

Policy 106 Committee Overview of Policy Recommendations and Deliberations

Committee Composition and Process

The Policy 106 Committee was charged by President Richard Feldman to review and consider changes to the University's Policy against Discrimination and Harassment, Policy 106. The Committee is comprised of faculty, staff, and students, including representatives from the Commission on Women and Gender Equity in Academia, the Faculty Senate Executive Committee, and the University Diversity and Equity Counsel.

The Committee met over a period of seven months and evaluated a series of potential amendments to the Policy. Committee members relayed and discussed experiences with and concerns about the current Policy and process from their various perspectives within the University, and considered specific potential changes to the Policy. Although the Committee's discussions were informed by the January 11, 2018 Debevoise & Plimpton Report of the Independent Investigation, the Committee considered topics and questions that were broader than those raised in that report.

The Committee further considered the Preliminary Report of the Commission on Women and Gender Equity in Academia and the Report of The Students' Association Task Force to Review Sexual Misconduct Policy, insofar as they addressed Policy 106. Looking beyond our own University, the Committee also considered the Report on Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine by the National Academies of Sciences, Engineering, and Medicine.

The Committee additionally created and used a database that included the harassment and discrimination policies of twenty-four peer Universities, including all those referenced in the Debevoise & Plimpton Report, focusing on the structures for investigative procedures and decision making, language about confidentiality, the sharing of results with the community more broadly, and addressing inappropriate behavior not violating the Policy. This latter research allowed the Committee to more confidently understand what practices were usual, uncommon, or absent in any peer institution, as well as understand particular parts of those policies more holistically within the context of other structures or procedures present at those universities. This information, along

with Committee members' individual efforts and work as part of subcommittees, informed the Committee's recommendations.

The major topic areas considered and discussed by the Committee are outlined below. After considering feedback from members of the University community, the Committee will conclude its work by forwarding its report and proposed recommendations to President Richard Feldman.

Topics of Discussion and Specific Recommendations

- **The Committee considered a separate respectful workplace policy and proposes incorporating reference to our Vision and Values.**

During the course of the Committee's work, the Committee discussed developing a respectful workplace policy that would define and capture conduct that did not violate Policy 106 but was otherwise objectionable. The Committee felt it was important to provide a vehicle for complaint and potential redress for employees who are concerned that they have not been treated fairly or respectfully, but who have not experienced the type of workplace behavior that is prohibited by Policy 106; for example, to address behavior that was not severe or pervasive, or not directed at someone due to their membership in a protected class. The Committee felt that to be effective, any such policy would need to be integrated with other ongoing efforts at the University and that developing a comprehensive policy or recommendation for implementation of such a policy would exceed the charge of this Committee. As a result, the Committee recommends that the development of a respectful workplace policy be addressed by a separate committee or group.

The Committee did, however, think it was important to expressly note that Policy 106 reflects not only the University's commitment to equality of opportunity, as set forth in Policy 100, but also supports the University's Vision and Values. The proposed language incorporating our Vision and Values is reflected in Part I of the proposed Policy (Policy and Policy Statements).

- **The Committee proposes additional language describing acts that could constitute sexual harassment.**

The current version of Policy 106 includes language describing acts that might constitute sexual harassment. In evaluating how to clarify or highlight this concept in the Policy, the Committee looked to examples, including the recently-drafted New York State model sexual harassment prevention policy. Using this model policy as a guide, the Committee proposed more clearly organized and expanded examples. This proposed language can be found at the end of Part II(B) of the draft Policy (Definitions of Terms Referenced in Policy, Harassment).

- **The Committee proposes strengthened language to encourage community members to report discrimination, harassment, and retaliation, and additional language to clarify when reporting is required.**

The past versions of Policy 106 included language encouraging reporting by members of the community, but the Committee looked to strengthen this language. In addition, prior to the completion of the Committee's work, interim changes to the Policy were made to highlight the responsibility of managerial personnel to report perceived discrimination, harassment, or retaliation, using language from the recently drafted New York State Model Sexual Harassment Policy.

The Committee, however, received feedback that these changes had created confusion in the University community. As a result, the Committee sought to clarify and explain when employees, including faculty and staff, have an obligation to report concerns of perceived discrimination, harassment, or retaliation that might fall within the Policy. Thus, the Committee sought to define and make clear, for purposes of the Policy, who might be included in the definition of managerial or supervisory personnel. The Committee also sought to distinguish this definition and associated reporting requirement under Policy 106 from the principle of "Responsible Employee" under the University's Student Sexual Misconduct Policy. These changes are reflected in the first three paragraphs of Part III of the draft Policy (Complaint Procedure).

