

Report from the Non-Discrimination Policy Working Group to the University Harassment and Discrimination Steering Committee

I. Background

On January 25, 2021, Provost Garber announced the start of a University-wide review of policies related to sexual misconduct, discrimination, and bullying. As part of this review, a Non-Discrimination Policy Working Group was convened and charged with making recommendations to a Steering Committee regarding what might be included in a University-wide policy to address complaints about forms of illegal discrimination, other than those covered in the Title IX and Other Sexual Misconduct policies, and suggesting procedures by which such complaints will be investigated and resolved. The working group was also charged with making recommendations about how these policies, as well as mechanisms to address violations, could be made more visible and accessible to members of our community. We were asked to conduct a comprehensive review of existing University policies prohibiting discrimination on the basis of race, color, sex (including sexual orientation and gender identity, as well as pregnancy, but excluding matters covered in the Title IX and Other Sexual Misconduct policies), religion, creed, national origin, age, ancestry, veteran status, disability unrelated to job requirements, genetic information, military service.

Federal and state law prohibit discrimination against individuals based on their membership in a protected category such as those listed above. Discrimination is adverse treatment of an individual based on one or more of the protected characteristics listed in this policy. In a university setting, complaints of discrimination may arise in the employment context and the education context. Federal and state laws, including Title VII, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), and Massachusetts General Law Chapter 151B, prohibit discrimination against employees on the basis of protected categories. These protected categories are age (40+), race, color, national origin, sex/gender, gender identity, sexual orientation, genetic information, ancestry, religion, pregnancy or pregnancy related conditions, physical or mental disability or handicap, criminal records (inquiries only), and veteran and military personnel status. Federal laws, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act, and the Age Discrimination Act of 1975, prohibit discrimination against individuals on the basis of race, color, national origin, sex, gender identity, sexual orientation, disability, and age within educational programs and activities.

Our charge was to examine whether Harvard has, or should have, its own policies covering discrimination in addition to the Federal and state laws that are already available to members of our community.

II. Process

The Non-Discrimination Policy Working Group was chaired by Sherri Ann Charleston, Harvard's Chief Diversity and Inclusion Officer, and included faculty, students, and staff from across the University. As noted above, the charge to the group was to recommend what might be included in a University-wide policy to address complaints about forms of illegal discrimination, other than those covered in the Title IX and Other Sexual Misconduct policies, and suggest procedures by which such complaints will be investigated and resolved. The working group was also charged with making recommendations about how these policies, as well as mechanisms to address violations, could be made more visible and accessible to members of our community. The group convened for the first time in February 2021 and met biweekly throughout the remainder of the Spring semester. The members of the group are listed at the end of this report. Following our initial meetings, we divided into subgroups focused on the following tasks:

The Research 1 subgroup examined existing University policies prohibiting discrimination and existing procedures by which such complaints are investigated and resolved. Their goal was to identify any gaps or deficiencies in the policies and procedures that currently exist across the University, and to note ways in which these policies, as well as mechanisms to address violations, may not be visible and accessible to members of our community.

The Research 2 subgroup selected several peer institutions and examined their policies prohibiting discrimination and the procedures by which such complaints are investigated and resolved. They also noted several promising practices for how these policies, as well as mechanisms to address violations, are made visible and accessible to members of their communities.

The Outreach subgroup was asked to identify community members from whom we should seek input, identify areas of concern pertaining to current University policy and seek input on key policy components of importance to the community, and obtain community feedback on mechanisms to address violations. Together with the Title IX and Other Sexual Harassment Policy Working Group and the Anti-Bullying Policy Working Group, the Outreach subgroup organized a series of listening sessions and invited all members of the Harvard community to sign up to attend. Members of our outreach subgroup attended listening sessions with postdoctoral fellows, undergraduate students, professional and master's degree students, doctoral students, managerial staff, non-managerial staff, non-tenured faculty, and tenured faculty. Representatives from the three working groups also attended several faculty meetings and joined a meeting of the Council of Deans of Students. Finally, members of our non-discrimination working group joined a meeting of the Diversity, Inclusion, and Belonging Leadership Council and a meeting of Human Resources Deans and Directors.

