



## **INVESTIGATION AND MEDIATION GUIDELINES FOR COMPLAINTS OF DISCRIMINATION, RETALIATION AND WHISTLE BLOWING**

### **I. PURPOSE**

The purpose of these Guidelines is to set forth the procedures for investigating, mediating and resolving complaints alleging discrimination, sexual harassment, retaliation and whistle blowing. These Guidelines apply to complaints brought by University students, faculty, administrators, staff members and all other employees of the University as well as vendors and guests. The Guidelines are also applicable to complaints by, or about, members of the University community involving conduct that occurred off campus at University sponsored activities, including internships, clinical practica and student teaching placements.

The Guidelines are under the jurisdiction of the Office of Compliance and Risk Management. The Guidelines may be updated at the discretion of the Director of Compliance and Risk Management.

### **II. TYPES OF COMPLAINTS THAT MAY BE INVESTIGATED OR MEDIATED PURSUANT TO THESE GUIDELINES**

As a Catholic institution of higher education, Seton Hall University embraces Judeo-Christian values that proclaim the dignity and rights of all people. The University has a responsibility to create and maintain a working and learning environment that is free of unlawful discrimination and that assures the fair and equitable treatment of all employees and students. Seton Hall administers all University policies and programs in accordance with our Catholic mission, the teachings of the Catholic Church and the law.

The types of complaints that may be investigated or mediated pursuant to these Guidelines include allegations of discrimination based upon membership in one or more of the following protected classes:

- Age
- Gender (including sexual harassment)
- Disability
- Race
- Color
- Creed
- Ethnicity
- National origin
- Religion
- Sexual orientation
- Gender identity and expression
- Pregnancy

- Veteran’s status
  - Liability for service in the Armed Forces
  - Marital status (including civil union and/or domestic partnership)
  - Genetic Information Nondiscrimination Act of 2008
1. Complaints involving claims of retaliation for exercising legal rights, participating in an investigation or whistle blowing will also be investigated or mediated in accordance with these Guidelines.
  2. The University may, in its discretion, choose to apply these Guidelines to investigations or mediations of complaints that fall outside of the scope of the above categories.
  3. These Guidelines may also be applied to complaints about conduct involving University students or employees that occur at off-site locations (“the other site”) in connection with University sponsored activities. A complainant may utilize the other site’s process but should keep the Director of Compliance and Risk Management apprised of the progress of that investigation. The Director of Compliance and Risk Management, in his/her discretion, may elect to accept or reject the other site’s findings and implement these Guidelines. Alternatively, a complainant may elect to file a complaint internally and invoke these Guidelines.
  4. Complaints involving allegations of sexual assault are not subject to mediation.
  5. Retaliation against an individual who has filed a complaint or participates in the review process is prohibited. Anyone who engages in retaliatory conduct will be subject to disciplinary action.

### **III. PROCESS FOR INVESTIGATING A COMPLAINT**

1. An individual who believes that he/she has been subjected to discrimination or retaliation (the “complainant”) or who has information concerning a potential violation of federal law, state law or University policy, may file a complaint. He/she may do so by contacting his/her supervisor, Human Resources, the Director of Compliance and Risk Management or by filing a complaint via Ethics Point. Supervisors and Human Resources personnel who receive complaints shall immediately notify the Director of Compliance and Risk Management. Individuals who become aware of a complaint are required to advise his or her supervisor, Human Resources or the Director of Compliance and Risk Management immediately upon learning of the complaint.
2. A complaint should be promptly reported in order to facilitate a more effective investigation and resolution.
3. After the initial intake interview with the complainant, the Director of Compliance and Risk Management will determine whether or not the allegations fall within the purview of the Office of Compliance and Risk Management. If the allegations do not fall within the purview of the Office of Compliance and Risk Management, the complainant will be notified in writing within ten (10) business days of the interview. No appeal may be taken from this determination.