- **The Committee recommends a revision allowing both the Complainant and the Respondent the option of having a support person present during the investigation.**

In determining what its recommendation would be regarding the role of an advisor or support person, the Committee reviewed and discussed the policies of peer institutions. In considering whether a particular policy could serve as a useful template, the Committee considered in part the context under which a particular policy provided for or discussed advisors. For example, student sexual misconduct policies generally provide for a hearing, which changes the way in which a policy addresses the concept of an advisor.

At our University, procedures in the Student Sexual Misconduct Policy apply to cases where there is a complaint brought by a student against a student for sexual misconduct. These cases involve conduct proceedings that often include a hearing to determine whether the accused student is responsible for a student conduct violation. In contrast, Policy 106 applies when there is a complaint brought against an employee (faculty or staff) for conduct that could constitute discrimination or harassment based on a protected class (e.g. gender, race, ethnicity, religion, disability, sexual orientation, etc.).

Complainants or Respondents in incidents involving domestic violence, dating violence, stalking, sexual assault or retaliation relating to such conduct are already entitled to have an advisor of their choice accompany them to any discussion involving the incident. In contrast, in the University's Student Sexual Misconduct Policy, Declarants and Respondents are given the broader right to have an advisor of choice accompany them to any discussion, regardless of whether the incident involves domestic violence, dating violence, stalking, sexual assault or retaliation relating to such conduct.

Our peer institutions address "advisors" in a variety of ways. Some have no reference in their policy to advisors. Others have advisors who act as support persons, but are not permitted to engage in any type of advocacy. At least two peer institutions describe advisors who can provide limited advocacy, such as making written submissions.

The Committee considered the fact-finding procedure used under Policy 106, which involves information gathering by an investigator, including witness interviews, and the drafting of a report for a decision maker. The Committee felt it was appropriate for Complainants and

Respondents to have access to a support person of their choosing during the process. The proposed language does not define or limit who the Complainant or Respondent may choose. The Committee also felt it was important to note in the Policy that support persons are present to provide support, not to substitute their own voice for that of the Complainant's or the Respondent's, or to interfere with the interview process. This is consistent with language found in all similar policies at peer institutions that mention advisors or support persons. These proposed changes can be found in the last paragraph of Part III (Complaint Procedure).

Finally, it is important to note that the Committee reviewed the Debevoise & Plimpton Report recommendation regarding procedural advisors for Complainants and Respondents. The Committee viewed this as articulating a separate recommendation for the provision of procedural advice. In response to this recommendation, the University had identified the two University Intercessors along with the HR Business Partners as Policy 106 procedural advisors. In addition, the Office of Equity and Inclusion is being formed, and may include or identify others in this role. As a result, the Committee used the term "support person" in its proposed draft, so that additional language could eventually be incorporated into Policy 106 without causing confusion.

- **The Committee proposes articulating the standard of proof used in making determinations under Policy 106.**

The Committee included language making clear that the standard of proof used to make determinations of responsibility under Policy 106 was the preponderance of the evidence standard. Since this is a legal term, the Committee reviewed language from model jury instructions, which are used to explain this term to jurors who are applying this standard in a legal matter. Using language from model jury instructions, a brief definition of this concept is also proposed in the Policy. This proposed change is reflected in the first paragraph of Part IV (Determinations, remediation, and corrective measures).

- **The Committee elected not to propose altering the single decision-maker model, but proposes a clarification noting that the decision maker may consult with senior administrative personnel who are required to maintain confidentiality.**

The Committee discussed whether a different decision-maker model, such as a panel of decision makers, would be more appropriate. The Committee determined that since this Policy applies across the institution, given the size of the institution at large, a panel decision-maker model for all complaints would be impractical. For example, in contrast to many institutions, our medical center and the University are one entity, and Policy 106 applies to all of these University employees. In addition, most hearing panels at other institutions are established under a sexual misconduct policy that does not cover other kinds of discrimination and harassment based on other protected classes (e.g. race, ethnicity, religion, disability, etc.). Since Policy 106 covers all kinds of discrimination, this would broaden the volume of complaints and scope of conduct that such a panel would have to address.

The Committee also reviewed the recommendation reflected in the Debevoise & Plimpton Report regarding a potential separate process for claims involving faculty members. The Committee felt that a separate process for faculty members, regardless of the form of that process, should be considered by a group or committee convened specifically for that purpose.

