



CORNELL UNIVERSITY
POLICY LIBRARY

Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

POLICY 6.4

Volume: 6, Human Resources
Chapter: 4, Prohibited
Discrimination, Protected
Status (Including Sexual)
Harassment and Bias Activity
Responsible Executives:
Provost and Vice President for
Human Resources
Responsible Office: Workforce
Policy and Labor Relations
Originally Issued: July 8, 1996
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2006
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2009

POLICY STATEMENT

Cornell University prohibits its faculty, staff, and students from engaging in any form of prohibited discrimination or protected status (including sexual) harassment, and expects these individuals to refrain from committing acts of bias within the university's jurisdiction. The university has processes to provide redress and remediation to individuals who believe they have been the victims of these acts. Members of the university community who have relevant information must cooperate with the university's investigations into prohibited discrimination, protected status harassment, or bias activity.

◆**Note:** With the exception of student employees, complaints brought against students may be covered under the Campus Code of Conduct and must be directed to the Judicial Administrator. Complaints by faculty of unlawful discrimination relating to reappointment, promotion, and tenure are covered in the Faculty Handbook.

REASON FOR POLICY

Acts of discrimination, protected status (including sexual) harassment, and bias undermine the university's mission by threatening the careers, educational experience, and well-being of those associated with the university. This policy expresses Cornell's opposition to discrimination, harassment, and bias, and assists the university to comply with federal, state, and local legal mandates in relation to such misconduct.

ENTITIES AFFECTED BY THIS POLICY

- All units of the university. The Weill Cornell Medical College in New York City administers its own procedures, covering related Contacts, Definitions, and Responsibilities.

WHO SHOULD READ THIS POLICY

- All members of the Cornell University community

WEB SITE ADDRESS FOR THIS POLICY

- This policy:
www.dfa.cornell.edu/dfa/treasurer/policyoffice/policies/volumes/humanresources/prohibited.cfm
- University Policy Office: www.policy.cornell.edu

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RELATED DOCUMENTS, FORMS, AND TOOLS

University Documents

[University Policy 4.6, Standards of Ethical Conduct](#)
[University Policy 4.9, Legal Defense and Indemnification](#)
[University Policy 5.1, Responsible Use of Electronic Communications](#)
[University Policy 6.2.10, Establishment of College-Level Academic Grievance Procedures](#)
[University Policy 6.3, Sexual Assault](#)
[University Policy 6.11.3, Employee Discipline \(Excluding Academic and Bargaining-Unit Staff\)](#)
[University Policy 6.13, Disability Accommodation Policy](#)
[University Policy, 6.13.8, Religious Accommodation](#)
[Human Resources Policy 6.11.4, Staff Complaint and Grievance Procedure](#)
[Board of Trustees Policy on Equal Educational and Employment Opportunity](#)
[Board of Trustees Policy on Faculty Dismissal](#)
[Campus Code of Conduct](#)
[Collective Bargaining Agreements for Represented Employees](#)
[Cornell University President's Statement on Affirmative Action and Equal Employment Opportunity](#)
[Executive Committee of the Board of Trustees Guidelines: March 13, 1975, amended March 13, 2002](#)
[Faculty Handbook](#)
[The Guide to Graduate Study](#)
[Handbook for Teaching Assistants at Cornell](#)
[Open Doors, Open Hearts, and Open Minds: Cornell's Statement on Diversity and Inclusiveness](#)
[Student Disability Grievance Procedure](#)
[Student Handbook](#)
[Student Employment Policies of the Office of Financial Aid and Student Employment](#)

Other Documents

[Age Discrimination in Employment Act of 1967](#)
[Charter and Code of Tompkins County, Chapter 92](#)
[Civil Rights Act of 1991](#)
[Code of the City of Ithaca, Pt. II, Ch. 215, Human Rights Protection; Ch 90, Art VIII, Sexual Harassment](#)
[Equal Employment Opportunity Commission's Guidelines on Sexual Harassment](#)
[Genetic Information Nondiscrimination Act \(GINA\) of 2008 \(effective November 21, 2009\)](#)
[New York State Human Rights Law](#)
[Title IX of the Education Amendments of 1972](#)
[Titles VI and VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991](#)

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CONTACTS

Direct any general questions about this policy to your college or unit's administrative or Human Resources office. Direct questions about specific issues to the following offices.

Subject	Contact	Telephone	E-mail/Web Address
Policy Clarification	Office of Workforce Policy and Labor Relations (WPLR)	(607) 255-3976 TDD/TTY: (607) 255-7066	equalopportunity@cornell.edu www.ohr.cornell.edu/contacthr/laborrelations/
Accessibility to Facilities on Campus: Faculty and Staff	ADA Coordinator for Facilities	(607) 255-5150	Andrea Haenlin-Mott
Campus Code of Conduct	Judicial Administrator (JA)	(607) 255-4680	cuinfo.cornell.edu/Admin/judicial_system.html
Complaints Concerning:			
· Alleged Harassment Committed by Students	Judicial Administrator (JA)	(607) 255-4680	cuinfo.cornell.edu/Admin/judicial_system.html
· Alleged Prohibited Discrimination or Protected Status Harassment Committed by Faculty, Staff, or Student Employees	Office of Workforce Policy and Labor Relations (WPLR)	(607) 254-7232 Fax: (607) 255-0298	equalopportunity@cornell.edu www.ohr.cornell.edu/contacthr/laborrelations/
· Bias Activity	Office of Workforce Diversity and Inclusion (WDI)	(607) 255-3976	www.ohr.cornell.edu/resolveWork/biasDiscrimHarass/biasResponse/Program.html
Disability Accommodation Requests from Faculty or Staff	Medical Leave Administration	(607) 216-1424 (607) 216-1420	www.ohr.cornell.edu/benefits/disabilityCase/
Disability Accommodation Requests from Students	Student Disability Services (SDS)	(607) 254-4545	clt_sds@cornell.edu clt.cornell.edu/campus/sds
Educational Programs and Resources	Cornell Interactive Theatre Ensemble (CITE)	(607) 254-2759	www.ohr.cornell.edu/cite
	Judicial Administrator (JA)	(607) 255-4680	cuinfo.cornell.edu/Admin/judicial_system.html
	Office of Workforce Diversity and Inclusion (WDI)	(607) 255-3976 TDD/TTY: (607) 255-7066	www.ohr.cornell.edu/contactHR/workLifeDiversity/
General Employee Relations/Workplace Concerns	Supervisor or local Human Resource representative		www.ohr.cornell.edu/contactHR/hrAcrossCampus/hrConsultants.html
	Office Workforce Policy and Labor Relations (WPLR)	(607) 255-4652	equalopportunity@cornell.edu www.ohr.cornell.edu/contacthr/laborrelations/