4. The University reserves the right in its discretion to retain external independent investigator(s) to conduct investigations. The Director of Compliance and Risk Management has the discretion to select the external independent investigator(s). The University reserves the right in its discretion to retain one (1) external independent investigator.
5. Truthfulness by all parties and witnesses is expected in the investigative process.
6. Upon receipt of a complaint, the Director of Compliance and Risk Management shall appoint a co-investigator, who may be the respondent's supervisor or other appropriate University employee. (The respondent is the individual against whom the complaint has been made.)
7. When a complaint involves a student, either as a complainant or as a respondent, a co-investigator may be appointed from the Division of Student Affairs.
8. Complainants are encouraged to provide the investigators with a signed written statement detailing the factual allegations of the complaint.
9. Within ten (10) business days of receiving a complaint, the Director of Compliance and Risk Management will notify the respondent, in writing, of the complaint and inform other individuals, such as the respondent's supervisor and/or division head, as may be appropriate. A copy of the complainant's written statement will be provided to the respondent.
10. Respondents are encouraged to provide the investigators with a signed written response to the factual allegations of the complaint. A copy of the respondent's written statement will be provided to the complainant.
11. The investigators may interview the parties and witnesses and seek additional information and/or documentation that they deem reasonable to conduct a fair and objective investigation. Tape recording of interviews by the investigators, parties or witnesses is not permitted. However, note taking is allowed.
12. Documents provided by a party or a witness may be shared with the other party or other witnesses, in the discretion of the Director of Compliance and Risk Management.
13. All investigations are confidential in order to maintain the integrity of the process and privacy of the individuals involved. Complainants, respondents and witnesses should refrain from discussing the investigation with each other or other University employees. Violations of confidentiality are inappropriate and unprofessional and may result in disciplinary action.
14. It is expected that anyone contacted as a witness or a party by the Director of Compliance and Risk Management or external investigator will cooperate. Failure to cooperate with an investigation may lead to disciplinary action.

15. During interviews or other proceedings that may occur in the course of the investigation and resolution of a complaint, either the complainant or the respondent may be accompanied by another individual from the University for support purposes. The support person cannot be a person who has direct or personal knowledge of the matter or someone who may be called as a witness. The respondent's supervisor cannot serve as a support person. The support person is not permitted to participate in the investigative process by, for example, asking or answering questions. Witnesses are not permitted to have a support person present.
16. No attorney, whether accompanying the complainant or respondent, may be present during interviews or any other phase of the investigative proceedings unless he/she is from the University and is acting as a support person for the complainant or respondent.
17. Investigations will be completed as promptly as possible. The time to complete an investigation may vary depending upon the allegations and number of individuals involved. The investigators will keep the complainant and respondent apprised of the status of the investigation.
18. In evaluating the allegations, the investigators will examine all the facts and evidence and assess the credibility of the parties and witnesses to determine whether it is more likely than not that a violation of University policy occurred.
19. The investigators will prepare a written, signed report of the investigation setting forth the allegations, the factual findings concerning the allegations, conclusions and recommendations, if any.
20. A copy of the investigation report will be provided by the investigators to the appropriate University personnel on a need to know basis as determined by the Director of Compliance and Risk Management. Neither the complainant, the respondent nor any witness shall receive a copy of the investigation report or statements or summaries of the statement of witnesses.
21. As soon as possible following the completion of the investigation, the complainant and respondent will be advised verbally of the factual findings concerning the allegations, the conclusions and the recommended disposition of the complaint. This information will be reported to the complainant and respondent separately at individual meetings with appropriate University personnel as determined by the Director of Compliance and Risk Management. The meeting will be confirmed in writing to the complainant and respondent. Upon written request by either party to the Director of Compliance and Risk Management, the University will provide that party with a confidential detailed written summary of the allegations investigated, the factual findings and conclusions.
22. After receiving the investigation report, the supervisor shall determine the sanction, if any, to be imposed on the respondent. If the respondent is a student, the Division of Student Affairs may invoke the Community Standards Review Process.
23. If a complainant files a complaint and later decides that he/she is no longer willing to pursue the complaint, the Director of Compliance and Risk Management has a continuing

legal obligation to investigate the allegations of the complaint and pursue a resolution of the matter.