As part of its process, the Committee heard from personnel involved in the Policy 106 process, including a decision maker under the Policy. The Committee felt that it was important for the Policy to recognize that decision makers can have access to advice from senior administrative personnel, who are required to maintain confidentiality, as part of the decision maker's process. These consultations could provide valuable insight into, for example, the work environment of a Respondent, and could also provide the decision maker with input on the impact of conduct on other members of the community, including students and staff. However, recognizing this input in the Policy does not change the single decision-maker model; the decision maker designated in the Policy is responsible for making the determination. This proposed change is reflected in the second paragraph of Part IV (Determinations, remediation, and corrective measures).

- **The Committee proposes significant additional detail to describe potential remedial or corrective measures that could be imposed.**

The Committee sought to list and describe the various types of disciplinary or corrective measures that could be imposed if a decision maker determines that a Respondent violated Policy 106. The Committee considered and outlined in the proposed Policy examples for both staff and faculty. The Committee felt it was important to outline the full range of possible corrective measures, from mandatory training to termination, or in the case of a tenured faculty member, presentation to the University Committee on Tenure and Privileges for the revocation of tenure. These proposed changes are reflected in the fourth paragraph of Part IV (Determinations, remediation, and corrective measures).

- **The Committee proposes language making clear that the University may impose remedial or corrective measures even if the conduct was not found to violate Policy 106, and making clear that such a determination would be placed in an employee's personnel file.**

The Committee discussed the fact that investigations under Policy 106 at times reveal conduct that may violate other University policies, or conduct that does not violate Policy 106, but is otherwise problematic and should be addressed. The Committee also reviewed policies of peer institutions. The Committee felt that automatically requiring a separate investigation or process if other problematic behavior was revealed would be unnecessary and duplicative, and would delay addressing such behavior. In addition, the Committee felt that the Policy should make clear that the University is not prevented from taking remedial or corrective measures to address this conduct. As a result, the Committee proposed language that allows the University to initiate a separate review if necessary, or allows the University to impose disciplinary or corrective measures if appropriate. These changes are reflected in the last paragraph of Part IV (Determinations, remediation, and corrective measures).

In addition, the Committee sought to make clear that a finding that conduct violates other University policies or is otherwise problematic will be separately placed in an employee's personnel file, with a copy to that employee's supervisor, chair, or dean, as appropriate. This proposed change is reflected in the last paragraph of Part VII (Recordkeeping). Finally, as noted

above, the Committee recommends that the development of a respectful workplace policy be addressed by a separate committee or group.

- **The Committee proposes specific language regarding confidentiality, which also encompasses whether the result of an investigation would, as a matter of course, be shared beyond the Complainant and the Respondent.**

The Committee did an extensive review of language regarding confidentiality expressed in the policies of our peer institutions, and also became familiar with the ways in which employers and institutions protect the integrity of an investigation. The resulting proposed language is based in part on language reflected in the policy of Harvard University. The proposed language is designed to:

- Encourage participants to avoid compromising the integrity of the investigation by disclosing information and to avoid retaliation against a participant in the investigation;
- Make clear that participants are free to share their own experiences, but that it is generally advisable to limit the number of people in whom they confide to avoid compromising the investigation;
- Note that if necessary, the investigator may take steps to protect the integrity of the investigation and to prevent potential retaliation;
- Make clear that the results of investigations will generally not be shared beyond the Complainant and the Respondent, but that the decision maker has the discretion to authorize the disclosure of limited information if the circumstances so require.

The Committee considered whether mandating the disclosure of the results of the investigation beyond disclosure to the Complainant and the Respondent, but rejected that approach. However, the Committee felt it important to add additional language making clear that the decision maker may authorize disclosure of limited information related to an investigation if circumstances so require.

The Conclusion of the Committee's Work and Charge

The Committee will collect feedback regarding its proposed recommendations through an open comment period that will close on January 23, 2019. Comments can be sent to the Committee at Policy_106_Committee@rochester.edu. The Committee's recommendations and proposed revisions presented to President Feldman at the conclusion of our work will reflect the Committee's consideration of and deliberation on this feedback. The Committee's report will also be available to the University community.

Subject: **Policy against Discrimination and Harassment**

Applies to: This Policy applies to faculty, staff, residents, fellows, postdoctoral appointees, student employees, students¹, interns (paid or unpaid), volunteers, and to all visitors (including patients, contractors, and vendors) to any University campus, facility and/or property and to University sponsored activities and events, whether on University premises or not.

