



# OHSU Procedure Manual

## Discrimination, Harassment, Sexual Misconduct, and Retaliation Based on Protected Status

Policy Number: [03-05-048](#)

Effective Date: August 1, 2025

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## **I. PURPOSE, IMPLEMENTATION, AND JURISDICTION**

### **A. Introduction**

OHSU recognizes the strength that comes with being diverse in people and ideas and strives to uphold respect and inclusion for all OHSU Members, including employees and students. OHSU is committed to equal access for Members in employment, programs, activities, admission, course offerings, and facilities. Any form of prohibited discrimination, harassment, sexual harassment, sexual misconduct, and retaliation (together referred to as “Discriminatory Misconduct”) has no place at OHSU. It is the policy of OHSU to maintain an environment free of Discriminatory Misconduct against any person because of their real or perceived protected characteristic, as defined in Section II. A General Definitions.

This Discrimination, Harassment, and Retaliation Procedure Manual (“DHR Manual”) sets out key definitions and processes that OHSU will follow when responding to concerns about Discriminatory Misconduct. Reports of Discriminatory Misconduct can be made to the Office of Civil Rights Investigations and Compliance (“OCIC”). Reporting options and confidential resources are discussed in more detail in Sections III and IV.D, respectively. OHSU acts on all reports of Discriminatory Misconduct promptly, making every effort to preserve confidentiality and privacy in accordance with applicable law, the [Discrimination, Harassment, And Retaliation Policy \(03-05-048\)](#), and this DHR Manual.

Supportive measures, remedies, and other resources are available through the VP OCIC/Title IX Coordinator or OCIC.

If OHSU finds that an OHSU Member has engaged in Discriminatory Misconduct, it will take immediate and appropriate corrective action. Students who have engaged in Discriminatory Misconduct may face sanctions up to and including suspension or dismissal. Employees who have engaged in Discriminatory Misconduct may face discipline or corrective action, up to and including termination.

Sexual harassment is prohibited under both federal and state law, and in some circumstances, [Title IX of the Education Amendments of 1972](#) (“Title IX”) establishes specific definitions or procedures that do not apply to other forms of Discriminatory Misconduct. Conduct that does not fall within the definition of sex harassment under Title IX may still be prohibited under Oregon state law and the DHR Policy. This DHR Manual establishes the procedures that apply to sexual harassment under both Title IX and Oregon law.

While this DHR Manual addresses Discriminatory Misconduct, nothing in the DHR Policy or this DHR Manual is intended to impact communications or expressions protected by the United States or Oregon constitutions. OHSU shall not prohibit the lawful exercise of freedom of expression and/or academic freedom and is committed to free and vigorous discussion of ideas and issues not prohibited under the DHR Policy or this DHR Manual. Academic freedom and the related

freedom of expression include, but are not limited to, the civil expressions of ideas – however controversial – in all aspects of OHSU.

## **B. Purpose and Implementation**

This DHR Manual supplements OHSU's Discrimination, Harassment, and Retaliation Policy ([03-05-048](#)), and defines prohibited discrimination, harassment (including sexual harassment), and retaliation; outlines reporting options and obligations; describes both informal and formal resolution, investigation, determination, and appeal processes for reports of conduct prohibited by OHSU's DHR Policy and this DHR Manual.

These procedures are aligned with OHSU values and are in compliance with state and federal nondiscrimination and equal opportunity laws and implementing regulations, including but not limited to: the [Equal Pay Act of 1963](#); the [Civil Rights Act of 1964](#), as amended; [Age Discrimination in Employment Act of 1967](#), as amended; Sections 503 and 504 of the [Rehabilitation Act of 1973](#); Section 402 of the Vietnam Era Veterans Readjust Assistance Act of 1974, as amended, [38 U.S.C. 4212 \(VEVRAA\)](#); [Age Discrimination Act](#) (1975); [Pregnancy Discrimination Act](#) (1978); [Immigration Reform and Control Act of 1986](#); [Americans with Disabilities Act of 1990](#), as amended; [Civil Rights Act of 1991](#); [Uniform Services Employment and Reemployment Act \(1994\)](#) (USERRA); [ADA Amendments Act of 2008](#); [Genetic Information Nondiscrimination Act of 2008](#); [Title IX](#); and all other applicable state and federal civil rights laws.

OHSU intends to comply with all applicable requirements under federal and state law. If there are any inconsistencies between legal requirements and the language in the DHR Policy or this DHR Manual, OHSU will adhere to current federal and state laws. OHSU reserves the right to amend, revise, or replace (in whole or in part) this DHR Manual as it deems necessary or appropriate. This DHR Manual may be revised at any time without notice. All revisions supersede prior policy and are effective immediately upon approval.

Nothing in this DHR Manual, nor any other OHSU policy, practice, or procedure, creates a contractual obligation or an express or implied promise between OHSU and a member of the OHSU community.

OCIC's Vice President (VP) is the designated Title IX Coordinator for OHSU and oversees implementation of the procedures in this DHR Manual. The VP OCIC/Title IX Coordinator acts with independence and authority and oversees all resolutions under this policy, free from bias and conflicts of interest. The VP OCIC/Title IX Coordinator may assign responsibility or authority outlined in this DHR Manual to one or more designees.

The procedures described in this DHR Manual apply to all students, staff, and faculty members. This includes unionized or other related categories of employees who are also subject to the terms of either any applicable collective bargaining agreements or other OHSU policies on employment, to the extent those agreements and policies do not conflict with federal or state

compliance obligations. Usually, this means that a union member or employee retains their right to grieve a disciplinary action.

Given the federal mandates of Title IX and its implementing regulations, the rights and obligations provided in this policy as it relates to Title IX necessarily supersede any conflicting rights or obligations provided in the bylaws or constitutions of the Faculty Senate or the Associated Students of OHSU or any other OHSU policy on disciplinary process, staff complaint procedures or other governing documents.

This DHR Manual will generally be reviewed and updated annually by the VP OCIC/Title IX Coordinator. Should this DHR Manual be updated, the procedure in effect at the time that the conduct occurred will apply even if the procedure is subsequently changed.

### **C. Jurisdiction**

The [DHR Policy](#) and this DHR Manual apply to all members of the OHSU community, including, but not limited to: students, visiting students, student organizations, employees, contractors; all applicants for OHSU employment or for admission to educational or OHSU-sponsored programs or activities; and all non-student and non-employee persons or groups participating in, attempting to participate in, or accessing OHSU-sponsored activities, programs, or facilities. Likewise, an investigation may not be possible where OHSU lacks control or access to relevant information or involved individuals. ***[This DHR Manual does not apply to OHSU patients. Patients with concerns about potential discriminatory behavior should contact OHSU's Section 1557 Coordinator for assistance.]***

OHSU reserves the right to respond, consistent with OHSU policy and applicable law, to Discriminatory Misconduct that: (1) occurs on campus or property owned, used, or controlled by OHSU; (2) occurs in the context of an OHSU employment or educational program or activity; (3) uses OHSU resources, such as telephones, computers, video conferencing technology, e-mail, or other means of electronic communication; or (4) creates a hostile environment for or causes substantial disruption to the OHSU community or any of its Members.

An off-campus event such as an academic or professional conference may constitute an OHSU program or activity if, for example, it is an OHSU-sponsored event or OHSU otherwise maintains substantial control over the event, and prohibited conduct occurs within the context of such an event.

### **Specific Title IX Jurisdiction:**

For the Title IX-specific provisions of this DHR Manual to apply, the alleged conduct must meet the following three jurisdictional requirements:

- The conduct took place in the United States.
- The conduct took place in an OHSU “education program or activity,” which for the purposes of Title IX is defined as locations, events, or circumstances over which OHSU exercised substantial control over both the Respondent and the context in which the harassment occurred, including on-campus and off-campus property and buildings OHSU owns or controls or student organizations officially recognized by OHSU.
- The conduct meets the definition of “Title IX Sexual Harassment” (as defined in Section II.D.1.

## **II. DEFINITIONS**

### **A. General Definitions**

- **Advisor:** A person chosen by a party or appointed by OHSU to accompany a party to meetings related to the resolution process and to advise the party on that process. Throughout this procedure, both the Complainant and Respondent have a right to one (1) advisor of their choice. This person is also considered a Support person. OHSU may establish restrictions regarding the extent to which the advisor may participate in the proceedings if the restrictions apply equally to both parties. Language translators or interpreters provided by OHSU to either party for access purposes (e.g., a sign language interpreter or a Spanish translator) will not be counted as an advisor.
  - Title IX Specific Information: As described below in Section J, for Formal Complaints related to Sex-Based Harassment under Title IX, only an advisor can conduct cross-examination for the party at a live hearing. If a party does not have an advisor at the time of the hearing, OHSU will provide the party with an advisor of OHSU’s choice, free of charge.
- **Complainant:** An individual who is reported to be the victim of conduct that could constitute a violation of OHSU’s policies prohibiting Discriminatory Misconduct.
- **Confidential Employee:** An individual who is not obligated to report concerns of discrimination, harassment, or sexual misconduct to OHSU. Please see Section C for more information.
- **Consent:** An affirmative, conscious, and voluntary agreement among all participants to engage in specific conduct, including but not limited to sexual

activity. Consent is not affirmative, conscious, and voluntary if it is achieved by force, coercion, or if the individual is incapacitated and incapable of giving consent. Consent can be given by words or actions, if those words or actions create clear permission regarding willingness to engage in the sexual activity or contact. Silence or lack of resistance, in and of itself, does not demonstrate consent. An individual cannot provide consent if they are incapacitated. Consent can be withdrawn at any time. The definition of consent does not vary based on a participant's sex, sexual orientation, gender identity, or gender expression. Previous consent does not imply consent to sexual contact or activity in the future. It is the responsibility of each person involved to ensure they have the affirmative consent of the other(s) to engage in each sexual activity or contact.

