



Policy on Discrimination, Harassment, and Sexual
Misconduct

Responsible Official: University Counsel

Responsible Office: University Compliance

Policy Purpose

This policy specifies East Tennessee State University's (ETSU) system for reporting and addressing Discrimination and Harassment and explains ETSU employees' reporting obligations related to Discrimination and Harassment.

Policy Statement

ETSU prohibits Discrimination, Harassment, and Sexual Misconduct based on any federally or state Protected Classes, and includes race, color, or ethnicity; sex, sexual orientation, gender, gender identity, or gender expression; national origin; marital or parental status; religion; age; disability; veteran's status; and/or genetic information in Education Programs or Activities and employment. This Policy applies to all levels and areas of university operations and programs, to undergraduate and graduate students, administrators, faculty, staff, volunteers, vendors, and contractors. Individuals may report Discrimination or Harassment without fear of adverse consequences and ETSU will be responsive to Reports.

This policy is not intended to infringe upon academic freedom or to censor or punish members of the university community who engage in activity protected by the First Amendment

I. Scope, Effective Date, and Conflicting Policies.

A. Scope.

This Policy applies to alleged Discrimination or Harassment (including Sexual Misconduct) in any medium occurring in the context of an Educational Program or Activity or where the University exercises substantial control over the Respondent and Complainant.

Discrimination and Harassment may manifest in many evolving forms, including but not limited to physical, verbal, visual, and online/electronic/social media.

B. Effective Date.

This policy applies to all Discrimination, Harassment, and Sexual Misconduct reported to have occurred on or after the effective date of this policy. If the alleged Discrimination or Harassment occurred prior to the effective date of this Policy, the Report will be evaluated under the applicable ETSU policy in effect at that time. Procedures regarding the University's response to the Report will be based on this Policy. If the alleged Discrimination or Harassment occurred over a period spanning more than one policy, the Report will be evaluated under the applicable ETSU policy in effect at the time of the most recent allegation. Procedures regarding the University's response to the Report will be based on this policy and procedure.

C. Conflicting Policies.

This policy takes precedence over other ETSU, college, or departmental policies and procedures concerning Discrimination or Harassment in the event of a conflict, except that ETSU's Title IX Rule applies to all sex-based Discrimination and/or Harassment Reports, as defined by the Title IX Rule. Any sex-based Discrimination and/or Harassment that does not fall under ETSU's Title IX Rule may be addressed pursuant to this Policy.

II. Retaliation.

Retaliation is prohibited against any individual who files a Report, participates in a Discrimination or Harassment inquiry, investigation, hearing, or proceeding, or is regarded as filing a Report or participating in a Discrimination inquiry, investigation, hearing, or proceeding. Retaliation is also prohibited against any individual who opposes any perceived or actual unlawful conduct or opposes any conduct prohibited by this Policy. Retaliation is a violation of this policy regardless of whether the underlying allegation of a violation of this policy is ultimately found to have merit. Reports of Retaliation will be investigated separately from the initial Report(s) of alleged discriminatory conduct under the procedures contained herein.

III. False Reports.

A person who makes a knowingly false or fabricated Report of Discrimination or Harassment or who knowingly or maliciously provides false or fabricated information to the University may be subject to disciplinary action. This provision does not apply to Reports made in good faith, even if no investigation takes place or an investigation does not find a policy violation.

IV. Amnesty.

ETSU recognizes a student under the influence of alcohol and/or drugs at the time of a reportable incident may be hesitant to report the incident to the University. Because of the importance to the university of responding to Sexual Misconduct, a student who reports conduct or provides information in a university investigation will not be subject to disciplinary action for personal consumption of alcohol or other drugs, or minor offenses, at or near the time of the reported incident. A student will be responsible for a violation of this policy or other, more serious conduct that harmed or placed the health or safety of another person at risk.

