint under this policy must be strictly observed, except insofar as it interferes with the University's obligation to fully investigate allegations of violation of this policy or to notify applicable governmental agencies as may be required by law. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. In these cases, privacy and confidentiality should be maintained to the extent possible. Breach of confidentiality by the investigator(s) will result in a permanent removal from the investigation and may subject that person to disciplinary action.

The OIE may assist to initiate Interim Measures to address the allegations, as appropriate, while the investigation is pending. For more information on Interim Measures, see [Salisbury University's Policy Prohibiting Non-Sex Based Discrimination](http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf), available at: <http://www.salisbury.edu/equity/library/docs/SUProhibitedSexDiscriminationPolicy.pdf>.

### **c. Standard of Proof and Evidence**

In determining whether the alleged conduct constitutes Non-Sex Based Prohibited Discrimination, the OIE will look at the record of the particular complaint as a whole and the totality of the circumstances of the complaint, including, but not limited to, the nature of the behavior, the particular facts of the case, the nature of the relationship between the parties and the context in which the alleged conduct occurred. The University may also consider any relevant prior conduct between the parties in making the determination. To determine whether the alleged conduct is prohibited by any relevant policy, the standard shall be from the perspective of “a reasonable person within the University Community.” Common sense and reason shall guide the official reviewing the case.

Both parties will have the opportunity to have notice of, as well as be heard by, the OIE with regard to any evidence to be considered for or against them. This includes, but is not limited to, the parties’ opportunity to respond to information received during the course of the investigation. Both parties will have the same access to information to be used and considered during the process, and the same opportunity to present names of relevant Witnesses and identify and provide evidence during the process.

The required standard of proof in all Non-Sex Based Prohibited Discrimination subject to these Procedures is “preponderance of the evidence” that the conduct set forth has occurred. Preponderance of the evidence means that the information and facts establish it is “more likely than not” that the alleged Non-Sex Based Prohibited Discrimination occurred, as defined in relevant Policy.

The University is cognizant that, on occasion, baseless complaints are intentionally filed. The University will take strong steps to address spurious complaints and may take appropriate disciplinary action if a Complainant is believed to have intentionally filed a complaint in bad faith.

Protected Status rights to equal opportunity and freedom from discrimination must, of course, be honored in concert with First Amendment rights to freedom of speech and association. For example, the University fully supports the principles of academic freedom, and is committed to protecting the free expression of ideas, teaching methods and course content in the academic setting. Academic freedom generally protects the use of, and is defined as, in part, verbal or visual environmental factors that are germane to the course material and not directed at

any individual in the University Community. This may include, but is not limited to, reading and discussing a piece of literature depicting scenes using racially charged language, involving a character's opinion on behavior that involves Protected Status, and/or discussing social issues involving Protected Status conduct, even if such discussion includes references or visual aids, or frank discussion. Non-Sex Based Prohibited Discrimination, however, is not a proper exercise of academic freedom and may not be legally protected expression.

#### **d. Investigation And Decision**

A written decision shall be prepared by the OIE at the conclusion of the investigation, setting forth (1) a statement of the findings of fact concerning the alleged events; (2) a statement identifying relevant elements of the policy to support the conclusion that a violation of University policy did or did not occur based on a preponderance of the evidence; (3) sanction(s), if applicable; and (4) notification of right to appeal (hereinafter "Outcome").

Any Outcome, including sanctions, must be consistent with applicable law and USM and SU policies. Disciplinary employment action will be addressed on a case-by-case basis dependent on the facts of each situation, the extent of harm to the individual(s) involved, the obligations of the University, and whether and to what extent the accused has a history of documented previous wrongdoing. Penalties will be assessed according to regulations governing employment relationships, as enumerated in the Faculty Handbook and/or Policy Manual for Employees. Depending on the nature and severity of the findings, and applicable policy governing the assessment of penalties, the possible sanctions include, but are not limited to, a letter of reprimand, censure, service to the University, counseling, retraining, demotion or suspension, or termination of employment. These sanctions may be imposed even after a first offense, under appropriate circumstances. Sanctioning may take into account any previous violation(s) of University Policy.