- **Day:** Day means a “business” day which falls on a Monday through Friday and excludes federally recognized holidays and other days when OHSU is closed. “Day” includes breaks between terms during the academic year for students, or time off contract for employees. This means parties who may be on break or who are off contract may still be contacted during processes described in this DHR Manual.
- **Decision-maker:** The individual(s) who will make a determination of responsibility, or, for the purposes of conduct that falls within Title IX, oversee the live hearing described in Section J. OHSU may have one decision-maker determine whether the Respondent is responsible for a violation of OHSU policy and another decision-maker determine the appropriate sanction for the conduct. The decision-maker cannot be the Title IX Coordinator or the investigator.
- **Determination of Responsibility:** Made at the conclusion of the Formal Resolution Procedure and based on the preponderance of the evidence (more likely than not) that a violation of an OHSU policy or expectation did or did not occur.
- **Discriminatory Misconduct:** Prohibited discrimination, harassment, sexual harassment, sexual misconduct, sexual assault, domestic violence, dating violence, stalking, sexual exploitation, and retaliation, as described in this DHR Manual.
- **Employee:** A person employed by OHSU either full- or part-time. This includes student employees when acting within the scope of their employment.
- **Finding:** A conclusion based on the preponderance of the evidence that the alleged conduct did or did not occur (as in a “finding of fact”).
- **Formal Complaint:** A written complaint signed by the Complainant or Title IX Coordinator alleging a violation of OHSU’s policy on Discriminatory Misconduct and requesting an investigation. If the Title IX Coordinator signs the Formal



Complaint, the Title IX Coordinator will not become a party to the Formal Complaint.

- **Formal Title IX Complaint:** A Formal Title IX Complaint is required for OHSU to initiate the resolution procedures regarding conduct that falls within the scope of Title IX. A Formal Title IX Complaint must be in writing, signed by the Complainant or Title IX Coordinator, and allege conduct that reasonably could constitute Title IX Sexual Harassment (as defined in more detail below) and request an investigation. If the Title IX Coordinator signs the Formal Complaint, the Title IX Coordinator does not become a party to the Formal Title IX Complaint.
- **Formal Resolution Procedure:** The process described in this DHR Manual follows a Formal Complaint of conduct that could constitute Discriminatory Misconduct. The Formal Resolution Procedure includes an investigation, determination of responsibility, and sanctions and remedies where appropriate.
- **Informal Resolution:** A flexible process to address reports of conduct that could constitute a violation of the [DHR Policy](#) or this DHR Manual. Informal resolution does not include an investigation or a final determination.
- **Incapacitation:** A state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction). This definition includes a person who is mentally incapacitated, involuntarily physically, mentally, or cognitively restrained, or from the taking of incapacitating drugs.
- **OHSU Member:** As defined in [OHSU Policy 01-01-000](#), the term "OHSU Member" includes members of the OHSU Board of Directors; employees; students and trainees; volunteers; visiting faculty, researchers, and healthcare practitioners; and contractors and vendors, while doing business with OHSU; or others who work for or act on behalf of OHSU.
- **Party/Parties:** As used in this DHR Manual, this means the Complainant and Respondent.
- **Process Guide:** A member of the OCIC Team who will provide the Parties with information about the processes and options described in this DHR Manual. The Process Guide may be the same individual who conducts the investigation.
- **Protected Characteristic:** Includes race, color, religion, national origin, sex, sexual orientation, gender identity or expression, pregnancy (including pregnancy-related conditions), age, disability (including physical or mental disability), genetic

information (including family medical history), ancestry, marital or familial status, citizenship, service in the uniformed services (all as defined in federal or state law), protected veteran status, expunged juvenile record, use of leave protected by state or federal law, use of the Workers' compensation system, and/or any other status protected by Oregon or federal law.

- **Report:** The disclosure of information regarding conduct that could constitute a violation of the DHR Policy or this DHR Manual. OCIC will follow up on all reports of Discriminatory Misconduct received by OCIC. A report does not constitute a "Formal Complaint" as defined above.
- **Reasonable Person:** An objective standard referring to a hypothetical reasonable person with a reasonable way of interpreting and reacting to a situation, as a reasonable person under similar circumstances and with similar identities to the individual.
- **Respondent:** An individual reported to be the perpetrator of conduct that could constitute a violation of the DHR Policy or this DHR Manual.
- **Responsible Employees:** OHSU employees who have a duty to report to OCIC if they become aware of conduct that could constitute Discriminatory Misconduct. In general, all OHSU employees are considered responsible employees for the purposes of the DHR Policy and this DHR Manual unless they have been specifically designated as confidential employees. Responsible employees are discussed in Section IV. B.
- **Student:** For the purposes of this DHR Manual, "student" includes any person who has matriculated, is registered for one or more credit or non-credit hour(s), including online learning courses, received financial aid, or received any other service or benefit provided by OHSU requires student status.
- **Third-Party Reporter:** Any person, except the Complainant or Respondent, who reports conduct that could reasonably constitute Discriminatory Misconduct. A third-party reporter could be any individual who witnesses conduct or is made aware of conduct that could reasonably violate this policy and procedure, and reports this event, incident, or conduct to OHSU.

## **B. Discrimination**

Discrimination is broadly defined under federal, state, and local laws to include various forms of conduct. OHSU prohibits discrimination based on protected characteristics recognized by federal, state, and local law.

Discrimination is generally an adverse action taken against an individual or group on the basis of the individual's or group's protected characteristic(s). Discrimination takes two forms: disparate

treatment and disparate impact. Disparate treatment occurs when the adverse action is motivated in whole or in part by the protected characteristic. Disparate impact occurs when a policy, requirement, or regularized practice, although neutral on its face, adversely impacts persons in a protected class without a legitimate purpose.

### **C. Harassment**

Harassment is a form of discrimination and is unwelcome verbal or physical conduct based on a protected characteristic that is sufficiently severe or pervasive that it substantially interferes, or is likely to substantially interfere, with an individual's employment, education or access to OHSU programs, activities, or opportunities, and would have such an effect on a reasonable person who is similarly situated.

Harassment may include, but is not limited to, severe or pervasive verbal statements or nonverbal or physical conduct, graphic or written statements, threats, or slurs. Whether the alleged conduct unreasonably interferes depends on the totality of the particular circumstances, including the nature, frequency, and duration of the conduct in question, the location and context in which it occurs, and the status of the individuals involved. Although the impacted party's perception of the offensiveness of the alleged conduct, standing alone, may not be sufficient by itself to constitute harassment, consistent with trauma-informed practices, the impacted party's subjective experience is considered in all aspects of this analysis.

### **D. Sexual Harassment**

Sexual Harassment is unwelcome conduct of a sexual nature and is prohibited under both Title IX and Oregon law. Title IX and Oregon law have different definitions of sexual harassment as outlined below. In general, OCIC will evaluate reports of sexual harassment to determine whether the reported conduct meets the definition of sexual harassment under Title IX. If so, the specific procedures applicable to Title IX as defined in this DHR Manual will apply. If the reported conduct does not meet the definition of sexual harassment under Title IX, OCIC will evaluate whether the conduct meets the definition under Oregon law. If so, the general procedures applicable to Discriminatory Misconduct will apply.

#### **1. Title IX Sexual Harassment**

Sexual harassment under Title IX includes any conduct on the basis of sex that satisfies one or more of the following:

- **Quid Pro Quo Harassment:** An OHSU employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct; or
- **Title IX Hostile Environment Harassment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it

effectively denies a person equal access to OHSU's education program or activity;  
or

- **Title IX Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Uniform Crime Reporting System of the Federal Bureau of Investigation, including the following:
  - **Sex Offenses.** Any sexual act directed against another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent.
  - **Rape (except Statutory Rape).** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
  - **Sodomy.** Oral or anal sexual intercourse with another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of the Complainant's age or because of the Complainant's temporary or permanent mental or physical incapacity.
  - **Sexual Assault with an Object.** To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of the Complainant's age or because of the Complainant's temporary or permanent mental or physical incapacity.
  - **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of the Complainant's age or because of the Complainant's temporary or permanent mental or physical incapacity.
  - **Sex Offenses, Non-Forcible.**
    - **Incest.** Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
    - **Statutory Rape.** Non-forcible sexual intercourse with a person who is under the statutory age of consent.
- **Title IX Dating Violence.** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. Dating

violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Title IX domestic violence.

- **Title IX Domestic Violence.** An act of violence committed by:
  - A current or former spouse or intimate partner of the Complainant;
  - A person with whom the Complainant shares a child in common;
  - A person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner;
  - A person similarly situated to a spouse of the Complainant under applicable law; or
  - Any other person against an adult or youth Complainant is protected from that person's acts under applicable domestic or family violence laws.
- **Title IX Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - Fear for the Complainant's safety or the safety of others; or
  - Suffer substantial emotional distress.
  - For the purposes of this definition:
    - Course of conduct means two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
    - Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.

## **2. Oregon Sexual Harassment**

Oregon Sexual Harassment is defined as sexual harassment that is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal or physical conduct of a sexual nature where such conduct is sufficiently severe or pervasive that it has the effect, intended or unintended, of unreasonably

interfering with an individual's work or academic performance or it has created an intimidating, hostile or offensive environment and would have such an effect on a reasonable person.

