

ADMINISTRATIVE DIVISION Office of Equal Opportunity Programs	EOP 1.01
POLICY TITLE Equal Opportunity Complaint Processing Procedures	
SCOPE OF POLICY All Campuses	DATE OF REVISION: February 27, 2019
RESPONSIBLE OFFICER Director of the Office of Equal Opportunity Programs	ADMINISTRATIVE OFFICE Equal Opportunity Programs

PURPOSE

The Equal Opportunity Complaint Processing Procedures Policy sets forth the procedures for investigating complaints of unlawful discrimination and harassment at the University of South Carolina.

DEFINITIONS

Alleged Offender/Respondent. Any person accused of subjecting another person or group of persons to unlawful discrimination or harassment as defined herein.

Complainant. A person who files a written complaint with the Office of Equal Opportunity Programs alleging he or she has been subjected to unlawful discrimination or harassment as defined above.

Demonstrated Loss. Demonstrated loss includes, but is not limited to, loss or diminishment of an academic benefit, standing or privilege; or loss or diminishment of an employee benefit or privilege, to include a change in terms or conditions of employment deemed to be of a negative nature.

Sanctions. Sanctions include any disciplinary action authorized by University of South Carolina policy which the university is authorized to impose upon any faculty, staff or student.

Unlawful Discrimination. Unfair or unequal treatment of an individual or group of individuals based upon race, color, national origin, religion, sex, gender, age, disability, sexual orientation, genetics, protected veteran status, pregnancy, child birth or related medical conditions, or any other category protected by law which interferes with or limits the ability of an individual or group of individuals to participate in or benefit from the services, activities or privileges provided by the university.

Unlawful Harassment. Conduct (oral, written, graphic or physical) which is directed against any individual or group of individuals because of or based upon one or more of the characteristics set forth above, that is sufficiently severe, pervasive or persistent that it interferes with or limits the ability of an individual or group to participate in or benefit from programs, services and activities provided by the university. Such conduct may include, but is not limited to, objectionable epithets, demeaning depictions or treatment and threatened or actual abuse or harm.

“**Work day**” or “**university work day**” includes any day the university is open and is conducting normal administrative and/or academic activities, excluding federal, state, or university holidays, Saturdays, Sundays, and any day the university is closed because of declared emergencies or weather conditions.

POLICY STATEMENT

The Office of Equal Opportunity Programs (hereinafter referred to as EOP Office) was established by the President of the university to provide equal opportunity and affirmative action in education and employment for all persons regardless of race, color, national origin, religion, sex, gender, age, disability, sexual orientation, genetics, protected veteran status, pregnancy, child birth or related medical conditions, or any other category protected by law. The EOP Office is also charged with investigating complaints of unlawful discrimination or harassment based upon race, color, national origin, religion, sex, gender, age, disability, sexual orientation, genetics, protected veteran status, pregnancy, child birth or related medical conditions, or any other category protected by law. Unless otherwise indicated herein, the procedures set forth herein shall govern the investigation of such complaints filed with the EOP Office.

To the extent the provisions of this policy are inconsistent with the provisions of university policy [EOP Policy 1.05 Sexual Misconduct, Intimate Partner Violence and Stalking](#) or [STAF 6.24 Student Non-Discrimination and Non-Harassment Policy](#), the provisions of EOP 1.05 or STAF 6.24, if applicable, shall control in cases on the USC Columbia campus in which both the complainant and the respondent are students.

A. Sanctions/Disciplinary Action

Persons found to be in violation of the university's anti-discrimination or harassment policies will be subject to disciplinary action, which may include, but is not limited to, oral or written warnings, reprimands, suspension, transfer, demotion or separation from the institution, (to include revocation of tenure procedures if applicable).

B. Remedy for Demonstrated Loss

If the Complainant can demonstrate that he/she has suffered a loss because of unlawful discrimination or harassment, a remedy may be recommended. The objective is to restore the complainant to his/her status before occurrence of the unlawful harassment or discrimination. A remedy may consist of a reassignment, transfer, letter of apology, or other appropriate action.

C. Record Keeping

1. While a complaint is being investigated all documentary evidence regarding the complaint must be maintained in the confidential files of the investigator(s) handling the complaint.
2. After final resolution of the complaint within the university system, all records regarding the complaint must be maintained in the confidential files of the EOP Office.