V. ETSU Responsibilities.

- A. ETSU promotes equal opportunity in recruitment, selection, advancement, and terms and privileges associated with employment and education for all persons without regard to race, color, ethnicity, national origin, sex, sexual orientation, gender identity, gender expression, religion, age, disability, veteran's status, genetic information, or any other Protected Class.
- B. ETSU does not discriminate in employment or education programs and activities based on race, color, ethnicity, national origin, sex, sexual orientation, gender identity, gender expression, religion, age, disability, veteran status, genetic information, or any other Protected Class recognized by federal or Tennessee law.
- C. Compliance Counsel and a University EEO representative oversee the creation and implementation of ETSU's annual affirmative action plan, which is designed to ensure equal employment opportunity. The Office of University Compliance is responsible for the development and implementation of educational efforts for the campus community regarding all types of Discrimination and Harassment, affirmative action, and equal opportunity.
- D. Once ETSU has notice of alleged Discrimination or Harassment, ETSU will take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps calculated to end any Discrimination, eliminate any Hostile Environment and its effects, and prevent Discrimination from recurring. Mandatory Reporters and/or Campus Security Authorities must fulfill their reporting obligations as required by federal or state law and ETSU's Clery Compliance Policy. Campus Security Authorities ("CSAs") are required by law to report any information received regarding Clery Crimes, as defined by the Clery Act, to Campus Safety as soon as possible after they receive such information.
- E. Mandatory Reporters must report actual or suspected incidents Sexual Misconduct committed by or against any ETSU employee or student to the University upon actual or perceived knowledge that such conduct has occurred, regardless of whether the person who has provided the information wishes to file a complaint pursuant to this policy.

Mandatory Reporters must report all of the following situations: (1) any direct knowledge of Sexual Misconduct committed by or against any ETSU employee or student to University Compliance or Public Safety when the Mandatory Reporter actually or perceives knowledge that such conduct has occurred; (2) any allegation reported to Mandatory Reporter of Sexual Misconduct committed by or against any ETSU employee or student to University Compliance or Public Safety when the Mandatory Reporter actually or perceives knowledge that such conduct has occurred; and (3) any indirect receipt of information about Sexual Misconduct committed by or against any ETSU employee or student to University Compliance or Public Safety when the Mandatory Reporter actually or perceives knowledge that such conduct has occurred.

- F. Disclosures of Sexual Misconduct made in classroom writing assignments, classroom discussions, or other open campus forums will not be considered formal complaints or notice to the University, unless specifically indicated as such, as such matters implicate issues of academic freedom.
- G. Unless otherwise indicated, the responsibilities described herein are ETSU's responsibility regardless of whether the victim makes a Report, asks ETSU to act, or identifies the Harassment as a form of Discrimination. If a victim does not wish to file an official Report and/or wishes to remain anonymous, ETSU will honor such requests to the extent allowed by law. However, ETSU has the right to investigate any alleged Harassment or Discrimination on its own accord to ensure the safety of those on campus, to foster an environment of inclusion, and comply with federal and state law.

VI. FERPA.

A student's personally identifiable information found in the student's education records will be shared only with university officials who have a legitimate educational interest in assisting with the university's response to Discrimination and in accordance with the exceptions found in federal law.

VII. Tennessee Public Records Act.

The Tennessee Public Records Act provides that public records are open for inspection to any citizen of Tennessee except as otherwise provided by law. Tenn. Code Ann. § 10-7-503(a)(2)(A). Investigative reports prepared by university officials that do not contain personally identifiable student information may be considered public records.

VIII. Preservation of materials.

The Office of University Compliance will maintain records obtained or created during an investigation under this Policy for at least seven years or as required under ETSU's records retention policy, whichever is longer, from the date such documents are received. Any ETSU faculty or staff

member in possession of records relating in any way to any alleged or actual Discrimination or Harassment has a duty to preserve such records and provide the same to Compliance Counsel and the Title IX Coordinator upon notice that such records relate to an alleged or actual instance of Discrimination or Harassment. Purposefully withholding or any destruction of such records may result in disciplinary action.

IX. Conflicts of Interest.

A Complainant or Respondent may raise bias or a conflict of interest regarding ETSU employees involved in the investigative and resolution process at any time in the investigative process as soon as the party becomes aware of bias or conflict. Reports of bias or conflict of interest may also be raised on appeal of a final determination in accordance with the appeal process outlined in this policy. ETSU's Office of Compliance will make the determination regarding the existence or nonexistence of bias and remediate the issue accordingly.

X. Reporting Options.

Reports or complaints of Discrimination or Harassment may be filed with ETSU's Office of Compliance. Up to date contact information is listed on the ETSU Office of University Compliance Webpage. Reports can be made using the online reporting form posted at: https://redcap.link/compliance_report Reports can be made anonymously.