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CONTACTS, CONTINUED

	Recruitment and Employment Center, Direct Service Units	(607) 254-8370	employment_svcs@cornell.edu www.ohr.cornell.edu/contacthr/rec/
Harassment Advisors	Office of Workforce Policy and Labor Relations (WPLR)	(607) 254-7232 Fax: (607) 255-0298	www.ohr.cornell.edu/contacthr/laborrelations/
Psychological/Emotional Support Services, Faculty and Staff	Faculty Staff Assistance Program (FSAP)	Faculty and Staff: (800) 327-2255 Supervisors and HR representatives: (607) 216-1410	fsap@cornell.edu www.ohr.cornell.edu/contacthr/eap/
	University Ombudsman	(607) 255-4321	ombudsman.cornell.edu
	Cornell United Religious Work (CURW)	(607) 255-4214	www.curw.cornell.edu
Psychological or Emotional Support Services, Students	Counseling and Psychological Services	(607) 255-5208	www.gannett.cornell.edu/CAPS/
	Dean of Students	(607) 255-6839	dos.cornell.edu
	Empathy, Assistance and Referral Service (EARS)	(607) 255-3277	ears.dos.cornell.edu
	University Ombudsman	(607) 255-4321	ombudsman.cornell.edu
	Cornell United Religious Work (CURW)	(607) 255-4214	www.curw.cornell.edu
Religious Accommodation Request: Faculty, Staff, and Student Employees	Department chair or supervisor		
	Office of Workforce Policy and Labor Relations (WPLR)	(607) 254-7232 Fax: (607) 255-0298	www.ohr.cornell.edu/contacthr/laborrelations/
Religious Accommodation Request: Students	Dean of Faculty	(607) 255-4843	theuniversityfaculty.cornell.edu/
Reporting a Crime	Cornell University Police	(607) 254-6731 from 8:00 a.m. - 4:30 p.m. only on Monday – Friday; All other times and days, call (607) 255- 1111	www.cupolice.cornell.edu/crimes/bias.cfm

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DEFINITIONS

These definitions apply to these terms as they are used in this policy.

Accused	Person against whom a complaint or charge of prohibited discrimination or protected status harassment has been made.
Bias Activity	Actions comprising bias incidents and hate crimes, which are prohibited by state and local law.
Bias Activity Report	Written account alleging bias activity that is completed by a bias activity reporting team member to initiate an appropriate institutional response.
Bias Incident	Act of bigotry, harassment, or intimidation by unknown perpetrator(s) that occurs on the Cornell campus or within an area that impacts the Cornell community, and that one reasonably could conclude targets a member or group of the Cornell community because of that individual's or group's actual or perceived age, color, creed, disability, ethnicity, gender, gender identity or expression, marital status, national origin, race, religion, sexual orientation, veteran status, or any combination of these factors.
Bias Reporting Team	Group of individuals from within the Cornell community trained to report bias incidents and crimes, and assist with the referral of bias/discrimination complaints to the appropriate office.
Bias Response Committee	Group of individuals from within the Cornell community, who, in response to a bias activity report, coordinate an appropriate institutional response.
Bias Response Program	As established by this policy, Cornell's process for addressing acts of bias by unknown perpetrators occurring on the Cornell campus or within an area that impacts the Cornell community.
Bias/Discrimination Complaint	Under state, federal, and local law, a formal statement filed with the Office of Workforce Policy and Labor Relations (WPLR) alleging bias/discriminatory activity that calls for official action or treatment in response.
Bias/Hate Crime	Form of bias activity that is a criminal offense or attempted criminal offense that one could reasonably and prudently conclude is motivated, in whole or in part, by the alleged offender's bias against an individual's actual or perceived age, ancestry or ethnicity, color, creed, disability, gender, gender identity or expression, height, immigration or citizenship status, marital status, national origin, race, religion, religious practice, sexual orientation, socioeconomic status, or weight.
Committee on Academic Freedom and Professional Status of the Faculty	Committee of nine members of the faculty appointed by the Faculty Senate for three-year terms to examine and make recommendations on issues relating to academic freedom and responsibility, freedom of teaching and learning, and the professional status of the faculty.
Complainant	Person or group of people who believes he or she or it has been victimized by prohibited discrimination or protected status (including sexual) harassment.
Discrimination	See "Prohibited Discrimination" of these definitions.

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DEFINITIONS, CONTINUED

EEO-Protected Status	Groups identified for protection under federal, state, and local equal employment laws and regulations. These groups relate to race, ethnic or national origin, color, gender (including pregnancy), age, creed, religion, actual or perceived disability (including persons associated with such a person), ex-offender status, veteran status, sexual orientation, and gender expression and identity, and an individual's genetic information.
Equal Employment Opportunity (EEO)	Federal, state, and local law prohibiting job discrimination based on an EEO-protected status.
Faculty Co-Investigator	Selected by the Dean of Faculty, after consulting with the Provost or his or her designee, from an elected pool of appropriately trained faculty members to collaborate with WPLR in investigating cases in which a faculty member is accused of prohibited discrimination or protected status harassment as described in this policy.
Faculty Member	Person who holds appointment to an academic title (as specified in the Bylaws of Cornell University, Article XVI).
Genetic Information	Information about (a) an individual's genetic tests; (b) the genetic tests of family members of the individual; or (c) the occurrence of a disease or disorder in family members of the individual. The term does not encompass information about the sex or age of an individual.
Harassment	See "Protected Status Harassment" of these definitions.
Harassment Advisor	Person who is part of a pool of advisors drawn from each college and major administrative unit, who has been trained specifically to provide advice and guidance to individuals who believe they have been targets of prohibited discrimination or protected status harassment. These individuals are not authorized to engage in formal mediation or investigation.
Investigation	Systematic inquiry into allegations of prohibited discrimination or protected status (including sexual) harassment brought by complainants through the process described in this policy.
Investigation Report	Written account of findings from a formal investigation, conducted by WPLR, into an allegation of prohibited discrimination and/or protected status (including sexual) harassment.
Mediation	Intervention between conflicting parties to promote reconciliation, settlement, or compromise.
Prima Facie	Legal term meaning on initial examination or consideration.
Prohibited Discrimination	Legal term referring to an employment or academic decision that results in negative and/or different treatment of an individual based upon his or her membership in an EEO-protected class. Discriminatory conduct includes decisions in which protected-class membership was the sole factor or a contributing factor.
Protected Status Harassment (See also, "Sexual Harassment")	Legal term describing when an individual is targeted with verbal, written, visual, or physical conduct based on that person's EEO-protected class status that unreasonably interferes with the individual's work or academic performance, or creates an intimidating, hostile, or offensive working or learning environment.