3. Access to these confidential records shall be on a need to know basis only. Persons who may access these records include: the President of the university, Executive Vice President for Academic Affairs and Provost, chancellor, Office of the General Counsel, Vice President for Human Resources and/or campus personnel director, Vice President for Student Affairs or equivalent campus student affairs official, dean and any other designated official deemed appropriate by the President, or the director of the EOP Office.

D. Non-retaliation

It is a violation of University of South Carolina policy for any person to retaliate, intimidate or take reprisals against a person who files a complaint, testifies, assists or participates in any manner in the investigation/resolution of a complaint of unlawful discrimination or harassment. Appropriate sanctions/disciplinary actions shall be taken against any person who is found to have violated this policy.

PROCEDURES

A. Pre-Complaint Review

1. An individual (student, faculty, staff member, applicant, or any other person) may file a complaint or seek information about unlawful discrimination or harassment at the University of South Carolina based on race, color, national origin, religion, sex, gender, age, disability, sexual orientation, genetics, veteran status, pregnancy, child birth or related medical conditions, or any other category protected by law. Information may be requested from, and complaints may be filed with, the EOP Office. Inquiries may be made by telephone, in person or in writing.
2. Pre-complaint review provides an individual an opportunity to discuss confidentially the specifics of his/her complaint and to receive guidance and information about the administrative procedures followed by the EOP Office.
3. It is not necessary for an individual to reveal his or her identity in seeking information about filing a discrimination or harassment complaint.
4. Requests for anonymity or confidentiality may limit the extent to which the university may be able to respond to the complaint. However, the EOP investigator receiving such complaint may, depending on the seriousness of the incident described, bring the complaint to the attention of the Office of the General Counsel or other appropriate university officials.
5. A faculty, staff member or student who is made aware of an incident of unlawful discrimination or harassment shall immediately refer the person(s) subjected to such discrimination or harassment to the EOP Office, unless the incident is one addressed by university policy regarding sexual assault, or interpersonal violence, such as (relationship

violence, stalking or harassment) and the person to whom the incident is disclosed is a “Confidential Source”, as defined in policy [EOP Policy 1.05 Sexual Misconduct, Intimate Partner Violence and Stalking](#).

6. The EOP Office may advise whether a complaint warrants an attempt at informal resolution. In some cases, a formal investigation may be appropriate such as in cases involving sexual assaults, or which involve violence or threats of violence.
7. After receiving information or pre-complaint counseling from the EOP Office, an individual may:
 - a. choose not to pursue a complaint; or
 - b. pursue informal resolution.
 - c. proceed with a formal complaint of unlawful discrimination or harassment through the EOP Office.

B. Informal Resolution Process

1. Informal complaint resolution focuses on conciliation; however, disciplinary action, including an oral or written warning may be issued if warranted. The aim of informal resolution is to ensure that the discriminatory behavior ceases and that the matter is resolved promptly at the lowest possible level.
2. For a complaint to be mediated, the complainant and the alleged offender must agree. If the complaint is mediated by the EOP Office, the EOP Office shall prepare a settlement agreement. Any settlement agreement prepared pursuant to the provisions of this paragraph will be filed in the EOP Office permanent files.
3. The settlement agreement must:
 - a. be voluntary and in writing;
 - b. be signed by both parties;
 - c. contain a provision indicating the party against whom the complaint was made gives assurances that the offensive behavior will stop and will not be repeated, and that no retaliation will be taken against the complainant;
 - d. contain any other provision the EOP Office deems necessary to insure full compliance with this policy;

- e. the EOP Office shall provide a copy of the settlement agreement to both parties, file the original in the EOP Office, and provide a copy to the appropriate official in the Division of Human Resources.