- **Oregon Sexual Assault** includes non-consensual sexual contact or intercourse. Non-consensual sexual contact means any touching of the sexual or other intimate parts of a person or causing a person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party. Sexual intercourse has its ordinary meaning and occurs upon any penetration, however slight.
- **Oregon Intimate Partner Violence** (“IPV”) includes dating violence, domestic violence, and other types of relationship violence. Oregon IPV is defined as intentionally or recklessly causing physical, emotional, or physiological harm to a person who is, or has been involved in, a sexual, dating, or other intimate relationship with the Respondent. (This excludes self-defense.) Oregon IPV includes, but is not limited to, threatened acts of violence, including threatened self-harm for the purpose of controlling an individual and threats of harm to the individual’s family members, friends, or pets. A relationship can be evidenced by the parties’ description of their interactions, the frequency of interactions between the parties, and consideration of the length and type of interactions.
- **Oregon Sexual misconduct** means an incident of sexual harassment, sexual violence, Oregon Intimate Partner Violence (IPV), sexual exploitation, stalking, harassment, or violence based on sexual orientation or general identity or expression, or other gender-based harassment or violence.
- **Oregon Stalking** based on gender or sex is defined as engaging in a course of conduct on the basis of sex or gender that is directed at a specific person and that would cause a reasonable person to fear their own or others’ safety, or to suffer substantial emotional distress.
  - “Course of conduct” means two or more acts, including, but not limited to, unwanted contact, property invasion or damage, watching, following, surveilling (e.g., using tracking devices, monitoring online activity, etc.), sabotage, threats, violence, and attacks. Stalking can occur in person, via third parties, and/or using technology.
  - “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or professional treatment or counseling.

For the purposes of Oregon law, a trauma-informed response includes a response involving an understanding of the complexities of intimate partner violence, domestic violence, sexual assault and stalking through training centered on the neurobiological impact of trauma, the influence of societal myths and stereotypes surrounding the causes and impacts of sexual assault and related trauma and knowledge of how to conduct an effective investigation.

## **E. Retaliation**

Retaliation refers to a materially adverse action taken against an OHSU Member because the individual engaged in a protected activity. Adverse action means any action that is reasonably likely to deter a reasonable person from engaging in a protected activity. Examples of retaliation include a reprimand, discipline, or demotion. Adverse action does not include petty slights or trivial annoyances. Protected activity includes but is not limited to (1) opposing a practice that is unlawful or that the individual reasonably believes is unlawful; (2) filing a report, serving as a witness, assisting someone with a report of unlawful activity or discriminatory misconduct, or participating in an investigation, proceeding or hearing pertaining to discriminatory misconduct conduct; or (3) participating in OHSU's reasonable accommodation processes.

## **III. REPORTING DISCRIMINATORY MISCONDUCT**

OHSU will appropriately respond to any report or Formal Complaint alleging conduct in violation of OHSU's [DHR Policy](#) or this DHR Manual. All reports are taken seriously by OHSU and will be evaluated and resolved through the appropriate procedures.

Reports are preferably made within 24 hours. While there are no time limits on reporting or filing a complaint, the passage of time can directly impact OHSU's ability to respond to a report or complaint, such as gather important information, meet with necessary parties and witnesses, provide supportive measures, or impose remedies.

### **A. Reporting to OCIC**

Any individual who witnesses, experiences, or is impacted by prohibited Discriminatory Misconduct is encouraged to report the incident, event, or conduct to OCIC. The individual reporting the incident, event, or conduct may speak to a Confidential Intake Specialist. Reports can also be made via voicemail, [email](#), mail, or [online](#). OHSU's [Integrity Helpline](#) may be used by individuals who have experienced Discriminatory Misconduct, as well as by third-party reporters when they observe, are told about, or suspect Discriminatory Misconduct.

Making a report is not the same as filing a Formal Complaint. To file a Formal Complaint, the Complainant should contact the VP OCIC/Title IX Coordinator or any other member of the OCIC team. Refer to Section XI.A for more information on OCIC's Intake Process for Reports of Discrimination and Harassment, and to Section XI.G.1 for Submitting a Formal Complaint.

As described in Section IV.B, Responsible Employees are required to notify OCIC of information related to Discriminatory Misconduct.

## **B. Reporting to Law Enforcement**

A Complainant or other individual has the right to choose to report potential criminal conduct to law enforcement, in addition to other reporting obligations. Upon request, OHSU will assist a Complainant in contacting law enforcement at any time.

Where there is a threat to the health or safety of any OHSU member or to the extent a report involves potential criminal activity on OHSU's campus, OHSU may independently conduct a criminal investigation through the Department of Public Safety. An individual may make a report to OHSU, to law enforcement, to neither, or to both.

OHSU's resolution process and law enforcement investigations may be pursued simultaneously, but will typically operate independently of one another. OHSU will, when appropriate, coordinate information with law enforcement if law enforcement is notified. OHSU may also pause its investigation to allow initial fact-gathering by law enforcement.

## **C. External Reporting**

OHSU encourages all OHSU Members with a complaint about Discriminatory Misconduct to follow the process provided by OHSU in this DHR Manual. However, individuals may always choose to make a discrimination complaint directly to outside agencies or law enforcement, including, but not limited to, the [Bureau of Labor and Industries' Civil Rights Division](#), the [Office for Civil Rights of the U.S. Department of Education](#), the [U.S. Equal Employment Opportunity Commission](#), the [Educational Opportunities Section of the Civil Rights Division of the U.S. Department of Justice](#), or the [Accreditation Council for Graduate Medical Education](#).

## **IV. RESPONSIBLE EMPLOYEES, CONFIDENTIAL EMPLOYEES, AND OTHER CONFIDENTIAL RESOURCES**

Every OHSU employee, except for those specifically designated as a "confidential employee," is considered a "responsible employee" for the purposes of the [DHR Policy](#) and this DHR Manual and is required to report information about Discriminatory Misconduct to OCIC.

At the same time, OHSU respects that not every individual harmed by Discriminatory Misconduct will want to or is prepared to have their experience reported to OCIC. Individuals seeking to talk to someone about an incident of Discriminatory Misconduct in a private manner without making a report or initiating any investigation or action by OHSU may access confidential employees or confidential resources as described below.

### **A. All OHSU Members**

OHSU asks all OHSU Members, except confidential employees, to do the following when responding to disclosures of Discriminatory Misconduct under the DHR Policy and this DHR Manual:



1. Unless you are a designated Confidential Employee (defined in Section IV.C), inform the person if you have an obligation to report all Prohibited Discriminatory Misconduct to OCIC.
2. To the extent you are comfortable, listen to what the person wants to tell you before providing support or information. Don't feel the need to ask a lot of questions or gather information.
3. Be sensitive to the needs of the person who shares about the conduct, without judgment. Do not dismiss or minimize the concern.
4. Inform the person of reporting options, including the option to report to OCIC, the Integrity Helpline, or law enforcement.

In addition to these general expectations, all OHSU employees, with the exception of confidential employees, have the additional reporting obligations set forth below. All OHSU Members who are not employees or on the Board of Directors (e.g., students, including graduate students; volunteers; visiting faculty, visiting researchers, and visiting healthcare practitioners; contractors and vendors) are encouraged, but not required, to report Discriminatory Misconduct. Anyone may meet with the OCIC VP/Title IX Coordinator or designee to learn more about the process before making a report.

OHSU Members should not investigate any matter themselves. OHSU Members are not required to share information disclosed during public awareness events (e.g., student forums or town halls) or as part of an Institutional Review Board-approved human subjects' research protocol.

## **B. Responsible Employees**

OHSU employees, except those designated as confidential employees, receiving reports of Discriminatory Misconduct should:

1. Comply with the [expectations for all OHSU Members](#) set forth above.
2. Direct the person making the disclosure to the DHR Policy and this DHR Manual, including confidential employees and confidential resources.
3. As soon as possible in the conversation, inform the person making the disclosure that you need to make a report to OCIC, so that steps can be taken to stop the discrimination or harassment, remedy its effects, or prevent future instances of discrimination and harassment.
4. Report the incident to OCIC via the [web form](#) or the [Integrity Helpline](#). In general, reports to OCIC and/or referrals to other resources should be made while the person is with you, if possible, but in no event later than 24 hours after the person shared the information.
5. For situations involving an immediate threat to someone's health or safety, the employee should call the Department of Public Safety at 503-494-4444 for on-campus emergencies. In all instances where there is a state law requirement to make a mandatory report to law enforcement or other agencies (e.g., child abuse), the person should follow state law.

Responsible employees should be prepared to report the name, date, time, location, and description of the incident and involved parties to the extent such information is readily apparent, or freely shared, and to provide the notes of any conversations they had with the individuals. They otherwise will maintain privacy to the greatest extent possible. Anyone may meet with the OCIC VP/Title IX Coordinator or a designee to learn more about the process before making a report.

It is a violation of the DHR Policy and this DHR Manual for a responsible employee to fail to report as required by the DHR Policy and this DHR Manual.

### **C. Confidential Employees**

OHSU has identified certain employee positions as confidential employees. Confidential employees will not share information disclosed to them with others without the express written permission of the person making the disclosure or as required or permitted by applicable law or professional codes of ethics (such as cases involving abuse of a minor or an elder, or an imminent risk of serious harm).

The following employees are confidential employees under the [DHR Policy](#) and this DHR Manual when acting in their confidential role:

- I. OCIC confidential intake specialists.
- II. All health care and mental health professionals providing care as a treating professional at OHSU. This includes employees at the Student Health and Wellness Center, Resident and Faculty Wellness, Employee Assistance Program, Confidential Advocate Program for Employees, and the Confidential Advocacy Program for students.
- III. The OHSU's Ombuds and program staff.

**Note:** Ombuds, Confidential Intake Specialists, and Confidential Advocacy Program for Employees do not have a legal privilege of confidentiality, but under their professional code of ethics, they must take steps to avoid, whenever possible, disclosure of confidential information.

Confidential employees will submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to the person they are advising.

### **D. Confidential Resources**

In addition to confidential employees, other confidential resources are available to OHSU Members and can provide support in addition to, or without, making a report of Discriminatory Misconduct to OHSU.

