



Office for Equity and Accessibility

ANTI-DISCRIMINATION COMPLAINT PROCEDURES
Addressing Prohibited Discriminatory Conduct by University Employees



Anti-Discrimination Complaint Procedures

Addressing Prohibited Discriminatory Conduct by University Employees

The University is subject to Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, as amended, the Age Discrimination in Employment Act, the Equal Pay Act, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, Federal Executive Order 11246, Genetic Information Nondiscrimination Act of 2008 (GINA), Virginia Executive Order(s), and other rules and regulations as applicable.

This document (the Anti-Discrimination Complaint Procedures) outlines the process that the University's [Office for Equity and Accessibility](#) (OEA) follows to address any allegation that employee conduct or department practice or policy violates [Virginia Tech's Policy on Harassment, Discrimination, and Sexual Assault \(Policy 1025\)](#).¹

Virginia Tech's Policy 1025 prohibits discrimination and harassment on the basis of age, color, disability, gender (including pregnancy), gender identity, gender expression, genetic information, national origin, political affiliation, race, religion, sexual orientation, veteran status, or any other basis protected by law. This prohibition applies to all levels and areas of University operations and programs, to undergraduate and graduate students, administrators, faculty, staff, volunteers, vendors, and contractors. Policy 1025 also describes mandatory reporting obligations for employees relating to reports covered by Title IX, as well as reports of other forms of discrimination.² Anyone who has been subjected to discrimination on any of the above bases may file a complaint under this procedure.

OEA strongly encourages the use of its [Complaint Form](#). Complaints may be submitted to OEA in any of the following ways:

- Email to equityandaccess@vt.edu;
- Hand-delivery to OEA at 2300 North End Center; or
- Mail to Virginia Tech, North End Center, Suite 2300 (0150), Turner St. NW, Blacksburg, VA 24061.

If a reasonable accommodation or other assistance is needed to file a complaint, please contact OEA at 540-231-8771.

¹ The procedures described in this document do not constitute policy and are subject to change. The procedures neither confer rights onto any party involved in an investigation, nor create any responsibilities for the University.

² See Policy 1025 for a complete description of the University's anti-discrimination policy and mandatory reporting obligations.

Procedures:

This document describes the procedures that the OEA follows in order to provide a prompt and equitable response to reports and complaints alleging violations of Policy 1025. The procedures are not policy and are subject to change.

OEA's process can loosely be broken up into two stages: (1) what happens after OEA receives a complaint or report of a possible violation of Policy 1025 ("intake") and (2) what happens after OEA opens a complaint for investigation ("resolution"). In addition to the two stages, OEA may occasionally need to proceed with an investigation, sometimes truncated, despite not having received a complaint; OEA calls this third process an "administrative review."

Definitions

A "report" is an informal concern, matter, or issue brought to the attention of OEA. A report can either be a "direct report" or a "third-party report. A "direct report" is a report that pertains to the individual who contacted OEA. A "third-party report" is a report that pertains to someone else. An "impacted party" is an individual who is alleged to be directly and negatively affected by behavior or policy alleged in a report as a potential policy violation.

A "complaint" is a formal request for OEA to resolve an alleged matter or situation. A complaint may consist of a completed complaint form and any additional information collected to clarify allegations in the completed complaint form. A "complainant" is an individual who files a complaint with OEA. A "respondent" is an individual alleged to have engaged in conduct that violates Policy 1025. "Party" is a generic term for either the complainant or respondent.

The phrase "preliminary inquiry" describes any fact-collecting completed prior to OEA commencing an investigation. Preliminary inquiries typically focus on information given to OEA by an impacted party, a third-party reporter, a complainant, or learned through publicly available sources.

I. Intake:

The goal of OEA's intake process is to (1) identify University community members who may have been impacted by discrimination (2) provide those impacted parties with resources and support, or avenues to seek support; (3) empower impacted parties to help OEA determine the best approach to stop, prevent, and remedy any discrimination or harassment; and (4) promptly proceed to the resolution stage as necessary.

When OEA receives a third-party report that potentially relates to prohibited discrimination or harassment, OEA uses its best efforts to contact the impacted party. Best efforts include using available University records and contacting the source of the third-party report. In most cases, OEA will attempt to contact the impacted party via an outreach

email to a University email account. Typically, the outreach email will contain a request to speak further and a list of resources and supports that may be available.