C. Formal Procedure

1. Filing a Formal Complaint of Discrimination or Harassment

- a. In the event the parties do not reach a voluntary settlement agreement, the EOP Office shall conduct a full investigation, which may include obtaining oral and/or written statements from persons the complainant or the alleged offender identifies as witnesses, and from any other persons who possess relevant information.
- b. To initiate a formal complaint an individual is required to submit a written statement to the EOP Office.
- c. The complainant must:
 - i. state a cause of action based upon one's membership in a protected class: race, color, national origin, religion, sex, gender, age, disability, sexual orientation, genetics, veteran status, pregnancy, child birth or related medical conditions, or any other category protected by law;
 - ii. file the complaint timely, identify with specificity the alleged offense(s) and the date(s) of the alleged offense(s);
 - iii. indicate the harm, if any, the complainant has suffered, is suffering, or will suffer because of unlawful discrimination or harassment based on her/his protected class status; and
 - iv. specify the relief the complainant is seeking.

2. Acknowledging Receipt of Formal Complaint of Discrimination or Harassment

After receipt of a discrimination or harassment complaint form, the EOP designated investigator shall meet with the complainant as soon as possible, generally no later than five work days after receiving the complaint to review the complaint and clarify any issues. The complainant will be asked to identify witnesses to the incident(s), steps taken to resolve the matter, and the relief sought. The complainant will be advised that notice of the complaint of discrimination or harassment and a copy of the complaint will be provided to the alleged offender.

3. Notice of Complaint/Service of Complaint of Discrimination or Harassment

The Notice of Complaint will contain the name of the complainant, the specific allegations (date, places and nature of the discrimination or harassment) and a copy of the complaint.

The Notice of Complaint is processed as follows:

- a. The Notice of Complaint and a copy of the complaint will be provided to the alleged offender or his/her representative by the EOP Investigator, or other designated university official, normally within five (5) university work days of receipt of the formal complaint. The Notice of Complaint and copy of the complaint may be provided to the alleged offender personally, electronically (by a means capable of verifying delivery), or via certified United States mail, return receipt requested.
 - b. The alleged offender shall answer the complaint(s) in writing within five (5) university work days of receiving the Notice of Complaint.
 - c. The time limit to provide a written response may be extended with the approval of the designated EOP investigator. If the alleged offender fails to respond, notice of such failure to respond will be provided to the alleged offender's supervisor, and the investigation will proceed. The alleged offender may be compelled by the university to respond to a complaint of discrimination or harassment, to the extent permitted by or consistent with federal and state law. Regardless of whether the alleged offender responds, the EOP Office will endeavor to complete the investigation within the time limit specified herein.
 - d. Upon receipt of the alleged offender's response to the complaint, a copy will be provided to the complainant by the EOP investigator. The complainant will be afforded five (5) university work days to provide a written response.
4. Investigating Formal Complaints of Unlawful Discrimination or Harassment

The process of formal investigation includes the following:

- a. An investigator will be assigned by the Director of the EOP Office, or the Director's designee.
- b. The investigator will interview separately the complainant, alleged offender, and (if deemed necessary by the investigator) witnesses identified by each party.
- c. The investigator may meet with the complainant and alleged offender together if, in his/her judgment, such a meeting could foster a resolution to the problem and the complainant and alleged offender agree to such a meeting.
- d. If during the investigation, the EOP Office determines harassment or retaliation is occurring, the EOP Office may recommend to the appropriate university officer that immediate steps be taken to stop any further harassment or retaliation.
- e. The EOP Office will endeavor to complete the investigation within 35 university work days of receipt of the formal complaint; however, if warranted by the

circumstances of the complaint, this time may be increased at the discretion of the investigator.

- f. The investigative process is a non-adversarial procedure. There shall be no cross-examination of witnesses by the alleged offender, the complainant or the legal counsel representing either the alleged offender or the complainant during the investigation.
- g. The EOP Office shall treat all information received during the investigation as confidential and shall make it available only to appropriate university officials who have a need to know.

5. Report and Recommendations

- a. Based upon the information obtained during the investigation, the investigator shall issue a report of the findings and make appropriate recommendations. The investigator, as appropriate, may consult the Vice President for Human Resources, the Vice President for Student Affairs, the Executive Vice President for Academic Affairs and Provost and the Office of the General Counsel regarding any recommendation of disciplinary action.
- b. The report of findings and recommendations shall include a statement of the complaint, a chronology of the investigation (who was interviewed and by whom), the information discovered, a list of documents pertinent to the investigation, the conclusions reached, the investigator's recommendations, the investigator's name and date of the report.
- c. The EOP investigator will provide the complainant and the alleged offender a copy of the report of the findings of the investigation within five (5) university work days after the conclusion of the formal investigation. The investigative record, including the report of findings, shall be maintained by the Office of Equal Opportunity Programs.