- A. Reports of Discrimination and/or Harassment under this Policy must be made within two (2) years of the date of the alleged incident. Any alleged conduct occurring outside of that timeframe may be investigated at the discretion of the Compliance Officer.
- B. Inquiries or complaints regarding Discrimination or Harassment may also be made to:
 - 1. The United States Department of Education, Office for Civil Rights, 61 Forsyth Street, S.W., Suite 19T10, Atlanta, GA 30303.
 - 2. The United States Department of Justice, Civil Rights Division, 950 Pennsylvania Avenue, N.W., Educational Opportunities Section, PHB, Washington, D.C. 20530.
 - 3. The Equal Employment Opportunity Commission, 220 Athens Way, Suite 350, Nashville, TN 37228.
 - 4. The United States Department of Labor – OFCCP, 1321 Murfreesboro Rd., Ste. 301, Nashville, TN 37217.

5. The Tennessee Human Rights Commission, 312 Rosa L. Parks Ave., 23rd Floor, Nashville, TN 37243.

External agencies have deadlines to file complaints. It is an individual's responsibility to know those deadlines. Please consult with the agencies listed directly to determine if there is a time limitation or deadline for filing your complaint.

C. Confidentiality.

Individuals who desire to communicate with someone who by law can or is required to keep information confidential should contact: ETSU's Counseling Center; a personal attorney; a clergy member; and/or a physician or licensed mental health professional. Information communicated to the Compliance Officer or Assistant Compliance Officers will not be confidential, but will be kept private, which means information will initially be shared only with university employees who need to be involved in responding to a Report. Individuals are free to limit the details they share while they decide whether to report an incident of Discrimination or Harassment to the University. ETSU will take all reasonable steps to investigate and respond to a report consistent with a request for confidentiality as long as doing so does not prevent the University from responding effectively to Discrimination and Harassment and preventing Discrimination of other individuals.

D. Anonymous Reporting.

If ETSU learns of Discrimination or Harassment through an anonymous report, varied factors will affect ETSU's response. These factors are the source and nature of the information; the seriousness of the alleged incident; the specificity of the information; whether there is an ongoing safety threat to the Complainant or others; the objectivity and credibility of the source of the report; whether any individuals can be identified who were subjected to the alleged Discrimination; and whether those individuals want to pursue the matter. If it is reasonable for ETSU to investigate and the University can confirm the allegations, ETSU will take appropriate responsive action.

XI. University Remedial Efforts.

ETSU is under a continuing obligation to address the issues of Discrimination and Harassment campus wide. Reports of Discrimination may prompt ETSU to consider broader remedial action, such as increased monitoring, increased education and prevention efforts, additional climate surveys, and revisiting policies and practices.

XII. Corrective Action/Disciplinary Processes.

ETSU's actions to correct and prevent the recurrence of any policy violations may include taking disciplinary action, up to and including termination or expulsion from ETSU. ETSU policies and procedures applicable to disciplinary processes include due process protections and may be found here:

- A. Student disciplinary policies: ETSU Undergraduate Catalog; ETSU Graduate Catalog; Conduct Process Flowchart; Pre-Hearing Information; Post-Hearing and Appeals Information
- B. Faculty: [Faculty Progressive Discipline Guidelines](#); [Tenure](#)
- C. Staff: [Progressive Disciplinary Procedures](#)

Complainants and Respondents are afforded similar and timely access to any documents and information used in a university disciplinary action, including any investigative report.

Authority: Executive Order 11246, as amended; Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act; The Rehabilitation Act of 1973, as amended; The Americans with Disabilities Act, as amended; The Age Discrimination in Employment Act of 1967; The Age Discrimination Act of 1975; The Older Workers Benefit Protection Act; The Pregnancy Discrimination Act; Title VI and Title VII of the Civil Rights Act of 1964, as amended; The Equal Pay Act of 1963, as amended; The Immigration Reform and Control Act; The Uniformed Services Employment and Reemployment Rights Act; The Genetic Information Nondiscrimination Act of 2008; The Tennessee Human Rights Act; the Family Educational Rights and Privacy Act; the Tennessee Public Records Act; and all other applicable state and federal laws and regulations.