#### **1. Confidential Resources – Students**

The Student Health and Wellness Center counselors and medical providers, and the Confidential Advocacy Program (CAP) are available to help students.

## **2. Confidential Resources – Employees**

The Confidential Advocacy Program for Employees (CAPE) is available to all employees and can be seen on an emergency basis during normal business hours.

## **3. Additional and Off-Campus Confidential Resources**

More information on confidential resources available to OHSU Members can be found on the [OCIC website](#).

## **V. SUPPORTIVE MEASURES**

The VP OCIC/Title IX Coordinator or designee may provide interim supportive measures intended to support individuals impacted by Discriminatory Misconduct or parties who are participating in a Resolution Procedure, as detailed in Section XI.

Supportive measures are non-disciplinary, non-punitive individualized services offered without fee or charge to the parties at any time, regardless of whether a Formal Complaint has been filed. OHSU will provide the parties with options for supportive measures and how to request available supportive measures. OHSU will provide such measures to the parties as appropriate and as reasonably available to restore or preserve equal access to OHSU's education program or activities and workplace. These measures are designed to protect the safety of all parties, protect OHSU's educational environment, and deter Discriminatory Harassment without unreasonably burdening either party.

OHSU will provide supportive measures on a confidential basis and will not disclose that OHSU is providing supportive measures except to those with a need to know to enable OHSU to provide the service or to restore a party's access to OHSU's educational program or workplace, or if disclosure is authorized by the party receiving the supportive measure.

Supportive measures may include, but are not limited to:

- Referral to counseling and health services for students or to the Employee Assistance Program;
- Short-term alterations to work schedules, locations, or arrangements for employees;
- Providing campus escorts;
- Providing translation services;
- Providing academic support and/or reasonable accommodations; and
- Offering other temporary adjustments to work schedules, academic deadlines, course schedules, etc.

Parties wishing to request supportive measures should contact the VP OCIC/Title IX Coordinator.

If OHSU declines to provide certain supportive measures to a Complainant, OHSU will document the rationale for the denial, considering the known circumstances.

## **VI. INTERIM MEASURES, INCLUDING NO-CONTACT DIRECTIVES**

In addition to supportive measures, interim measures may also be available to protect both parties during a resolution procedure.

At the discretion of the VP OCIC/Title IX Coordinator, in consultation with other appropriate OHSU officials, OHSU may issue a no-contact directive to promote safety and access to educational and employment opportunities.

For Title IX and this procedure, no-contact directives are mutual and apply equally to all parties.

Students or employees who violate the terms of a no-contact directive may be subject to disciplinary action. To request a no-contact directive, a party should contact the VP OCIC/Title IX Coordinator.

## **VII. EMERGENCY REMOVAL**

OHSU may remove a student from OHSU's education program or activity on an interim, emergency basis pending the completion of the formal or informal resolution process.

For conduct that falls within Title IX or this [DHR policy](#), students may be subject to emergency removal after OHSU conducts an individualized safety and risk analysis according to OHSU's threat assessment team and determines that an immediate threat to the physical health, safety, or well-being of any member(s) of the campus community arising from the allegations of sexual harassment justifies removal.

The VP OCIC/Title IX Coordinator or designee, in consultation with appropriate OHSU officials, will ensure a risk assessment is conducted to determine if there is a safety risk to the campus community. OHSU will also consider any applicable disability laws and will evaluate the appropriateness of supportive measures in lieu of an emergency removal. All emergency removals must be approved, coordinated, and monitored by the VP OCIC/Title IX Coordinator or designee.

If the allegations fall under Title IX, OHSU may not use emergency removal to address a student's threat of obstructing the investigation or destroying relevant evidence. Emergency removal is only available to address health or safety risks against individuals arising out of Title IX Sexual Harassment allegations. However, OHSU may choose to remove a student related to other allegations that fall under the DHR policy.

In all cases in which an emergency removal is contemplated, OHSU will provide written notice to the student and a timely opportunity to challenge the emergency removal decision. The student

has the option to request to meet with the VP OCIC/Title IX Coordinator or designee prior to such emergency removal being imposed, or as soon thereafter as reasonably possible, to show cause why the emergency removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. The Complainant and their advisor may be permitted to participate in this meeting if the VP OCIC/Title IX Coordinator or designee determines it is equitable to do so. The student may be accompanied by an advisor of their choice when meeting with the VP OCIC/Title IX Coordinator or designee for the show cause meeting. The student will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

At OHSU's discretion, alternative coursework options may be made available to ensure as minimal an academic impact as possible on the parties. Violation of an emergency removal under this policy will be grounds for sanctions, up to and including expulsion.

The terms of the interim emergency removal will define, limit, and/or deny the student access to the OHSU campus (physical and remote), buildings, offices, facilities, events, or other OHSU-related activities. These restrictions may include work, classes, and/or all other OHSU activities or privileges for which the student might otherwise be eligible.

#### **VIII. EMPLOYEE ADMINISTRATIVE LEAVE**

OHSU may place an employee on paid administrative leave, on an interim basis, pending the completion of the formal or informal resolution process outlined below.

In coordination with the VP OCIC/Title IX Coordinator, Human Resources may place an employee on paid administrative leave under this Procedure to determine its conditions and duration. OHSU will follow any relevant policies, procedures, collective bargaining agreements, and Oregon law when implementing administrative leave. A violation of the terms of an employee's interim paid administrative leave will be grounds for disciplinary or corrective action, up to and including dismissal or termination.

During an interim administrative leave, an employee may be denied access to the OHSU campus (physical and remote), offices, buildings, facilities, events, or other OHSU-related activities or services such as email, telephone, or other OHSU systems. These restrictions may include work, classes, and/or all other OHSU activities or privileges for which the employee might otherwise be eligible. At OHSU's discretion, alternative work options and/or other reasonable accommodations may be pursued to ensure as minimal an impact as possible on the employee.

#### **IX. CONFIDENTIALITY AND PRIVACY**

OHSU makes every effort to preserve the parties' privacy and confidentiality throughout this Procedure. OHSU will take reasonable steps to protect the privacy of the parties and witnesses

when carrying out the requirements under this DHR Manual, although individuals should be aware that during the Formal Resolution Procedure (Section XI. H.) OHSU will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with family members, confidential employees, or confidential resources, advisors, or otherwise prepare for or participate in the Formal Resolution Procedure.

OHSU employees are expected to treat information related to the Discriminatory Misconduct, including during the resolution procedures, as confidential and only share information on a need-to-know basis. Any OHSU employee with questions about whether it is appropriate to share information should consult with OCIC.

OHSU will not disclose personally identifiable information about parties, witnesses, or other individuals except in the following circumstances:

- When OHSU has obtained prior written consent from the person or someone with a legal right to consent to the disclosure;
- When the information is disclosed to a parent, guardian, or other authorized legal representative who has the legal right to receive personally identifiable information;
- When it is necessary to carry out the requirements of this DHR Manual or other policies or procedures, including taking action to address conduct that reasonably may constitute Discriminatory Misconduct;
- As otherwise required by state, federal, or local law or as required by terms and conditions of a federal award, including a grant award or other funding agreement; or
- When permitted under FERPA, 20 U.S.C. 1232g, or its implementing regulations, [34 CFR part 99](#).

As discussed in Section XVII, OHSU is required to document reports of sexual harassment in compliance with the [Clery Act](#), a federal law requiring data collection of crime within the campus geography. Under the Clery Act, OHSU does not document personal information.

## **X. AMNESTY RELATED TO THE REPORTING OF SEXUAL HARASSMENT**

OHSU encourages all community members to report behavior associated with sexual harassment. To support such reporting, OHSU will not pursue disciplinary proceedings or sanctions for violations of OHSU's policies related to drug or alcohol use, trespassing, or unauthorized entry of OHSU facilities or other violations of OHSU policy or applicable code of conduct against a student or employee (who reports experiencing or witnessing an incident of sexual harassment to OHSU) and who requests an investigation of sexual harassment under the

[DHR Policy](#) or this DHR Manual, when the violation of OHSU policy is discovered in connection with the reported sexual harassment. OHSU may pursue disciplinary proceedings or sanctions if OHSU determines that the report was not made in good faith or that the violation was egregious (including actions that place the health or safety of another at risk).

## **XI. OHSU'S RESOLUTION PROCEDURES**

This section of this DHR Manual describes the resolution procedures available for reports of Discriminatory Misconduct. The two resolution procedures are Informal Resolution or the Formal Resolution Procedure. Both are described in detail below.

### **A. OCIC Intake Process for Reports of Discriminatory Misconduct**

Upon receiving a report of Discriminatory Misconduct, the OCIC VP/Title IX Coordinator<sup>1</sup> or their designee will promptly take the following action(s):

1. Contact the Complainant regarding the reported conduct;
2. Offer and coordinate supportive measures to the Complainant or third-party reporter(s) (if applicable) and provide information about the process;
3. Conduct an initial evaluation of the report;
4. Discuss OHSU's resolution procedures with the Complainant, and determine whether the Complainant wishes to file a Formal Complaint and/or pursue one of OHSU's resolution procedures;
5. Consider referring the report to Informal Resolution (if appropriate); and/or
6. If the Complainant does not wish to file a Formal Complaint, assessing whether the Title IX Coordinator will submit a Formal Complaint.

The initial evaluation typically includes:

- Assessing whether the reported conduct falls under the jurisdiction of OCIC;
- Determining whether OHSU has jurisdiction over the reported conduct;
- Determining whether the reported conduct falls within the scope of the DHR Policy and this DHR Manual; and
- Evaluating whether the reported conduct may reasonably constitute a violation of Title IX's prohibition on sexual harassment.

