

Preventing and Addressing Discrimination, Harassment, and Retaliation (PADHR) Complaint Procedures

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I. INTRODUCTION

In order to provide a safe and non-discriminatory learning, living, and working environment, the University of Virginia (the “University”) prohibits discrimination and harassment on the basis of age, color, disability, marital status, national or ethnic origin, political affiliation, race, religion, sex (including pregnancy), sexual orientation, gender identity, veteran status or family medical or genetic information in University academics, employment, or in its programs or activities (together, “Prohibited Discriminatory Conduct”). These forms of Prohibited Discriminatory Conduct are defined in the University’s Preventing and Addressing Discrimination and Harassment (PADH) policy. Through its Preventing and Addressing Retaliation (PAR) policy, the University prohibits retaliation against any individuals who, in good faith (holding a genuine belief in the truth of one’s allegations), complain of discrimination and/or harassment prohibited by the PADH policy or who participates in an investigation into such reports (“Prohibited Retaliatory Conduct”).

The Office for Equal Opportunity and Civil Rights (EOCR) is responsible for enforcing the PADH and PAR policies on behalf of the University through these Preventing and Addressing Discrimination, Harassment and Retaliation Complaint Procedures (PADHR Procedures). Under these PADHR Procedures, faculty, staff, students, student and employee applicants and certain third-parties may report and seek resolution of complaints of Prohibited Discriminatory or Retaliatory Conduct. The PADHR Procedures offer two forms of resolution for reports made under the PADH or PAR policies: (1) Informal Procedures, which include a variety of informal options and channels for resolving reports, and (2) Formal Procedures, which provide a structured negotiated resolution option, where available, and formal investigation procedures.

Reports of Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Sexual or Gender-Based Harassment, Complicity (with such behaviors), or Retaliation (for reporting such conduct) (Sexual or Gender-Based Prohibited Conduct) are governed by the University's Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence (SH/IPV policy), which establishes separate procedures for reporting and resolving allegations of Sexual or Gender-Based Prohibited Conduct against Students (Appendix A) and Employees (Appendix B). For more information on the SH/IPV policy, including definitions of the Sexual or Gender-Based Prohibited Conduct and reporting options, please visit: <http://www.eocr.virginia.edu/title-ix>. If you have questions about which policy and procedures apply to your concerns, please contact EOCR at (434) 924-3200 or UVAEOCR@virginia.edu.

II. INFORMAL PROCEDURES

Employees and students are encouraged to attempt initially to resolve complaints at the lowest level through the relevant administrative structure of the employment unit or academic department. Certain types of Prohibited Discriminatory or Retaliatory Conduct or concerning behaviors that may not yet rise to the level of such conduct may be more appropriately and efficiently resolved through one of the many forms of informal resolution outlined below. On the other hand, some reports of Prohibited Discriminatory or Retaliatory Conduct, particularly those implicating violence or particularly severe harassment, may not be appropriate for resolution under the Informal Procedures and the University reserves the right to proceed with formal investigation at any time.

Pursuing resolution under the Informal Procedures does not preclude subsequent recourse to the Formal Procedures if the attempts at informal resolution fail to adequately resolve the reported concern. You are not required to follow the Informal Procedures before initiating Formal Procedures.

Informal Procedures may involve individual and/or community remedies that are designed to address a report of Prohibited Discriminatory or Retaliatory Conduct, such as:

- One-on-One Communication: If a Complainant wishes to address a situation with a Respondent without the direct involvement of a third party, the Complainant may communicate directly with the Respondent. This option is only appropriate if the Complainant does not feel threatened, there is no risk of physical harm, and the Complainant reasonably believes the Respondent will be receptive to the communication. Complainants are NOT required to engage in one-on-one communication before seeking third party assistance or other help.
- Resolution with the Assistance of a Third Party: A Complainant may seek assistance in informally resolving a report of Prohibited Discriminatory or Retaliatory Conduct from (i) the Complainant's supervisor, if the Complainant is an employee; (ii) the Respondent's supervisor; (iii) the Human Resources professional for the department and/or unit; (iv) University Human Resources Consulting Services or Health System Human Resources Office of Employee Relations; (v) the Office of the Provost(Faculty); (vi) the Office for Equal Opportunity and Civil Rights (EOCR); or (vii) a trained mediator (www.virginia.edu/mediation). Any of the foregoing third parties must consult with EOCR before taking action to resolve a report of Prohibited Discriminatory or Retaliatory Conduct.

