

### 9.2.7.3 Procedure for Resolving Complaints of Discrimination or Sexual Misconduct.

Bellarmino's Office of Human Resources and Bellarmino's Title IX Coordinator and Assistant Coordinators ("Policy Response Team" or "PRT") are responsible for enforcing Bellarmino's Discrimination and Sexual Misconduct Policy. Please refer to the University Title IX website for a current listing of coordinators.

I. **Duty to Report.** An employee who has reasonable cause to believe that a situation has occurred which may be covered by this Policy, whether or not the employee is involved, should take steps immediately to make the University aware of the situation by notifying his or her supervisor, department head, or any member of the Policy Response Team. Supervisors, department heads or others who are notified or become aware of a situation potentially covered by this Policy should immediately inform a member of the PRT.

II. **Informal Procedure.** An employee with a concern is encouraged to attempt initially to resolve complaints at the lowest level through the administrative structure of the employment unit or academic department. Supervisors or administrators, including faculty, always should contact a member of the PRT before attempting to resolve any such complaints. **However, employees are not required to follow the informal procedures before filing a formal complaint. This procedure is not available to a student alleging a sexual assault; please refer to the Sexual Discrimination and Misconduct policy in the Student Handbook:**

[http://www.bellarmino.edu/Libraries/Student\\_Affairs\\_Docs/studenthandbook2012-2013.sflb.ashx](http://www.bellarmino.edu/Libraries/Student_Affairs_Docs/studenthandbook2012-2013.sflb.ashx).

1. If you feel comfortable dealing with the situation without the direct involvement of a third party, you can communicate directly with the person whose behavior is unwelcome.
2. It is appropriate to use face-to-face, individual communication only when you do not feel threatened, there is no risk of physical harm and you believe the other person will be receptive.
3. E-mail is the preferred method of communication. If you choose to communicate face-to-face, you also should send an e-mail, if possible. Keep copies of any written communication. The communication should include:
  - a. A factual description of the incident(s) including date, time, place, witnesses and a description of the specific unwelcome behavior.
  - b. A description of any consequences you may have suffered due to the unwelcome behavior.
  - c. A request that the unwelcome behavior cease.
  - d. If you do not feel comfortable with individual communication or you believe the communication was not successful, you should consider other informal or formal procedures, as outlined below.
4. If you would like to proceed informally, but with the assistance of someone else, you may ask one of the following individuals or offices to intervene:
  - a. Your supervisor or the other person's supervisor; or
  - b. Any member of the Policy Response Team
  - c. If the alleged behavior is severe or there is threat of imminent harm, these offices or individuals may have to take further action.

5. Do not rely upon other co-workers or individuals who are not familiar with University policy to intervene on your behalf when discussing your concerns with the person whose behavior is unwelcome and/or offensive.

III. **Formal Procedures.** Employees or students who have a complaint against an employee may initiate formal complaint procedures by filing a complaint whether or not they have attempted resolution through informal procedures. The individual who files the complaint is referred to as the “Complainant”. The individual against whom the complaint is filed is referred to as the “Respondent.” Collectively, these individuals are referred to as the “Parties”.

A. **Filing a Complaint.** The PRT responds to complaints in accordance with the procedures outlined below. However, there may be exceptional circumstances which justify a departure from these procedures, and should such circumstances arise, the PRT will advise the Parties as soon as possible.