If OCIC determines that the alleged conduct, if proven, would not constitute a violation of the [DHR Policy](#) or this DHR Manual or that OCIC or OHSU lacks jurisdiction, the report is typically removed from the process defined in this DHR Manual. If applicable, the report will be referred

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<sup>1</sup> The OHSU President or Title IX Coordinator may designate another person to oversee the process below, should a complaint be made against the OCIC VP/Title IX Coordinator or in the event that the OCIC VP/Title IX Coordinator is otherwise unavailable or unable to fulfill their duties.

to the appropriate office, department, or administrator, and resolution may be pursued in accordance with any other applicable OHSU policy, procedure, guidelines, agreements, or handbooks.

If the reported conduct includes behavior that falls within both this DHR policy and other OHSU expectations (such as the [Code of Conduct](#)), OCIC will typically investigate the allegations and render findings. Disciplinary determinations will be made by the appropriate office.

#### **B. Use of Privileged Information and Other Evidentiary Considerations**

OHSU's resolution procedures do not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (e.g., attorney-client privilege, doctor-patient privilege, spousal privilege, etc.), unless the person holding the privilege provides voluntary, written consent to waive the privilege.

During the Formal Resolution Procedure, the investigator(s) and the decisionmaker(s) will only consider evidence that is deemed relevant and not otherwise impermissible. Relevant evidence is that which may aid in determining whether the allegation occurred or whether the behavior constitutes Discriminatory Misconduct. Impermissible evidence may be relevant evidence that is excluded, as well as questions seeking that evidence, which means it cannot be accessed, considered, disclosed, or otherwise used.

In addition, OHSU will not consider evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent or preclude a determination that sex or gender-based harassment occurred.

#### **C. Presumption of Good Faith and Presumption of Non-Responsibility Until Final Determination**

OHSU presumes all reports are in good faith. Further, OHSU presumes the Respondent is not responsible for the reported conduct until OHSU makes its final determination regarding responsibility at the conclusion of the Formal Resolution Procedure.

#### **D. Bias or Conflict of Interest**

The OCIC VP/Title IX Coordinator, investigator, decision-maker, or any person designated by OHSU to facilitate Informal Resolution will not have potential or actual bias or conflict of interest in the investigatory, hearing, sanctioning, or appeal process or bias for or against complainants or respondents generally. Actual bias is an articulated prejudice in favor of or against one party



or position. A generalized concern about the personal or professional backgrounds, positions, beliefs, or interests of the decision-maker in the process is not a basis to determine bias.

#### **E. Pending Civil or Criminal Charges or Actions**

OHSU action will not be precluded on the grounds that civil or criminal charges involving the same incident have been filed or that such civil or criminal charges have been dismissed or reduced.

#### **F. Informal Resolution**

Informal Resolution is an opportunity to address allegations of discrimination, harassment, and retaliation without an investigation and final determination. It is a flexible, voluntary, non-punitive, remedies-based process that provides an alternative to an investigation and determination. Informal Resolution is typically a facilitated process between the Complainant and the Respondent that seeks to identify and meet the needs of the Complainant while providing an opportunity for the Respondent to be informed of the allegations and respond, acknowledge harm, and seek to repair the harm (to the extent possible) experienced by the Complainant. Informal Resolution may be an option at any time before reaching a formal determination of responsibility under the Formal Resolution Procedure.

Except when the alleged conduct may fall under the jurisdiction of Title IX as determined by the OCIC VP/Title IX Coordinator, OHSU may offer Informal Resolution when:

- The alleged conduct, even if proven, would not violate this policy or procedure; or
- The alleged conduct, if proven, would violate this policy or procedure, but the Complainant does not wish to file a Formal Complaint, and the OCIC VP/Title IX Coordinator has determined not to file a Formal Complaint.

The Informal Resolution process cannot be used to resolve an allegation that an employee engaged in sexual harassment of a student. OHSU may decline to allow use of the Informal Resolution process when OHSU determines that the alleged conduct would present a future risk of harm to others.

OHSU will not pressure the parties to participate in Informal Resolution.

*Title-IX Specific Requirements:* For conduct that falls under Title IX, Informal Resolution is only available after a Formal Complaint is filed and requires notice and the written consent of both parties to participate in informal resolution. For non-Title IX conduct that could constitute a violation of the [DHR Policy](#) or this DHR Manual, informal resolution is available without the filing of the Formal Complaint, and, depending on the circumstances, may not require either notice or the consent of both parties.

## 1. Types of Informal Resolution

Remedies under Informal Resolution may include appropriate and reasonable educational, restorative, and/or accountability-focused measures. Generally, support people will not be present during informal resolution procedures. OHSU offers several forms of Informal Resolution:

- **Supportive Resolution:** When the OCIC VP/Title IX Coordinator or designee can resolve the matter informally by providing *only* supportive measures designed to remedy the situation. This option is not available if the matter falls under Title IX without providing notice to the Respondent.
- **Facilitated Conversation:** When the OCIC VP/Title IX Coordinator or appropriate designee can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and OHSU's expectations, or can accompany the Complainant in their desire to speak with the Respondent regarding the conduct.
- **Informal or/Departmental Coaching:** When the OCIC VP/Title IX Coordinator or designee can resolve the matter with one-on-one coaching and/or group training. These might be facilitated by OCIC facilitators or in partnership with HR, CWE, other departments, or external agencies.
- **Accepted Responsibility:** When the Respondent is willing to accept responsibility for violating OHSU policy and is willing to agree to actions that will be enforced similarly to sanctions, and the Complainant(s) and OHSU are agreeable to the resolution terms.

## 2. Notice of Informal Resolution

In most instances, before initiating Informal Resolution, OHSU will provide the parties with a written notice. Written notice will always be provided for conduct that falls under Title IX. For non-Title IX conduct that could constitute a violation of the DHR Policy or this DHR Manual, the VP OCIC/Title IX Coordinator or designee may determine that notice is not necessary if the informal resolution does not require the participation of the Respondent.

The notice will explain:

- The allegations;
- The requirements of the Informal Resolution process;
- The potential terms that may be requested or offered during Informal Resolution, including that any agreement will be binding only on the parties;
- That, prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and to initiate or resume the Formal Resolution Procedure;
- Any sanctions resulting from withdrawing from the Informal Resolution process;

- How records will be maintained by OHSU and how it could disclose such information for use in its Formal Resolution Procedure; and
- The parties' agreement to a resolution at the conclusion of the Informal Resolution process will preclude the parties from initiating or resuming either Informal Resolution or the Formal Resolution Procedure arising from the same allegations.

## **G. Formal Complaints of Discriminatory Misconduct**

### **1. Submitting a Formal Complaint**

A Formal Complaint must be signed by the Complainant, unless the VP OCIC/Title IX Coordinator or designee decides to issue a Formal Complaint without the Complainant. In all cases, OHSU will consider the Complainant's wishes with respect to how a report is addressed, but reserves the right to investigate and pursue the Formal Resolution Procedure when the individual identifying a concern chooses not to initiate or participate in a Formal Complaint.

After a Formal Complaint is submitted, both the Complainant and Respondent will have access to an OCIC team member to serve as a Process Guide. This is a member of the OCIC Team who will guide the parties in what to expect throughout the process.

Filing a Formal Complaint with OHSU will trigger the Formal Resolution Procedure, outlined in Section XI.H., unless Informal Resolution would be appropriate.

### **2. Resolution Timeline for Formal Complaints**

OHSU aims to resolve all Formal Complaints within 120 business days. OHSU may extend this timeline at the request of the parties or as necessary for appropriate cause by the VP OCIC/Title IX Coordinator or designee, with notice to the parties. Appropriate cause for extending such time objectives shall typically be limited to situations involving accommodation of criminal investigations, ensuring the health or safety of witnesses and other participants, ensuring availability of witnesses and other participants, ensuring participants have adequate access to hearing materials, and other reasons approved by the VP OCIC/Title IX Coordinator or designee. OHSU values the prompt resolution of Formal Complaints and will evaluate all requests for extension accordingly.

The VP OCIC/Title IX Coordinator or designee retains discretion to grant reasonable extensions upon notice to the Complainant and Respondent regarding any deadline specified in this DHR Manual concerning the investigation, hearing, or appeal process. Requests for extensions, to reschedule hearings, or any aspect of the procedure will be reasonably considered in the interests and schedules of all parties involved, including the Complainant, Respondent, hearing officer, and other participants.

### **3. Dismissing a Formal Complaint**

OHSU may dismiss a Formal Complaint or any allegations therein if, at any time during this process:

- i. The conduct alleged in the Formal Complaint would not constitute a violation of OHSU policy as further defined in this procedure, even if proven to have occurred as alleged;
- ii. The conduct did not occur in a program or activity controlled by OHSU (including buildings or property controlled by recognized student organizations), and/or OHSU does not have control of the Respondent;
- iii. The conduct reported did not occur against a person in the United States;
- iv. The Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations therein;
- v. The Respondent is no longer enrolled in or employed by OHSU; or
- vi. Specific circumstances prevent OHSU from gathering evidence sufficient to reach a determination as to the Formal Complaint or specific allegations therein.

For Title IX Formal Complaints, OHSU must dismiss the Formal Complaint from Title IX for the reasons identified in Sections 1-3. OHSU maintains discretion to dismiss a Title IX Formal Complaint or any allegation for the reasons outlined in Sections 4-6. If a Title IX Formal Complaint is dismissed, the VP OCIC/Title IX Coordinator or designee will evaluate whether to proceed under Oregon sexual harassment or another provision of this DHR Manual.

If the Respondent withdraws or resigns while the Formal Complaint is pending, the VP OCIC/Title IX Coordinator or designee will evaluate other options to ensure compliance with applicable OHSU policies and procedures.