Interventions and Remedies: Resolution under Informal Procedures may also include other interventions and remedies, such as broad-based educational programming or training for relevant individuals or groups; one or more sanctions for Respondent(s), if warranted and in accordance with relevant disciplinary procedures; and/or any other remedial or protective measures that can be tailored to the involved individuals to achieve the goals of the PADH and PAR policies.

Any combination of the options offered under the Informal Procedures may be utilized in any order. If resolution of the report of Prohibited Discriminatory or Retaliatory Conduct is reached through one of these Informal Procedures, the matter will be considered closed. If resolution is not reached, and EOCR determines that further action is necessary, or if a Respondent fails to comply with the terms of any agreed to resolution, the matter will be referred for an investigation under the Formal Procedures.

III. FORMAL PROCEDURES

Complainants may initiate Formal Procedures by filing a complaint with EOCR, regardless of whether resolution under Informal Procedures has been attempted. EOCR responds to complaints in accordance with the procedures outlined below. However, there may be exceptional circumstances that justify a departure from these procedures, and, should such circumstances arise, EOCR will advise the parties to the complaint as soon as possible.

A. FILING A COMPLAINT

A complaint may be filed with EOCR by any Academic Division, Medical Center, or College at UVA- Wise present or former employee, present or former student, applicant for admission or employment, or any other participants in the University's programs or activities who believe that they have been subject to Prohibited Discriminatory or Retaliatory Conduct ("PADHR Complaint").

Reports of sexual assault, sexual exploitation, complicity, intimate partner violence, stalking, and/or sexual or gender-based harassment (Sexual or Gender-Based Prohibited Conduct) are governed by the SH/IPV policy and separate procedures referenced in that policy, which outline the investigation and resolution of claims of Sexual or Gender-based Prohibited Conduct made against Students (Appendix A) and Employees (Appendix B). Reports of Sexual or Gender-Based Prohibited Conduct may be made through the University's online reporting system (<http://www.virginia.edu/justreportit/>) or by contacting the Title IX Coordinator or a Deputy Title IX Coordinator:

Catherine Spear, Acting Title IX Coordinator
Assistant Vice President for Equal Opportunity and Civil Rights
O'Neil Hall, Room 037
P.O. Box 400211
ccs9a@virginia.edu
(434) 924-7179 (office)

Akia Haynes, Deputy Title IX Coordinator
O'Neil Hall, Room 037
P.O. Box 400211
aah6n@virginia.edu
(434) 297-7988 (office)

Christopher Tate, Deputy Title IX Coordinator
O'Neil Hall, Room 037
P.O. Box 400211
crt2b@virginia.edu
(434) 297-7988 (office)

Complaints under the PADHR Procedures must be in writing and should be filed after the most recent alleged Prohibited Discriminatory or Retaliatory Conduct. A Complainant may also file a formal charge of discrimination, harassment and/or retaliation with a state or federal agency authorized by law to receive such complaints.

When filing a PADHR Complaint, EOCR strongly encourages the use of its Complaint Form, which can be found at <http://eocr.virginia.edu/sites/eop.virginia.edu/files/pdf/EOPComplaintForm.pdf>. This complaint form is intentionally structured to assist Complainants in documenting their complaint allegations and providing EOCR with sufficient information to evaluate the complaint. However, EOCR will also initially accept complaints in alternate written form, such as email, where the complaint includes, at a minimum: (1) the Complainant's name and contact information; (2) the names of the Respondent(s); (3) an explanation of the conduct believed to constitute Prohibited Discriminatory or Retaliatory Conduct with approximate date(s) of when these actions occurred; and (4) a brief description of why the Complainant believes that alleged conduct at issue is based on one or more protected characteristics. EOCR reserves the right not to accept complaints that are transmitted via telephone only and/or lacking sufficient information.