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DEFINITIONS, CONTINUED

Retaliation	To seek revenge, reprisal, or injury to an individual or group who has exercised the right to file a complaint or make a report of prohibited discrimination or protected status (including sexual) harassment, or has participated in an investigation into allegations of such activity.
Sanction	Disciplinary action imposed on an individual found to have committed prohibited discrimination or protected status harassment, which may include corrective actions or termination of employment.
Sexual Harassment	<p>Form of protected status harassment that constitutes unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature that either explicitly or implicitly are made (1) a term or condition of an individual's employment or academic status, or (2) as a basis for an employment or academic decision affecting that person.</p> <p>The following types of sexual harassment are referenced in this policy:</p> <p>Sexual acts that are demanded in exchange for maintaining or enhancing employment or academic benefits or status</p> <p>Unwelcome sexual behavior toward another employee or student that is (1) persistent, pervasive, or severe, and (2) has the purpose or effect of interfering with the work or educational environment in a way that a reasonable person would find hostile or offensive</p>
Staff	Individual employed by Cornell to provide support, administrative, or executive services who does not meet the definition of "Faculty Member."
Student Employee	Student in a non-academic, hourly paid position, working less than full-time, and optimally, no more than 20 hours per week, during the academic year.

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RESPONSIBILITIES

◆**Note:** All individuals involved in the complaint reporting, mediation, and/ or investigation process in relation to prohibited discrimination or protected status (including sexual) harassment must maintain the confidentiality of those proceedings.

Accused Party	Cooperate with investigations under this policy, and perform any corrective actions indicated from findings of discrimination or harassment.
Bias Reporting Team Member	Complete a "Bias Activity Report" when contacted by an individual or group who alleges witnessing or experiencing an incident of bias, and refer that individual or group to the appropriate office for support and guidance. Provide a copy of the completed "Bias Activity Report" to the Office of Workforce Diversity and Inclusion (WDI).
Bias Response Committee	Coordinate an appropriate institutional response to activity reported in "Bias Activity Reports."
Committee on Academic Freedom and Professional Status of the Faculty	Obtain training from Workforce Policy and Labor Relations (WPLR) on how to recognize prohibited discrimination and protected status harassment. Adjudicate cases in which an accused faculty member contests an investigation report on the grounds that the alleged behavior arose out of the nature of a subordinate-supervisory relationship with a student, or is protected by academic freedom. Examples of such a relationship include teaching, advising, research, and thesis or dissertation supervision.
Complainant	File a timely, written complaint of the harassing behavior or discrimination with WPLR. May confer with a harassment advisor, Human Resource representative, WPLR, or the Ombudsman about concerns related to prohibited discrimination and protected status (including sexual) harassment. Serve as a witness in an investigation process initiated by WPLR or an appropriate university official, if asked to do so.
Dean of Faculty	When a faculty member is charged with discriminatory or harassing behavior allegedly rising out of a subordinate-supervisory relationship with a student, or involving an issue of academic freedom: <ul style="list-style-type: none"> - Consult with the Provost or his or her designee, and designate a faculty member to serve as a co-investigator, if appropriate - Explain in writing to all of the parties the rationale for appointing a faculty co-investigator
Deans, or Equivalent Unit Heads (For Example, Vice Provosts, Vice Presidents)	Inform faculty, staff, and student employees under their direction or supervision of this policy, and require training of all supervisors on what is prohibited discrimination, protected status harassment, and bias activity, and how to respond to related complaints. The appropriate dean or equivalent unit head to which an investigation report is forwarded may either accept or modify the findings and recommendations, or return the report for further investigation. This individual may consult confidentially with University Counsel concerning the sufficiency of the investigation, the factual

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RESPONSIBILITIES, CONTINUED

	<p>findings, and the related recommendations, if any.</p> <p>Determine and implement any corrective action resulting from WPLR's findings and recommendations in the investigation report.</p>
Faculty Co-Investigator	<p>When the harassing or discriminatory behavior is alleged to have arisen out of the nature of a subordinate-supervisory relationship between a faculty member and a student, or to have potentially involved an issue of academic freedom, collaborate with the WPLR investigator in conducting the investigation and preparing the investigation report..</p>
Faculty, Staff, Student Employees, Students, or Groups	<p>May confer with a harassment advisor, Human Resource representative, WPLR, WDI, or the University Ombudsman if he, she, or it believes they have experienced prohibited discrimination, protected status harassment, or bias activity.</p> <p>Maintain the confidentiality of witnesses.</p> <p>Cooperate with investigations of prohibited discrimination, protected status harassment, and bias activity occurring in the context of employment and/or otherwise within the university's jurisdiction.</p> <p>May be subject to university action if he, she, or it refuses to cooperate during an investigation.</p>
Harassment Advisor	<p>Refer complaint of prohibited discrimination and protected status harassment to WPLR for documentation and/or to be handled through formal mediation or investigation.</p> <p>Obtain training from WPLR on how to recognize prohibited discrimination, protected status harassment, and bias activity.</p> <p>Provide advice, suggestions, guidance, or act as a resource for individuals on handling issues of discrimination, harassment, or bias, including explaining the definition of prohibited discrimination, protected status harassment, or bias activity, offering guidance on the appropriate recourse, and providing information about psychological counseling and support services available to faculty, staff, and students.</p> <p>Refer complainant to WPLR, if that individual wishes to pursue the complaint beyond informal consultation. These individuals are not authorized to engage in formal mediation, to conduct investigations, or to maintain formal or detailed records of confidential consultations.</p> <p>If a complainant prefers not to pursue the complaint with WPLR, but wishes the consultation to be confidential, report the nature of the incident and the outcome to WPLR without any personally identifiable information.</p> <p>Accompany and assist the complainant during the investigation process, if requested by the complainant.</p>
Local Human Resources Representative	<p>Refer complaint of prohibited discrimination and protected status harassment to WPLR for documentation and/or to be handled through formal mediation or investigation.</p> <p>Obtain training from WPLR on how to recognize prohibited discrimination, protected status harassment, and bias activity.</p> <p>Provide advice, suggestions, guidance, or act as a resource for individuals on handling issues of discrimination, harassment, or bias, including explaining the definition of prohibited discrimination,</p>