The Drafting subgroup was tasked with identifying what might be included in a University-wide policy to address complaints about forms of illegal discrimination, other than those covered in the Title IX and Other Sexual Misconduct policies, synthesizing reports from the other three subgroups, and refining drafts in collaboration with the other subgroups. The bulk of their work came towards the end of our process and they were instrumental in thinking through the details of the recommended policy and procedures.

III. Areas of Concern Considered by the Working Group

a. Decentralization yields inconsistency and confusion

In its review of non-discrimination policies and procedures around the University, the Research 1 subgroup noted that there are a number of policies, both central and in the Schools. Most of the policies it examined were quite clearly stated and their wording hewed closely to that of the Harvard Human Resources Staff Non-Discrimination Policy,¹ which was originally designed to address employment-related concerns, not necessarily those of students or classroom issues. Descriptions of the procedures varied from School to School, with some being more explicit in designating an office or person with responsibility for the policy and others remaining vague. Notably, the process for staff complaints under the HR policy is quite different from processes for faculty and students. For student or faculty-based complaints, typically a group was assigned to investigate and make recommendations to the dean. The full process was rarely spelled out. There was little information describing how Schools inform or train community members about the policies and procedures.

Our listening sessions revealed significant confusion across all levels of the community about what the University's policies on non-discrimination are, where community members can go to learn more about these policies, and how they can seek support or remedy for allegations of discrimination. The Outreach group heard from several community members who expressed that they did not know where to seek support for or report discrimination, regardless of whether they had experienced it themselves or witnessed it. They also noted that they lacked any insight into what the process would look like and what the potential outcomes might be if they did report discrimination. Postdocs in particular expressed confusion about how the existing policies apply to them (if they do at all), given that Harvard tends to refer to faculty, students, and staff while failing to explicitly state where postdocs fit in. Other community members noted that the University has a much more well-developed infrastructure and information around Title IX, and expressed concern that the lack of a similar infrastructure for other forms of discrimination sends a signal that the University cares more about one type of discrimination than the others.

The Research 2 subgroup examined policies and practices of several peer institutions, including taking a close look at MIT, Brown, Princeton, and Cornell. The group noted the comparative ease of use when schools presented their policies and processes as university wide as opposed to multiple local policies. They found it particularly helpful when schools had one website that listed resources for Title IX, discrimination, and harassment, and included educational materials, language about their philosophy and values, and information about their diversity, inclusion, and belonging initiatives. The group noted favorably that some peer schools also had easily identifiable access to reporting forms and flow charts, noting that there were also clear directions on how to pursue both formal and informal complaints.

b. Gray area behavior and bias incidents that do not rise to the level of discriminatory behavior

¹ [Harvard Human Resources Discrimination Policy and Review Procedure](#)

Many listening session participants reported concerns about biased behavior that might not rise to the level of illegal discrimination but that nonetheless might detract from the working and learning environment. We termed this “gray area” behavior. As an example, such behavior might include one member of the University community using insensitive, stereotyping, or even racist speech on a single occasion or in an ad hoc manner. There was considerable commitment by the working group to ensure the Policy should also be construed within the context of the University’s enduring commitments to academic freedom and free inquiry, and the conception of the University as a place that must encourage reasoned dissent and the free exchange of ideas, beliefs, and opinions, however unpopular. In fact, members of the working group stressed that learning to engage in robust, open debate, even on uncomfortable topics, was essential to our pedagogy and mission. Moreover, there was agreement that the University Policy should not constrain the freedom of Harvard community members to engage in academic disagreements or to speak out about troubling matters, criticize the administration or University policies, or take part in political protest.