Previous Policy: Discrimination and Harassment; Sexual Misconduct

Definitions

Campus Security Authorities (CSA)	Persons who by virtue of their university responsibilities are designated to receive and report criminal incidents to ETSU's Department of Public Safety. Campus security authorities include ETSU Department of Public Safety employees, individuals who have responsibilities for campus security, and ETSU employees who have significant responsibilities for student and campus activities.
Compliance Officer	The University's Title IX and Title VI Coordinator.
Consent	Words and/or conduct that constitute a knowing and voluntary agreement to engage in a specific activity at the time of the activity. A person cannot Consent if the person is incapacitated, forced, or coerced to act or participate in an act, or is under the age of 18, unless the person giving Consent is at least 13 years old and the other person is less than four years older.
Discrimination	Treating a person less favorably because of their Protected Class or having a policy or practice that has a disproportionate adverse impact on Protected Class members.
Education Program or Activity	All of the University's operations and services, including academic, educational, extra-curricular, athletic, and other programs of the school, regardless of location.
Formal Investigation	An action where the University reaches a determination as to whether a responding party has violated one or more university policies prohibiting Discrimination and unlawful Harassment and if so, remedy the effects of a violation.
Gender Based Harassment	Unwelcome conduct based on an individual's actual or perceived sex, including Harassment based on gender identity or nonconformity with sex stereotypes. Gender Based Harassment can sometimes involve conduct of a sexual nature that denies or limits an individual's ability to participate in or benefit from an educational program or activity. Gender-based Harassment is a form of Sexual Misconduct.

Harassment

Unwelcome conduct (e.g., physical, verbal, graphic, or written) on the basis of a Protected Class that: 1. Is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges (including employment) provided by ETSU; or 2. that must be endured as a condition of continued employment or enrollment; or 3. that unreasonably interferes with an individual's work performance or education. A criminal offense that evidences the Complainant was intentionally selected because of the Respondent's bias against the Complainant. A Hate Crime may include intimidation or sexual assault and may be a form of Sexual Harassment.

Hate Crime

Hostile Environment

Unwelcome conduct that is so severe, pervasive, and objectively offensive that it denies or limits an individual's ability to participate in or benefit from their employment or a university Education Program or Activity. Conduct is considered from a subjective and an objective perspective based on the totality of the circumstances. Creating a Hostile Environment is a form of Harassment.

Informal Resolution

A resolution that is reached regarding a claim of Discrimination or Harassment without a Formal Investigation finding. Informal Resolution may include mediation, facilitated dialogue, conflict coaching, restorative justice, or other models of alternative dispute resolution.

Intimidation

To unlawfully place another person in reasonable fear of bodily harm using threatening words and/or conduct, but without displaying a weapon or subjecting the person to actual attack. Intimidation includes cyber intimidation if the person is threatened within ETSU's Clery geography, as defined by the Clery Act.

Mandatory Reporters

All ETSU employees, including faculty, contract, and student employees, unless such employee is exempt from reporting by law (i.e., counselors, clergy), and received the report in such exempt capacity.

Preponderance of the Evidence

Whether it is more likely than not that the responding party violated this policy and procedure by engaging in Discrimination, Harassment, or Retaliation. In a university disciplinary proceeding, the University has the burden of proving violations of university policy by a Preponderance of the Evidence.

Retaliation

Protected Activity that would discourage a reasonable person from engaging in the Protected Activity. For purposes of this Policy, Retaliation also includes any interference with an ongoing investigation.

Sexual Misconduct

A broad, non-legal umbrella term that encompasses the wide range of behaviors that are prohibited by this Policy or federal and state law, including Discrimination or Harassment based on sex, sexual orientation, gender, or gender identity. Sexual Misconduct also includes the following behavior: Intimidation, Hate Crimes, Pregnancy, parenting, and/or marital status Discrimination, Quid Pro Quo Harassment, Relationship/Domestic Violence, Sexual Assault, Sexual Harassment, Stalking, Sexual Exploitation, Rape, and/or attempts to commit any of the above listed conduct.