I. Policy and Policy Statements.

This Policy is the basis for the University's commitment to maintaining a workplace and academic environment free from unlawful discrimination and harassment. In support of its Vision and Values and commitment to equality of opportunity (as set forth in Policy 100), the University of Rochester sets forth the following Policy Statements:

- A. Anti-Discrimination and Anti-Harassment Statement.** The University prohibits and will not engage in discrimination and harassment on the basis of age, color, disability, domestic violence status, ethnicity, gender identity or expression, genetic information, marital status, military/veteran status, national origin, race, religion/creed, sex, sexual orientation, or any other status protected by law.² Discrimination or harassment (including hostile work environment harassment) based on protected status is illegal, will not be tolerated, and is considered misconduct that will be subject to discipline.
- B. Anti-Retaliation Statement.** The University prohibits retaliation against any person who complains of or opposes perceived discrimination or harassment as defined in this Policy, including those who participate in any investigation under this policy or other proceeding involving a claim based on a protected class. Retaliation is illegal, will not be tolerated, and is considered misconduct that will be subject to discipline.
- C. Title IX Statement.** The University complies with Title IX of the Education Amendments of 1972, which prohibits sex discrimination (including sexual harassment and violence based on sex) in the University's educational programs and activities, as well as retaliation for asserting claims of sex discrimination. Discrimination based on sex is illegal, will not be tolerated, and is considered misconduct that will be subject to discipline. Inquiries concerning the application

¹ This policy is not intended to be used for complaints against students. For complaints against students, the Standards of Student Conduct apply or the Student Sexual Misconduct Policy and related process applies. See <http://www.rochester.edu/college/cscm/conduct.html>.

² Applicable laws and regulations include: Age Discrimination in Employment Act & Older Workers Benefits Protection Act; Americans with Disabilities Act Amendment Act; Equal Pay Act of 1963; Executive Order 11246 (as amended by Executive Order 11375); Genetic Information Nondiscrimination Act; Pregnancy Discrimination Act; Rehabilitation Act of 1973 (§§503-504); Section 1981 of the Civil Rights Act of 1866; Section 1983 of the Civil Rights Act of 1871; Title VI of the Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964, as amended (1991); Public Health Service Act; Title IX of the Education Amendments of 1972; Uniformed Services Employment and Re-employment Rights Act; Vietnam Era Veterans Readjustment Assistance Act; New York State Human Rights Law; Rochester City Code; and discrimination laws of other states or nations, as applicable.

of Title IX and sex-based complaints should be referred to the University's Title IX Coordinator, Morgan Levy, 20 Taylor Hall, 585-275-7814, Morgan.Levy@rochester.edu.

II. Definitions of Terms Referenced in Policy.

The following definitions are intended to provide a better understanding of the meaning of certain terms as used within this Policy:

A. Discrimination. Discrimination involves an adverse action or decision or harassing treatment of a person or class of persons *because of* a legally protected status (e.g., age, gender, race, etc.) or because of perceived or actual affiliation/association with other individuals in a protected class. Discrimination under this Policy does not include unfair or inappropriate behavior not based on a protected class; for instance, complaints involving profanity or name calling not related to a protected class or issues of nepotism must be addressed through other avenues (e.g., Human Resources, your supervisor, the Intercessor).

B. Harassment. Harassment is a form of discrimination which involves (1) unwelcome verbal, written, physical or electronic conduct, (2) that is intended to cause or which could reasonably be expected to cause an individual or group to feel intimidated, demeaned, abused, or fearful, or to have concern for their personal safety, (3) because of a protected class when the conduct is:

(a) sufficiently severe or pervasive (meaning that the conduct is either of an extraordinarily severe or egregious nature *or* has been repeated with sufficient frequency and/or continuity); in other words, typically a single offense or occasional, episodic instances of offensive behavior will not qualify as sufficiently severe or pervasive, but a single instance of severe egregiousness (e.g., sexual assault) would, *and*

(b) objectively *and* subjectively has the effect of (1) unreasonably interfering with an individual's work or equal access to education or (2) creating an intimidating, hostile, or offensive work or academic environment.

All of these requirements must be met for certain behavior to qualify as harassment, and a finding of hostile environment must be based on a totality of the facts and circumstances. Types of behaviors based on a protected class which can lead to claims of harassment include, degrading and derogatory words, graffiti, pictures, jokes, epithets, statements or stereotyping activities as well as other forms of verbal, visual or written messages of intimidation, as well as unwanted physical contact or comments or threats about physical contact and stalking.

