



# OLD DOMINION UNIVERSITY

## University Policy

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### Policy #6310

### DISCRIMINATION COMPLAINT POLICY AND PROCEDURES

**Responsible Oversight Executive:** Assistant Vice President, Office of Institutional Equity and Diversity/University Counsel

**Date of Current Revision or Creation:** May 4, 2012

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#### A. PURPOSE

The purpose of this policy is to provide a means for the internal resolution of complaints of discrimination on the basis of race, color, religion, sex (including pregnancy), national origin, age, veteran status, disability, political affiliation, sexual orientation or genetic information.

#### B. AUTHORITY

[Title IX of the Education Amendments of 1972](#)

[Title VII of the 1964 Civil Rights Act](#)

[The Equal Pay Act of 1963 \(EPA\)](#)

[The Age Discrimination in Employment Act of 1967 \(ADEA\)](#)

[Title I of the Americans With Disabilities Act of 1990 \(ADA\)](#)

[The Genetic Information Nondiscrimination Act of 2008 \(GINA\)](#)

[Virginia Code Section 23-9.2:3, as amended](#), grants authority to the Board of Visitors to establish rules and regulations for the institution. Section 6.01(a)(6) of the [Board of Visitors Bylaws](#) grants authority to the President to implement the policies and procedures of the Board relating to University operations.

[Executive Order Number 6 \(2010\) Equal Opportunity](#)

[Old Dominion University Board of Visitors Policy 1001 – The Mission of the University](#)

[Old Dominion University Board of Visitors Policy 1012 – Resolution Adopting Executive Order Number Two \(94\), ‘Equal Opportunity’](#)

## C. DEFINITIONS

Classified Employee - A salaried employee whose terms and conditions of employment are subject to the [Virginia Personnel Act, Code of Virginia Section 2.2-2900 et seq., as amended](#), and who is employed in a classified position.

Complainant - The individual who lodges a discrimination complaint.

Discrimination Complaint - A statement by an individual that he/she has suffered direct injury as a result of an action by a University official or employee based on race, color, religion, sex (including pregnancy), national origin, age, veteran status, disability, political affiliation, sexual orientation or genetic information.

Faculty - Employees whose work assignments primarily involve instruction, research, and scholarly activities, and who hold academic rank/titles (with departmental designation) of professor, associate professor, assistant professor, senior lecturer, lecturer, instructor, or the equivalent of any of these academic ranks.

Respondent - The University employee or student named in the discrimination complaint as having taken the action that is the basis for the complaint.

Retaliation: Includes any adverse treatment that may deter individuals (including third parties) from filing a charge or participating in an investigation. Retaliation can be verbal, physical, visual, electronic, or through various media.

Student - Any person enrolled at the University at the time of the alleged improper activity.

## D. SCOPE

This policy applies to all employees, students, volunteers, employees of affiliated organizations, and visitors to the institution. Employees include all staff, administrators, faculty, full- or part-time, and classified or non-classified persons who are paid by the University. Students include all persons attending classes whether enrolled or not enrolled. Affiliated organizations are separate entities that exist for the benefit of the University and include the Foundations, the Community Development Corporation, and the Alumni Association. Visitors include vendors and their employees, parents of students, volunteers, guests, uninvited guests and all other persons located on property, owned, leased, or otherwise controlled by the University.

## E. POLICY STATEMENT

It is the policy of Old Dominion University to provide equal employment, educational and social opportunities for all persons without regard to race, color, religion, sex (including pregnancy), national origin, age, veteran status, disability, political affiliation, sexual orientation or genetic information. Moreover, to the extent permitted by law, the University prohibits discrimination based upon the foregoing factors.

Any person who has been accused of discrimination, pursuant to the terms of this policy, and who retaliates against his/her accuser in any manner shall be charged with a violation of the [General Harassment Policy](#).

