

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

## I. Purpose

These Procedures provide a process for the prompt and equitable investigation and adjudication of complaints of discrimination based on marital status, pregnancy, race, color, ethnicity, national origin, age, disability, genetic information, religion, veteran status, or sex (collectively referred to as "Sex Based Prohibited Discrimination")<sup>1</sup> against Salisbury University faculty, staff, and certain third parties under University control (collectively referred to as "University"). These Procedures apply to all University employees and students.

## II. Complaints and Reporting

### A. Reporting to SU

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

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

There are several ways to report to the OIE:

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

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

Individuals may alternatively report to any Responsible Employee (as defined in [Salisbury WpKxgtukv {øu Rqnke { Rtqjkdvkpi Non-Sex -Based Discrimination](#), available at: <http://www.salisbury.edu/equity/library/docs/SUProhibitedNonSexDiscriminationPolicy.pdf>).

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

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

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

Any Responsible Employee, as defined in [University of Salisbury Non-Sex Based Discrimination](#), available at:

<http://www.salisbury.edu/equity/library/docs/SUProhibitedNonSexBasedDiscrimination.pdf>, who receives a complaint or report under these Procedures must do the following:

1. Advise the Complainant of the existence of [University of Salisbury Non-Sex Based Discrimination](#), available at: <http://www.salisbury.edu/equity/library/docs/SUProhibitedNonSexBasedDiscrimination.pdf>, and these Procedures, as well as where to find the same.
2. Advise the Complainant of the existence of the OIE and its role in the complaint resolution process.
3. Advise the Complainant of the duty to report the





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request for confidentiality, and assess whether the matter needs to be referred to the SUPD for timely warning notification under the Clery Act.

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

#### **IV. Confidentiality**

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

The University understands that the Complainant, Respondent, and Witnesses involved in any Non-Sex Based Prohibited Discrimination matter desire Confidentiality during the investigation and adjudication of such matters. While the University ~~will keep these matters Confidential~~ to the extent possible and as required by law, the University cannot ensure complete Confidentiality, or even the Confidentiality requested by parties, in all cases. The OIE will, to the best of its ability, keep confidential the complaint, report, Witness statements, and any other information provided by the Complainant, Respondent, or Witnesses, and will disclose this information only to any individual who needs to know and/or is allowed to know by law. For example, the OIE may need to disclose information to law enforcement consistent with State and Federal law; to other University officials as necessary for coordinating Interim Measures, for health, welfare, safety, and other compliance with Federal and State law.

Any OIE investigation report and any written decision from the OIE will be disclosed to the Complainant and Respondent only as allowed by law. For example, see [Salisbury University Non-Sex Based Discrimination](#), V.B.5, available at: <http://www.salisbury.edu/equity/library/docs/SUProhibitedNonSexBasedDiscrimination.pdf>, for FERPA allowed disclosures. Under certain circumstances, University Officials, including members of the OIE, may have obligations to keep information they learn confidential, subject to limited exceptions, for example, when necessary to protect health, welfare or safety and/or any other appropriate reasons. Information about complaints and reports, absent personally identifiable information, may be reported to University officials as needed and/or to external entities for statistical and analysis purposes pursuant to FERPA.



## **VI. Patterns**

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





description of the allegations with relevant dates, places and statements made, the name(s) of the person(s) involved, the names of any Witnesses to the events in question, any documentation to support and substantiate the claim, and the remedy requested. If the complaint is not available in writing, the OIE shall attempt to interview the Complainant and attempt to interview the Respondent on those notes to signify that the Complainant agrees with the description of the alleged Non-Sex Based Prohibited Discrimination as recounted by the OIE. Complainants will be provided by the OIE with an intake form to facilitate the process of collecting germane information on their complaint. The Internal Fair Practices Complaint Intake Form (Appendix C) is also available at:

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

#### **a. Notice of Investigation**

The Respondent, the person accused in the complaint, shall be notified in writing of the initiation of the formal process by the OIE and will be invited to submit a written response to the OIE within ten (10) University business days of receiving the notification. If the University is not the Complainant, the Complainant will also be notified. The OIE shall also notify the Associate Vice President of Administration and Finance for Human Resources and the Vice President of the appropriate unit(s) in a Non-Confidential manner. OIE may also schedule an interview with the Respondent during or after any pending written response period.

