



Procedures for Resolution of Reports Against Employees Under Cornell University Policy 6.4 for the Following Acts of Non-Title IX Prohibited Conduct:

- Aiding Prohibited Conduct
- Prohibited Discrimination
- Protected Status Harassment, including Sexual Harassment and Sex/Gender-Based Harassment (Non-Title IX)¹
- Sexual Misconduct (which includes Non-Title IX Dating and Domestic Violence, Sexual Assault, Stalking, and Sexual Exploitation)
- Retaliation
- Violating a Supportive Measure and/or Temporary Suspension

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.

¹ The University has multiple obligations regarding employee sexual harassment and sex/gender-based harassment under various federal and state laws. Sexual and sex/gender-based prohibited conduct meeting the Title IX regulatory standard is addressed under the Procedures for Resolution of Reports Against Employees Under Cornell University Policy 6.4 (Title IX Prohibited Conduct).

Additional Protections and Remedies

In addition to the procedures available under University Policy 6.4, students and employees may also choose to pursue legal remedies under the state and federal laws listed below:

- New York Human Rights Law

A complaint can be filed with the New York State Division of Human Rights within one (1) year of the alleged discrimination. A complaint may also be filed in New York Supreme Court within three (3) years of the alleged discrimination. For more information: <https://dhr.ny.gov/contact-us>

- Title VII of the Civil Rights Act of 1964

The Equal Employment Opportunity Commission (“EEOC”) is responsible for enforcement of the federal law prohibiting employment discrimination, Title VII. An individual can file with the EEOC anytime within 300 days from the alleged discrimination. For more information: www.eeoc.gov.

- Title IX

The Office for Civil Rights, the United States Department of Education is responsible for enforcement of Title IX. For more information: OCR@ed.gov or (800) 421-3481.



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1 EMPLOYEES UNDER THESE PROCEDURES

An employee is a faculty member (defined as a person who holds appointment to an academic title (as specified in the Bylaws of Cornell University, Article XVII)) or a staff member (defined as an employee of Cornell University who is not a faculty member). A graduate or undergraduate teaching or research assistant is treated as an “employee” for the purposes of these procedures for reports or Formal Complaints arising out of performance of those academic assignments.

In situations where the respondent is both a student and an employee, the appropriate University official² will determine which procedures apply based on the circumstances surrounding the alleged conduct as determined in their sole discretion. Further, when the respondent is both a student and an employee, the respondent may be subject to any of the sanctions applicable to students or employees under Policy 6.4.

2 DEFINITIONS OF PROHIBITED CONDUCT

2.1. Aiding Prohibited Conduct

A person aids prohibited conduct if, with the intent to promote or facilitate such conduct, that person helps another person commit the prohibited conduct.

2.2. Prohibited Discrimination

Prohibited Discrimination occurs when an employment or academic decision results in negative and/or different treatment of an individual based upon their membership in an Equal Education and Employment Opportunity (“EEEEO”)-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 EEEEO-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.

² Throughout these procedures, various University officials, such as the Associate Vice President of the Cornell Office of Civil Rights, or their designees, are assigned responsibility for performing specific functions. Named officials are authorized to delegate responsibility to other appropriate University officials and non-university consultants except where such delegation contravenes University policy. Additionally, named officials and their designees may consult with appropriate University officials, the Office of University Counsel, and subject-matter experts.



2.3. Protected Status Harassment (see also Sexual and Sex/Gender-Based Harassment (Non-Title IX))

Protected-status harassment, including sexual and sex/gender-based harassment, occurs 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.

The conduct constitutes harassment when the conditions outlined in (1) or (2), below, are present.

1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs or activities or is used as the basis for University decisions affecting the individual (often referred to as "quid pro quo" harassment.)
2. Such conduct creates a hostile environment. A hostile environment exists when the conduct subjects an individual to inferior terms, conditions or privileges of employment or education. Conduct must be deemed "more than a petty slight or trivial inconvenience" from the perspective of a reasonable person in the same protected class. In evaluating whether a hostile environment exists, the University will consider a number of factors, including, but not limited to:
 - The frequency, nature, and severity of the conduct;
 - Whether the conduct was physically threatening;
 - The effect of the conduct on the complainant's mental or emotional state;
 - How the conduct affected the terms, conditions or privileges of employment or education;
 - Whether the conduct was directed at more than one person;
 - Whether the conduct arose in the context of other discriminatory conduct;
 - Whether there is a power differential between the parties; and
 - Whether the conduct implicates concerns related to academic freedom or protected speech.