Anonymous Reports/Complaints & Requests for Confidentiality

Anonymous Reports/Complaints. The University will take all reasonable steps to evaluate anonymous reports. However, the University may be limited in its ability to respond to anonymous complaints. An anonymous report may or may not lead to an administrative review (see pg. 12), depending on the factors described in that section.

Requests for Confidentiality. When a complainant requests that a report to the university remain confidential, the University will seek action consistent with the complainant's request if possible. The University will balance the request with its obligation to provide a safe and nondiscriminatory environment for all Virginia Tech community members.

If OEA is unable to make contact with an impacted party, OEA will determine whether to move forward with the information available or close the report. Closing the report is an internal designation that does not affect an impacted party's ability to come forward at a later date.

If OEA is able to make contact with an impacted party, OEA will conduct a preliminary inquiry to determine how to proceed. Common questions OEA will ask an impacted party include: What happened? Who was involved? When did it happen? Where did it happen? And how was or were the event(s) described connected to a protected identity? If necessary, in addition to these questions, OEA will work with the impacted party to determine whether **interim measures** are appropriate to support the impacted party as the impacted party decides how to proceed.

Interim Measures

Interim measures are supportive actions taken to help an impacted party, a complainant, a respondent, or identified witnesses, continue to participate in University programs and activities throughout the pendency of a matter with OEA. Interim measures are neither remedial nor punitive. OEA, in consultation with appropriate department and University leaders, may put interim measures in place at any time. The decision to provide interim support is fact-dependent. OEA will only put in place interim measures that burden the workplace or other University employees if OEA determines that the risk of continued harassment or safety of the workplace outweighs any identified burdens and less burdensome measures would be ineffective.

More often than not, OEA is able to let the impacted party decide how to proceed from this point forward. Typically, an impacted party's options include taking any of the following

actions:

- (1) **File a complaint:** When OEA receives a complaint, OEA will first conduct a preliminary inquiry to determine whether the complaint states a violation of Policy 1025. Specifically, OEA will determine whether the complaint and any related information contain sufficient information for OEA to infer that a University employee or department may be violating or may have violated Policy 1025. If the complaint form itself does not contain sufficient information for OEA to move forward but still relates to prohibited discrimination or harassment, OEA will contact the complainant to collect more information. If OEA determines that the complaint—meaning the complaint form and any additional information related to the complaint that clarifies allegations therein—does not provide OEA a basis to infer that prohibited discrimination or harassment may have occurred, OEA will send the complainant a **Closeout Memorandum** as notice of the outcome of OEA’s preliminary inquiry.

Jurisdiction, Timeliness, & Other Reporting Considerations

OEA may be limited in its ability to respond to concerns about discrimination or harassment that are unrelated to the employment relationship between the University and the respondent, such as where the allegations do not state sufficient information to infer that a hostile environment has been created in a University program or activity. This jurisdictional issue most often arises in the case of harassment alleged to have occurred off-campus and involving individuals with little or no direct relationship to the University.

OEA encourages complainants and third-party reporters to report possible violations of Policy 1025 as soon as possible. With respect to complaints of gender- or sex-based discrimination or harassment, the University has no reporting deadlines or limitations when it comes to timing—except that the University may not be able to take disciplinary action against a respondent who is no longer connected to the University through an employment relationship. With respect to complaints involving all other forms of prohibited discrimination or harassment, OEA must receive the complaint within 300 days of the date of the last act of discrimination or harassment. If a complaint is untimely or not within OEA’s jurisdiction, OEA will issue the complainant a Closeout Memorandum (see “Letters of Notice” section below).

If OEA determines that a complaint or a complaint and related information provide sufficient information for OEA to infer that an employee or department violated Policy 1025, OEA will issue a **Notice of Investigation** and a **Leadership Notice**.

Letters of Notice

Closeout Memorandum: A Closeout Memorandum is a memorandum to document the results of a preliminary inquiry and provide notice to the complainant of OEA's determination against proceeding with formal resolution. A complainant who receives a Closeout Memorandum may still be able to pursue informal resolution.