Upon any dismissal of a complaint that falls under Title IX, OHSU will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. OHSU will also notify the parties of their right to appeal a dismissal decision (including OHSU's decision not to dismiss a Formal Complaint) described in XIV, as well as a Complainant's ability to re-engage in OHSU's resolution process after withdrawing a Formal Complaint, or request that OHSU reinstate a specific allegation. Any appeal must be filed within five (5) business days of the dismissal notification. The appeal standards and process described in Section XIV will be followed for all dismissal appeals.

### **4. Consolidating Formal Complaints/Other Conduct Code Violations**

OHSU may, but is not required to, consolidate Formal Complaints alleging Discriminatory Misconduct against more than one Respondent, or by more than one Complainant against one

or more Respondents, or by one party against the other party, where the allegations of Discriminatory Misconduct arise out of the same facts or circumstances.

- Similarly, OHSU may, but is not required to, consolidate applicable processes and procedures provided in other OHSU policies that may be implicated by a Formal Complaint or any allegation contained therein. OHSU, at its sole discretion, may conduct one consolidated investigation into the alleged conduct, or may elect to proceed concurrently under one or more other applicable OHSU policies as OHSU also follows the procedures outlined in this Manual. For example, OHSU may proceed with a Formal Complaint and Formal or Informal Resolution Procedures under this Manual, while also following the procedures detailed in the Code of Conduct related to allegations arising out of the same facts or circumstances.

#### **5. Formal Resolution Procedure.**

After filing a Formal Complaint, the Formal Complaint will be resolved according to the following Formal Resolution Procedure, unless Informal Resolution is otherwise appropriate.

#### **6. Notice**

The OCIC VP/Title IX Coordinator will provide the following notice, in writing, to the parties:

- Notice of OHSU's Formal Resolution Procedure;
- Notice of the allegations of reported discrimination, harassment (including sexual harassment), and/or retaliation with sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- A statement that the Respondent is presumed not responsible for the reported conduct and that a determination regarding responsibility is made at the conclusion of the Formal Resolution Procedure;
- Notice that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
- Notice that the parties may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which OHSU does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a party or other source; and
- Inform the parties of any provision in OHSU's applicable Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the Formal Resolution Procedure.

If, during an investigation, OHSU decides to investigate allegations about the Complainant or Respondent that are not included in the notice provided above, the OCIC VP/ Title IX Coordinator or designee will provide notice, in writing, of the additional allegations to both parties.

## **H. OCIC Process Guide, Advisors and Support Persons**

The OCIC VP/Title IX Coordinator or designee will assign a Process Guide to the Parties to explain the processes outlined in this DHR Manual.

Each party may also choose an advisor/support person of their own or elect to proceed without an advisor. Each party, however, is only permitted to have one advisor/support person. Employees represented by a union may have one union representative present to serve as a support person for interviews. This union representative will be the one advisor/support person of choice permitted to a party. The employee has the right to have a union representative present during the investigatory interviews, if they choose. Each party must provide OCIC with written notice (generally via email) of their chosen advisor/support person or confirm they have elected to proceed without one. The role of the advisor/support person is to provide support and assistance. The advisor/support person may not testify in or obstruct an interview or disrupt the process. The OCIC VP/Title IX Coordinator has the right to determine what constitutes appropriate behavior of an advisor/support person and take reasonable steps to ensure compliance with this procedure.

A party does not have a right to self-representation at a live hearing as described in Section J; an advisor must conduct any cross-examination. OHSU will provide an advisor of its choice, free of charge to any party without an advisor, to conduct cross-examination. If an advisor fails to appear at the hearing, OHSU will provide an advisor to appear on behalf of the non-appearing advisor.

## **I. Investigations**

The investigation is a neutral, fact-finding process. All investigations will be thorough, reliable, and impartial, and will seek the collection of witnesses and evidence directly or substantially relevant to whether the alleged policy violation occurred. Typically, this will entail interviews with relevant parties and witnesses, obtaining available evidence, and identifying sources of expert information, if necessary.

The VP OCIC/Title IX Coordinator or designee is responsible for overseeing investigations to ensure timely resolution and compliance with Title IX and this procedure.

Both parties have the right to have an advisor/support person present at every meeting described in this section.

### **1. Trained Investigators**

OHSU will investigate Formal Complaints fairly and objectively. Individuals serving as investigators under the Formal Resolution Procedure will have adequate training on what constitutes a violation of OHSU policy and this procedure, including sexual harassment for the purposes of Title IX (if applicable) and how OHSU's Formal Resolution Procedure operates. OHSU will also ensure that investigators receive training on issues of relevance to create an investigative

report that fairly summarizes relevant evidence and complies with the Formal Resolution Procedure.

## **2. Burden of Gathering Evidence**

OHSU, not the parties, has the responsibility to gather information and interview witnesses.

## **3. Notice of Investigative Interview**

OHSU will provide written notice of the date, time, location, participants, and purpose of all investigative interviews to a party whose participation is invited or expected, with sufficient time for the party to prepare to participate.

## **4. Investigative Report**

The results of the investigation of a Formal Complaint will be outlined in a written report that will include at least the following information:

- A description of the circumstances giving rise to the Formal Complaint;
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- A summary of the testimony of each witness the investigator interviewed;
- An analysis of relevant evidence collected during the investigation, including a list of relevant documents;
- A specific finding as to whether the allegations occurred using a preponderance of the evidence standard;
- A table of contents is included if the report exceeds ten pages; and
- Any other information deemed appropriate by OHSU.

The investigator will not make a determination regarding responsibility.

The investigator may redact information not directly related to the allegations or privileged information. However, the investigator will keep a log of information they do not provide to the parties. The investigator will provide this log only to the Title IX Coordinator. The Title IX Coordinator will not disclose the log to the parties but will maintain the log in the Title IX Coordinator's file, in the event it later becomes relevant.

## **5. Evidence Review**

Both parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which OHSU does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.

Prior to the investigator preparing the final investigative report, OHSU will make available to each party and the party's advisor (if any, and so desired by the party), the evidence subject to inspection and review in an electronic format or a hard copy, and the draft investigation report. The parties will have at least ten (10) days to review and submit a written response. The investigator must consider this written response prior to completing the investigative report.

OCIC will incorporate any response timely received from the parties into the final report before it is shared with all parties and their advisors through a secure electronic transmission or hard copy. OCIC will provide the parties with access to the final report at least ten (10) days prior to the hearing (if applicable) or the final determination.

OHSU will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

#### **6. Resolution Without a Hearing (Non-Title IX Formal Complaints)**

The investigative report and factual findings will be referred to the OCIC Director of Investigations or designee, who shall make a determination regarding policy violation(s). The OCIC Director of Investigations may meet separately with the Complainant and Respondent to determine credibility or ask clarifying questions. Parties will receive a written decision regarding the determination of responsibility regarding the allegations. The OCIC Director of Investigation will offer to meet with each party to explain the findings.

The Respondent may choose to admit responsibility for all or part of the alleged conduct that would violate OHSU policy and this procedures manual at any point in the resolution process. If the Respondent admits responsibility (either in whole or in part), such an admission must be memorialized in writing. The OCIC Director of Investigations will then render a finding that the individual is in violation of OHSU policy for the admitted conduct. If the Respondent only admits responsibility for some of the alleged conduct, the Formal Complaint will continue to a final determination on any remaining disputed violations. For admitted violations, the OCIC Director of Investigations will recommend an appropriate sanction or responsive action to Human Resources or the School.

If the investigation of the Formal Complaint has also included conduct that falls outside the [DHR Policy](#) and this DHR Manual but was investigated by OCIC because the allegations arose out of the same general set of facts, the investigator will make factual findings and the OCIC Director of Investigations will determine if the relevant policy was violated. The policy findings will then be referred to the appropriate office or Human Resources for a determination of sanctions.

#### **7. Formal Hearing Process for Title IX Formal Complaints**

For Title IX Formal Complaints only, after completing an investigation and prior to making a determination regarding responsibility, OHSU will hold a live hearing to provide the Complainant and Respondent an opportunity to respond to the evidence gathered before a decision-maker.



Neither party may choose to waive the right to a live hearing, but the parties can choose whether to participate in the hearing or answer some or all cross-examination questions. The parties may also request to participate in Informal Resolution instead of a live hearing, but all parties must agree in writing to Informal Resolution.

## **8. Notice of Hearing and Alleged Violations**

- I. At least 10 business days prior to the hearing, or as far in advance as is reasonably possible (if an accelerated hearing is scheduled with the consent of the parties), the decision maker will provide the parties with written notice of the date, time, location, participants, and purpose of the hearing with sufficient time for the parties to prepare to participate. Once mailed, emailed, and/or received in person, notice will be presumptively delivered. This notice will also include the following information: A description of the alleged violation(s) and a reference to this policy and the applicable procedures, including potential sanctions, responsive actions, and discipline that could result.
- II. A reminder that the parties have a right to attend the hearing at the scheduled date, time, and location. A statement that if any party does not appear at the scheduled hearing, the hearing will be held in their absence, and sanctions may or may not be imposed despite a party's absence. For compelling reasons, the decision maker may reschedule the hearing.
- III. A reminder that the parties will have the assistance of an advisor at the hearing, who will conduct cross-examination. The advisor may not make a presentation or represent the Complainant or Respondent during the hearing. The parties to the hearing are expected to ask and respond to questions on their own behalf, without interference from their advisor. A party may consult with their advisor quietly or in writing, or outside the hearing during breaks, but an advisor may not speak on behalf of the party. In cases where the advisor is an attorney for a party to the complaint, OHSU may also elect to have its counsel present at the hearing. For parties represented by a union, the Complainant or Respondent may choose one union representative to serve as their advisor.