Because of protections afforded by academic freedom, speech and other expression occurring in the context of instruction or research will not be considered protected-status harassment unless this speech or expression also meets one or both of the following criteria:

- it is meant to be either abusive or humiliating toward a specific person or persons, or
- it persists despite the reasonable objection of the person or persons targeted by the speech.

2.4. Sexual and Sex/Gender-Based Harassment (Non-Title IX)

Sexual harassment is unwelcome sexual advances, requests for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, nonverbal, graphic, physical, or otherwise, when the conditions outlined in (1) or (2), below, are present.

Sex/gender-based harassment is harassment based on gender, sex, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, nonverbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined in (1) or (2), below, are present.

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Originally Issued: 7/8/1996

Last Updated: 1/31/2025



1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs or activities or is used as the basis for University decisions affecting the individual (often referred to as "quid pro quo" harassment), including an attempt or solicitation of an unwelcome "prohibited relationship" as defined in Cornell Policy 6.3, Consensual Relationships.
2. Such conduct creates a hostile environment. A hostile environment exists when the conduct subjects an individual to inferior terms, conditions or privileges of employment or education. Conduct must "more than a petty slight or trivial inconvenience" from the perspective of a reasonable person in the same protected class.

In evaluating whether a hostile environment exists, the University will consider a number of factors, including, but not limited to:

- The frequency, nature, and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the complainant's mental or emotional state;
- How the conduct affected the terms, conditions or privileges of employment or education;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether there is a power differential between the parties; and
- Whether the conduct implicates concerns related to academic freedom or protected speech.

Because of protections afforded by academic freedom, speech and other expression occurring in the context of instruction or research will not be considered sexual or sex/gender-based harassment unless this speech or expression also meets one or both of the following criteria:

- it is meant to be either abusive or humiliating toward a specific person or persons, or
- it persists despite the reasonable objection of the person or persons targeted by the speech.

2.5. Sexual Misconduct

Sexual Misconduct is defined in Policy 6.4 as a broad term encompassing unwelcome behavior of a sexual nature designated as prohibited conduct by the applicable procedures under this policy. For these procedures, Sexual Misconduct includes:

1. Dating and Domestic Violence
2. Sexual Assault
3. Stalking
4. Sexual Exploitation

The definitions for (1) – (3) are in the Procedures for Resolution of Reports Against Employees Under Cornell University Policy 6.4 (Title IX Prohibited Conduct) and are incorporated by reference. When allegations of Sexual Assault, Dating and Domestic Violence, and/or Stalking do not fall within the Title IX regulatory framework, the University will determine whether jurisdiction exists under these procedures. (See Section 5 "Jurisdiction".)



Sexual Exploitation is intentionally engaging in any of the following:

- Observing another person when that person is nude or engaged in sexual activity without the knowledge and consent of the person observed or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- Making, sharing, posting, streaming or otherwise distributing any image, photography, video, or audio recording depicting or otherwise recording another person when that person is nude or engaged in sexual activity without the knowledge and consent of the person depicted or recorded;
- Exposing one's genitals to another person without the consent of that person;
- Exposing another person to a sexually transmitted infection without the knowledge and consent of the person exposed; and
- Causing another person to become incapacitated with the intent of making that person vulnerable to nonconsensual sexual assault or sexual exploitation

2.6. Retaliation

Retaliation is adverse action taken against an individual for making a good-faith report of prohibited conduct or participating in any investigation or proceeding under these procedures. Retaliation may include intimidation, threats, coercion, or adverse employment or educational actions. Retaliation may be found even when an underlying report made in good faith was not substantiated. Retaliation may be committed by the respondent, the complainant, or any other individual or group of individuals. Retaliation does not include good-faith actions pursued in response to a report of prohibited conduct.