Sexual Harassment. Sexual harassment is a form of prohibited harassment as defined above in II.B. (a) and (b) and the requirements listed therein apply. Sexual harassment involves unwelcome sexual advances or requests for sexual favors, or other verbal or physical acts/conduct of a sexual or sex-based nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic success;

2. submission to or rejection of such conduct by an individual is used as the basis for an employment or academic decision affecting such individual; or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creates an intimidating, hostile, or offensive working or academic environment.

Sexual Assault. Sexual assault is sexual harassment which includes any physical sexual act perpetrated against a person's will, where that person does not give clear and voluntary consent or where that person is incapable of giving consent due to drug or alcohol use or due to intellectual or other disability. Sexual assault includes but is not limited to rape, sexual battery, sexual coercion (the act of using pressure or force to have sexual contact with someone who has already refused), and any other act of sexual violence.

Depending upon the severity or pervasiveness of the conduct, the following behaviors (some of which constitute criminal acts)³ may constitute sexual harassment or lead to complaints of sexual harassment:

- Physical acts of a sexual nature, such as:
 - Sexual violence (rape, sexual battery, sexual assault, dating violence, domestic violence, molestation) or attempts to commit sexual violence;
 - Unwanted and intentional touching, pinching, patting, kissing, hugging, grabbing, brushing against another person's body or poking another person's body or clothing.
- Sexual advances or propositions that are unwanted, such as:
 - Requests for sexual favors accompanied by implied or overt threats/promises that an individual's refusal or willingness to submit will impact the individual's status, wages, advancement, performance evaluation, promotion, or other benefits or detriments;
 - Subtle or obvious pressure for unwelcome sexual activities;
 - Sexual flirtations (including leering or ogling);
 - Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience.
- Display of sexual or sexually demeaning material anywhere in the workplace.
 - Examples include (but are not limited to) pictures, posters, calendars, graffiti, objects, text or other materials that are sexually demeaning or pornographic.
 - This includes displays on workplace computers, cell phones or any other area visible to other members of the University community.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, or the status of being transgender, either in person or through other means, such as:

³ Determinations made as to whether or not a Respondent violated Policy 106 based on allegations of behavior that could also constitute criminal acts are made solely for purposes of determining whether this Policy has been violated. The standards for assessing a violation of policy are not the same as the distinct legal standards required for a finding of criminal liability.

- Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
- Commenting about an individual's body, clothing or lifestyle that have sexual implications or demean the individual's sexuality or gender;
- Sabotaging an individual's work;
- Bullying, yelling, name-calling.

C. Retaliation. Retaliation is adverse action taken against an individual by the University *because* the individual has (1) personally complained of or opposed perceived discrimination or harassment because of a protected class; (2) testified, assisted, or participated in an investigation, proceeding, hearing, or legal action involving a claim of discrimination or harassment based on a protected class; (3) exercised rights under a relevant statute which involves a protected class, and/or action taken by the University which would dissuade a reasonable person from engaging in these types of protected activities.

D. Other Terms: "Gender expression" refers to external characteristics and behaviors that are socially defined as masculine or feminine (manner of dress, grooming, mannerisms, etc.); "Gender identity" refers to a person's innate, deeply felt psychological identification as male or female; "Protected status" or "protected class" refers to any of the categories listed in the Equal Opportunity and the Anti-Discrimination and Anti-Harassment Policy Statements.

III. Complaint Procedure

Members of the University community are encouraged to report discrimination, harassment or retaliation in accordance with this Policy. This includes members of the University community who feel that they have experienced behavior that violates this policy or who witness or become aware of conduct that they believe violates this Policy. In addition, any person who is a "Responsible Employee" under the University's Student Sexual Misconduct Policy, who learns that a student may have been the victim of "Sexual Misconduct," must promptly report that information to the University's Title IX Coordinator.⁴

However, management and supervisory personnel and Human Resources Business Partners who observe, receive or learn of reports or concerns of perceived discrimination, harassment or retaliation which fall within this Policy **must** report those concerns or reports, in accordance with this procedure, upon making such observation or being informed of such a concern or report. Management and supervisory personnel who fail to report and knowingly allow the continuation of behavior that constitutes discrimination, harassment, or retaliation under this policy will be subject to discipline.