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RESPONSIBILITIES, CONTINUED

	<p>protected status harassment, or bias activity, offering guidance on the appropriate recourse, and providing information about psychological counseling and support services available to faculty, staff, and students.</p> <p>Refer complainant to WPLR, if that individual wishes to pursue the complaint beyond informal consultation. These individuals are not authorized to engage in formal mediation, to conduct investigations, or to maintain formal or detailed records of confidential consultations.</p> <p>If a complainant prefers not to pursue the complaint with WPLR, but wishes the consultation to be confidential, report the nature of the incident and the outcome to WPLR without any personally identifiable information.</p> <p>Accompany and assist the complainant during the investigation process, if requested by the complainant.</p>
Office of Judicial Administrator	<p>Process reports or complaints brought against a student regarding violations that are covered by the Campus Code of Conduct.</p>
Office of Workforce Diversity and Inclusion (WDI)	<p>Receive copies of completed Bias Activity Reports from Bias Reporting Team members.</p> <p>If the bias activity constitutes a bias crime as defined by federal, state, and local laws, provide a copy of completed Bias Activity or Discrimination Reports to the Cornell Police.</p>
Office of Workforce Policy and Labor Relations (WPLR)	<p>Is charged with the enforcement of the university's non-discrimination obligations and has exclusive responsibility of accepting and processing complaints of prohibited discrimination and protected status harassment, and resolving these complaints impartially, promptly, and confidentially through informal intervention, mediation, or formal investigation, and when necessary, in conjunction with other offices.</p> <p>Provide education and training programs to members of the university community related to the university's policy on prohibited discrimination, protected status harassment, and bias activity, and the university's processes for addressing such issues.</p> <p>Train members of the Committee on Academic Freedom and Professional Status of the Faculty each year to recognize prohibited discrimination and protected status harassment.</p> <p>Publish and distribute semiannually a report that summarizes the number, type, source, and outcome of incidents related to prohibited discrimination and protected status harassment.</p> <p>Provide copies of this policy to the appropriate deans or equivalent unit heads for redistribution to their directors, department heads, and chairs.</p> <p>May investigate particularly serious (example, coerced sexual acts) and prima facie, well-founded allegations, even when the complaining party does not wish to pursue such charges. Pending completion of the investigation, may also recommend interim steps to protect the safety and well-being of members of the university community.</p>
Provost	<p>Consult with the Dean of Faculty concerning the designation of a faculty co-investigator in instances where a faculty member is charged with prohibited discrimination or protected status harassment that is alleged to have arisen out of the nature of a subordinate-supervisory relationship with a student, or to have potentially involved</p>

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RESPONSIBILITIES, CONTINUED

	<p>an issue of academic freedom.</p> <p>Receive the investigation report in instances where a dean, vice president, or a vice provost is the accused in an investigation related to prohibited discrimination or protected status harassment.</p>
Supervisor	<p>Inform faculty, staff, and students under his or her direction or supervision of this policy.</p> <p>Notify the Human Resource (HR) representative or, if not available, WPLR when he or she observes or receives a report or complaint of an act of prohibited discrimination, protected status harassment, or bias.</p> <p>Implement any corrective actions that are imposed because of findings of prohibited discrimination or protected status harassment.</p>
University Counsel	<p>Provide counsel, as necessary, to the investigators and decision-makers during the investigation or resolution process.</p>
University Ombudsman	<p>Receive informal inquiries related to prohibited discrimination or protected status harassment, and offer guidance on appropriate recourse, including explaining the definition of discrimination or harassment, and providing information about psychological counseling and support services available to faculty, staff, and students.</p> <p>If the complainant wishes to pursue a complaint beyond informal consultation or resolution, refer the individual to WPLR. The Ombudsman is not authorized to engage in formal mediation, to conduct investigations, or to maintain formal or detailed records of confidential consultations.</p> <p>If the complainant prefers not to pursue the complaint with WPLR, but wishes the consultation to be confidential, report the nature of the incident and the outcome to WPLR without any personally identifiable information. Provide counsel, as necessary, to the investigators and decision-makers during the investigation or resolution process.</p>
University President	<p>Receive the investigation report in instances where the Provost is the accused in an investigation related to prohibited discrimination or protected status harassment.</p>

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PRINCIPLES

Overview

Cornell University's commitment to diversity and inclusiveness is grounded in providing an environment that is free from all prohibited discrimination, protected status harassment, and bias activity, in particular when such actions are directed at a member or group of the Cornell community because of that individual's or group's actual or perceived age, color, creed, disability, ethnicity, gender, gender identity or expression, marital status, national origin, race, religion, sexual orientation, veteran status, or any combination of these or related factors.

Acts of prohibited discrimination and protected status (including sexual) harassment constitute violations of federal law. Although bias activity may not rise to the level of a federal violation, it is prohibited by state and local law. Cornell equally condemns such activity and aims to respond to such incidents when they occur in its jurisdiction.

Accordingly, this policy prohibits all members of the university community from engaging in such prohibited discrimination and protected status harassment, and expects all members of the community to refrain from bias activity. The university establishes an internal university process for presenting and responding to discrimination-related complaints, and reports of bias activity. Members of the university community who have relevant information must cooperate with investigations of such misconduct.

" Notes:

1. Complaints against individuals not part of the Cornell community are not covered under this policy, but should be directed to the complainant's supervisor or local Human Resources representative, or the Office of Workforce Policy and Labor Relations (WPLR) for appropriate response and/or support.
2. Complaints regarding inappropriate workplace conduct that is not covered by this policy are considered general employee relations concerns and should be directed to the supervisor, local Human Resources representative or the central Division of Human Resources.
3. Complaints by faculty of unlawful discrimination in reappointment, promotion, and tenure are governed by appeal procedures set out in the Faculty Handbook.