1. **Who May File.** Any employee (as defined in 9.2.7.2), student, applicant for admission or employment, or participant in the University’s programs or activities who believes that (s)he has been unlawfully discriminated against or harassed on the basis of age, color, disability, national or ethnic origin, political affiliation, race, religion, sex (including pregnancy), sexual orientation, veteran status, or family medical or genetic information, or who has been the victim of sexual misconduct, or who believes that (s)he has been retaliated against for reporting discrimination or harassment or for assisting or participating in a complaint investigation, may file a complaint under this Policy. Discrimination or sexual misconduct should be reported to any supervisor, department head, the Dean of Students, Student Affairs or any member of the PRT, who will provide assistance in filing the complaint. If the complaint involves any of those people, the complaint can be made directly to the Chief Human Resources Officer for the University.
2. **Student Complaints Against Other Students.** Complaints by students against employees and others are resolved under this Policy. **However, Complaints of discrimination and sexual misconduct (including sexual harassment, sexual exploitation, non-consensual sexual contact, non-consensual intercourse and retaliation) by a University student against another University student should be reported to the Dean of Students or Student Affairs** [Contact info with phones, email) or in person (where)]. Student sexual misconduct complaints are addressed by the Student Code of Conduct and Conduct Procedures in the Student Handbook, a copy of which is provided to each student and which can be located at [web link].
3. **When to File.** Complaints should be in writing and should be filed as soon as practicable. However, verbal complaints will be accepted. Early reporting is the most effective method of resolving actual or perceived incidents of discrimination or sexual misconduct. All time limits set forth in these procedures may be extended for good cause. The Complainant also may file a formal charge of discrimination, harassment and/or retaliation with a state or federal agency authorized by law to receive such complaints.
4. **Content of Complaint.** The PRT strongly encourages the use of its Complaint Form, which can be found at [link]. Otherwise, the complaint should be a written

document which includes: the Complainant's name, contact information and signature, a description of the conduct believed to be discriminatory, sexually inappropriate, harassing and/or retaliatory with approximate date(s) when these actions occurred, and the name(s) of the Respondent(s).

**B. Receipt and Acceptance of a Complaint**

1. **Initial Meeting.** Upon receipt of a complaint, if PRT has not previously spoken with the Complainant, a member of the PRT will hold an initial meeting with the Complainant within five (5) working days to review the complaint procedures and discuss the Complainant's allegations.
2. **Initial Review.** Following the initial meeting with the Complainant, the PRT shall decide whether the written complaint states a potential violation of University policies or federal and state laws and shall notify the Complainant in writing of its decision.
3. **No Cause Finding.** If the PRT determines that there is no reasonable cause to believe the Complainant's allegations, if true, state a violation of University policies or federal or state laws, the written notice of this decision shall explain why the complaint does not state a violation and may inform the Complainant of other possible avenues of redress, if appropriate.
4. **Reasonable Cause.** If the PRT concludes that the allegations of the complaint state a potential violation, it will notify the Complainant that it has accepted his/her complaint and meet with the Complainant to determine the specific factual allegations upon which the complaint is based, and discuss complaint procedures.
5. **Confidentiality/Privacy & Non-Retaliation Policy.** When a report of discrimination or gender-based misconduct is filed, the Complainant, the Respondent, and all identified witnesses who are named in the investigation, will be notified of the University's expectation of confidentiality/privacy. The University will make all reasonable efforts to maintain the confidentiality/privacy of parties involved in gender-based misconduct investigations. Breaches of confidentiality/privacy or retaliation against any person involved in the investigation, including the complainant, respondent, witnesses, or the investigators, may result in additional disciplinary action.
6. **Interim Measures.** From the time the University is made aware of any situation or concern or a complaint is filed, until resolution of the matter, the University may take interim measures including, but not limited to: notification of law enforcement, restrictions on contact between the Complainant and the Respondent, bans from areas of campus, and/or removal or relocation from the residential areas, and temporary suspension pending the resolution of the complaint. Failure to adhere to the requirements of any interim measures is a violation of this Policy and may lead to additional disciplinary action.

- C. **Complaint Investigation.** The PRT will conduct an investigation in accordance with the following procedures.