Hearings for possible violations that occur near or after the end of an academic term will be held immediately after the end of the term or as needed, to meet OHSU's resolution timeline and remain within the 120-day timeline for resolution, unless extended by mutual agreement of the parties or approval of the VP OCIC/Title IX Coordinator or designee.

## **9. Hearing Decision Makers**

The decision-maker, most frequently the OCIC Director of Investigations, will be free from conflict of interest or bias, including bias for or against Complainants or Respondents. The VP OCIC/Title IX Coordinator will appoint a decision maker. The decision maker cannot be the investigator (who may be called as a witness at the hearing).

The VP OCIC/Title IX Coordinator or designee will inform the parties of the appointed decision maker at least ten (10) business days in advance of the hearing. In cases where the Complainant or Respondent objects to the decision maker based on a conflict of interest or bias, the objecting party may request the VP OCIC/Title IX Coordinator select a different decision maker. The VP OCIC/Title IX Coordinator will select a new decision maker if the VP OCIC/Title IX Coordinator determines that the decision maker cannot conduct an impartial hearing. The Complainant or Respondent must promptly make this request in writing at least five (5) days before the hearing. Further, promptly after being notified of their appointment, a decision maker who feels they cannot make an objective determination must recuse themselves from the hearing.

The decision maker will receive training on issues of relevance, how to apply the rape-shield protections for Complainants, and any technology to be used at the hearing. The decision maker retains discretion over the hearing time, date, location, and format, including whether to allow the parties or witnesses to attend a hearing remotely or in person.

The decision maker may ask the parties and witnesses questions during the hearing. The decision maker must objectively evaluate all relevant evidence, both inculpatory and exculpatory, and must independently reach a final determination. The decision maker will make a final determination as to whether there has been a violation of the DHR policy and this DHR Manual based on the investigation report, written statements, and responses of the parties (if any) to the evidence gathered, and any other relevant information provided during the hearing. If there are policy violations that fall outside of the DHR policy and Title IX, the decision maker will also make a final determination.

## **10. Hearing Procedures**

Hearings will be convened on a timely basis following completion of the investigation and will be conducted in private. The decision maker has the authority to reach a final decision on all allegations included in the Formal Complaint.

Hearing participants may only include the decision maker, the investigator(s), the Complainant(s), the Respondent(s), advisors to the parties, and any presenting witnesses.

## **11. Presenting Witnesses and Evidence**

The decision maker will disclose to the parties the names of witnesses OHSU intends to call, all pertinent documentary evidence, written statements to be presented at the hearing, and any written summaries from the investigator(s) at least ten (10) days before the hearing.

OHSU will provide the Complainant and Respondent an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

Only relevant evidence will be admissible during the hearing. Relevant evidence means evidence, including evidence relevant to the credibility of a party or witness, having any tendency in reason to prove or disprove any disputed fact material to the allegations under investigation.

Information not disclosed prior to the hearing shall be excluded from the hearing. The parties must identify relevant witnesses and evidence to be presented at the hearing to the decision maker reasonably in advance of the hearing so that participants can receive access to such information at least ten (10) business days before the hearing, and witnesses can be contacted.

OHSU is not able to compel participation in hearings; therefore, witnesses, like parties, are not required to participate in the hearing.

The decision maker, in consultation with the parties and investigators, may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the investigator(s) during the hearing.

## **12. Cross Examination**

OHSU shall permit each party's advisor to ask the other party and any witness relevant questions, including questions challenging credibility. The party's advisor must conduct cross-examination directly, orally, and in real time. A party may never personally conduct cross-examination.

Before a Complainant, Respondent, or witness answers a question, the decision maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The decision maker need not provide a lengthy or complicated explanation in support of a relevance determination. If a party or witness disagrees with a relevance determination, that individual has the choice of either (i) abiding by the decision maker's determination and answering the question or (ii) refusing to answer the question.

The decision maker cannot rely on the statements or testimony of a party or witness who has refused to answer a question the decision maker had found relevant unless the decision maker reconsiders and changes the ruling before reaching the determination of responsibility. If the decision maker changes the determination of relevance of an unanswered question, the decision maker must explain the decision to reconsider the ruling in the written determination of responsibility.

The decision maker cannot draw an inference about the determination of responsibility based solely on a party's or witness's absence from the hearing or refusal to submit to cross-examination or to answer any questions.

The decision maker may also ask any party or witness questions. If a party or witness refuses to respond to a decision-maker's questions, the decision-maker is not precluded from relying on that party's or witness's statements.

### **13. Outline of Hearing Process**

Once the procedures are explained and the participants are introduced, the investigator will present the report of the investigation first and will respond to background questions about the investigation from the parties and the decision maker. The summary of information gathered during the investigation is not binding on the decision maker. Undisputed material facts specified in the investigation report will not be revisited during other stages of the hearing, except as necessary to determine sanctions/responsive actions. The decision maker will permit questioning of the parties and any present witness(es). Questions may be directed through the decision maker at the discretion of the decision maker (formal rules of evidence will not apply).

Any evidence that the decision maker reasonably believes is relevant and credible may be considered, including evidence of past discriminatory behavior or sexual misconduct. The decision maker will address any evidentiary concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence, and may disregard evidence lacking in credibility.

Evidence regarding the Respondent's character intended for consideration as an aggravating or mitigating factor in the determination of sanctions may only be submitted in writing and will only be reviewed by the decision maker after the decision maker has reached a finding of responsibility. Such aggravating and mitigating evidence may include evidence of past misconduct by the Respondent or letters of support evidencing the Respondent's propensity for good character. Such evidence must be presented at the hearing and may not be submitted as new information during the appeal.

The decision maker will determine all questions of procedure and evidence. Any third parties appearing at the hearing to provide information will respond to questions on their behalf.

Except as expressly allowed by this policy, no one will present information, evidence, or raise questions concerning: (1) incidents not directly related to the possible violation, unless they are directly relevant to showing a pattern of behavior at issue in the hearing, or (2) the sexual history of or the character of the victim/party bringing a complaint.

There will be no observers in the hearing. The decision maker may allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the decision maker or the parties involved. The decision maker does not hear from character witnesses but will accept up to two letters supporting the character of the individuals involved for consideration if or when the decision maker is required to determine sanction(s).

In hearings involving more than one Respondent, or in which two parties bringing complaints have accused the same individual of substantially similar conduct, the standard procedure will be to hear the complaints jointly; however, the decision maker may permit the hearing pertinent to each complaint to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each Respondent.

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings and may be subject to further OHSU discipline for failure to do so.

A record of the hearing will be maintained for the purposes of review in the event of an appeal. The decision maker, the parties, and/or the persons who initiated the complaint, and appropriate administrative officers of OHSU will be allowed to review the record in a location determined by the OCIC Director of Investigations or designee. No person will be given or be allowed to make a copy of the record without permission from the VP OCIC/Title IX Coordinator or designee. Persons given access to the record will be required to sign an agreement confirming that they will protect the privacy of the information contained in the record.

#### **14. Decision-Maker's Final Determination**

The decision maker will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the violation(s) in question. The decision maker will base its determination on a preponderance of the evidence (i.e., whether it is more likely than not that the accused individual committed each alleged violation). The Respondent will be presumed not responsible until the evidence shows otherwise. If an individual Respondent or organization is found responsible by the decision maker, the decision maker will recommend appropriate sanction(s) to the Dean of the student's school when the Respondent is a student and to Human Resources when the Respondent is an employee.

The decision maker will prepare a written recommendation detailing the findings, the information cited in support of their recommendation, any information excluded from consideration, and the material reasons for the decision. The report should conclude with any recommended sanction(s). This report will typically be completed within five (5) business days of the end of deliberations.

The VP OCIC/Title IX Coordinator or designee will simultaneously notify the Respondent and the Complainant of the final determination within ten (10) business days of the hearing. The notification will include information on the outcome, when it becomes final, and the right of each party to appeal. Similar notifications will be provided in the event there is any change to the results before the decision becomes final.

Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official OHSU records; or emailed to the parties' OHSU-issued email account. Once mailed, emailed, and/or received in person, notice will be presumptively delivered.

#### **XII. REMEDIAL MEASURES AND SANCTIONS**

The VP OCIC/Title IX Coordinator or designee will determine remedial measures and recommend sanction actions. In general, remedial measures are actions designed to restore or preserve

access to OHSU's education programs, and sanctions are disciplinary consequences for violations of the [DHR Policy](#) or this DHR Manual. Factors considered when determining remedial measures or sanctions may include:

- The nature, severity of, and circumstances surrounding the violation.
- An individual's disciplinary history.
- Previous complaints or allegations involving similar conduct.
- The need for sanctions or remedies to bring an end to the discrimination, harassment, sexual misconduct, and/or retaliation.
- The need for sanctions or remedies to prevent the future recurrence of discrimination, harassment, sexual misconduct, and/or retaliation.
- The need to remedy the effects of the discrimination, harassment, sexual misconduct, and/or retaliation on the Complainant and the campus community.

#### **A. Sanctions for Students or Organizations**

The following are examples of sanctions that may be imposed upon students or organizations singly or in combination:

- Warning: A formal statement that the behavior was unacceptable and a warning that further infractions of any OHSU policy, procedure, or directive will result in more severe sanctions/responsive actions.
- Required education or training.
- Probation: A written reprimand for violation of this policy and/or the Code of Conduct, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any OHSU policy, procedure, or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, non-contact orders, and/or other measures deemed appropriate.
- Suspension: Termination of student status for a definite period of time and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at OHSU.
- Dismissal: Permanent termination of student status and revocation of rights to be on campus for any reason or attend OHSU-sponsored events. This sanction may be noted on the student's official transcript with an appropriate reference to the policy violated.
- Withholding Diploma: OHSU may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has a complaint pending, or as a sanction if the student is found responsible for an alleged violation.
- Organizational Sanctions: Deactivation, de-recognition, and loss of all privileges (including OHSU registration) for a specified period of time.