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Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PRINCIPLES, CONTINUED

Prohibited Discrimination

Prohibited discrimination occurs when an employment or academic decision results in negative and/or different treatment of an individual based upon his or her Equal Employment Opportunity (EEO)-protected class status. Discriminatory conduct includes decisions in which the EEO-protected class status was the sole or a contributing factor. For examples of prohibited discrimination, see Appendix E.

Protected Status Harassment

Protected status harassment, including sexual harassment, occurs when an individual is targeted with verbal, written, visual, or physical conduct based on that person's EEO-protected status that unreasonably interferes with the individual's work or academic performance, or creates an intimidating, hostile, or offensive working or learning environment. The conduct constitutes harassment under any of the following conditions:

- The conduct is direct
- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic involvement
- Submission to, or rejection of, such conduct by an individual is used as the basis for an employment or academic decision affecting that person

For examples of protected status harassment, see Appendix E.

Sexual Harassment in the Work Environment

Sexual harassment is a form of protected status harassment. Unwelcome sexual advances, requests for sexual favors, and other oral, written, or physical conduct of a sexual nature may constitute sexual harassment when one or more of the following conditions are present:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment

POLICY 6.4

Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PRINCIPLES, CONTINUED

Sexual Harassment in the Education Environment

Sexual harassment is a form of protected status harassment. Unwelcome sexual advances, requests for sexual favors, and other oral, written, or physical conduct of a sexual nature may constitute sexual harassment when one or more of the following conditions are present:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic involvement
2. Submission to or rejection of such conduct by an individual is used as the basis for academic decisions affecting that individual
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's academic performance, or participation in extracurricular activities, or of creating an intimidating, hostile, or offensive educational environment

Because of protections afforded by academic freedom, under Item Three above, speech and other expression occurring in the context of instruction or research will not be considered sexual harassment unless this speech or expression also meets one or both of the following criteria:

1. Is meant to be either abusive or humiliating toward a specific person or persons
2. Persists despite the reasonable objection of the person or persons targeted by the speech

◆**Note:** The condition described in Item Three of both sections above concerning sexual harassment in the work and educational environments involves an objective standard. The question is whether the conduct would interfere with a reasonable person's work or academic performance or participation in extracurricular activities, or would create an intimidating, hostile, or offensive working or educational environment in the mind of a reasonable person.

Bias Activity (Including Bias Incidents and Hate Crimes)

Bias activity includes bias incidents as defined by this policy and hate crimes as defined by law. Such activity is that which a reasonable person could conclude is directed at a member or group of the Cornell community because of that individual's or group's actual or perceived attribute of diversity. Such incidents may not rise to the level of prohibited discrimination and protected status harassment, but are prohibited by state and local law.

POLICY 6.4

Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PRINCIPLES, CONTINUED

This policy covers the responses of campus offices, such as the Office of Workforce Diversity and Inclusion (WDI), the Cornell Police, the Office of the Judicial Administrator, and the Office of the University Ombudsman, to bias activity that occurs in Cornell's jurisdiction. These offices will advise the university community of the occurrence of bias incidents and crimes, provide support-related resources to individuals who have experienced bias activity, and develop programs that will help to prevent or eliminate bias activity.

Disciplinary Action

Disciplinary action for prohibited discrimination and protected status harassment may include a verbal or a written warning, a requirement to attend training, work restrictions, salary reduction or limitation, suspension, and/or dismissal. The department determines such action based on the recommendations in the investigation report.

If, in reviewing a case of bias activity, the perpetrator becomes known as a member of the university community, the above disciplinary action will apply, except where the perpetrator is a Cornell student, in which case the Judicial Administrator would apply the Campus Code of Conduct.

Duty to Cooperate

University faculty, staff, and students must cooperate with investigations of prohibited discrimination, protected status harassment, or bias activity occurring in the context of employment and academic appointment, and in relation to a university activity. A faculty or staff member or student who has relevant information, but refuses to cooperate after being asked to do so during an investigation, may be subject to disciplinary action. When conducting an investigation, WPLR will advise all concerned parties to maintain the confidentiality of witnesses.

Confidentiality

No one participating in the procedures under this policy should reveal any information learned in the course of so doing. WPLR, and when a faculty member is involved, the Committee on Academic Freedom and Professional Status of the Faculty, will underscore the importance of confidentiality in meetings with parties and witnesses. The university will take reasonable measures to ensure the confidentiality of the testimony and records produced in the procedures under this policy. However, the university cannot and does not guarantee that parties and witnesses will maintain confidentiality.

Confidentiality does not mean that the details of the complaint will be withheld from the accused, or that the university is constrained from divulging the proceedings in

POLICY 6.4

Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PRINCIPLES, CONTINUED

appropriate circumstances. For example, the university may publicly divulge details of the outcome if one of the parties discloses selective or self-serving portions of the proceedings, or when a lawsuit emerges where the complaining or accused contests the findings or results of the university's investigation. When the complaining party does not elect to pursue charges, the appropriate university official may request WPLR to investigate the charges, in which case, the complaining party may be asked to serve as a witness in the investigation process.

POLICY 6.4

Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PROCEDURES: APPLYING APPROPRIATE PROCEDURES

◆ **Note:** All individuals involved in the complaint, reporting, mediation and/or investigation process must maintain the confidentiality of those proceedings.

Separate procedures apply to handling complaints related to prohibited discrimination and protected status harassment, and those related to bias activity. Determination of which procedures apply depends on whether the accused is unknown, or, if known, whether the accused is a faculty member, staff member, student employee, or a student.

Where there is ambiguity about which procedures apply, the Office of Workforce Policy and Labor Relations will decide, guided by “Reason for Policy.”

**Accused is Known
Cornell Faculty,
Staff, or Student
Employee** Apply procedures for prohibited discrimination and protected status harassment.

**Accused is Known
Cornell Student
(Excluding Student
Employees)** Apply the Campus Code of Conduct through the Office of the Judicial Administrator.