In order to learn more about how other institutions have approached these issues, we invited the following guests to speak with our working group: Lilo Barbosa, currently the Chief Diversity, Inclusion, and Belonging Officer at Harvard's Chan School and previously Chief Diversity Officer at Lesley University where he worked on establishing a Bias Education and Response Team (BERT); and Maya Kobersy and Jack Bernard, Associate General Counsels at the University of Michigan to speak about their experience with a bias response team that is now a campus climate support function. Such “bias response” systems use a more informal or collaborative model to address the “grey area” concerns; they generally do not have any formal disciplinary authority. Some explicitly aim for “restorative” justice rather than punitive measures.

These conversations were immensely helpful in informing us about potential models we might emulate and potential challenges we might have to confront were Harvard to adopt a similar mechanism. However, a great deal more research and thinking would be needed to better understand the impact of such mechanisms and how they could work at Harvard. The working group determined that because its work was limited to illegal discriminatory behaviors, gray area behavior was not within its purview in this process and, therefore, we could not devote the time necessary to explore these issues in depth. The working group concluded that for a non-discrimination policy to be fully effective and responsive to the community’s issues there would have to be another University policy and set of procedures to capture gray area behavior. The working group also felt it was important to signal this point clearly whenever a final report and policy is implemented in order to make clear that the University acknowledges and cares about addressing this wide range of behaviors.

c. Central versus local reporting

Listening session participants also expressed concerns about the potential for conflicts of interest in reporting mechanisms, particularly when those mechanisms are based at the local level. These individuals noted that reporting up within a hierarchy gave the perception that the person accused of discrimination might have the ear of the same people to whom you are reporting. At the same time, local officials may have particular knowledge or trust that a person reporting might appreciate. The

working group members had identified this as an issue at an early stage in our process, noting that some level of centralization would be needed to ensure that people could have the option of reporting to a neutral entity.

d. Need for more data and record-keeping about discrimination and bias at the University

Throughout the process, the working group noted the relative lack of data collected on alleged acts of discrimination. The impact of the lack of data was acutely noted in the context of our discussions around adding to the policy's list of protected categories. Without having accessible data on the number and type of incidents, the working group lacked the data necessary to make an informed decision about what, if any, categories should be added. Going forward it will be important for the University to keep more comprehensive data on reports of discrimination to determine whether it is necessary to add areas to the protected categories or modifications to the definition of discrimination in the University-wide policy. Furthermore, a more comprehensive data strategy—with uniform data reporting structures—will enable leadership across the University to assess our progress relative to the goal of reducing discriminatory behavior.

e. Prevention, Education, and Visibility

In examining Harvard's policies and statements about harassment and discrimination, we found little in the way of proactive efforts to design our educational and workplace settings to mitigate the occurrence of discrimination. Our listening sessions revealed that the current structure for reporting incidents of discrimination remains largely invisible to members of the University community. Additionally, there was considerable concern that the University had not taken affirmative steps to limit acts of discrimination, including for example educational programming or messaging signaling that discrimination at Harvard was unwelcome. The extensive educational campaigns around Title IX and inappropriate sexual harassment were cited as an example of efforts that could be expanded to other types of discrimination.

IV. Recommendations

Based on the working group's review of existing University policy, the policies of several peer and peer plus institutions, and considerable stakeholder engagement with constituents from across the University, the Non-Discrimination Working Group is submitting the following recommendations which are codified in the attached draft policy (Appendix 1):

Adoption of a Central University-wide Policy with a centralized reporting structure for the filing of formal complaints. There was strong consensus that a centralized, University-wide policy and

accompanying procedures for adjudicating complaints would be best suited to ensure consistency and uniformity in process. The working group concluded that dedicated resources, including professionally trained investigators (whether internal or external to the University), should be employed to investigate formal complaints. There was agreement that informal complaints and support functions could, and in most cases should, also be handled by the Schools or Units.