Quid Pro Quo Harassment

Rape

A person having power or authority over another and conditioning an

Protected Activity

A person's good faith opposition to or Report of Discrimination or Harassment or assisting a person who opposes or reports Discrimination or Harassment to the university, the police, or a state or federal agency. Protected Activity also includes participation in a Discrimination inquiry, including an investigation, proceeding, or hearing.

Protected Class

Groups of people of a shared characteristic who are legally protected from Discrimination and Harassment by laws, practices, and policies and/or procedures (e.g., race, gender, age, disability, or sex).

Report

Information provided to the Compliance Officer or designee regarding an incident of Discrimination or Harassment, whether provided by a Complainant, a Respondent, a witness, or third party.

Complainant

A person(s) or student organization who may have been subject to Discrimination or Harassment regardless of whether that person(s) or student organization makes a Report or seeks action under this policy.

Request for Limited Action

A Complainant's request to the University to limit the University's involvement in a Report.

Respondent
or Harassment.

A person(s) or organization who is accused of committing Discrimination educational or employment benefit or service or access to receiving the educational or employment benefit or service upon a person's participation in unwelcome sexual conduct. Quid Pro Quo Harassment is a form of Sexual Harassment.

An adverse action taken
because of a person's
participation in a

Sexual penetration, no matter how slight, of a person with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim.

An act of violence, or a threat of an act of violence, committed by a person who is or has been in a sexual, dating, spousal, romantic, familial, or other intimate relationship with the Complainant. Relationship Violence may include conduct that meets the definition of domestic violence or dating violence as used in the Clery Act and may be a form of Sexual Harassment.

Relationship Violence

An act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose.

The act or acts of Sexual Exploitation are prohibited even though the behavior does not constitute one of the other Sexual Misconduct offenses.

Sexual Exploitation

Examples of Sexual Exploitation include:

- Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and Consent of all parties involved
- Non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and Consent of all parties involved
- Prostituting another individual
- Exposing another's genitals or breasts in non-consensual circumstances
- Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

An umbrella term that encompasses Hostile Environment, Quid Pro Quo Harassment, Hate Crimes based on gender, Sexual Exploitation, Relationship Violence, and Intimidation. Sexual Harassment is a form of prohibited sex Discrimination. Sexual Harassment may include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, digital, or physical conduct of a sexual nature.

Sexual Harassment

Student on Student Harassment

Unwelcome conduct that is discriminatory on a basis prohibited by federal, state, or local law that occurs between students and that falls under freedom of speech, assembly, or expression. This conduct will not result in disciplinary action by ETSU under this or any other policy unless it is so severe, pervasive,

and objectively offensive that it effectively bars the victim's access to an education opportunity or benefit.

Policy History

Effective Date: 10/12/2021

Revision Date:

Procedure

I. Initial University Response and Assessment.

A. Receipt.

After receiving a Report of Discrimination or Harassment, the Compliance Officer takes immediate and appropriate steps to communicate with the individual who reported the alleged discriminatory conduct, provide the individual with a copy of this policy and procedure, and determine whether the alleged conduct, as described by the Complainant, falls within the scope of this policy.

B. Administrative Closure.

The Compliance Officer has discretion to administratively close a Report of Discrimination or Harassment if, after an initial assessment the allegations as stated do not constitute a violation of this policy and procedure, or a Request for Limited Action is granted. The Compliance Officer notifies the Complainant that allegations as stated do not constitute a violation of this policy and procedure and directs the individual to the appropriate university office or department to resolve the report.

II. Request for Limited Action.

When an incident of Discrimination or Harassment is reported to the Compliance Officer, the Complainant has a right to:

- A. Request the report or the Complainant's contact with the Compliance Officer not be disclosed to the Respondent; Decline to personally identify the Respondent; Decline to respond to communications from the Compliance Officer; and request the university not investigate or stop an ongoing investigation that is not substantially complete.
- B. The Compliance Officer evaluates a Request for Limited Action in the context of the university's responsibility to provide a safe and nondiscriminatory environment for all individuals. The Compliance Officer considers these factors in the evaluation:
 - 1. The seriousness of the alleged discriminatory conduct;
 - 2. The age of the individuals involved;
 - 3. Whether there have been other Reports of Discrimination or Harassment against the accused individual(s);
 - 4. The risk the accused individual(s) will commit additional Discrimination, Harassment, or Retaliation; and
 - 5. The rights of the accused individual(s) to receive information about the accuser(s) and the allegations if a formal proceeding with sanctions may result.
- C. If the Compliance Officer honors the Request for Limited Action remedial or disciplinary actions against individuals may be limited. If the Compliance Officer does not grant a Request for Limited Action, the Compliance Officer informs the Complainant of the decision prior to starting or continuing an investigation. If the university must disclose the Complainant's identity to the Respondent, the Compliance Officer notifies the Complainant of that determination prior to the disclosure.