1. **Scope of Investigation.** The investigation may include, but is not limited to:
    - a. Interviewing material witnesses, including Complainant and Respondent;
    - b. Reviewing relevant files and records;
    - c. In appropriate cases, comparing the treatment of the Complainant to that of others similarly situated in the department or unit; and/or
    - d. Reviewing applicable policies and procedures.
  2. **Notice.** In addition to the notice provided to the Respondent, at or near the time that the investigation is commenced, the PRT will notify the Respondent's immediate supervisor of the Complaint. In some cases, the PRT may determine that it is necessary to contact other University officials to protect against imminent risk of physical harm or to investigate potential crimes. However, information will be provided strictly on a need-to-know basis.
  3. **Written Report.** The investigation shall normally be concluded within sixty (60) working days of inception, at which time the investigator(s) shall issue a written report. The report will include findings of fact as well as appropriate recommendations.
  4. **Dismissal.** If the investigation report concludes that the Complainant's allegations do not establish a violation of this Policy, the findings will be shared with all parties and the Complaint will be dismissed.
  5. **Set for Conference.** If report concludes that the Complainant's allegations are substantiated, then the Complaint will be set for a conference before a panel whose members will be determined by the PRT.
  6. **Updates to Parties.** Every effort will be made to ensure that both the Complainant and Respondent are updated at several points during the investigation and conference procedures.
- D. **Informal Resolution.** Informal resolution is a process by which the PRT attempts to resolve complaints quickly and to the satisfaction of all parties prior to the conference, while protecting confidentiality to the extent possible. Informal resolution may be attempted at any stage of the complaint process, but it will generally be considered at the conclusion of the investigation and prior to a conference. The PRT may deem a complaint unsuitable for an informal resolution or may determine that the only basis for informal resolution is full imposition of sanctions on the Respondent. At any time during the informal resolution process, either party may elect to terminate the process. Generally, the informal resolution process will not involve anyone other than the Complainant and Respondent. In some cases, it may be necessary to consult with or otherwise involve other University officials regarding University policies and procedures or available remedies. However, information will be provided solely to these persons on a need-to-know basis. If the complaint is successfully resolved, the parties will sign a "Informal Resolution Agreement" prepared by PRT, setting forth the agreed-upon terms. Copies of the complaint, all pertinent documents and the Informal Resolution Agreement

will be maintained by PRT in accordance with University policies and state and federal law.

- E. **The Conference.** A conference panel will be convened as soon as practicable following the receipt of the investigators' report and the conclusion of the informal resolution process, ideally within 30 days following the receipt of the investigators' report, which time may be extended for good cause. Whenever possible, the Complainant and Respondent will be given at least five calendar days' notice to prepare for the conference. The conference is a closed proceeding.

1. **The Conference Panel.** The conference panel is charged with determining whether the Discrimination and Sexual Misconduct Policy has been violated and providing PRT with their finding. The conference panel will be selected by the PRT based on the nature of the complaint and the parties' employment status or University position from deans, senior administration, and, where appropriate, employee or faculty representatives. The Complainant and Respondent will be informed of the panel's constitution prior to the commencement of the conference. A party may challenge a panel member's participation in writing if the party believes that the panelist has a conflict of interest or a personal relationship that could affect his or her ability objectively to consider the issues in the case. The PRT will review the request and in its discretion determine whether it is appropriate to make a substitution.

2. **The Conference Procedure.**

a. **Investigators' Report.** At the conference, the investigator(s) will present the report of the investigation and recommended findings and sanctions. The investigators' report will summarize all relevant witness statements and documents reviewed in the investigation and will state the investigators' conclusions as to their credibility. As the investigator reviews the report, (s)he will ask Complainant and Respondent whether they have any additional statements or evidence to add to the report. Except in unusual circumstances, additional evidence must not have been available at the time of the investigation. Unless a witness is necessary to testify about new evidence which is accepted at the conference, witnesses may not testify merely to repeat the contents of their witness statements. No character witnesses will be permitted to testify.

b. **Conduct of the Proceeding.** The panel may impose time limits on any stage of the procedure. The panel may also determine the relevance of and place restrictions on any witnesses or information presented. Only the panel may ask questions of the investigator, the parties and any witnesses. Both parties have the opportunity to put forth questions not covered in the investigator's report by submitting them to the panel in written format. The panel may determine which questions are relevant and which are duplicative in nature. The panel reserves the right to revise or remove submitted questions.