Adoption of School-based options for informal reporting, support, and resolution. It is anticipated that the vast majority of alleged incidents of discrimination will benefit from involvement from the individual Schools at the University and as such they will wish to tailor procedures related to the Policy to meet the specific needs of their communities. It is also anticipated that there could be overlap between claims of discrimination, bullying, and harassment. It is recommended that Schools enact procedures and provide designated resources to those who wish to seek advice about or report possible discrimination, harassment, or bullying behavior. For example, Schools might offer: a) an avenue for anonymously seeking advice about how to manage a difficult interpersonal situation, or b) an avenue for making an informal complaint and thereby initiating an informal assessment and/or a mediated resolution. In designing their procedures, Schools will need to be mindful of the fact that complainants and respondents may be affiliated with different Schools within the University.

Adoption of a clear definition of discrimination with accompanying standards and process for remedy. Given the potential for discipline against a member of our community, it is essential that the University adopt a shared definition, clearly identifying what potential behaviors might rise to the level of illegal discrimination consistent with current law, and applicable to all faculty, students, staff, and postdoctoral fellows at the University.

Development of a process and structure to handle “gray area” concerns. Development of a University process and procedures to handle violations of this policy will also necessitate that the University clarify and develop a process to address behaviors that do not meet this standard. As most problematic behaviors fall in this latter category, it is the strong recommendation from this working group that “gray area” behavior—biased behavior that might not rise to the level of illegal discrimination but that nonetheless might detract from the working and learning environment—must be addressed through a separate process. The working group has proceeded on the assumption that the University will continue the work to develop a structure to deal with the totality of problematic behaviors, including those that may fall outside of the non-discrimination, harassment, or bullying policies.

Adoption of a system for data collection. To allow for more data informed decision making across campus, the University should adopt a system to effectively track reports of discrimination, most likely through a central system for collating reports of discrimination.

Ensure transparent and visible processes. To build confidence in the system, the University should ensure that the procedure for filing complaints as well as the subsequent investigation is as visible and transparent as possible. For example, the University might consider having one website, listing resources for Title IX, discrimination, and harassment, and including educational materials, language about our philosophy and values, and information about our diversity, inclusion, and belonging initiatives. The University might also consider providing easy access to reporting forms and providing clear directions on how to pursue an informal complaint. The University should also explore the best way to report on incidents and actions taken in ways that do not violate privacy but that do help educate the community.

Proactive and Preventative Education. It is critical that the University take proactive steps to educate the community about the policy, including examples of what types of behaviors would constitute violations, where individuals can seek support, and what they can expect from each step of the process. It would be helpful for the Policy and Procedures to be included in orientations for all new members of the community, and to develop other public notice and education initiatives.

Reevaluation of the policy to consider adding additional categories. The working group explored the addition of several other categories (e.g. parental status or familial status). Given the lack of data, the working group is recommending ongoing assessment and reevaluation of the categories and policy in no more than three (3) years.

V. Issues for Further Consideration

While the general recommendations above and incorporated in the draft policy reflect the consensus of the working group, members of the group have additional considerations that should be brought to the attention of the steering committee:

There is broad consensus that there should be a uniform policy and procedures as well as professional investigators engaged to investigate complaints. However, several members of the working group raised concern with the investigator making the initial findings of fact and suggested a separation of the fact-finding function from the preliminary determination stage. One possible alternative is to involve a hearing panel or other entity to render the preliminary determination as to whether the alleged act of discrimination constitutes a policy violation. The current University interim policies on sexual and gender based harassment embody these two different approaches: The Interim Title IX policy separates out the investigation from the determination of violations; the Interim Other Sexual Misconduct Policy has the investigation and the fact-finding and determination of possible violation handled by the same body. We recognize these two models incorporate different trade-offs and bring this to the attention of the steering committee.