2.7. Violating a Supportive Measure and/or Temporary Suspension

A person violates a Supportive Measure and/or Temporary Suspension if it is an order by a University official and the person to whom the order applies knowingly violates any of the conditions of the order. One common example of an order by a University official is a “no-contact” order. Alleged violations of Supportive Measures and/or Temporary Suspensions issued under Policy 6.4 are subject to resolution under these procedures.

3 EFFECTIVE DATE OF THESE PROCEDURES

These procedures will apply in all cases where a Formal Complaint of alleged prohibited conduct under these procedures is signed on or after the effective date of these procedures.

Where the date of the alleged prohibited conduct precedes the effective date of these procedures, the definitions of prohibited conduct in existence at the time of the alleged conduct will be used. These procedures, however, will be used to investigate and resolve all Formal Complaints signed on or after the effective date of these procedures or subsequent updates to these procedures, regardless of when the alleged conduct occurred.



4 APPLICATION OF UNIVERSITY POLICIES AND PROCEDURES

Appropriate Procedures under Policy 6.4

The University will take reasonable and necessary actions to prevent discrimination and harassment; to take appropriate action when it learns directly or indirectly of conduct that might violate this policy; and respond promptly and thoroughly to such information, whether or not a Formal Complaint is filed under these procedures.

The University will determine which procedures under Policy 6.4 apply and direct the report or formal complaint accordingly with appropriate notice and information to the complainant(s) and as appropriate, the parties. To make this determination, the University will consider the status of the respondent and evaluate whether the report or formal complaint concerns non-Title IX prohibited conduct to be addressed under these procedures or Title IX prohibited conduct to be addressed under the separate procedures governing such cases.

For more information, visit: <https://titleix.cornell.edu/procedures/>.

Allegations of Violations of other University Policy

If a party submits a report or formal complaint that alleges a violation of another University policy, the Provost when the respondent is a faculty member or the Vice President and Chief Human Resources Officer when the respondent is a staff member, will determine how these allegations will be handled, such as, but not limited to, incorporated in an investigation under these procedures or referring the allegations of the other policy violation to the proper University official. The parties will be notified of the determination. These determinations are not subject to further appeal or review.

5 JURISDICTION

These procedures will apply when an employee's alleged prohibited conduct occurred in the University's education program or activity (as defined in the policy) and when the Procedures for Resolution of Reports Against Employees Under Cornell University Policy 6.4 (Title IX Prohibited Conduct) do not apply.

All actions by an employee that involve the use of the University computing and network resources from a remote location, including but not limited to accessing email accounts, will be deemed to have occurred on campus.

These procedures will generally apply to alleged prohibited conduct by an employee that occurs in the workplace or within the general context of their employment. Alleged prohibited conduct outside of this context may be addressed at the University's discretion under these procedures if the conduct has specific employment-related or institutional consequences. The connection between such conduct and employment will be assessed on a case-by-case basis by the Cornell Office of Civil Rights (COCR) in consultation with the appropriate University officials. The University reserves the right to exercise jurisdiction under these procedures if an employee engages in conduct that is deemed egregious and/or detrimental to the best interests of the University. For example, the University reserves the right to Procedures for Resolution of Reports Against Employees Under Cornell University Policy 6.4 (Non-Title IX Prohibited Conduct)

Originally Issued: 7/8/1996

Last Updated: 1/31/2025



exercise jurisdiction if the conduct may negatively impact the University's mission, its reputation, or the health or safety of University community members, including potentially contributing to or creating a hostile environment on any campus of the University.

A jurisdictional challenge shall be deemed waived if not raised by the appeal stage under these Procedures.

6 INITIAL ASSESSMENT

Upon receipt of a report of alleged prohibited conduct by an employee, the Cornell Office of Civil Rights (COCR) will make an initial assessment of the reported information. This initial assessment will include (1) whether the reported information is subject to these procedures, The Procedures for Resolution of Reports Against Employees Under Cornell University Policy 6.4 (Title IX Prohibited Conduct), or to neither, and (2) an analysis of whether immediate reasonable steps have been taken or should be recommended to the unit or college to address the concerns raised by the report. These reasonable steps are determined on a case-by-case basis and are dependent on the conduct alleged and an evaluation of the work environment. The reasonable steps could include, for example, a separation of the parties, including a change in assignment, shift, or work location or administrative leave. Reasonable steps may also include a recommendation to the responsible unit and/or human resource professionals that they offer counseling and/or training for the affected individuals. These immediate reasonable steps do not preclude additional Supportive Measures or the complainant's or the University's pursuit of a resolution under these procedures.