**Accused is Not
Known** Apply procedures for bias activity.

POLICY 6.4

Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PROCEDURES: PROHIBITED DISCRIMINATION AND PROTECTED STATUS (INCLUDING SEXUAL) HARASSMENT

◆ **Note:** All individuals involved in the complaint, reporting, mediation and/or investigation process must maintain the confidentiality of those proceedings.

Initiating a Complaint

Any faculty or staff member, student, student employee, or group who believes he, she, or it has experienced prohibited discrimination, or protected status harassment, in employment, or in the context of academic pursuit, may confer with a supervisor, harassment advisor, Human Resource (HR) representative, the Office of Workforce Policy and Labor Relations (WPLR), or the University Ombudsman for guidance on appropriate action, psychological counseling, and other support services.

If the individual or group wishes to pursue the matter beyond informal resolution efforts, he, she, or it must be referred to WPLR, which is the only office authorized to process a formal complaint or report. At that individual's or group's request, the harassment advisor, or Ombudsman may accompany the individual or group during a complaint investigation.

If the complainant wants the consultation to remain confidential or "off the record," and does not wish to pursue the matter with WPLR, the harassment advisor, HR representative, or the University Ombudsman will advise WPLR, for statistical reporting purposes, of the nature of the incident and the outcome, without identifying any individuals.

◆ **Note:** Complaints will ordinarily only be investigated when the complaining party so elects. In extraordinary circumstances, however, WPLR may determine on its own to investigate particularly serious (such as, coerced sexual acts) and prima facie, well-founded allegations, even when the complaining party does not wish to pursue such charges. In such extraordinary circumstances, pending completion of the investigation, WPLR may also recommend to the appropriate university official interim steps, to protect the safety and well-being of members of the university community.

The "complainant" may be a single person or several individuals. If there are several complainants, and they cannot agree on a common position, the complaint will be divided into two or more complaints. The complaint must describe in writing the alleged act or acts, identify the person or persons purportedly responsible, and indicate the date or approximate date on which the discriminatory or harassing act or acts occurred.

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Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PROCEDURES: PROHIBITED DISCRIMINATION AND PROTECTED STATUS (INCLUDING SEXUAL) HARASSMENT, CONTINUED

Complaints must be filed within six months of the alleged discriminatory or harassing behavior. However, for students bringing a complaint against faculty in the context of a subordinate-supervisory relationship between the faculty member and the student (such as in relation to teaching, advising, research, and thesis or dissertation supervision), this deadline may be extended to one year after the student is no longer under the faculty member's supervision, or three years from the date of the alleged behavior, whichever is earlier.

If, after its initial review, WPLR determines that the complaint appears to have merit, it will notify the "accused" that he or she has been named in a complaint.

When a complainant does not pursue a complaint that he, she, or it has filed, WPLR will maintain confidentially materials obtained during the complaint filing for at least three years, or until any external agency investigation or legal action is concluded, whichever is later. These records cannot be considered for any purpose in the mediation, investigation, or adjudication of future discrimination or harassment cases.

◆ **Notes:**

1. For information about the university's position on "Romantic and Sexual Relationships between Students and Staff," see Appendix D.
2. For examples of prohibited discrimination and protected status (including sexual) harassment, see Appendix E.

Filing a Complaint Internally Versus Externally

A complainant who files a timely, written complaint with WPLR may seek resolution through Cornell's internal process for informal intervention, mediation, or formal investigation. At any time (before or after filing a complaint with WPLR), the complainant is free to file a charge externally, that is, by instituting formal proceedings before a local, state, or federal agency, or by filing a lawsuit. If the complainant chooses an external remedy, the university's role may be altered from independent investigator to a respondent or defendant, and WPLR will proceed appropriately under those circumstances.

Processing a Complaint

WPLR has exclusive responsibility for accepting and processing prohibited discrimination and protected status harassment complaints and will undertake to resolve these complaints impartially, promptly, and confidentially through informal intervention, mediation, or formal investigation.

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Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PROCEDURES: PROHIBITED DISCRIMINATION AND PROTECTED STATUS (INCLUDING SEXUAL) HARASSMENT, CONTINUED

If the complainant's concerns are unrelated to prohibited discrimination or protected status harassment, WPLR may refer the complainant to or cooperate with another university office to investigate and/or address such unrelated concerns.

Mediating a Complaint

Although this step is not required, WPLR encourages complaining parties to participate initially in the mediation process. The primary objective of mediation is to permit the parties to resolve the dispute on their own, quickly and confidentially. Both the complaining party or parties and accused must agree to mediation. At any stage during or upon the conclusion of the mediation process, either party may decide to proceed by formal investigation.

◆**Note:** The mediation process may be particularly suitable when the accused's conduct was unintentional or unknowingly offensive.

If a complainant and the accused agree to proceed by mediation, a trained individual designated by the Vice President of Human Resources, or his or her designee, will interview the complainant to determine the factual allegations on which the charge of discrimination or harassment is based, and the terms satisfactory to the complainant upon which the complaint may be conciliated. The mediation process must be completed within 20 working days, but is subject to extension by WPLR as necessary or to show good cause.

During the mediation process, WPLR will contact no person other than the complainant and the accused. Both parties must respect the confidentiality of the mediation process.

If the complaint is mediated successfully, WPLR will prepare a mediation agreement presenting the agreed-upon terms that comply with university policies and procedures. The two parties must sign the agreement to indicate the dispute is fully and finally resolved. If a party fails to comply with this agreement, the other party may seek the intervention of WPLR, and the agreement may be used in evidence in any subsequent hearings relating to charges of prohibited discrimination or protected status harassment.

WPLR will not retain any written record of the mediation process, except the complaint and the successful mediation agreement, which will be made available to the complainant and the accused upon request.

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Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PROCEDURES: PROHIBITED DISCRIMINATION AND PROTECTED STATUS (INCLUDING SEXUAL) HARASSMENT, CONTINUED

Investigating a Complaint

◆**Note:** For additional information on the mediation process as it applies to individuals participating in interscholastic and intercollegiate athletics, see Appendix A.

The purpose of the investigation is to gather evidence relating to the alleged discrimination or harassment to determine whether the accused engaged in conduct constituting discrimination or harassment.