VI. Conclusions

The accompanying draft policy is an important first step in ensuring that all members of the community can live out our core University values in our living and working environments. As [reported](#) by the Presidential Task Force on Inclusion & Belonging, the University's core values are: Respect the rights, differences, and dignity of others; Demonstrate honesty and integrity in all dealings; Pursue excellence conscientiously in one's work; Be accountable for actions and conduct in the community; and Cultivate bonds and bridges that enable all to grow and learn from one another. The members of the working group applaud the University for taking this important step in helping us to pursue and achieve these values.

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Appendix 1: (Draft) Harvard Non-Discrimination Policy

I. Statement of Policy

Harvard University is committed to the principles of equal opportunity in education and employment. Discrimination on the basis of the following protected categories, or any other legally protected basis is unlawful and intolerable to the University.

- age (40+)
- race
- color
- national origin
- sex (including gender identity and gender expression, as well as pregnancy)
- genetic information
- ancestry
- religion
- creed
- veteran status
- disability
- military service
- sexual orientation

This policy and the associated procedures only apply to the categories of discrimination described here. Claims of discrimination on the basis of sex that fall under Harvard's Interim Title IX Sexual Harassment Policy, Interim Other Sexual Misconduct Policy, and Sexual and Gender-Based Harassment Policy should be pursued under those policies and their accompanying procedures. Violations of other University policies and community standards will be handled accordingly.

University policy prohibits retaliation for asserting one's rights to a work and/or educational setting free of discrimination on these bases. Moreover, retaliation against an individual for cooperating in an investigation of such a complaint, or for opposing prohibited practices is prohibited. Submitting a complaint in bad faith or providing materially false or misleading information in an investigation is also prohibited.

II. Definition of Discrimination

Discrimination is adverse treatment of an individual based on one or more of the protected characteristics listed in this policy. In a university setting, complaints of discrimination may arise in the employment context and the education context.

Discrimination can take two forms.

Discriminatory disparate treatment is singling out or targeting an individual for less favorable treatment because of their protected characteristic. In the employment context, the less favorable treatment must negatively affect the terms and conditions of employment. In the education context, to rise to the level

of discrimination, the treatment must unreasonably interfere with or limit the student's ability to participate in or benefit from the institution's programs and activities. For example:

- Failing or refusing to hire or admit an individual because of their protected characteristic
- Imposing more severe discipline on a student or employee because of their protected characteristic;
- Giving a negative performance evaluation or grade/academic assessment because of an individual's protected characteristic;
- Terminating, suspending, dismissing, or expelling an individual based on their protected characteristic.

Discriminatory harassment is unwelcome and offensive conduct that is based on an individual or group's protected status. Discriminatory harassment may be considered to violate this policy when it is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive or, in the education context, that is severe, pervasive, or persistent enough to interfere with or limit the ability of a student to participate in or benefit from the institution's programs and activities. These factors will be considered in assessing whether discriminatory harassment violates this policy:

- Frequency of the conduct
- Severity and pervasiveness of the conduct
- Whether it is physically threatening
- Degree to which the conduct interfered with an employee's work performance or a student's academic performance and/or ability to participate in or benefit from academic/campus programs and activities
- The relationship between the alleged harasser and the subject or subjects of the harassment
- Whether the harasser makes accepting the conduct a condition of participation in the employment or educational activity

III. Jurisdiction

The Policy and its accompanying procedures apply to alleged acts of discrimination that are committed by any member of the Harvard community, including faculty, researchers, postdoctoral fellows, staff, and students, but does not apply to alleged misconduct that may fall within the scope of other University policies. Alleged misconduct that is dealt with under other University policies (e.g. those regarding sexual and gender-based harassment and other sexual misconduct, bullying, or research misconduct) will not be covered by this policy unless a determination is made by those responsible for those other policies that the behavior fits more appropriately in this policy. Sexual and gender-based harassment are covered by the University's Interim Title IX Sexual Harassment Policy, Interim Other Sexual Misconduct Policy, and Sexual and Gender-Based Harassment Policy. Bullying and abuse of power will be covered by the University's anti-bullying policy.