6.1. Where the Complainant's Identity Is Known

Where the identity of the complainant is known, they will be provided an explanation of available resources and options and will be offered the opportunity to meet promptly with COCR to discuss those resources and options.

6.2. Where the Complainant's Identity Is Unknown

Where a report is filed but the identity of the complainant is unknown, COCR will assess the nature and circumstances of the report, including whether it provides information that identifies the potential complainant, the potential respondent, any witnesses, and/or any other third party with knowledge of the reported incident, and take reasonable and appropriate steps to respond to the report of prohibited conduct consistent with applicable federal and state laws and these procedures.

7 ALTERNATIVES TO FILING A FORMAL COMPLAINT

7.1. Informal Resolutions

Members of the Cornell community have an option to resolve concerns of prohibited discrimination without an investigation under this policy by acting through COCR, who will work with the appropriate



university officials to achieve a resolution under applicable staff employee or academic policy/ protocol. If those officials resolve the matter, no complaint may be filed, and no appeal may be taken.

7.2. Mediating a Concern

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.

If a complainant and the alleged respondent agree to proceed by mediation, a trained individual designated by the Vice President and Chief Human Resources Officer, or their designee(s), will interview the complainant to determine the factual allegations on which the allegation of discrimination is based, and the terms satisfactory to the complainant upon which the complaint may be conciliated. The mediation process must be completed within 20 business 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 reports or formal complaints of prohibited discrimination.

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.

7.3. Supportive Measures

At the request of the complainant or at its own discretion, COCR may recommend to the appropriate university official under applicable academic policy Supportive 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.

8 PENDING CRIMINAL INVESTIGATIONS

In addition to the University investigating potential Policy 6.4 allegations, CUPD or other law enforcement may investigate alleged criminal matters. In cases where there is a criminal investigation, the University process will run concurrently with such investigation. The University may grant temporary delays reasonably requested by law enforcement for evidence gathering.



9 FILING A FORMAL COMPLAINT AGAINST AN EMPLOYEE

9.1. Time Limits for Filing a Formal Complaint

Complaints brought against employees must be filed with COCR within one (1) year of the alleged action.

9.2. Formal Complaint Process

An individual or group may file a formal complaint with COCR. 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 formal complaint. In extraordinary circumstances, however, COCR may determine on its own to investigate prohibited conduct that interferes with the University's ability to provide a safe and non-discriminatory environment. In such circumstances, COCR 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 COCR determines that the formal complaint describes an alleged violation of the prohibited conduct governed by these procedures, it will notify the respondent that they have been named in a complaint and proceed under these procedures.

9.3. Dismissal of Formal Complaint

9.3.1. Dismissal of a Formal Complaint by COCR

If COCR determines that the Formal Complaint does not describe an alleged violation of the prohibited conduct governed by these procedures, it will notify the complainant that the formal complaint is dismissed, and the complainant will be informed of their right, if any, to appeal under this policy, pursue remedies under another University procedure or policy and/or to seek external avenues of complaint resolution.³

If the complainant's concerns are unrelated to prohibited conduct, COCR may refer the complainant to or cooperate with another university office to investigate and/or address such unrelated concerns.



9.3.2. Dismissal of a Formal Complaint Based on Academic Freedom

At any time after a Formal Complaint is filed, COCR may dismiss a Formal Complaint and close a case where COCR determines that dismissal of the Formal Complaint is warranted because the alleged prohibited conduct is protected by academic freedom and inquiry, principles of free speech and expression, or the university's academic mission. Review of the Formal Complaint pursuant to this provision may be initiated by COCR, at the request of the respondent, or by the Dean of the Faculty. The Associate Vice President of COCR and three faculty members from the Committee on Academic Freedom and Professional Status of the Faculty will make the decision. This decision is not subject to further review.