Notice of Investigation (NOI): An NOI is a letter that OEA sends to both parties simultaneously as notice of the start of an OEA investigation. An NOI will always include sufficient information to put a respondent on notice of pending allegations. Typically, an NOI will include the date OEA received a complaint; a brief description of factual allegations; and a brief statement of issues that OEA intends to investigate. The NOI identifies the OEA investigator assigned to the complaint.

Leadership Notice: A Leadership Notice is a letter that OEA sends to employees in leadership roles who need to know of a pending investigation.

- (2) **Pursue informal resolution:** A second option is for the impacted party to request informal resolution to the concerns without filing a complaint. OEA may determine that this option is unavailable to an impacted party.³ When an impacted party expresses interest in pursuing informal resolution, OEA will refer the impacted party to the Assistant Director for Education, Outreach, and Conflict Resolution for participation in OEA's Conflict Resolution program.

Reporting to Police

Virginia Tech Police Department

911 (Emergency number from a landline)

(540) 231-6411 (Central Dispatch; cell phone emergency number)

www.police.vt.edu

Blacksburg Police Department

911 (Emergency number)

(540) 961-1150 (Office; Central Dispatch)

All parties have a right to report any concerns to law enforcement. Except when required by law or necessary to ensure the continued safety of the community, the University will generally respect a complainant's choice about whether or not to report an incident to police. Complainants may pursue a complaint with OEA and law enforcement simultaneously, and OEA and law enforcement investigations can proceed concurrently. Rarely, OEA may need to briefly suspend an investigation at the request of law enforcement so as not to impact law enforcement's ability to collect evidence; if delay is necessary, OEA will promptly inform the parties of the reasons for the delay and will resume investigation as soon as possible.

³ See below for more information about informal resolution.

- (3) **Choose not to seek resolution:** A third option is for the impacted party to request that OEA neither investigate nor work toward a preliminary informal resolution. Requests for OEA not to take action in response to a reported concern are not unusual, and reports that come to OEA with a request that OEA not take action still help OEA fulfill its mission to provide a working and educational environment free of discrimination and harassment. However, OEA retains discretion to conduct an administrative review of an issue without the impacted party's participation.⁴

A brief word about accommodations...

A request for a religious or disability-related accommodation is not a complaint or report of discrimination and therefore is not subject to these procedures.

Students should direct requests for disability-related accommodations to Services for Students with Disabilities (SSD). Employees should direct requests for disability-related accommodations to OEA's ADA & Accessibility Services.

A complaint or report that a University employee has failed to implement a disability-related accommodation granted through SSD or OEA is subject to these procedures.

II. Resolution:

OEA strives to provide a prompt and equitable resolution to every complaint. But beyond those nebulous qualifiers, OEA seeks to maintain a flexible and fair process for all parties to the extent possible while achieving OEA's mission to help the University stop ongoing discrimination or harassment, prevent it from recurring, and remedy its effects (stop, prevent, and remedy). Generally, complaints resolve through either formal or informal resolution, both of which are described below.

Retaliation...

...can occur at any time prior to, during, or after OEA opens a complaint for investigation. Retaliation describes any *adverse action* taken against a person *because of* that person's prior or concurrent engagement in a *protected activity*. An "adverse action" is construed broadly, and can include demotion, being passed over for promotion, termination, discrimination or harassment, intimidation, etc. A "protected activity" is an act taken pursuant to a protected civil right (under federal or state law, or University policy) on one's own behalf or on behalf of another. Retaliation may constitute a separate cause for complaint and investigation. OEA encourages anyone who has concerns about retaliation to contact OEA immediately.

a. Formal

⁴ See below for more information about administrative reviews.

Formal resolution invariably starts with a notice of investigation to the parties and ends with a confidential investigation report (final report). Between the NOI and the final report, OEA engages in fact-gathering efforts (i.e. investigation). OEA's investigations are largely dependent on the participation of the parties and witnesses identified by the parties, and are therefore case-dependent and subject to alterations.

Participation and Unresponsive Parties/Witnesses

Participation. OEA does not—and indeed cannot—require anyone to participate in OEA's process. That means that any party or witness can choose the extent to which they will participate, and even whether they will participate at all. With respect to participation of the parties, it is helpful for parties to know that at the conclusion of a formal resolution to a complaint, OEA will weigh the evidence, most of which is typically provided by the parties via their own statements, statements of identified witnesses, or emails or text messages sent to OEA by the parties, to determine whether it is more likely than not that a policy violation occurred.