IV. Guiding Principles

In the interest of providing a fair process, preserving privacy, and preventing retaliation, the following principles will be observed:

- **Impartiality.** All persons charged with responsibility for implementing these procedures will discharge their obligations with fairness, rigor, and impartiality.
- **Fair Process.** Principles of fair process should be observed throughout the process to ensure the overall legitimacy of the system including timeliness of resolution, proper notice to parties, and the ability to respond to allegations.
- **Privacy.** All activities under these procedures will be conducted with regard for the legitimate privacy and reputational interests of all parties involved. Once a formal complaint is filed, all parties, including witnesses, will be notified of the expectation that they keep information about the case – including any documents that they may receive or review – confidential. They will also be notified that sharing such information might compromise the investigation or may be construed as retaliatory. However, [Selected University Entity] may disclose otherwise confidential information where necessary to protect the health, safety, or well-being of the parties or others in the University community, to comply with the University’s legal obligations, or where, in the judgment of the Dean, Vice President, or appropriate authority, certain disclosures would be in the best interest of the parties or the University. Medical and counseling records are privileged and confidential documents that parties will not be required to disclose. The parties remain free to share their own experiences, though to avoid the possibility of compromising the investigation, it is generally advisable to limit the number of people in whom they confide.
- **Respondents Are Presumed Not Responsible.** A respondent is presumed not to be responsible for an alleged Policy violation until a final determination regarding responsibility is made.
- **University Values.** The procedures for this policy are to be construed in concert with broader University policies. As [reported](#) by the Presidential Task Force on Inclusion & Belonging, the University’s core values are: Respect the rights, differences, and dignity of others; Demonstrate honesty and integrity in all dealings; Pursue excellence conscientiously in one’s work; Be accountable for actions and conduct in the community; and Cultivate bonds and bridges that enable all to grow and learn from one another.
- **Protection from Retaliation.** The University has an interest in encouraging the reporting of wrongdoing and members of the community must be free from fear of retaliation to support that interest. Retaliation against an individual for making a report of discrimination, or for participating or refusing to participate in any proceeding regarding such a complaint, or for opposing discriminatory practices is prohibited by the University’s Non-Discrimination Policy as well as the University’s Non-Retaliation Policy and will not be tolerated.
- **Clarity and Visibility.** It is essential that all members of the University community be aware of the University’s Non-Discrimination Policy, that they understand what conduct is prohibited under the policy, what their rights and responsibilities are under the Policy and Procedures, where they can seek support should they experience or witness a violation of the Policy, and what they can expect from each step of the process should they choose to seek support or file a formal complaint about an alleged Policy violation.
- **Transparency.** Throughout the course of the investigation, [the Professional Investigators employed centrally by the University] will provide frequent updates to both the complainant (the person bringing the complaint) and the respondent (the person about whom the complaint has been made).

- **Timeliness.** The investigatory office may impose reasonable timeframes to enable timely resolution of the matter. The investigatory process typically will not exceed 120 calendar days. In the event that revisions of the designated timeframes are required, both parties will be notified.
- **Avoiding Conflict of Interest.** The University commits to eliminating any conflicts of interest in the process. In situations where either the complainant or the respondent raises a matter which names the University official(s) who are designated as facilitating or overseeing any stage in the Informal Problem-Solving or Formal Complaint Processes, a designee will assume those responsibilities in place of the named University official(s).

V. Procedures

This Policy provides multiple pathways for those who wish to seek advice about or report possible acts of discrimination.

a. Supportive Measures and Informal Resolution

When appropriate and possible, members of the Harvard community are encouraged to speak directly with one another about any concerns. Support for resolving differences may be/should be available through [Schools or Units, the University ombudsperson, or other established processes].