c. **Testimony Regarding Romantic or Sexual History in Cases Involving Sexual Misconduct.** The romantic or sexual history of either the Complainant or Respondent will not be allowed in a conference involving allegations of sexual misconduct, unless such information is determined to be so highly relevant by the Conference Panel that excluding such information would result in a manifest injustice. No such information may be proffered unless the offering party notifies the other

party and the panel at least 3 business days in advance of the conference and receives written permission from the conference panel to do so. Such testimony may also be admitted where the Respondent was previously found to be responsible in a sexual misconduct situation substantially similar to the present allegation, and the information indicates a pattern of behavior that substantially conforms to the pattern in the present Complaint. If the Complainant and Respondent had a romantic or sexual history, testimony and questions about this history is permitted.

**d. Refusal of Participation.** In cases where a Complainant and/or Respondent refuse to participate in the conference procedure and where an investigation deems that a policy violation may have occurred, the conference panel will convene and determine a finding based on the evidence and testimony available to them.

**e. Supporters.** Both the Complainant and Respondent are entitled to have a supporter present at the conference and during any meetings regarding the process. The supporter's function in the process is to provide support to the Complainant or Respondent. During the conference, the supporter may talk quietly with the Complainant or Respondent or pass notes in a non-disruptive manner. The supporter may not, in any way, intervene in the conference or address the panel. The supporter must be a current member of the University community (i.e. employee or student). The supporter should generally not be someone who has a current formal role (e.g., advisor, coach, faculty member) with either the Respondent or Complainant, unless the PRT determines that this would be beneficial given the circumstances. Neither party is entitled to legal representation (as that term is commonly understood) during the conference. A supporter from the University community may be an attorney by training, but is only permitted to act as a supporter (as described above) during the conference.

**f. Panel Findings.** The panel may find a party responsible for an alleged violation of policy based on a majority vote. The panel may also vote by majority to dismiss the charge. The panel will render a recommendation within five working days following the conclusion of the conference. The panel also may recommend sanctions consistent with University guidelines and practice.

Upon finding a Respondent responsible, the panel will submit its decision to the Title IX Coordinator, who will review the panel's finding with senior administration before notifying the Complainant and Respondent and other appropriate supervisory personnel where applicable.

**g. Range of Sanctions.** An employee or student who has been found to have violated this Policy may be subject to sanctions including, but not limited to, reprimand/warning, disciplinary probation, suspension, and dismissal or termination of employment. Prior disciplinary history may be taken into consideration in determining an appropriate sanction. An employee or student may also be barred from certain University facilities or activities, or required to attend educational programming.

In a discrimination case, sanctions and remedies may include, but are not limited to:

- (1) A directive to stop any ongoing discriminatory, harassing and/or retaliatory behavior/practice;

- (2) Disciplinary or other corrective action against the Respondent and/or others; and/or
- (3) Relief to the Complainant, such as reinstatement, hiring, reassignment, promotion, training, back pay or other compensation and/or benefits.

**F. The Appeals Process.** Both the Complainant and Respondent may appeal the decision made by the conference panel and the sanctions imposed. The three grounds upon which an appeal of the decision or sanctions may be made are:

- The party believes a procedural error occurred, which if not corrected could substantially affect the finding or sanctions.
- The party has substantive new evidence that was not available at the time of the conference and that if introduced would substantially affect the findings or the sanctions;
- The party believes that the severity of the sanction is inappropriate given the findings of the case. Disagreement with the finding or sanctions is not, by itself, grounds for appeal.

1. The appeal should be submitted in writing to the PRT within five working days following the date on the outcome letter. The conference panel will review the appeal and make a final decision. This decision is not appealable except as set forth in the next paragraph. Appeals decisions will be rendered within 10 working days after the receipt of the formal appeal is filed.

2. If the Respondent is a member of the faculty, (s)he may request the remedies under Sections 7.4.1, 7.4.2 and 7.4.3 of the Faculty Handbook following receipt of the decision on appeal.