For purposes of this policy, management and supervisory personnel include: any employee having formal supervisory responsibility over employees; faculty in such roles as dean, department chair, director, or similar position supervising other faculty and/or staff (including student employees);

⁴ See the Student Sexual Misconduct Policy [link] for definitions and more information about this obligation.

and Principal Investigators on a grant or contract (these employees act in a supervisory capacity over the individuals in the lab or research they lead).

All complaints or reports involving harassment or discrimination based on a protected class or related retaliation will be handled under the processes set forth in this Policy.⁵

Complaints arising under this Policy may be made to an individual's department chair, dean, director, immediate supervisor, the Office of Human Resources, the Office of Staff Diversity and Inclusion (formerly the Equal Opportunity Compliance Office), the Office of the Intercessor, or the Office of Counsel. Complaints arising may be made informally through a verbal complaint or more formally through a written report. A Report form may be obtained from any contact listed in Appendix A or on-line at:

http://www.rochester.edu/working/hr/policies/pdfpolicies/106_request_formal_resolution.pdf.

Regardless of the manner of reporting, the University will look into and respond to all good faith concerns and complaints raised under this Policy as expeditiously as possible and take remedial measures as needed. Informal resolution of complaints is expressly encouraged whenever possible (through any of the contacts listed in Appendix A). All informal complaints and efforts to resolve complaints arising under this Policy must be reported, for compliance purposes, to the University's Office of Counsel.

If a matter cannot be resolved through informal measures, a formal written complaint should be forwarded to Human Resources or the Office of Counsel for assessment and prompt investigation. The content of the complaint should include, at a minimum, the complainant's name, a description of the offending behavior including time and place of events, the name of the alleged offender, the names of any witnesses to the offending behavior, and identification of the protected class (or classes) involved.

The University will attempt to complete any investigation within 30 to 45 days of receipt of the complaint. Temporary protective measures may be implemented, as deemed appropriate.⁶ The investigation will include an interview with the Complainant (the individual who has made the complaint), the Respondent (the person about whom the complaint is made), and interviews of other witnesses with knowledge relevant to the complaint, and, at the investigator's discretion, the gathering of witness statements. While every effort will be made to protect the privacy of all parties, confidentiality cannot be guaranteed.

⁵ Staff and faculty may not use the Human Resources Grievance Procedure (Policy 160) and faculty may not use other grievance procedures described in the Faculty Handbook to complain about discrimination/harassment based on a protected class or related retaliation.

⁶ The University reserves the right to take temporary protective measures to protect individuals where the working, learning, patient care, or living environment appears to require such protective measures. Temporary protective measures include such actions as placing persons on temporary leaves of absences, exclusion from programs and facilities, altering working, learning, patient care or living arrangements, or imposing other conditions in the University environment as warranted.

Investigations conducted under this Policy are strictly internal. However, Complainants and Respondents may have a support person of their choosing present during any part of their participation in the process. Such persons are present to provide support for the Complainant or Respondent, and not to speak on their behalf. Support persons may not intervene or interfere with an interview or any aspect of the investigatory process. At the conclusion of the investigation, the investigator will provide a written report to the appropriate decision maker (see Appendix B). Within 15 business days of receipt of the investigative report, the decision maker will send a written determination of the outcome of the investigation to the Complainant, the Respondent, and appropriate administrative personnel.

IV. Determinations, remediation, and corrective measures

The determination sent to the Complainant and to the Respondent will include a summary of the findings of the investigation and will indicate whether a Respondent is found responsible for a violation of Policy 106. Determinations regarding violations of this Policy will be made by using the preponderance of the evidence standard. Preponderance of the evidence means that an allegation is more likely true than not true. Depending on the circumstances, the determination sent to both the Complainant and the Respondent will describe any corrective action to be taken as well as other recommendations based upon the findings.⁷

The decision maker may consult with senior administrative personnel as necessary. Such personnel must keep any information revealed as part of that consultation confidential to the greatest extent possible.

Neither the Complainant nor the Respondent will receive a copy of the written report. However, following the issuance of the determination, the Complainant and/or the Respondent may review the written report in person.

If the decision maker determines that Respondent is responsible for violating this Policy, the consequences imposed are dependent upon the specific findings and details of the case. Disciplinary, remedial, or corrective measures imposed can include, but are not limited to:

Staff:

Termination

Demotion

Suspension without pay

Written warning

Mandatory training

Non-renewal of contract (if applicable)

Reporting a violation of this Policy to the appropriate grant making or licensing authority, if required

⁷ In determining corrective action related to faculty, no faculty member's tenure can be revoked or contract abrogated without following the tenure revocation process outlined in the *Faculty Handbook*.