III. Informal Resolution.

Any party may request the university facilitate an Informal Resolution to a Discrimination or Harassment Report at any time after the university's initial assessment of a Report. The Compliance Officer, at their discretion, may suggest an Informal Resolution to the parties at any time after the university's initial assessment of a Report.

- A. Upon a request for Informal Resolution, the Compliance Officer determines whether Informal Resolution is appropriate based on the facts and circumstances of the case. The Compliance Officer ensures that any proposed Informal Resolution is consistent with the university's obligations to prevent and redress Discrimination and Harassment. Reports of Clery Crimes, as defined by the Clery Act (34 USC § 668.46(c)), are not eligible for Informal Resolution under this Policy.

- B. Informal Resolution is voluntary. The Complainant and the Respondent must provide written Consent for Informal Resolution to take place. Any party has a right to end the informal process at any time and begin the formal process.
- C. Informal Resolution concludes the matter only when all parties have signed a written agreement that confirms resolution of Discrimination allegations. The resolution agreement must include a waiver of the Respondent's right, if any, to have a formal hearing on the allegations. Neither the Complainant nor the Respondent may revoke or appeal a resolution agreement.
- D. If an Informal Resolution agreement is not reached, the university will proceed with a Formal Investigation.

IV. Formal Investigation.

The goal of a Formal Investigation is to reach a determination as to whether a responding party has violated one or more university policies prohibiting Discrimination and unlawful Harassment and if so, remedy the effects of a violation.

- A. The Compliance Officer determines the nature and scope of investigations on a case by-case basis. The Compliance Officer may include possible violations of other university policies that contributed to, arose from, or are otherwise related to alleged violations of this policy and procedure in the scope of an investigation.
- B. The Compliance Officer designates one or more investigators to investigate and give written notice to the Complainant and Respondent of the investigation, providing sufficient details to allow the parties to prepare for initial interviews.
- C. A Respondent may respond in writing to the notice of investigation within five (5) business days following the date of receipt of the notice of investigation.
- D. Parties to an investigation can expect a prompt, thorough, and equitable investigation of Reports, including the opportunity for parties to ask questions, present witnesses, and provide information regarding the allegations.
- E. Students are not required to participate in an investigation. If a student chooses not to participate in an investigation, the university's ability to respond fully or discipline individuals may be limited. Failure to respond or participate in an investigation will not prevent the completion of the investigation. The investigator(s) will make determinations based on the totality of the evidence available.

- F. Employees are required to participate in an investigation. Failure or refusal to cooperate with, or interference with, investigative proceedings may result in disciplinary action, up to and including termination.
- G. The standard of proof used in investigations is Preponderance of the Evidence. It is the university's responsibility to establish the standard of proof and gather evidence during investigations.
- H. The university aims to bring all investigations to a resolution within sixty (60) business days from the date the Compliance Officer determines an investigation will commence.
- I. Extensions of timeframe for good cause are allowed, so long as written notice and the reason for the delay is provided to the parties.
- J. Investigations typically include interviews with the Complainant, the Respondent, and any witnesses, and the objective evaluation of any physical, documentary, or other evidence as appropriate and available. The university gives the Complainant and the Respondent written notice of any interview, meeting, or hearing at which a party is invited or expected to participate.
- K. The Compliance Officer informs the Complainant and Respondent at regular intervals of the status of the investigation.
- L. The university may suspend a student, employee, or student organization pending the completion of an investigation and resolution, particularly when in the judgment of the Compliance Officer, the safety or well-being of any member(s) of the campus community may be jeopardized by the on-campus presence of the accused individual or organization.
- M. In all cases in which an interim suspension is imposed, the student, employee, or student organization are given the opportunity to meet with the Compliance Officer or their designee prior to such suspension to show cause why the suspension should not be implemented.
- N. The Compliance Officer, after consulting with appropriate university officials, has sole discretion to implement or stay an interim suspension and to determine its conditions and duration.
- O. Violation of an interim suspension under this policy is grounds for expulsion or termination.