When a tenured or tenure-track faculty member is found responsible for Non-Sex Based Prohibited Discrimination, or when further University action is required prior to implementing any discipline for any employee, per applicable policies or agreements, any Outcome should indicate that the institution will take necessary steps to proceed with the specified sanction. At that point, the institution will take steps pursuant to the USM and SU Appointment, Rank & Tenure Policies, applicable MOU, or other applicable separate procedures to seek implementation of the sanction.

The OIE will issue the Outcome to the Complainant and Respondent, as appropriate and allowed by law, and shall copy the Associate Vice President of Administration and Finance for Human Resources and the Respondent's direct supervisors.

If either the Complainant or Respondent disagrees with the Outcome, they may file an appeal pursuant to the “Appeals Procedures” section below. If neither appeals, the OIE decision becomes final on the day immediately following the expiration of the time for filing an appeal.

## **IX. Appeal Procedures**

### **A. Authority of the Appeal Officer**

The appropriate Vice President overseeing a Non-Student Respondent (“Area VP” or “AO”) has the authority to review appeals of either party relating to the Outcome in a Non-Sex Based Prohibited Discrimination matter.

### **B. Appeal Request**

A request for an appeal must be filed within five (5) University working days of the receipt of the OIE’s decision. The request for an appeal must be filed with the AO specified by OIE in the Outcome. In all cases, the AO will provide the OIE with a copy of the initial appeal request, as soon as practicable. The non-appealing party will also, if permitted, receive prompt and appropriate notice of the appeal request. Appeals submitted after five (5) University working days will be denied.

The appeal must be in writing and must describe the appellant’s desired outcome, as well as state specific grounds for the appeal. Mere dissatisfaction with the Outcome is not a valid basis for appeal. Grounds for appeal are limited to the following: (a) specified procedural errors or errors in interpretation of University policies were so substantial as effectively to deny a Complainant or Respondent notice or a fair opportunity to be heard; (b) new or significant information that became available and could not have been discovered by a properly diligent party before or during the investigation or adjudication; or (c) a violation of substantive due process occurred (i.e., the OIE decision was based on an illegal or constitutionally impermissible consideration such as race or exercise of 1<sup>st</sup> Amendment freedoms, etc.).

### **C. Standard of Review**

The AO shall review the findings and sanctions of the OIE on the narrow bases above. The burden of proof lies with the appealing party, as the OIE determination is presumed to be reasonable and just. The AO may affirm, overturn, or modify the findings and/or sanctions of the OIE if it finds that a proper and supported appeal basis exists.

### **D. The Appeal Decision**

Generally, within ten (10) working days of the submission of the written appeal statement, the AO will submit a decision in writing to the appropriate parties and the OIE. This decision shall be the final decision of the University regarding the Non-Sex Based Prohibited Discrimination.

#### **E. Further Employee Rights**

Employees may have further rights to challenge sanctions issued for findings of Non-Sex Based Prohibited Discrimination, pursuant to the USM and SU Appointment, Rank & Tenure Policies, applicable MOU, and/or other applicable separate procedures giving employees a right to challenge implementation of or further appeal a disciplinary action.

#### **X. Final Outcome & Post-Resolution Follow Up**

After all review processes are concluded, the OIE or designee will, as appropriate, promptly notify the Complainant and Respondent, in writing, of the final outcome of the Non-Sex Based Prohibited Discrimination complaint.

After a final sanction and remedy is issued, the OIE may periodically follow up with the Complainant and Respondent to ensure that the Non-Sex Based Prohibited Discrimination has ended, to determine any additional remedies necessary, and to ensure compliance with sanctions imposed. Any violation of an Interim Measure or sanction imposed for Non-Sex Based Prohibited Discrimination should be promptly reported to the OIE.

#### **XI. Conflict of Interest and Training**

All University officials who are involved in the discrimination grievance process, including the OIE, designated investigators and AO, will have adequate training. Training will address, but is not limited to, recognizing and appropriately responding to allegations of discrimination, harassment, including hostile environment harassment and Retaliation, conducting investigations, and protecting confidentiality.

The names of the investigator and the individual who will serve as AO for a particular matter will be readily accessible. These individuals must promptly disclose any potential conflict of interest they might have in a particular case. In the rare situation in which an actual or perceived conflict of interest arises from the involvement of an Investigator or AO, that conflict must be disclosed to all parties and any potential or actual conflict will be appropriately addressed.