- Other Actions: In addition to or in place of the above sanctions, OHSU may assign any other sanctions as deemed appropriate.

## **B. Sanctions for Employees**

Recommended sanctions for an employee who has engaged in sexual harassment, sexual misconduct, discrimination, and/or retaliation shall be referred to Human Resources for adoption, imposition, and/or implementation and may include:

- Coaching;
- Required training/counseling from OCIC or ACC;
- Documented verbal warning;
- Written Warning;
- Final Written Warning;
- Demotion and
- Termination

Following any appeal and issuance of discipline regarding employee-members, such employees will have the opportunity to grieve tangible employment sanctions to the extent provided by their respective complaint processes.

## **C. Failure to Complete Sanctions or Comply with Remedial Measures**

All Respondents are expected to comply with sanctions within the timeframe specified by the department communicating the sanction.

Failure to follow through on sanctions by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanctions.

Respondents needing an extension to comply with their sanctions must submit a written request to the department issuing the sanction stating the reasons for needing additional time.

## **XIII. EFFECT OF WITHDRAWAL OR RESIGNATION AFTER RECEIVING NOTICE OF COMPLAINT**

### **A. Student Withdrawal**

Should a student Respondent permanently withdraw from OHSU, the resolution process ends, as OHSU no longer has disciplinary jurisdiction over the withdrawn student. However, OHSU will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s) and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to OHSU without first resolving any pending matters.

If the student Respondent withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely, and that student is not permitted to return to OHSU unless and until all sanctions have been satisfied or the matter is otherwise completed.

## **B. Employee Resignation**

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as OHSU no longer has disciplinary jurisdiction over the resigned employee. However, OHSU will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending may be ineligible for rehire with OHSU, and the records retained by OCIC and HR will reflect that status.

All OHSU responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending OCIC investigation.

## **XIV. APPEALS**

This section describes the standards and process for appeals from dismissals under Title IX or from a final finding of responsibility. All appeals from dismissals must be submitted in writing to the VP OCIC/Title IX Coordinator within five (5) business days of the dismissal notification. All appeals from a finding of responsibility must be submitted in writing to the VP OCIC/Title IX Coordinator or designee within ten (10) business days of the delivery of the written finding of the decision maker. The appeal is decided on the basis of written submissions and will not include a live hearing. No witnesses or parties will be required to participate in the appeal, and OHSU will not require any witnesses or parties to the complaint to appear.

The VP OCIC/Title IX Coordinator or designee will facilitate the appeal process, including sharing the appeal with the other party. The appeal process will be completed within fourteen (14) business days after the receipt of the appeal. The appeal process will be conducted by a trained decision maker selected by the VP OCIC/Title IX Coordinator or designee from a pool of OHSU employees trained to hear appeals under this policy. Both parties may appeal. Appeals are strictly limited to the following:

- a. A procedural irregularity that affected the outcome of the matter.
- b. To consider new evidence, unknown or unavailable during the original hearing or investigation, which could substantially impact the original finding. A summary of this new evidence and its potential impact must be included in the appeal. Such new information must be relevant to the determination of responsibility regarding whether the offense was committed. Evidence that could have been presented at



the original hearing, including but not limited to character evidence intended to enhance or mitigate the sanctions imposed, will not be accepted on appeal as new evidence.

- c. The OCIC Director of Investigations, investigator, or decision maker had a conflict of interest or bias for or against Complainants or Respondents generally or for or against the specific Complainant or Respondent, and the bias or conflict affected the outcome of the matter.

The original dismissal or finding and sanction(s) will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. When any party requests an appeal, the other party (parties) will be notified and allowed to participate in the appeal. The party requesting an appeal must show that the grounds for an appeal request have been met. The other party or parties may also show that the grounds for appeal have not been met.

Where the appeal decision maker finds that at least one of the grounds for appeal is met and proceeds, additional principles governing the hearing of appeals include the following:

- Appeals decisions by the appeal decision maker are to be deferential to the original decision.
- Appeals of final decisions are not intended to be full re-hearings of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the original decision maker for reconsideration. Other appeals may be remanded to the decision maker with instruction as to the matters to be considered on remand by the original decision maker.
- All parties will be informed whether the grounds for an appeal are accepted. The results of the appeal decision, as well as a justification of that decision, will be submitted to the parties in writing.
- Once an appeal for both parties is decided, the outcome is final: further appeals are not permitted. Employees may only initiate any complaint process available to them according to an applicable collective bargaining agreement or other process after the appeal is final. Such complaints will not result in a new OCIC hearing.

## **XV. RECORD KEEPING / DOCUMENTS / FILE RETENTION**

OHSU will retain for a period of at least seven years or the applicable records retention schedule (whichever is longer) copies of:

- Each notification or Complaint of Discriminatory Misconduct;
- Any actions taken in response to the notification or Complaint, including the Informal Resolution process, supportive measures, and/or any outcome of an investigation into Discriminatory Misconduct; and

- All materials used to provide training as required under Section XV. OHSU will make training materials available upon request to members of the public.

All records will be afforded the confidentiality protections required by law, including but not limited to the Family Educational Rights and Privacy Act governing confidentiality of student information. Records concerning victims of sexual misconduct, violence, or abuse will be afforded confidentiality to the maximum extent allowed by law and will be redacted to exclude victims' personally identifiable information.

## **XVI. TRAINING**

### **A. OHSU Required Training**

OHSU will provide training to the VP OCIC/Title IX Coordinator, OCIC employees, advisors, investigators, decision-makers, any individual who facilitates Informal Resolution, campus security offices, and any other person who works at OHSU who may be required to participate in an investigation under this DHR Manual on:

- The process described in this DHR Manual for addressing complaints of sexual harassment;
- How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- The relevant definitions and dynamics of sexual harassment, sexual assault, domestic violence, dating violence, and stalking under both federal and state law;
- The prevalence of sexual harassment, sexual assault, domestic violence, dating violence, and stalking both overall and, to the extent relevant data exists, within the educational and employment contexts;
- Trauma-informed best practices for how to serve the parties involved in the resolution processes, including utilizing trauma-informed principles of support or student-centered frameworks; and
- For investigators, how to conduct effective interviews, including best practices for interviewing sexual assault survivors.

Training plans and materials shall include principles related to providing trauma-informed and culturally responsive processes, procedures, and services.

### **B. Title IX Required Training**

OHSU will provide training to Title IX Coordinators, investigators, decision-makers, and any individual who facilitates an Informal Resolution process, on the definition of sexual harassment, the scope of OHSU's education program or activities, how to conduct an investigation and the Formal Resolution Procedure, including hearings, appeals, and Informal Resolution processes, as applicable, and how to serve impartially, including avoiding prejudgment of the facts at issue,

conflicts of interest, and bias. Any materials used to train OHSU's Title IX Coordinator, investigators, decision-makers, and any person who facilitates an Informal Resolution process will not rely on sex stereotypes, and must promote impartial investigations and adjudications of Formal Complaints of sexual harassment.

OHSU will ensure that the Title IX Coordinator, investigator, decision-maker, and facilitator receive training on:

- The definition of sexual harassment in this DHR Manual;
- The scope of OHSU's education program or activity;
- How to conduct an investigation;
- The Formal Resolution Procedure, including conducting hearings, appeals, and Informal Resolution processes; and
- How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

### **C. Students and Employees**

An informed and well-trained campus community is everyone's responsibility. OHSU reserves the right to require additional training of students and employees, individually or collectively, in furtherance of its legal and ethical duty to provide preventive education programming, regardless of whether any report, issue, or concern has resulted in an investigation, hearing, or finding of responsibility.

## **XVII. CLERY ACT AND OTHER REQUIRED REPORTING**

In order to be compliant with the federal Jeanne Clery Act, victims of sexual misconduct should be aware that OHSU must issue timely warnings for reported incidents that pose a substantial threat of bodily harm or danger to members of the OHSU community.

OHSU will document reports of sexual harassment in compliance with the Clery Act, a federal law requiring data collection of crime within the campus geography. Under the Clery Act, OHSU does not document personal information; OHSU reports the type of conduct, and the time, date, and location.

In addition, employees of OHSU are considered by law to be mandatory reporters of child abuse, elder abuse, or abuse of persons with disabilities. OHSU employees are required by law to report incidents of abuse to the Oregon Department of Human Services or law enforcement whenever they have reasonable cause to believe that any person with such protected status with whom they come into contact has suffered abuse or that any person with whom they come into contact has abused such a person with protected status. A fuller description of the mandatory child abuse reporting obligation can be found at [Mandatory Reporting Requirements \(ODHS\)](#).

## **XVIII. DISSEMINATION OF DHR POLICY AND MANUAL**

OHSU will publish its procedures related to Discriminatory Misconduct on its website and in each handbook or catalog provided to applicants for admission and employment, students, employees, and all unions.

OHSU will provide a notice of nondiscrimination to students, parents and guardians, employees, applicants for admission and employment, and all unions.

The notice of nondiscrimination will include:

- A statement that OHSU does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, including in admission and employment;
- The name or title, office address, email address, and telephone number of OHSU's Title IX Coordinator;
- How to locate OHSU's DHR Policy and Manual; and
- How to report information about conduct that may constitute Discriminatory Misconduct and how to make a Complaint of Discriminatory Misconduct.

OHSU will prominently include all elements of its notice of nondiscrimination on its website and in each handbook, catalog, announcement, bulletin, and application or other forms that are used in connection with the recruitment of students or employees.

OHSU will also notify all students, employees, and any other participant in OHSU's education program or activity of how to contact Confidential Resources.