WPLR conducts these formal investigations, which must be completed within 60 working days, subject to extension by WPLR as may be necessary or for good cause shown by a party. During investigations, WPLR must keep both parties informed on the investigation's status, as appropriate. The precise features and steps of the investigation process, which is conducted by WPLR, are described in Appendix B. Adversarial hearings (including confrontation, cross-examination by the parties, and active advocacy by attorneys) are not permitted during the investigation process.

Throughout the investigative process, the complainant and accused may seek the advice of personal attorneys and advisors (including harassment advisors). Such representatives may attend their own clients' or advisees' investigative interview, but may not respond to questions for their clients or advisees, and may not pose questions.

If, upon completing the investigation process, WPLR determines that the complaint lacks merit, the university's internal complaint resolution process is concluded, and the complainant will be informed of his or her right, if any, to seek external avenues of complaint resolution.

◆**Notes:**

1. For additional procedures in relation to investigating complaints against faculty, see "Investigating a Complaint Against Faculty" of these procedures.
2. For additional procedures in relation to investigating complaints against students, see "Investigating a Complaint Against a Student" of these procedures.
3. For additional information on the investigation process as it applies to individuals participating in interscholastic and intercollegiate athletics, see Appendix A.

POLICY 6.4

Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PROCEDURES: PROHIBITED DISCRIMINATION AND PROTECTED STATUS (INCLUDING SEXUAL) HARASSMENT, CONTINUED

Reporting Investigation Findings

Upon concluding an investigation, WPLR must produce a written investigation report, which must include the following:

- Scope of the investigation
- Summary of the findings
- Recommendations for any corrective actions
- Any non-punitive, preventative remedies for the complainant
- If warranted, recommended action to restore the accused's reputation, such as notifying persons who participated in the investigation, and/or a public announcement of the outcome

WPLR will forward a summary of the investigation report in confidence to the appropriate dean, vice president, or equivalent unit head, which may also have access to the entire record on which the investigation report is based.

WPLR also may consult the Provost, Vice President for HR, other appropriate university official, and/or the University Counsel. When a dean, vice president, or vice provost is the accused, the summary will be forwarded to the Provost or his or her designee. If the Provost is the accused, the summary is forwarded to the University President or his or her designee. If the University President is the accused, the summary is forwarded to the Board of Trustees through University Counsel and Secretary of the Corporation.

The appropriate dean, vice president, or equivalent unit head (or the President, if appropriate) to whom the investigation report summary is forwarded ultimately may either accept or modify the recommendations, or return the report for further investigation.

During this review, he or she may consult confidentially with University Counsel, appropriate university officials, and with the accused's supervisor or department head if disciplinary actions are recommended, concerning the sufficiency of the investigation and the findings or any recommendations. Before making any decision, he or she must first forward to the complainant and the accused, copies of the summary of the investigation report, and give both parties a reasonable opportunity (that is, within 30 days, unless the appropriate dean, vice president, or equivalent unit head shortens such time in consultation with WPLR) to submit written comments.

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Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PROCEDURES: PROHIBITED DISCRIMINATION AND PROTECTED STATUS (INCLUDING SEXUAL) HARASSMENT, CONTINUED

◆**Note:** For additional information on the investigation reporting process as it applies to individuals participating in interscholastic and intercollegiate athletics, see Appendix A.

Dismissing a Complaint

WPLR may dismiss a complaint and close the case where the complaint:

- Is not reported or filed in a timely manner
- Is not supported by sufficient facts, lacks merit based upon the available evidence, or does not fall within the jurisdiction of WPLR

Similarly, WPLR may dismiss a complaint and close the case where the complainant:

- Fails or refuses to appear or to be available for interviews or conferences as necessary, or
- Cannot be located after reasonable efforts have been made, and has not responded for at least 10 calendar days to a notice sent by WPLR to his or her last known residence, office, or e-mail address, or
- Fails to provide requested, necessary information, or
- Fails or refuses to cooperate with the investigation to the extent that WPLR is unable to reasonably resolve the charge

If WPLR determines that a complaint should be dismissed, the complainant will be informed of his or her right, if any, to pursue external avenues of complaint processing. Furthermore, the disposition will include, if appropriate, an attempt to restore the reputation of the accused (such as deletion of records, and, unless the accused otherwise requests, notification to persons who participated in the investigation of the charge, and/or public announcement of the outcome).

Record-Keeping

WPLR will maintain all records of written and investigated complaints according to the following schedule:

- Records of all complaints will be maintained confidentially and permanently
- Records of investigated complaints that are dismissed will be maintained confidentially for a period not to exceed three years, or until the conclusion of any external agency investigation or legal action, whichever is later
- Records of investigated complaints that result in a determination of a policy violation will be maintained permanently
- Records of internal reports or complaints by parties that do not pursue these

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Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PROCEDURES: PROHIBITED DISCRIMINATION AND PROTECTED STATUS (INCLUDING SEXUAL) HARASSMENT, CONTINUED

complaints will be maintained confidentially for a period not to exceed three years, or until the conclusion of any external agency investigation, or legal action, whichever is later. These records will be maintained for institutional reasons, and may not be considered for any purpose in the mediation, investigation, or adjudication of future cases of prohibited discrimination or protected status, including sexual harassment.

Unless otherwise compelled by law, access to these records is limited strictly to those university officials directly investigating or adjudicating a complaint or implementing a complaint resolution.

Obtaining Protection from Retaliation and Bad Faith Complaints

Local, state, and federal law and this policy prohibit any form of retaliation against a person who files or bears witness to a prohibited discrimination or protected status harassment complaint. Violation of this prohibition may result in disciplinary action.

At the same time, as with any complaint brought in bad faith, an individual who is aggrieved because a complaint was malicious, knowingly false, or fundamentally frivolous, may invoke any applicable disciplinary or grievance procedure that may result in disciplinary action against the party that brings such a complaint.

Contesting Findings and Grieving Disciplinary Action Arising From an Investigation

The process for appealing findings and grieving disciplinary actions arising out of an investigation is different for faculty, staff, and student employees. For more information on these processes, see “Appealing Findings From an Investigation of a Complaint Against Faculty,” “Grieving Disciplinary Action Resulting From an Investigation of a Complaint Against Faculty,” “Appealing Findings From an Investigation of a Complaint Against Staff,” and “Grieving Disciplinary Action Resulting From an Investigation of a Complaint Against Staff” of these procedures.

◆**Note:** For additional information on the appeal and grievance process as it applies to individuals participating in interscholastic and intercollegiate athletics, see Appendix A.