Bringing a concern to the attention of [School, Unit, or other authority] does not automatically launch an inquiry or investigation. Supportive measures or other techniques for conflict resolution may be provided regardless of whether a mediated resolution or formal investigation is launched. Interested parties are advised to seek support, information, or advice from [School-based office or central office]. They can expect to learn about resources available at the University and elsewhere that provide counseling and support. They can also request information about the steps involved in pursuing informal resolution or filing a formal complaint as well as supportive measures, as appropriate.

Parties who wish to remain anonymous are encouraged to discuss their concerns with [University Ombudsman Office/School based unit]. They may alternatively report concerns through the University's Anonymous Reporting Hotline. When a report or complaint is anonymous, records will be kept but it may limit the ability of the University to fully address it.

b. Formal Resolution

When direct or informal resolution is not feasible, any current or former member of the Harvard community may bring concerns to [Selected University Entity]. The University has distinct procedures for the investigation and resolution of formal complaints.

Legal Context and Personal Advisors: These are academic and employment-related, not legal, procedures handled within the context of the University. Parties who wish may file formal complaints through processes external to the University, including courts and other formal legal channels.

- Any information that the investigative team deems relevant and trustworthy may be considered; legal rules of evidence do not apply.
- Parties may bring a personal advisor of their choice to any meeting or other proceeding that is part of the investigation. Personal advisors may not speak for their advisees during interviews or meetings that are part of the investigation. In situations where the respondent is a member of a collective bargaining unit and requests a union representative, in accordance with a union member's right to request representation during investigatory interviews that may reasonably lead to discipline, the complainant may also bring a union representative to any interviews with the investigator. Respondents may wish to obtain legal advice about how this process could affect any case in which they are or may become involved. When the allegations, if true, might constitute criminal conduct, the respondent is hereby advised to seek legal counsel before making any written or oral statements.

Investigatory Process

The purpose of the investigation is to gather facts relating to the incident(s) outlined in the written complaint and to determine, using a preponderance of the evidence standard, whether it is more likely than not that the alleged behavior occurred and, if so, whether it constitutes discrimination as defined in this Policy.

1. **Filing of a Formal Complaint.** A person who experienced discrimination may file a formal complaint directly with the Central Office, or with the designated local resource who will direct them to the Central Office. The complaint must be in writing and should be written in the complainant's own words. The complaint should identify the parties involved; describe the allegedly discriminatory behavior, including when and where it occurred; and identify by name or description any witnesses and/or evidence (e.g. correspondence, records, etc.).
2. **Initial Review & Assessment.** A representative of the Central Office will speak with the complainant to understand the allegations and any related conduct.
 - a) **Initial review -- Dismissal of Complaint.** The complaint may be dismissed without further process or review if the complaint on its face is frivolous, insubstantial, not credible, clearly without merit, or outside the scope of this policy or its accompanying procedures. A complaint may also be dismissed without further investigation if the issues it raises have been considered by the University in another forum or through another mechanism or if an investigation would not be feasible due to the passage of time since the alleged conduct occurred. The decision (either to dismiss or proceed with an investigation) will be communicated in writing to the complainant. The initial review will be concluded approximately 14 calendar days after the date the formal complaint was received.

- b) Initial review -- Acceptance of Complaint. When it is determined that the complaint should not be dismissed, an investigation will be opened as described below.