9.4. Retention of Documents if Complainant does not Pursue Complaint

When a complainant does not pursue a complaint that they have filed, COCR will maintain confidentially materials obtained during the complaint filing for at least three 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 cases.

9.5. 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 engaged in prohibited conduct.)

During investigations, the investigator will keep both parties informed on the investigation's status, as appropriate. Throughout the investigative process, the investigator may consult the Provost, the Vice President and Chief Human Resources Officer, Vice President for Student and Campus Life, Dean of Faculty, other appropriate university officials, subject-matter experts, and/or university counsel.

³ Where appropriate, the Title IX Coordinator may dismiss a Formal Complaint prior to the Notice of Formal Complaint to both parties.



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.

9.6. Duty to Cooperate with Investigation

Employees and students must cooperate with investigations conducted under these procedures in the context of employment and academic appointment, and in relation to a university activity. An employee 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.

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

9.7. 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 their 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.

9.8. Investigator's Report of Investigation Findings

9.8.1. 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 or disciplinary actions.
- Any non-punitive, preventative remedies for the complainant.

9.8.2. Disciplinary Action

Disciplinary action for prohibited conduct 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.



9.8.3. Restoring Respondent's Reputation upon a Dismissal of a Formal Complaint

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

9.9. 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 their 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) business 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").

9.10. Review of Investigative Report and Decision

The reviewer is the appropriate dean when the respondent is a member of the faculty, and the reviewer is the unit head when the respondent is a member of the academic or nonacademic staff (other than faculty). Before making any decision following the investigation, the reviewer must forward to the complainant and respondent, copies of the summary of the investigation report. In addition, if the respondent is a member of the faculty, a copy of the report must be forwarded to the dean of faculty. Before making any decision following the investigation, the reviewer must provide both parties a reasonable opportunity to submit written comments (that is, within ten (10) business days unless extended by the reviewer). The written comments may include any objections to the summary of the investigation report, and any alleged procedural and/or substantive errors to the summary of the investigation report.



The reviewer (or the President or Board of Trustees, if appropriate) of the investigation report summary will consider the written comments submitted by the complainant and/or respondent, and thereafter 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 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.

Staff respondents have no further rights to object to the investigation or the final determination after submission of written comments under this subsection. (The appeal rights referred to in 9.14, *infra*, are limited to the respondent challenging the disciplinary actions, if any, imposed as a result of the reviewer's final determination.) If the final determination includes the determination that any sanctions or remedial measures should be implemented, the reviewer will direct their implementation at the time the final determination is issued.

9.11. Appeals by Complainant

Appeals by complainants 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) business days of the determination to the Provost, or a designee, when the respondent is a member of the faculty, or to the Vice President and Chief Human Resources Officer 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 Provost, or a designee, when the respondent is a member of the faculty, or to the Vice President and Chief Human Resources Officer or a designee, when the respondent is a member of the academic or nonacademic staff (other than faculty). A written decision shall be issued within thirty (30)

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Originally Issued: 7/8/1996

Last Updated: 1/31/2025



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.

9.12. Appeal by Faculty Member

9.12.1. To Provost

If the respondent faculty member objects to the final determination by the reviewer, but does not contend that their conduct arose out of the nature of a subordinate- supervisory relationship between the faculty member and a student (such as while engaged in teaching, advising, research, and thesis or dissertation supervision), they may appeal, and ask the Provost or designee to review the evidence, determination, and/or recommended sanctions, or remedial measures in the investigation report within ten (10) business days of receiving the final determination. The Provost or designee will conduct such a review, and may accept, modify, or reject the determination, or recommended sanctions and/or remedial measures.

9.12.2. To the Committee on Academic Freedom and Professional Status of the Faculty

If the respondent faculty member objects to the final determination of the reviewer and contends that their conduct arose out of the nature of a subordinate- supervisory relationship between a student and faculty member, they must submit, within ten (10) business days of receiving the report, a written request for a review of the complaint to the Committee on Academic Freedom and Professional Status of the Faculty ("the Committee"), with a copy to COCR and the appropriate dean or equivalent unit head. The Committee's procedures for "Adjudicating Contested Investigatory Charges and Recommended Sanctions in Discrimination Cases" are described in Appendix A.