- P. Interviews conducted as part of an investigation under this policy and procedure may be recorded by the university. Recordings not authorized by the university are prohibited.
 - Q. The Complainant and the Respondent have the right to be accompanied by one (1) advisor of their choosing during all stages of an investigation. The University will not supply an advisor to either party under this policy. A party may elect to change advisors during the process. All advisors are subject to the same rules:
 - R. The advisor's role is limited to providing advice, guidance, and support to the Complainant or Respondent. An advisor is not permitted to act as a participant or advocate during the investigative process.
 - S. Advisors may not address campus officials in a meeting, interview, or hearing unless invited to.
 - T. Advisors are expected to maintain the privacy of the records shared with them.
 - U. Advisors are expected to refrain from interfering with investigations.
 - V. Any advisor who steps out of their role as defined in the advisor agreement during an investigation are warned once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave. The Compliance Officer determines whether the advisor may return or should be replaced by a different advisor.
 - W. Following an investigation, the investigator(s) prepare a final report that includes findings and recommendations as to whether the Respondent party is in violation of university policy. The investigator(s) will confirm that the facts are correct before the final report is released. The Complainant and the Respondent receive simultaneous notice of the investigator(s)' final report.
 - X. Appropriate ETSU administrator(s) receive the final report, and are responsible for imposing disciplinary sanctions, if appropriate.
- V. Appeal of Investigator's Determination.

- A. Within five (5) business days of receiving the final report, either party may request, by hand-delivery or email, an appeal of the findings in the Final Report based on one of the following bases:
1. There exists substantial relevant information that was not presented, *and* reasonably could not have been presented during the investigation or;
 2. a procedural irregularity occurred in the investigation of the incident in question which affected the integrity or outcome of the investigation, or;
 3. a conflict of interest existed at the time of or during the investigation which precluded the parties from being provided adequate due process.
- B. The appeal must state with reasonable detail: 1) The basis relied upon for requesting an appeal, and 2) the alleged procedural irregularity that occurred and/or the substantial relevant information that was not presented and could not have been presented within ten days of receiving the preliminary report and/or the nature of the conflict of interest and the manner in which it prevented the party from receiving adequate due process protection during the investigation. Appeals may not exceed ten (10) double-spaced pages on 8.5x11 paper with one-inch margins and 12-point font.
- C. When an appeal is appropriately requested pursuant to this policy, the request for appeal, along with the final report, will be sent to a three-person panel consisting of one staff member from the ETSU Staff Senate, a staff member from the Office of the Provost, and one faculty member (the "Appeals Board"). The Appeals Board should ensure that no conflict of interest exists with the parties prior to making any determination under this Policy. The Appeals Board may make the following determinations:
1. The appeal was not properly or timely requested by the Party making the appeal, and the final report is adopted.
 2. No procedural irregularity occurred, and the final report is adopted.
 3. A procedural irregularity occurred that affected the integrity or outcome of the investigation, and the final report will be remanded to the Office of University Compliance for correction of the procedural defect. The findings of such report may not be appealed once the new final report is released.

4. A procedural irregularity occurred that did not affect the integrity or outcome of the investigation and the final report is adopted.
5. No substantial relevant information was omitted that could not have been presented within ten days of the parties' receipt of the preliminary report and the final report is adopted.
6. Substantial relevant information that could not have been presented during the investigation was omitted; the final report is remanded to the Office of University Compliance for the correction of the findings based on the originally omitted information. The findings of such corrected report may be appealed pursuant to the procedures contained this policy.
7. A conflict of interest existed at the time of the investigation which precluded the parties from being provided with adequate due process. The final report is remanded to the Office of University Compliance, which must then investigate in a manner that provides adequate due process to all parties.
8. If more than one of the above can apply, the Appeals Board must specify which determinations have been made and must either remand or adopt the final report consistent with such determinations.

Procedure History

Effective Date: 10/12/2021

Revision Date:

Related Form(s)

[Report of Discrimination, Harassment, and/or Retaliation](#)