#### **b. Investigation & Timeline**

Upon receipt of the written complaint, the OIE shall begin an investigation into the claims by appointing one or more trained investigators from the OIE staff or, if appropriate, an external investigator. During the investigation, the OIE or designee is not permitted to discuss the investigation with anyone except as circumstances warrant on a need-to-know basis. University employees and University legal counsel to the University are exempt from this requirement. The investigation ordinarily will include a discussion with the Complainant, a discussion with the Respondent, interviews of any Witnesses to the events, a review of any pertinent documents and any other actions deemed appropriate by the investigator(s). OIE may schedule an interview with Complainant or Respondent during and/or after any pending Respondent written response period in Section B.1.a. The OIE and/or investigator(s) shall make every effort to keep the investigation confidential, although this cannot be guaranteed, and all participants in the investigation shall be subject to the requirement that all parts of the investigation remain confidential.

The privacy of all parties to a complaint under this policy must be strictly observed, except insofar as it interferes with the ability to investigate or to notify applicable governmental agencies as may be required by law. Where privacy is not strictly kept, it will still be tightly controlled on a need to know basis. In these cases, privacy and confidentiality should be maintained to the extent possible. Breach of confidentiality by the investigator(s) will result in a permanent removal from the investigation and may subject that person to disciplinary action.

The OIE may assist to initiate Interim Measures to address the allegations, as appropriate, while the investigation is pending. For more information on Interim Measures, see [Ucnkudwt{ Wpkxgtukv{øu Rqnke{ Rtqjkdvkpi Pqp-Sex Based Discrimination](http://www.salisbury.edu/equity/library/docs/SUProhibitedNonSexBasedDiscrimination.pdf), available at: <http://www.salisbury.edu/equity/library/docs/SUProhibitedNonSexBasedDiscrimination.pdf>.

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

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

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

The required standard of proof in all Non-Sex Based Prohibited Discrimination cases is preponderance of the evidence. Preponderance of the evidence means that the information and evidence gathered indicates that Non-Sex Based Prohibited Discrimination occurred, as defined in relevant Policy.

The University is cognizant that, on occasion, baseless complaints are intentionally filed. The University will take strong steps to address spurious complaints and may

take appropriate disciplinary action if a Complainant is believed to have intentionally filed a complaint in bad faith.

Protected Status rights to equal opportunity and freedom from discrimination must, of course, be honored in concert with First Amendment rights to freedom of speech and association. For example, the University fully supports the principles of academic freedom, and is committed to protecting the free expression of ideas, teaching methods and course content in the academic setting. Academic freedom generally protects the use of, and is defined as, in part, verbal or visual environmental factors that are germane to the course material and not directed at any individual in the University Community. This may include, but is not limited to, reading and discussing a piece of literature depicting scenes using racially ejective nomenclature, kpxqnxkpi c ejtcevgtøu opinion on behavior that involves Protected Status, and/or discussing social issues involving Protected Status conduct, even if such discussion includes references or visual aids, or frank discussion. Non-Sex Based Prohibited Discrimination, however, is not a proper exercise of academic freedom and may not be legally protected expression.

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

All parties will have the same opportunity to present relevant Witnesses and evidence during the investigative process and all parties will have the same opportunity to review proposed written findings and provide written comments to the investigator regarding such findings prior to an initial outcome. The parties will have five (5) University business days after the proposed findings are emailed to them via their respective University assigned electronic mail accounts, or another appropriate manner in the case of non-Students, to provide written comments to OIE.

All information submitted by the parties in response to the proposed findings will be carefully reviewed by the OIE. This information will be evaluated for relevancy and determinations will be made if it necessary to modify the proposed findings.

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

Any Outcome, including sanctions, must be consistent with applicable law and USM and SU policies. Disciplinary employment action will be addressed on a case by case basis dependent on the facts of each situation, the extent of harm to the individual(s) involved, the obligations of the University, and whether and to what extent the accused has a history of documented previous wrongdoing.

enumerated in the Faculty Handbook and/or Policy Manual for Employees. Depending on the nature and severity of the findings, and applicable policy governing the assessment of penalties, the possible sanctions include, but are not limited to, a letter of reprimand, censure, service to the University, counseling, retraining, demotion or suspension, or termination of employment. These sanctions may be imposed even after a first offense, under appropriate circumstances. Sanctioning may take into account any previous violation(s) of University Policy.

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

If either

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

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

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

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

but is not limited to, recognizing and appropriately responding to allegations of discrimination, harassment, including hostile environment harassment and Retaliation, conducting investigations, and protecting confidentiality.

The names of the investigator and the individual who will serve as AO for a particular matter will be readily accessible. These individuals must promptly disclose any potential conflict of interest they might have in a particular case. In the rare situation in which an actual or