6. Findings

The possible findings, which shall be provided to the parties and to the alleged offender's supervisor, department head, or other appropriate university official are (1) no reasonable cause to conclude unlawful discrimination or harassment occurred, or (2) reasonable cause to conclude unlawful discrimination or harassment occurred.

- a. If no reasonable cause is found, the complaint is dismissed. If the complainant is dissatisfied with the decision, the complainant may file a complaint with the appropriate federal or state agencies which enforce compliance with laws prohibiting illegal discrimination: Office for Civil Rights of the US Department of Education; Civil Rights Division of the US Department of Justice; Equal Employment Opportunity Commission;

Office of Federal Contract Compliance Programs; South Carolina Human Affairs Commission, as appropriate.

- b. If a reasonable cause violation is found, appropriate disciplinary action shall be taken by the appropriate university official, who must notify the alleged offender, in writing, of the action to be taken, the reasons for the action and grievance rights, if any.
 - c. The nature of any discipline to be imposed on the alleged offender shall not be communicated to the complainant; however, the complainant may be informed whether the offender will be disciplined.
7. The alleged offender may appeal disciplinary action through any available university grievance procedure.

D. Related Procedures

Suspension or Withdrawal of Complaints of Discrimination or Harassment

1. The EOP Office may suspend its investigative proceedings at any stage if the EOP investigator receives a written resolution of the complaint agreed to by both parties.
2. A complaint, or any part thereof, may be withdrawn at any time upon receipt of a written request from the complainant that the complaint be withdrawn. The alleged offender will be notified of the withdrawal of the complaint. Such withdrawal shall be without prejudice to the rights of the complainant to refile the complaint, subject to applicable state and federal guidelines.
3. If the complainant files a complaint with a state or federal agency, or files an action in state or federal court during the EOP Office's investigation, the EOP Office shall immediately cease to process the complaint, pending determination or resolution of the complaint or action by the state or federal agency or court.

E. Dismissal of Complaints of Discrimination or Harassment

1. A complaint may be dismissed if the EOP investigator investigating the complaint determines the complaint is without merit, or the accusations are false.
2. A complaint may be dismissed if the investigator determines the complainant has not cooperated and the action or actions of the complainant impairs or compromises the EOP Office's ability to conduct an objective investigation. In such instances, where applicable, the EOP Office will cease its investigation and refer the complainant to the appropriate federal/state administrative agencies empowered to conduct investigations of discrimination or harassment.
3. Willful false accusations by complainants or abuse of the EOP process may result in sanctions, to include reprimand, suspension, demotion, or dismissal.

F. Confidentiality

Every effort shall be made, to the extent possible, to protect the privacy of the persons involved in the complaint. The number of persons with knowledge of the complaint shall be kept to a minimum. Only persons with a need to know shall be notified of the complaint.

G. Removal or Suspension of Alleged Offender

1. Depending upon the nature of the alleged offense, it may be necessary for the President or chancellor, upon the advice of the General Counsel and Vice President for Human Resources, Vice President for Student Affairs or appropriate system campus officer, to suspend or remove from the university an alleged offender prior to beginning a formal investigation of a complaint.
2. Based upon the result of the investigation, reinstatement of the alleged offender may be appropriate.

H. Other Available Procedures

The procedures available under this policy do not preempt or supersede any remedies or rights otherwise available to complainants or respondents under state or federal law.

RELATED UNIVERSITY, STATE AND FEDERAL POLICIES

[EOP Policy 1.02 Sexual Harassment](#)

[EOP Policy 1.03 Prohibition of Unlawful Discrimination and Harassment](#)

[EOP Policy 1.05 Sexual Misconduct, Intimate Partner Violence and Stalking](#)

[STAF Policy 6.24 Student Non-Discrimination and Non-Harassment Policy](#)

DATE OF REVISION	REASON FOR REVISION
February 27, 2019	This Policy has been revised to ensure compliance with federal mandates and to incorporate the procedures from EOP Policy 1.02 [Sexual Harassment] herein