PADHR Complaints may be submitted to EOCR in any one of the following ways:

- Email to UVAEOCR@virginia.edu;
- Hand-delivery to EOCR's main office at Madison Hall, Room 101 (Lower Level);
- Mail to the University of Virginia, Office for Equal Opportunity and Civil Rights, P.O. Box 400219, Charlottesville, Virginia, 22904-4219; or
- Fax to (434) 924-1313.

B. RECEIPT OF COMPLAINT AND INITIAL ASSESSMENT

Upon receipt of a complaint, EOCR will first assess the allegations to determine whether interim measures pending resolution of the matter are appropriate. Interim measures may include, but are not limited to, a safety plan, schedule change, temporary removal of the Respondent from the workplace or academic program, if warranted, and other workplace and/or academic accommodations. In making this assessment, EOCR will consider the totality of the circumstances, the nature and severity of the allegations, and whether the allegations implicate a potential, ongoing safety threat to the Complainant or the community. EOCR will consult with University administrators, as appropriate.

C. EVALUATION OF COMPLAINT

Following EOCR's receipt of a complaint, EOCR shall decide whether the complaint states a potential violation of the PADH and/or PAR policies and shall notify the Complainant in writing of its decision. If the written complaint lacks sufficient information for EOCR to make this decision, EOCR will contact the Complainant to gather further information.

If EOCR determines that the Complainant's allegations, if true, do not state a violation of University policies, the written notice of this decision shall explain why the complaint does not state a violation and may inform the Complainant of other possible avenues of redress, such as contacting the University Ombudsman.

If EOCR concludes that the Complainant's allegations do not state a PADH or PAR policy violation, but nevertheless implicate potentially concerning behaviors, EOCR will advise Complainants of steps EOCR will take to assist them in addressing their concerns informally.

If EOCR concludes that the allegations of the complaint state a potential violation, EOCR will notify the Complainant of that determination and will meet with the Complainant to confirm the specific factual allegations upon which the complaint is based, discuss EOCR's complaint procedures, including whether the complaint is suitable for negotiated resolution.

For PADHR Complaints that also implicate conduct prohibited by the SH/IPV Policy, EOCR will consult with the Title IX Coordinator. Generally, such complaints or reports will be investigated together under the appropriate SH/IPV Procedures (Students - Appendix A; Employees - Appendix B), unless the Title IX Coordinator determines that doing so would unduly delay resolution of the allegations under the SH/IPV Policy. In these situations, EOCR will expressly inform Complainants in writing under which policies and procedures their reported allegations will be resolved.

D. NEGOTIATED RESOLUTION

Negotiated resolution is a process by which EOCR attempts to resolve complaints quickly and to the satisfaction of all parties without reaching formal findings, while protecting confidentiality to the extent possible. In contrast to mediation, negotiated resolution is undertaken after the filing of a complaint with EOCR and generally does not involve a facilitated meeting between the Complainant and the Respondent (collectively, the "parties"), unless such meeting is expressly agreed upon. If EOCR determines that a complaint is suitable for negotiated resolution, then this option will be discussed and offered to Complainants who will be given five (5) calendar days to decide whether to pursue this option and inform EOCR of their decision.

If the Complainant agrees to negotiated resolution, EOCR will notify the Respondent that the Respondent has been named in a complaint and advise the Respondent of the nature of the allegations. Such notification will provide information regarding PADHR Complaint Procedures and will offer the negotiated resolution option to the Respondent, who has five (5) business days from receipt of this notice to decide whether to exercise this option.

Negotiated resolution should be completed no later than thirty (30) calendar days from the date the Respondent agrees to this process.

If EOCR deems the complaint unsuitable for negotiated resolution or if either party declines to participate in or fails to make a decision regarding negotiated resolution, then EOCR will conduct an investigation in accordance with the procedures outlined below.

At any time during the negotiated resolution process, either party may elect to terminate the process. Upon termination of the process, EOCR will investigate the complaint in accordance with the procedures outlined below. EOCR reserves the right not to proceed with an investigation if, during negotiated resolution, the Complainant was offered and refused all of the relief to which the Complainant would be entitled if a formal investigation was conducted.