The Committee must make an initial determination within ten (10) business days of receiving the charged faculty member's request. If the Committee determines by majority vote that the alleged behavior did arise out of the nature of a subordinate- supervisory relationship, or that an issue of academic freedom is involved, it will make its own determination on the charges. (See Appendix A for the procedures of the Committee.)

If the Committee determines that the alleged behavior did not arise out of the nature of a subordinate- supervisory relationship, or that no issue of academic freedom is involved, the Committee has no further role. Otherwise, it will make a written report on its findings of fact, and provide copies to the complainant and the respondent, as well as to COCR. COCR then will forward its report of findings and recommended remedies to the appropriate dean or equivalent unit head for the final decision on appropriate sanctions.

The respondent or the complainant may rebut to the appropriate dean or equivalent unit head the Committee's recommendations of any sanctions. An intention to rebut must be filed with the dean or equivalent unit head within three days of receipt of the Committee's final report. The completed rebuttal must be filed with the dean or equivalent unit head within two (2) weeks of receiving of the Committee's final report. If the recommendations are appealed, the dean or equivalent unit head will refrain from considering the appropriate sanctions until the complete rebuttal has been filed.

The dean or equivalent unit head must accept the Committee's findings of fact and conclusions. However, he or she may modify the Committee's recommended sanctions. Before reaching a final decision
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concerning any modifications, he or she must explain the rationale for the decision in a written communication to the Committee and will consider the Committee's response to those modifications. If the dean or equivalent unit head seeks to impose the sanction of dismissal, the matter will be handled pursuant to the Trustees' Dismissal Procedures. This determination is final.

9.13. Grievance from Disciplinary Action Resulting from Investigation against Faculty

University Policy 6.2.10, Establishment of College-level Academic Employee Grievance Procedures or any other applicable grievance procedure will govern any grieved or contested disciplinary action.

9.14. Grievance from Disciplinary Action Resulting from Investigation against Staff

Staff Respondents may use Human Resources Procedure 6.11.4, Staff Complaint and Grievance Procedure, to challenge disciplinary actions resulting from a Policy 6.4 investigation. The Staff Complaint and Grievance Procedure is not available to challenge alleged procedural or substantive errors of the investigation, or raise objections to the investigation or final determination as provided in Section 9.10. . 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.

10 ADDITIONAL DEFINITIONS RELEVANT TO PROHIBITED CONDUCT UNDER POLICY 6.4

10.1. Formal Complaint

A "Formal Complaint" of prohibited conduct is a written document signed by a complainant alleging specific prohibited conduct by a respondent and initiating the resolution process under the Procedures, or a similar written document signed by a university official on behalf of the university. A "report" of prohibited conduct differs from a Formal Complaint. A report occurs when COCR becomes aware of an alleged incident of prohibited conduct.

10.2. Faculty and Staff Co-Investigators

When the respondent is a member of the faculty, the Dean of Faculty will designate a faculty member to serve as a co-investigator. When the respondent is a staff member, the Vice President and Chief Human Resources Officer will designate a staff member to serve as a co-investigator. These co-investigators will be selected from pools of appropriately trained faculty and staff. The co-investigator must collaborate fully with the investigator in all phases of the investigation.

10.3. Investigator

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A representative from COCR that has been trained and charged to review complaints of prohibited conduct under Policy 6.4, with an outcome of developing recommendations for addressing the Formal Complaint under these procedures.

10.4. 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 faculty under this policy shall be by a dean or equivalent unit head with authority over the respondent(s). 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 dean, vice provost, or vice president is the respondent, the summary will be forwarded to the Provost or their designee. If the Provost is the respondent, the investigation report is forwarded to the University President or their 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.