Unresponsive Parties/Witnesses. If an OEA request for information—such as documentary evidence or an interview—goes unanswered, OEA may deem the party or witness unresponsive and continue the investigation with the information available.

i. Investigation:

With the caveats about participation and the fluidity of fact-gathering out of the way, what follows is a brief synopsis of the major stages of an investigation:

- *Respondent Interview.* Typically, OEA will contact the respondent within a day or two of issuing the NOI and Leadership Notice to request a time to discuss OEA's procedures. OEA will then contact the respondent again to schedule an interview. The purpose of the respondent interview is to give the respondent a full and fair chance to respond to the allegations opened for investigation. During the interview, the OEA will give the respondent an opportunity to identify witnesses with knowledge of the facts or context relevant to the respondent's version of events and provide any evidence in support.
- *Complainant Interview.* Typically, OEA will contact the complainant shortly after OEA issues the NOI. The purpose of the complainant interview is to gather any information that the complainant want to provide in support of their complaint allegations. OEA will usually ask the complainant to identify witnesses with knowledge of the facts or context of the complainant's allegations and provide any relevant physical or documentary evidence.

Complainant and Respondent Interviews: Support Persons

OEA allows parties to bring one support person to any meeting or interview with OEA. The selected support person can be an attorney. The support person is expected to be a passive observer of the process. If the selected support person interrupts or otherwise interferes with the process, OEA may prohibit the support person from further participation.

- *Witness Interviews.* As necessary and relevant, OEA will contact witnesses to interview. Oftentimes, the parties are in the best positions to know who would be necessary to interview to understand each of their respective versions of events. Therefore, OEA relies heavily on parties to identify relevant witnesses. OEA will not interview witnesses who are solely in position to speak about a party's character; instead, witnesses must have information about the incident(s) alleged to have occurred. It is ultimately the OEA investigator's decision about who to interview.
- *Complainant/Respondent Follow-up.* If necessary, OEA will request follow-up interviews with the complainant and/or respondent.
- *Parties' Responses to Summary of Investigation.* Once OEA either has sufficient information to support a finding or enough information to support that additional fact-gathering will not foreseeably produce information that would alter the outcome, OEA will draft a summary of investigation and send the summary to both parties for review. OEA will send the parties the exact same summary of investigation at the same time. The parties will have three full business days to respond to the summary of investigation to correct any mistakes in the summary and provide any additional information. In the interest of promptness and equitability, absent exceptional circumstances (barring a disability-related accommodation), OEA will not accept a response to the summary of investigation received after close of business (5pm) on the third full business day.

Summary of Investigation

The summary of investigation describes the allegations opened for investigation, identifies the witnesses interviewed, summarizes the content of the interviews, describes the evidence provided, and summarizes the content of relevant pieces of evidence. The summary of investigation constitutes the first section of each final report.

ii. Final Report:

Once OEA completes its investigation, the OEA investigator will draft a final report. Typically, the final report will include the following information: a description of the allegations opened for investigation; a summary of investigation; a brief statement of

relevant factual findings; a statement of applicable University policy, including a description of the standard of proof applied to make findings; a brief analysis applying University policy to factual findings; and a statement of conclusion (either sufficient or insufficient evidence to support a violation finding).

Standard of Proof

OEA applies a “preponderance of the evidence” standard of proof in every case. Preponderance of the evidence means the act is more likely to have occurred than not. The standard is sometimes colloquially described as 50% plus a feather, or 50.001%.

OEA applies the preponderance standard both to make factual findings, in situations where the parties disagree on facts, and to make the ultimate conclusion regarding whether or not a policy violation occurred.

OEA’s final report is final. Except in the case of allegations of disability discrimination as discussed below, OEA does not recognize an appeal process. OEA does not issue a report without the approval of the Director of Compliance and Conflict Resolution or designee (and, in Title IX-related cases, the Title IX coordinator).