Generally, EOCR will only involve the Complainant, the Respondent and individuals necessary to facilitating the negotiated resolution process. Likewise, the parties will be asked to respect the confidentiality of the process. In some cases, it may be necessary to consult with or otherwise involve other University officials regarding University policies and procedures or available remedies. However, information will be provided solely to these persons on a need-to-know basis.

If the complaint is successfully resolved, the parties will sign a “Negotiated Resolution Form” prepared by EOCR, setting forth the agreed-upon terms. Upon the parties’ execution of the Negotiated Resolution Form, EOCR will destroy all other documents and notes except the original complaint. Copies of the complaint and the Negotiated Resolution Form will be provided to the Complainant and Respondent upon request and maintained by EOCR in accordance with University policies and state and federal law.

E. INVESTIGATION

If EOCR determines that negotiated resolution is not suitable, or if a negotiated resolution is not agreed to by both parties or is not successful, EOCR will conduct an investigation in accordance with the following procedures.

1. Notice of the Investigation: As soon as practicable, EOCR will provide notice to the Complainant and the Respondent(s), simultaneously and in writing, of the commencement of the investigation. Such notice will: (a) name the Complainant and the Respondent; (b) specify the nature of the alleged Prohibited Discriminatory or Retaliatory Conduct; (c) explain that the complaint will be investigated in accordance with these PADHR Procedures; (d) identify the Investigator; (e) explain the University’s prohibition against Retaliation; and (f) provide a copy of the PADH and PAR policies and the PADHR Complaint Procedures.

Where the Respondent is an Employee, EOCR will also notify, in writing, the Respondent's supervisor, Human Resources of the appropriate agency, (i.e., University Human Resources or Health System Employee Relations or College at Wise) and, if applicable, the Human Resources professional of the particular school/department/unit of the investigation. Such notice will inform these individuals that: (a) a complaint has been filed alleging that the Respondent has engaged in conduct prohibited by the PADH and/or PAR policies; (b) the report will be investigated in accordance with the PADHR Procedures; (c) the supervisor and the Human Resources professional are obliged to monitor the relevant environment, depending on the facts of the case, for Retaliation; and (d) information related to the report is confidential and will only be shared as needed to either obtain information pertinent to the investigation or to facilitate fulfillment of the duty of the supervisor and/or Human Resources to address any concerns regarding safety or Retaliation.

Interview with the Complainant and the Respondent(s): If EOCR has not already done so, EOCR will conduct a formal interview of the Complainant. EOCR will then formally interview the Respondent(s).

2. Investigation Overview: During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the Investigator to each other or to any witness. The Investigator will notify and seek to meet separately with the Complainant, the Respondent, and third-party witnesses and will gather other relevant and available evidence and information, including electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs (including those stored on computers and smartphones), and medical records (subject to the consent of the applicable party). The investigation conducted by EOCR may further include, but is not limited to:

- Interviewing material witnesses;
- Reviewing relevant files and records;
- Comparing the treatment of the Complainant to that of others similarly situated in the department or unit;
- Reviewing applicable policies and procedures; and/or
- Following-up with the parties as new evidence is collected, as appropriate, and permitting the parties to provide additional information to the record.

3. Timeframe for Investigation: The investigation shall normally be concluded within sixty (60) calendar days from the date of notice to the parties that the complaint has been accepted for investigation. This timeframe may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement for temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, to account for University breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. EOCR will notify the parties in writing of any extension of this timeframe.

4. Investigative Report and Recommended Findings: Upon conclusion of the investigation, EOCR shall issue a written report to the appropriate executive in the Respondent's chain of command or administrator with appropriate authority (Vice President and Chief Student Affairs Officer for Students; Executive Vice President for academic faculty and other employees reporting directly to an EVP; Vice President for other employees; and the Chancellor for the College at UVA-Wise). The investigative report will summarize the evidence gathered during the investigation and will include a recommendation as to whether there is sufficient information, by a preponderance of the evidence, to support a finding that the Respondent(s) engaged in the alleged Prohibited Discriminatory or Retaliatory Conduct in violation of the PADH and/or PAR policies.