#### **IV. PROCESS FOR APPEAL**

1. Either party may appeal the findings and conclusions of the investigation. If the respondent is an employee, he/she may appeal the action taken by his/her supervisor to the next level of supervision. If the respondent is a student, he/she may appeal to the Vice President for Student Affairs.
2. The appeal is to be made in writing and submitted to the Director of Compliance and Risk Management within fifteen (15) business days following written notification of the disposition of the complaint.
3. The party filing the appeal must state the ground(s) for the appeal.
4. Grounds for Appeal:
  - A. The appeal should describe with specificity why the findings were not reasonably based upon the evidence and information made available to the investigators.
  - B. There was new evidence obtained by the complainant or respondent that was not available to the investigators prior to the rendering of the findings and conclusions.
5. The Director of Compliance and Risk Management will transmit the appeal to the reviewing supervisor or the Vice President for Student Affairs, when applicable, and provide a copy to the other party.
6. The non-appealing party may file a response by submitting it, in writing, to the Director of Compliance and Risk Management within fifteen (15) business days of receiving a copy of the appeal. The Director of Compliance and Risk Management will transmit the submission to the reviewing supervisor or the Vice President for Student Affairs, when applicable.
7. The decision on the appeal by the reviewing supervisor or Vice President for Student Affairs, when applicable, should be made within forty-five (45) business days following receipt of the appeal or the response by the non-appealing party.
8. The decision by the reviewing supervisor or Vice President for Student Affairs, when applicable, shall be final. The reviewing supervisor will communicate to the parties the outcome of the appeal.

#### **V. PROCESS FOR MEDIATION**

1. Mediation is encouraged as a first step to dispute resolution. The University recommends that parties attempt to mediate matters if both parties agree to the process and the selection of a mediator.
2. Complaints involving allegations of sexual assault are not subject to mediation.

3. Either party to a complaint may seek to proceed by mediation, either before or during the investigation of a complaint, as long as the other party agrees.
4. Because each matter is unique, the mediation process may not be applicable to all matters. Accordingly, the Director of Compliance and Risk Management must approve the use of the mediation process and any resolution reached as a result of the mediation process.
5. If both parties agree to mediation, a mediator, who is acceptable to both parties, shall be appointed by the Director of Compliance and Risk Management.
6. The mediator will conduct interviews of the complainant and respondent and may request written statements from either party, which may be shared with the other party, in the mediator's discretion. It is not expected that the mediator will interview any witnesses.
7. Mediation should be completed within twenty (20) business days from the appointment of a mediator.
8. The mediator may terminate the mediation if there is a lack of cooperation by a party or lack of progress in the mediation.
9. Either party may terminate the mediation and the complaint will then be investigated according to the Investigation Guidelines above.
10. During the mediation, the mediator may consult with appropriate University personnel.
11. All individuals who are involved in the mediation process are required to maintain confidentiality of the proceedings.
12. If a complaint is successfully mediated, the Director of Compliance and Risk Management will prepare a mediation agreement setting forth the agreed upon terms.
13. The complainant and respondent must read and sign the mediation agreement in the presence of the Director of Compliance and Risk Management, the mediator and, when applicable, a representative from the Division of Student Affairs. By signing, the complainant and respondent agree that the dispute is fully and finally resolved, subject to the parties' compliance with any stipulated commitments. Both parties shall receive a copy of the signed mediation agreement. The parties shall not disclose the contents of the mediation agreement.
14. In the event a party fails to comply with the commitments or conditions contained in the mediation agreement, the other party may seek the intervention of the Director of Compliance and Risk Management, who may contact the party's supervisor or the Division of Student Affairs, when applicable, to assist with enforcement, institute an investigation of the underlying complaint or take other appropriate action.
15. There is no appeal from a mediation agreement.

## **VI. MEDIATION RECORD**

The Office of Compliance and Risk Management will not retain any written record of the mediation process, except the complaint and the mediation agreement. If the respondent is a student, the Division of Student Affairs shall receive a copy of the complaint and the mediation agreement. The mediator shall retain his/her notes and any documents acquired during the mediation in accordance with the University's record retention policy. Mediation agreements are available for use in any subsequent University investigation and/or hearing.

## **VII. RECORDKEEPING AND CONFIDENTIALITY**

The Office of Compliance and Risk Management and when applicable, the Division on Student Affairs, shall maintain records of complaints, mediations and investigations. These records are confidential to the extent possible, in accordance with the law. The contents of records will only be discussed or shared on a need-to-know basis.

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**Revised and Approved by the Office of Compliance & Risk Management January 12, 2012  
Effective Immediately.**