## F. PROCEDURES

1. Should a discrimination complaint be raised in another internal procedure, the internal procedure shall be deferred until the conclusion of this procedure. For example:
  - a. Classified employees who choose to complain about an action through the grievance procedure described in the Virginia Personnel Act that raises a complaint of discrimination will be referred to the Office of Institutional Equity and Diversity to initiate the Discrimination Complaint Policy and Procedures. The individual responsible for reviewing the claim of discrimination under the Virginia Personnel Act shall suspend his/her review of the complaint pending the conclusion of the discrimination complaint procedures.
  - b. All other employees who raise a complaint of discrimination will be referred to the Office of Institutional Equity and Diversity to initiate the Discrimination Complaint Policy and Procedures. The internal procedures will be deferred pending the conclusion of the discrimination complaint procedures, and will continue upon the conclusion of these procedures.
  - c. All students who raise a complaint of discrimination will be referred to the Office of Institutional Equity and Diversity to initiate the Discrimination Complaint Policy and Procedures. The student grievance procedures will be deferred pending the conclusion of the discrimination complaint procedures, and will continue upon the conclusion of these procedures.
  - d. Any complaint filed by an employee or student with the Commonwealth of Virginia Department of Human Resource Management, the U.S. Equal Employment Opportunity Commission or the Office of Civil Rights will result in the dismissal of the internal complaint upon notice to the University that a complaint has been filed.
2. Administration of the Procedure
  - a. The Office of Institutional Equity and Diversity will administer the Discrimination Complaint Policy and Procedures and will maintain all records resulting from a complainant's use of this procedure. The Assistant Vice President for Institutional Equity and Diversity (or designee, hereinafter referred to as "Assistant Vice President") establishes and interprets the policy, assures compliance with the policy as it relates to employees and students, and is responsible for providing information to employees and students concerning the availability and operation of the policy.
  - b. Time Periods
    - i. With the exception of the time period described in F.3.b., designated vacation days of the University and days between the end of one University semester or summer session and the beginning of the next semester or summer shall not be included in the time periods described herein.
    - ii. If, under the policy, a time period begins upon a party's receipt of notice, the time period will commence upon actual receipt of notice by the party or three days after the notice was sent by certified mail to the last address shown on University records for that party, whichever is earlier.

### 3. Informal Procedure

- a. Informal Discussion: The Assistant Vice President shall encourage an employee or student who has a complaint of alleged discrimination to discuss the complaint with the individual who took the action that is the basis for the complaint. The Assistant Vice President may be present during such discussions if either party requests such.
- b. Informal Resolution: Both parties to the complaint shall attempt to affect a resolution of the complaint through informal discussions.

### 4. Formal Procedure

- a. Discrimination Complaint: An employee or student who has a complaint of discrimination may initiate formally the discrimination complaint procedure by filing a written statement with the Office of Institutional Equity and Diversity. The written statement must include the following:
  - i. A description of the actions upon which the complaint is based;
  - ii. The date of the action or, in the case of an action that was reviewed administratively, the date of the final administrative decision below the level of the President;
  - iii. The name of the respondent, that is, the name of the University employee who took the action or, in the case of an action that was reviewed administratively, the name of the University official who made the final administrative decision below the level of the President in the review process;
  - iv. Whether the complainant has informally discussed the matter with the respondent and, if so, the results of those discussions; and
  - v. Whether the complainant has pursued the complaint through administrative review procedures, and, if so, a description of those procedures and the results.
- b. Time for Filing a Complaint: The written statement must be filed within 120 calendar days of the date upon which the action(s) described in the complaint occurred or the final decision was made after an administrative review of the action(s), whichever was later.
- c. Response to the Complaint: If the Assistant Vice President determines that the written statement is complete and is a timely filed discrimination complaint, the Assistant Vice President will notify the respondent and the respondent's supervisor. The respondent may respond in writing to the discrimination complaint; however, the respondent's written response must be received by the Assistant Vice President within 10 days of the respondent's receipt of notice of the complaint. In the written response, the respondent may ask for an opportunity to resolve the complaint through the informal procedure. If the respondent asks for an opportunity to discuss the matter, the Assistant Vice President will take no further action on the complaint for a period of 10 days from the date of the Assistant Vice President's receipt of the written response so as to provide that opportunity.
- d. Procedure for Investigating a Complaint
  - i. If the complaint is not resolved informally, the Assistant Vice President will provide both parties with a reasonable time to choose whether to have an investigation conducted by the Assistant Vice President or by a panel hearing.

- ii. If either party should choose to have an investigation made by a panel, the discrimination complaint will be investigated by a panel.
- iii. If neither of the parties chooses to have the complaint investigated by the panel, the Office of Institutional Equity and Diversity will conduct the investigation. The investigation will commence within five days of the receipt of notice of the election made by the parties or within five days of the end of the period for making such an election, whichever is earlier. During the investigation the Assistant Vice President will, at a minimum:
  1. Provide an opportunity to both the complainant and the respondent to meet with the investigator and discuss the complaint;
  2. Attempt to interview all individuals whom the parties have identified as having pertinent information; and
  3. Review all documents provided by the parties.

The investigator may also interview other individuals who, in the investigator's judgment, have pertinent information and may also review other documents which, in the investigator's judgment, are relevant to the investigation of the complaint. The investigator will conduct the investigation expeditiously and, upon conclusion of the investigation, will make a finding and recommendation as described in F.4.g. below.