3. Investigation

- a) Identification of an Investigator. In case of an investigation, the [Office where complaint is filed/or referred] will lead or coordinate the investigative process, identifying a trained investigator [Internal/External] to investigate the allegations.
- b) Notice to the parties. The complainant and respondent are notified in writing of the name of the investigator(s), the nature of the allegations, and a summary of the process that will be followed. A copy of the written notification can/should also be provided to [the respondent's supervisor, advisor, manager, and School or Unit officer (e.g. Dean of Students, Faculty Deans, or Human Resources)]
- c) Objection to the Choice of Investigator. Either the complainant or the respondent may object to the choice of investigator for good cause, such as evidence of conflict of interest or bias. Such objection must be in writing, must fully state the reasons for the objection, and must be received by [Office where complaint is filed] within 7 calendar days after the complainant and respondent are notified of the choice of investigator. [Entity with authority to make final determination (e.g. Dean, Vice President, etc.)] will determine whether to remove and replace the investigator.
- d) Investigation. The designated investigator will gather information from the complainant and the respondent, and others, if appropriate. Both parties will have an equal opportunity to submit the names of witnesses and any relevant information for review; and to review the information upon which the investigator may rely in making their findings and recommendations.
- e) Preliminary Findings of Fact. At the conclusion of the investigation, the investigator will make preliminary findings of fact, applying a preponderance of the evidence standard, and make a preliminary determination based on those findings whether there was a violation of this policy. The investigator will provide the complainant and respondent with a written draft of the preliminary findings of fact and analysis and will give both parties 7 calendar days to submit written responses to the draft. The investigator will consider whether revisions to the preliminary report are required based on any written responses and will send the report to: [the appropriate dean or vice president, or their designee; the complainant; and the respondent. (In administrative units that do not report to a dean or vice president, the local human resource officer, in conjunction with the unit director, may select a designee from within the University community.)] The investigator generally will issue the preliminary report within 60 calendar days of the complaint.
- f) Determinations. [The dean, vice president, or designee, which could include the School administrative board or other standing disciplinary body] will determine whether to (a) adopt the findings and analysis made by the investigator or to (b) request additional fact-finding. If the dean, vice

president, or designee determines additional fact-finding is required, they will make that request to the [University Office] or designee generally within 14 calendar days of receiving the preliminary report. The investigator will submit a revised report incorporating any additional findings and analysis to the dean, vice president, or designee generally within 21 calendar days of the request for additional fact-finding. The dean, vice president, or designee will issue a decision determining the resolution of the matter within 21 calendar days of the receipt of the final report. If a policy violation is found, the decision will include recommended corrective measures (e.g., training, coaching, or other measures, as appropriate) to be taken by the unit(s) to eliminate any discrimination, prevent its recurrence, and address its effects. The imposition of any disciplinary measures is addressed separately from the written decision in accordance with School, Unit, or HR policy. [From HR Policy: in consultation with Human Resources and the individual's supervisor, as appropriate, and consistent with the "Performance Correction Process" in the University Staff Personnel Manual].

- g) Appeal. If the resolution resulting from this Formal Complaint Process is not satisfactory to the complainant or the other party, each may submit to the [e.g. Office of the Provost, Office of the Executive Vice President, or University Entity Overseeing Reporting Office] or designee a written request for appeal of the decision at the University level within 7 calendar days of receiving the decision. This request must detail the reason(s) the employee disputes the decision and may include the following grounds for appeal:
- A procedural error occurred, which may change the outcome of the decision; or
 - The appellant has substantive and relevant new information that was not available at the time of investigation and that may change the outcome of the decision.

Disagreement with the findings or determination is not, by itself, a ground for appeal. The [Provost, EVP, etc.] or designee will send copies of the request for appeal to the investigator, to the appropriate dean or vice president or their designee, and to the other party. The [Provost, EVP, etc.] or designee will review the request for appeal for timeliness and compliance with the procedures set forth in this policy. The [Provost, EVP, etc.] or designee will consider the issues raised in the request for appeal and make a determination, which may include adopting or reversing the decision below, directing that the investigation be re-opened, or any other appropriate action. At the conclusion of this review, the [Provost, EVP, etc.] or designee will prepare a statement of outcome regarding the appeal request, to be shared with the parties and the appropriate officer in the parties' respective unit(s), seeking to complete any appeal generally within 30 calendar days after receipt of the request for appeal.

Appendix 2: Draft Policy and Procedure Flow Chart