Faculty:

Termination

Demotion

Presentation to the University Committee on Tenure and Privileges for revocation of tenure or abrogation of contract

Non-renewal of contract

Reassignment/change in assignment

Revocation or suspension of clinical privileges

Revocation of administrative duties or assignments

Documentation of violation and consequences in faculty/employee file

Mandatory training

Supervision or ongoing monitoring

Reporting a violation of this Policy to the appropriate grant making or licensing authority, if required

A finding that conduct was problematic, but did not rise to a violation of this Policy, does not preclude the University from taking remedial or corrective measures based on information learned during the course of an investigation. In addition, if a complaint alleges or an investigation reveals conduct that violates another University policy or rule, the University may initiate a separate review and/or if appropriate, impose disciplinary, remedial, or corrective measures directed to that conduct.

V. Appeals

Any party to a formal investigation may appeal the decision within 15 business days of the date of the letter notifying the individual of the decision. Appeals are not for the purpose of having a second investigation or review of all facts but are limited to considering (1) evidence not previously available to the Investigator or the Official (or designee); (2) material defects in the process leading to the decision; or (3) severity or appropriateness of the imposed corrective action. Appeals must be submitted in writing to the appropriate senior officer or administrator, i.e., the Deputy to the President where the accused is a staff member, visitor or patient, the Provost where the accused is a faculty member, and the President where the accused is an officer. The senior officer has 15 business days to respond to the appeal. Decisions of the senior officer or administrator are final.

VI. Confidentiality

The University will take reasonable steps to protect the privacy of Complainants, Respondents, and witnesses. Complainants, Respondents, and witnesses will be notified that disclosing information about the complaint or investigation has the potential to compromise the integrity of the investigation and might, in certain circumstances, be construed as retaliation against a participant in the investigation. Retaliation of any kind is in itself a violation of this Policy. The parties remain free to share their own experiences, though to avoid the possibility of compromising the investigation, it is generally advisable to limit the number of people in whom they confide. Depending on the circumstances, the investigator may take steps to protect the integrity of the investigation or to prevent conduct that could be perceived as retaliatory.

Other than the determination letter sent to the Complainant and the Respondent, the result of an investigation will not generally be shared, including with witnesses (except to notify them that the investigation has concluded) or others, unless the University is required to do so by law or regulation. However, the decision maker may, at his or her discretion, authorize disclosure of limited information related to an investigation if circumstances so require.

VII. Recordkeeping

The complete investigative file, including a copy of any determination or appeal decision relating to a complaint under Policy 106, along with any record of remedial action or discipline taken in response to any complaint, shall be maintained in the Office of Counsel. No documentation relating to an investigation, including the determination itself, should be placed in any individual's personnel file *unless* an individual has been counseled or disciplined as a consequence of the complaint and investigation. Records of informal complaints and any remedial action taken must be provided to the Office of Counsel.

If a violation of this policy is not found, but the University takes other remedial or corrective measures based on information learned during the course of an investigation, a separate communication regarding that determination will be placed in that individual's personnel file, with a copy to that individual's supervisor, chair, and/or dean, as appropriate.

VIII. Relationship to Principles of Academic Freedom and Freedom of Speech

The success of the University of Rochester depends on an environment that fosters vigorous thought and intellectual creativity. It requires an atmosphere in which diverse ideas can be expressed and discussed. The University seeks to provide a setting that respects the contributions of all the individuals composing its community, that encourages intellectual and personal development, and that promotes the free exchange of ideas. This Policy is not intended to regulate the content of speech, discussion and debate in the classroom, on campus or in any University forum reasonably related to academic activity or political, artistic and visual arts expression. The University will protect academic freedom and artistic expression in administering this Policy. However, using speech or expression to discriminate against those protected by this Policy or using speech that creates a hostile learning, working or campus living environment for those protected by this policy is prohibited.

IX. Additional Notice to Employees Required by New York State

New York State requires that employers provide employees, applicants, contractors, and other persons conducting business with the employer with information regarding legal protections and external remedies regarding claims of sexual harassment. This information is set forth in Appendix C.

While a Complainant does not need a private attorney to file a complaint with a governmental agency or with a court, Complainants may seek the legal advice of an attorney. The Office of Human Resources, the Office of the University Intercessor, the Office of Counsel, and the Title IX

Coordinator can answer questions about Policy 106, but no University employee or representative can provide legal advice to any Complainant, Respondent, or witness.