If EOCR recommends a finding of violation, the report will further issue recommended action items, which may include, but are not limited to: (a) a directive to stop any ongoing discriminatory, harassing and/or retaliatory behavior/practice; (b) disciplinary or other corrective action be taken against the Respondent and/or others; (c) relief be granted to the Complainant, such as accommodations, reinstatement, hiring, reassignment, promotion, training, back pay or other compensation and/or benefits (specific remedies shall be fact-specific to each complaint); and/or (d) other proactive measures, such as targeted training or education.

F. EXECUTIVE DECISION AND NOTICE OF OUTCOME TO THE PARTIES

Upon receipt of the Investigative Report, the appropriate executive will have ten (10) calendar days to review the Investigative Report, accept or reject the recommended findings and the recommended action items and, if applicable, determine sanction in accordance with the appropriate disciplinary procedures. Nothing in the PADHR Procedures prevents the executive from implementing disciplinary action against a Respondent where the Final Investigation Report demonstrates the Respondent engaged in other conduct prohibited by the University, regardless of whether the Respondent has been found responsible for violating the PADH or PAR policies.

The executive will communicate, in writing, his/her decision on the finding(s) and each of the recommended action items outlined in the Investigative Report with supporting reason to EOCR. If the executive requires additional time for further investigation or other good cause, the executive shall request such an extension from EOCR. EOCR will inform the parties, simultaneously and in writing, of any extension the executive requests. EOCR will communicate the executive's decision, in writing, simultaneously, to the parties within five (5) calendar days of receipt of the decision. The decision outlined in this notice is final under the Policy and is not subject to further University appeal or grievance. Nothing in these Procedures abrogates post-adjudication rights as provided by state and federal law (i.e., State Grievance Procedure, under Chapter 30 (§2.2-3000 et. seq.) of Title 2.2 of the Code of Virginia; the Office for Civil Rights; Equal Opportunity Employment Commission).

IV. ADMINISTRATIVE REVIEW

EOCR retains discretion to conduct an administrative review into allegations of Prohibited Discriminatory or Retaliatory Conduct, in absence of a formal complaint. In determining whether to initiate an administrative review of allegations of Prohibited Discriminatory or Retaliatory Conduct, EOCR will consider all known information, including (1) the nature and the severity of the allegations; (2) whether the allegations are amenable to resolution through other channels, such as human resources intervention; (3) the history of prior complaints regarding the same individuals, department and/or area; (4) the expressed wishes, if known, of the affected individual(s); and (5) any other pertinent information.

Upon initiation of an administrative review, EOCR will notify the head of the department/unit/area and the relevant human resources professionals of the commencement and scope of the review. Administrative reviews will include interviewing witnesses and reviewing pertinent documents and will normally be concluded within sixty (60) calendar days. This timeframe may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement for temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, to account for University breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. EOCR will then produce a written report outlining the findings of the Administrative Review and any recommended action items to the executive responsible for the department/unit/area. The same level of confidentiality applicable in complaint investigations will apply to administrative reviews.

V. OBLIGATION TO PROVIDE TRUTHFUL INFORMATION

All University community members are expected to provide truthful information in connection with any report made under the PADH and PAR policies. Submitting or providing false or misleading information in bad faith or with a view to personal gain or to intentionally harm another in connection with a complaint under these policies is prohibited and subject to disciplinary sanction. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

VI. EXTERNAL COMPLAINTS

Individuals also have the right to file complaints with one of the following federal or state agencies. Please be advised that separate deadlines and time limitations for filing complaints with the external agencies may apply, and EOCR's investigation does not toll or otherwise suspend these deadlines or time limitations. Please contact the following agencies for more information about the applicable deadlines:

Equal Employment Opportunity Commission
1-800-669-4000
info@eeoc.gov
<http://eeoc.gov/>

U.S. Department of Education
Office for Civil Rights
1-800-421-3481
ocr@ed.gov
<http://www2.ed.gov/about/offices/list/ocr/index.html>

Commonwealth of Virginia
Division of Human Rights
(804) 225-2292
human_rights@oag.state.va.us
<http://www.oag.state.va.us/index.php/programs-initiatives/human-rights>

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