Disability Discrimination for Students: Appeal Process

With regard to allegations of disability discrimination only, a complaining *student* may appeal findings or remedies to the University’s Director of ADA, Section 504 Compliance, and Accessibility Services:

Pamela Vickers, Director
ADA, Section 504 Compliance, and Accessibility Services
pvickers@vt.edu

The Director of ADA, Section 504 Compliance, and Accessibility Services must receive appeals in writing by close of business (5pm) on the fifteenth calendar day after the final report is issued or, in the case of an appeal of a remedy, on the fifteenth calendar day after the complaining student receives notice of the remedy at issue.

If OEA’s final report finds a violation of Policy 1025, OEA will work with individuals in the respondent’s chain of supervision and other University leaders as necessary to take reasonable steps necessary to prevent recurrence of discrimination, retaliation, or harassment and remedy its effects. Respondents who are found to be responsible for violating Policy 1025 may be subject to disciplinary action ranging from formal and permanent documentation of the violation to termination of employment. OEA will work with departments as necessary to restore the complainant’s full access to University programs and activities. OEA will retain records of all reports, allegations, and complaints, regardless of how a matter is resolved.

Concerns

Any participant in an investigation, including any party or witness, who has concerns about OEA's fact-gathering, OEA's procedures, perceived personal or institutional bias of an OEA investigator, timeframes, or general fairness, should contact Virginia Tech's Director of Compliance and Conflict Resolution:

Harrison Blythe, Director
Compliance and Conflict Resolution
hblythe@vt.edu; (540) 231-0448

To be in the best possible position to respond appropriately to concerns, OEA encourages individuals to contact the Director as soon as possible after the concern arises.

b. Informal

Informal resolution offers complainants and respondents an opportunity to resolve concerns without the time and emotional commitment—and usually the higher stakes—associated with formal resolution. For both parties, informal resolution offers the potential to repair deteriorating relationships and move forward in a way that formal resolution does not. Informal resolution is also more flexible than formal resolution, as some concerns or issues may not be able to be resolved through formal resolution. For instance, a complainant may have concerns about behavior that is perceived as discrimination or harassment that violates University policy, but may know that there's a lack of evidence that the behavior is connected to one of the traits protected under Policy 1025. Or a complainant may have concerns about an isolated incident or comment that might not rise to the level of a policy violation. In those situations, formal resolution may not be an avenue that can resolve an issue or concern. For respondents, informal resolution offers a way to maintain some control over the outcome of a complaint without risk of a formal determination of responsibility from the University.

When is informal resolution appropriate?

Because informal resolution is appropriate to resolve most conflicts, the better question is: When is informal resolution *not* appropriate? Informal resolution is not appropriate to resolve complaints involving physical violence, including any kind of sexual violence. Informal resolution is also not appropriate to resolve complaints about discrimination or harassment that is unlikely to stop as a result of informal resolution or is likely to continue to affect others in the University community. Lastly, informal resolution usually requires the voluntary participation of both or all parties to a complaint.

Ultimately, OEA makes the decision about whether informal resolution is available on a case-by-case basis consistent with its mission to stop, prevent, and remedy.

If a party expresses interest in informal resolution options, OEA may refer the matter to OEA's Assistant Director for Education, Outreach, and Conflict Resolution for follow up and to provide additional information about OEA's conflict resolution program. What follows is a non-exhaustive list and general description of ways OEA may be able to resolve a complaint or concern informally.

- **Conflict Coaching Resolution:** Conflict coaching is a one-on-one process led by an individual trained to help people effectively engage in conflict. Conflict coaching is not necessarily aimed at resolving a particular conflict, but instead is focused on providing tools to keep conflicts from escalating unnecessarily.
- **Outreach and Education Resolution:** If a complainant agrees, OEA may be able to resolve some concerns or complaints by contacting the respondent to schedule a training, either an informal one-on-one session or the University's in-person Compliance Workshop, to go over Policy 1025 and answer questions.
- **Facilitated Resolution:** Facilitated resolution is just that—a resolution that is facilitated by an OEA-designated, trained facilitator. Usually, facilitated resolution involves both the complainant and respondent agreeing to meet together with the facilitator to brainstorm ways to effectively resolve a dispute.
- **Voluntary Resolution:** Under voluntary resolution, a respondent often agrees—either verbally or in writing—to take certain steps or actions that will ameliorate the alleged behavior and take steps to prevent its recurrence. A respondent need not admit to alleged behavior to resolve a complaint through voluntary resolution. OEA may, in some instances, require both parties to sign a document stating that the complaint was resolved to each party's satisfaction through voluntary resolution.