11 THE INVESTIGATION PROCESS

11.1. The Investigation Process: Features and Steps

Investigations⁴ conducted by COCR or by an investigator with a faculty co-investigator, will be guided by the following process:

1. Identify the individual alleged to have engaged in the alleged prohibited conduct against 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 prohibited conduct and determine what efforts were made, if any, at informal resolution and/ or Supportive 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 prohibited conduct and, if possible, the dates and locations where the alleged prohibited conduct occurred.
6. Develop a thorough understanding of the professional or personal relationship, degree of control, and amount of interaction between the two parties.
7. Determine whether the complainant knows of or suspects that the respondent has engaged in prohibited conducted against other individuals.

⁴ The process for investigating complaints of prohibited discrimination is distinct from the mediation process. The same person may not perform the functions of mediator and investigator in a single case.



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 prohibited conduct 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.
12. Remind all parties and witnesses on a case by case basis of the need for process privacy, 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 prohibited conduct; 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 COCR's possession. The Provost will rule upon any objections.

11.2. Challenge to Investigator

When a Policy 6.4 complaint is brought against an employee acting in the scope of their University employment, the University 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, the University 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 Associate Vice President of COCR.

APPENDIX A: COMMITTEE ON ACADEMIC FREEDOM AND PROFESSIONAL STATUS OF THE FACULTY PROCEDURES

Note: Each year, COCR must train members of the Committee on Academic Freedom and Professional Status of the Faculty (the "Committee") to recognize prohibited conduct.

I GENERAL PROVISIONS

1. Any member of the Committee whose personal or professional relationships might interfere with providing a fair and unbiased hearing will recuse himself or herself from the proceedings. A member of the Committee who is in the same department as the respondent will recuse himself or herself. The respondent and complainant or parties may challenge any member of the Committee who does not recuse him or herself. Following such a challenge, if a majority of the other members



of the Committee present and voting, not including recused members and student members, votes in favor of recusal, then the challenged member will recuse himself or herself.

2. The remaining members of the Committee, not including recused members and student members, will participate in the proceedings. If there are fewer than five such remaining members of the Committee, the Committee will decline to hear the grievance until the Nominations and Elections Committee of the Faculty Senate adds members to the Committee to make a complement of five participating members. The participating members will be referred to hereinafter as the "members of the Committee."
3. A majority of the members of the Committee will constitute a quorum for any hearing. Decisions of the Committee will be rendered by a majority vote of the members present and voting. The Chair (paragraph five) will not vote on any matter except in the case of a tie.
4. Each person who appears before the Committee will be advised that he or she is obligated to treat everything that he or she learns in the proceedings as confidential, and may not disclose this information to any other person, unless compelled by law to do so.
5. The members of the Committee will elect a chair from among themselves. Subject to paragraph six, the chair will control the conduct of all proceedings and will make such procedural rulings as may be necessary to assure fairness and to avoid unnecessary delay, including rulings on the relevance of suggested witnesses or lines of questioning. The Committee may overrule any such decision by a majority vote of the members present and voting.
6. The Committee may appoint a faculty member who is a member of a state bar to serve as an independent legal advisor to advise the Committee on all matters relating to the performance of its responsibilities hereunder. The legal advisor will not be a Committee member and will not have a vote in the Committee's decisions. At the invitation of the Committee, the legal advisor may be present at any time during the proceedings and during the Committee's deliberations. The chair may authorize the legal advisor to control the conduct of the proceedings and to make procedural rulings. The Committee, by a majority vote of the members present and voting, may withdraw this authority at any time and may overrule any procedural ruling made by the legal advisor.
7. The Committee will recommend that the Faculty Senate maintain a list of individuals who have agreed to serve as volunteer advisors or attorneys for the parties in the Committee's proceedings. Nothing in these procedures will be interpreted, however, to obligate the Faculty Senate or the Committee to guarantee that the respondent and the complainant or parties will be able to obtain the services of an advisor or attorney.
8. The Committee has a responsibility to conduct fair and even-handed proceedings, and to see that all parties and witnesses are treated in a polite, respectful manner.
9. The Committee will conduct formal hearings as provided in Section III, unless the respondent waives their right to such hearings, in which case the Committee will conduct informal proceedings as provided in Section II. Any waiver of the right to formal hearings will be irrevocable.