- e. If either party chooses to have the investigation made by a panel hearing, the panel will be composed of three members from the University's EO/AA Committee as follows:
  - i. One member of the panel will be selected by the complainant and one member by the respondent. Neither of the individuals so selected may have had prior involvement in the action that is the basis for the complaint. If either party chooses an individual with such prior involvement, that party will be given an opportunity to select another individual to serve on the panel.
  - ii. The third member of the panel and its Chair will be the Assistant Vice President.
  - iii. A party whose initial selection is disqualified will be given three days within which to select a replacement and to advise the Assistant Vice President accordingly.
  - iv. If either party fails to select a panel member within the time period set by the Assistant Vice President, the Assistant Vice President will choose the panel member for that party.
- f. The panel's investigation will commence within 10 days of the panel's selection. The investigation will proceed as follows:
  - i. The Chair will send the date(s), time(s) and place(s) of the panel's meeting(s) and will conduct the meetings(s). The Chair may limit repetitive or irrelevant statements by the parties or by witnesses. The Chair shall limit questioning by a panel member if that questioning becomes abusive, unfair, or repetitive. The Chair may dismiss from a meeting any person, including a party, who becomes abusive or who obstructs or interferes with the meeting.
  - ii. The panel will hear a presentation by the complainant, during which the complainant will present his or her claim, pertinent witnesses and relevant documents.
  - iii. The panel will hear a presentation by the respondent during which the respondent will present his or her response to the complaint, pertinent witnesses and relevant documents.

- iv. A party may be present during the other party's presentation but witnesses will be present only while making statements to the panel.
  - v. The panel members may question the parties and witnesses but must do so in a fair and objective manner.
  - vi. The panel members may request documents other than those presented by the parties and may interview pertinent witnesses. The chair may limit repetitive or irrelevant statements by the parties or by witnesses. The Chair shall limit questioning by a panel member if that questioning becomes abusive, unfair, or repetitive. The Chair may dismiss from a meeting any person, including a party, who becomes abusive or who obstructs or interferes with the meeting.
  - vii. The meeting(s) will be closed. A recording(s) of the meeting(s) will be made.
  - viii. Upon the conclusion of its investigation, the panel will meet to determine its finding and make its recommendation as described in F.4.g. below. The panel's finding and recommendations shall be determined by majority vote of the panel members.
- g. Findings and recommendations of the Assistant Vice President or panel shall be made as follows:
- i. If the Assistant Vice President or panel finds by a preponderance of the evidence that discrimination has not occurred, the Assistant Vice President or panel shall recommend that the Complaint be dismissed.
  - ii. If the Assistant Vice President or panel finds by a preponderance of the evidence that discrimination has occurred, the Assistant Vice President or panel shall recommend a remedy, which the University's President has the authority to provide.
  - iii. The Assistant Vice President shall notify the President and all parties regarding the findings and recommendations. Upon such notification, there will be no further University review of the complaint unless either party submits in writing an appeal to the Office of Institutional Equity and Diversity within 10 days of receiving the above-referenced report. This appeal will be forwarded to the President for decision.
  - iv. Within 21 days of notification of the final disposition, the supervisor of the respondent shall seek to implement the recommendations. Any implementation of recommendations shall be documented in writing. If the proposed resolution is not accepted by the parties, the President or designee will provide the remedy.
  - v. Within 21 days of being notified of the final disposition of a discrimination complaint involving a student respondent, the Director of Student Conduct & Academic Integrity shall initiate student conduct action in accordance with the [Student Disciplinary Policies and Procedures](#).

## 5. Appeal Procedures

- a. The President will make a final decision based on his/her review of the findings and recommendations of the Assistant Vice President or panel and an appeal from any of the parties. The President will notify the complainant and respondent of the decision in writing within 21 days of his/her of the findings and recommendations. If the President disagrees with the panel or Assistant Vice President's findings and recommendations, the statement of decision will include a statement of rationale for the decision. If the President decides to amend the original remedy, the statement will include a description of the remedy to be provided. The President's decision is final.
- b. When a remedy is provided by the President, the Assistant Vice President will monitor implementation of that remedy.

6. Assurance of Confidentiality and Retention of Records:
  - a. The complaint and all records developed during the investigations of the complaint shall be considered confidential and shall not be released except as required by law or by the provisions of this policy.
  - b. The complaint and all records developed during the investigation of the complaint shall be retained for a period of two years after the date of the President's decision. Thereafter, the records shall be destroyed unless State or Federal action is pending.
7. Further Review of the Complaint: After the President makes a decision, there is no further University review of the complaint. A dissatisfied complainant may file a complaint of discrimination with the Commonwealth of Virginia Department of Human Resource Management and/or with the U.S. Equal Employment Opportunity Commission. Dissatisfied student complainants may file with the U.S. Office for Civil Rights.

**G. RESPONSIBLE OFFICER**

Assistant Vice President for Institutional Equity and Diversity

**H. RELATED INFORMATION**

[University Policy 4500 – Accommodation of Students With Disabilities](#)

[University Policy 4600 - Sexual Assault Policy](#)

[University Policy 4601 - Stalking Policy](#)

[University Policy 5406 - Accommodations for Individuals with Disabilities](#)

[University Policy 6320 - Sexual Harassment Policy](#)

[University Policy 6330 - General Harassment Policy](#)

[University Policy 6600 - Standards of Conduct for Classified Employees](#)

[University Policy 6602 - Classified Employees Grievance Procedure](#)