See also: #100 General Personnel Policy Statements
#102 Affirmative Action Policy
#133 Recruitment and Selection
#154 Corrective Discipline
#160 Grievance Procedure for Staff

See also: Pertinent Handbooks (Faculty, Nursing, Student, Graduate Student, Medical Student, Residents/Fellow Manual, SMD Regulations of the Faculty)

PLEASE CONTACT ANY OF THE FOLLOWING FOR ADDITIONAL INFORMATION ON HOW TO PROCEED UNDER THIS POLICY OR TO SUBMIT A COMPLAINT.

Office of Human Resources, River Campus	33A Wallis Hall, 585-275-3874
Office of Human Resources, Medical Center	600 Elmwood Ave. (URMC), Rm. 1-6039 585-276-6817
Office of Staff Diversity and Inclusion	910 Genesee St., Ste 100, 585-275-2200
Office of Intercessor	36 Wallis Hall, 585-275-9125
Any Department Chair's Office	
Any Dean's Office	
Office of Counsel	263 Wallis Hall, 585-273-2167
Office of Public Safety	Emergency – 13; Non-emergency 275-3333
Deputy to the President (for appeals)	240 Wallis Hall, 585-273-2284

TITLE IX COORDINATORS

University Wide	Morgan Levy, Title IX Coordinator 20 Taylor Hall, 585-275-7814 titleIX@rochester.edu
Arts, Sciences and Engineering	Dawn Bruner, Deputy Coordinator 510 Wilson Commons, 585-275-4085 Dawn.Bruner@rochester.edu
Eastman School of Music	John Hain, Deputy Coordinator ESM Gibbs Street – Rm. 111, 585-274-1020 jhain@esm.rochester.edu
School of Medicine and Dentistry	Dr. Linda Chaudron, Deputy Coordinator, 600 Elmwood Ave, Rm. 1-4444 585-276-3782 Linda_Chaudron@URMC.Rochester.edu
School of Nursing	Lydia Rotondo, Deputy Coordinator, 255 Crittenden Blvd., 585-275-5639 lydia_rotondo@urmc.rochester.edu
Simon School of Business	Karen Platt, Deputy Coordinator 202E Schlegel Hall, 585-275-8041 Karen.platt@rochester.edu
Warner School	Brian Brent, Deputy Coordinator 222 LeChase Hall, 585-275-3930 BBrent@Warner.Rochester.edu
Athletics	Kristine Shanley, Deputy Coordinator 1115 Goergen Athletic Center, 585-275-6277 kristine_shanley@rochester.edu

Complaint Against:	Decision maker will be:
A faculty member or discrimination concerns involving a faculty process	Dean of School where faculty member Respondent holds primary appointment or where the challenged process resides
Staff employee in a School or College	Dean of the Respondent's School or College
Staff employee – River Campus Libraries	Vice Provost and Dean of the Library
Staff employee -- LLE	Director of the LLE
Staff employee – MAG	Director of the MAG
Staff employee – SMH	Chief Executive Officer of SMH (or designee)
Staff employee – Central Administration	Vice President of the Respondent's division/unit (or designee)
Postdoctoral Fellow or Associate	Equivalent of the Dean of Graduate Studies of the Respondent's School
Dean of School or College	Provost
Provost, Senior Vice President for Health Sciences, and URMC CEO	President
President	Chair, Board of Trustees
Visitor or Vendor (non-hospital)	Senior Vice President for Finance & Administration (or designee)
Patient, Visitor, or Vendor in SMH	Chief Executive Officer of SMH (or designee)

** In cases where the complaint is against the relevant decision maker or in cases where the decision maker was involved in the decision or matter which is the subject of the complaint, there may be a conflict of interest and an alternative administrator without a conflict may be appointed. The Complainant will be made aware of who the decision maker will be at the time of filing the complaint and may request an alternate decision maker where such conflict exists.

ADDITIONAL NOTICE TO EMPLOYEES REQUIRED BY NEW YORK STATE

New York State requires that employers provide employees, applicants, contractors, and other persons conducting business with the employer with information regarding legal protections and external remedies regarding claims of sexual harassment. Reprinted below is language from the New York State Model Sexual Harassment Policy for All Employers in New York State.

Legal Protections And External Remedies

Sexual harassment is not only prohibited by the employer but is also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at the employer, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections.

State Human Rights Law (HRL)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one year** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to the employer does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: www.dhr.ny.gov.

Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

Civil Rights Act of 1964

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml.

Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.