II INFORMAL PROCEEDINGS

10. This section will apply only if the respondent waives their right to formal hearings. Section III will not apply in such a case.
11. The Committee will invite the respondent to explain why he or she feels that the charges and/or recommended sanction of the investigation report are unjustified. The respondent may be



accompanied by an advisor or attorney of their own choice, who may advise the respondent but may not participate in the proceedings in any other way.

12. The Committee may also call the complainant or parties and any witnesses. A complainant or witness who is called may be accompanied by an advisor or attorney of their own choice, who may advise the complainant or witness but may not participate in the proceedings in any other way.

III FORMAL HEARINGS

13. The university will provide an attorney whose sole responsibility in these proceedings will be to support the charges and recommended sanctions of the investigation report. This attorney will be entitled to present witnesses and cross-examine witnesses (including the complainant or parties and the respondent) who appear before the Committee.
14. The respondent will be entitled to be accompanied and represented by an advisor or attorney of their own choice.
15. The respondent will be entitled to be present throughout the hearings and, either personally or through their advisor or attorney, will be entitled to give evidence and to present witnesses on their own behalf, to hear the evidence against him or her, and to confront and cross-examine adverse witnesses (including the complainant or parties) who appear before the Committee.
16. The Committee will encourage Institutional Equity to turn over to the respondent all exculpatory evidence in their investigatory files.
17. Each complainant will be entitled to be accompanied and represented by an advisor or attorney of their own choice.
18. Each complainant, either personally or, if accompanied and represented by an advisor or attorney, through that advisor or attorney, will be entitled to give evidence and to present witnesses on their behalf and to confront and cross-examine adverse witnesses (including the respondent) who appear before the Committee.
19. Witnesses may raise objections to any question posed to them, either personally or, if represented by an advisor or attorney, through that person. The Committee will rule on such objections in accordance with paragraphs five and six.
20. The members of the Committee may question all those who appear in the hearings. The members of the Committee may adjourn temporarily to consult concerning the questions to be asked.
21. The Committee will endeavor to evaluate all of the relevant facts of a given case. The university, the complainant, and the respondent, may offer evidence. The Committee will not find the respondent responsible unless the Committee, after evaluating all of the evidence, is satisfied that the charge has been proven by clear and convincing evidence.
22. Prior findings of responsibility for prohibited discrimination and prior mediation agreements in such cases will be admissible. Records of prior accusations not leading to findings of responsibilities and records concerning similar behavior not subject to the complaint(s) in the case will not be admissible. Testimony about prior accusations or similar behavior will be admissible.
23. The Committee will base its findings of fact and conclusions solely on the evidence presented at the hearings.
24. All hearings will be tape-recorded. The Committee will permit the respondent and the complainant or parties to listen to the tape recordings upon request. However, the parties may not take any written notes of the recordings.



IV DECISION AND REPORT

25. The Committee will decide by a majority vote of the members present and voting whether there is clear and convincing evidence to find that the respondent is responsible for each of the charges specified in the investigation report. Only those members who attended all of the hearings may vote. The Chair will not vote except in the case of a tie.
26. The Committee will make a written report setting forth the Committee's findings of fact, conclusions, and recommendations. The Committee will transmit this report to the appropriate dean or equivalent unit head, the respondent, each complainant, and Institutional Equity. Before being given a copy of the Committee's report, the respondent and each complainant will be required to sign a statement of confidentiality affirming that he or she will not divulge the contents of the report to any other person, unless compelled to do so by law. The Committee's report will include a discussion of the rationale for its findings of fact, conclusions, and recommendations.
27. The respondent, a complainant, or Institutional Equity may appeal the Committee's findings of fact and conclusions to the University Faculty Committee, as provided for in Cornell University Policy 6.4. Following the conclusion of an appeal, the respondent, a complainant, or Institutional Equity may rebut the Committee's recommendations concerning sanctions to the appropriate dean or equivalent unit head, as provided in Cornell University Policy 6.4.
28. The Committee will have discretion to release a public statement of its findings of fact, conclusions, and recommendations. In exercising its discretion, the Committee will take into account concerns about confidentiality.
29. These procedures and any subsequent amendments will become effective upon ratification by the Faculty Senate.