OEA is not limited by the above-described categories of informal resolution strategies. Often, the categories can also be combined to fit a particular situation. If a matter fails to resolve through informal resolution, OEA may then proceed with its formal process if appropriate.

III. Administrative Review:

OEA always retains discretion to conduct investigations as necessary to stop ongoing discrimination, prevent its recurrence, and remedy its effects—even in the absence of a participating complainant. When making the determination about whether to conduct an administrative review, OEA considers the following factors: the severity of the reported concern; the likelihood that others may continue to be adversely impacted in the future if no action is taken; whether a resolution can be effectively achieved through other means; the history of complaints or concerns regarding the same employee(s) or department; and any other pertinent information.

In most situations, OEA's administrative review will follow the procedures outlined in the formal resolution section above with OEA serving in lieu of a named complainant. One unique situation that often merits administrative review is when OEA learns of a possible violation of the University's responsible employee policy as described in Policy 1025. Typically, OEA will learn of potential violations of the responsible employee policy during the course of a discrimination investigation. If, based on information gathered during the course of an investigation, OEA has sufficient cause to believe that an employee failed to report discrimination or harassment as required by Policy 1025, then OEA may conduct an administrative review to determine whether, by a preponderance of the evidence, the

employee failed to report. Upon finding a violation, OEA will draft a memorandum documenting its findings and send the memorandum to the appropriate University stakeholders for corrective action.

External Reporting Options

Individuals also have the right to file complaints with certain federal or state agencies. Please be advised that each of the agencies below may have their own deadlines, time limitations for filing complaints, and jurisdictional limitations. OEA's process does not toll or otherwise suspend these deadlines or time limitations. Please contact the following agencies for more information about the applicable deadlines:

Equal Employment Opportunity Commission

1-800-669-4000

info@eeoc.gov

<http://eeoc.gov/>

U.S. Department of Education Office for Civil Rights

1-800-421-3481

ocr@ed.gov

<http://www2.ed.gov/about/offices/list/ocr/index.html>

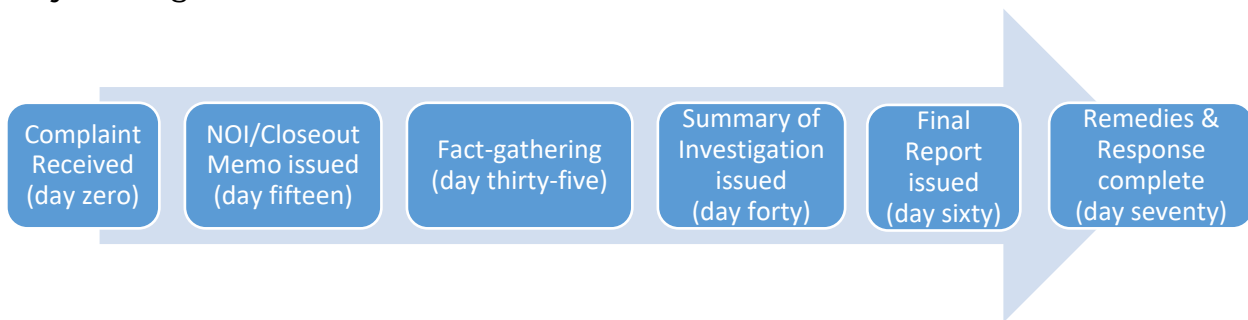
Commonwealth of Virginia Division of Human Rights

(804) 225-2292

human_rights@oag.state.va.us

<http://www.oag.state.va.us/index.php/programs-initiatives/human-rights>

Major Stages Timeline: Formal Resolution⁵



⁵ This timeline shows designated timeframes for the major stages of a formal investigation. The day indicated in parentheses shows how many days will have passed, in a typical case, from the day on which a complaint is filed (day zero) to the day on which that stage should be completed. No two cases are the same, however, and the timeline above may be altered for reasons outside of OEA's control.