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Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PROCEDURES: PROHIBITED DISCRIMINATION AND PROTECTED STATUS (INCLUDING SEXUAL) HARASSMENT, CONTINUED

Complaints Against Faculty: Additional Procedures

In addition to procedures outlined in all previous sections of these procedures, the following also apply.

Investigating a Complaint Against Faculty

In consultation with the Provost, when a complaint arises out of the nature of a subordinate-supervisory relationship between the faculty member and the student (such as while engaged in teaching, advising, research, and thesis or dissertation supervision), or that could have involved an issue of academic freedom, the Dean of Faculty will designate a faculty member to serve as a co-investigator, and state in writing to all concerned parties the reason for this selection. Pursuant to procedures established by the Faculty Senate, the faculty co-investigator must be selected from an elected pool of appropriately trained faculty members. The faculty co-investigator must collaborate fully with the WPLR investigator in all phases of the investigation.

Before making any decision following the investigation, the appropriate dean or equivalent unit head must forward to the complaining and charged parties, copies of the summary of the investigation report, and provide both parties a reasonable opportunity to submit written comments (that is, within 30 days). In addition, a copy of the report must be forwarded to the Dean of Faculty.

Contesting Findings From an Investigation of a Complaint Against Faculty

If the charged faculty member objects to the findings of the investigation report, but does not contend that his or her conduct arose out of the nature of a subordinate-supervisory relationship between the faculty member and the student (such as while engaged in teaching, advising, research, and thesis or dissertation supervision), or that the conduct is protected by academic freedom, he or she may appeal, and ask the appropriate dean or equivalent unit head to review the evidence, determination, and/or recommended sanctions, or remedial measures in the investigation report. The appropriate dean or equivalent unit head will conduct such a review, and may accept, modify, or reject the determination, or recommended sanctions and/or remedial measures.

If the charged faculty member objects to the findings of the investigation report, and contends that his or her conduct arose out of the nature of a subordinate-supervisory relationship between the student and faculty member, or was protected by academic freedom, he or she must submit, within 10 working days of receiving the report, a written request for a review of the complaint to the Committee on Academic Freedom and Professional Status of the Faculty ("the Committee"), with a copy to WPLR and the appropriate dean or equivalent unit head.

POLICY 6.4

Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PROCEDURES: PROHIBITED DISCRIMINATION AND PROTECTED STATUS (INCLUDING SEXUAL) HARASSMENT, CONTINUED

◆**Note:** The Committee's Procedures for "Adjudicating Contested Investigatory Charges and Recommended Sanctions in Discrimination or Harassment Cases" are described in Appendix C.

The Committee must make an initial determination within 10 working days of receiving the charged faculty member's request. If the Committee determines by majority vote that the alleged behavior did arise out of the nature of a subordinate-supervisory relationship, or that an issue of academic freedom is involved, it will make its own determination on the charges.

If the Committee determines that the alleged behavior did not arise out of the nature of a subordinate-supervisory relationship, or that no issue of academic freedom is involved, the Committee has no further role. It will make a written report on its findings of fact, and provide copies to the complainant and the accused, as well as to WPLR. WPLR then will forward its report of findings and recommended remedies to the appropriate dean or equivalent unit head for the final decision on appropriate sanctions.

The accused or the complainant may rebut to the appropriate dean or equivalent unit head the Committee's recommendations of any sanctions. An intention to rebut must be filed with the dean or equivalent unit head within three days of receipt of the Committee's final report. The completed rebuttal must be filed with the dean or equivalent unit head within two weeks of receiving of the Committee's final report. If the recommendations are appealed, the dean or equivalent unit head will refrain from considering the appropriate sanctions until the complete rebuttal has been filed.

The dean or equivalent unit head must accept the Committee's findings of fact and conclusions. However, he or she may modify the Committee's recommended sanctions. Before reaching a final decision concerning any modifications, he or she must explain the rationale for the decision in a written communication to the Committee and will consider the Committee's response to those modifications. If the dean or equivalent unit head seeks to impose the sanction of dismissal, the matter will be referred to the Trustees' Dismissal Procedures. This determination is final.

POLICY 6.4

Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PROCEDURES: PROHIBITED DISCRIMINATION AND PROTECTED STATUS (INCLUDING SEXUAL) HARASSMENT, CONTINUED

Grieving Disciplinary Action Resulting From an Investigation of a Complaint Against Faculty

University Policy 6.2.10, Establishment of College-Level Academic Grievance Procedures or any other applicable grievance procedure will govern any grieved or contested disciplinary action, other than contested cases involving academic freedom issues, which is the adjudicatory responsibility of the Committee on Academic Freedom and Professional Status of the Faculty.

◆**Note:** The Committee's Procedures for "Adjudicating Contested Investigatory Charges and Recommended Sanctions in Discrimination or Harassment Cases" are described in Appendix C.

Contesting Findings From an Investigation of a Complaint Against Staff

Complaints Against Staff

If the accused staff member does not object to an investigation report within 30 days of it being sent to him or her, and thereby agrees that the charges and sanctions and/or remedial measures presented therein are valid, the appropriate dean, vice president, or equivalent unit head will review and implement the sanctions and/or remedial measures recommended in the investigation report within 10 working days.

If the accused staff member contests the investigation report within the 30-day period, he or she may appeal and ask the appropriate dean, vice president, or equivalent unit head to review the evidence, determination, and/or recommended sanctions or remedial measures contained in the report. The appropriate dean, vice president, or equivalent unit head will conduct such a review, and may accept, modify, or reject the determination or recommended sanctions and/or remedial measures because of that review.

Grieving Disciplinary Action Resulting From an Investigation of a Complaint Against Staff

HR Policy 6.11.4, Staff Complaint and Grievance Procedure, governs grievance or contested employment action. The grievance procedures provided in the collective bargaining process apply to unionized employees. Non-faculty academic employees, such as librarians, may seek recourse under applicable grievance procedures.

Appealing Disciplinary Action

Complaints Against Student Employees

To appeal disciplinary action, student employees may resort to the grievance procedures provided by the Student Employment Office and the Office of the University Ombudsman.

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Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PROCEDURES: PROHIBITED DISCRIMINATION AND PROTECTED STATUS (INCLUDING SEXUAL) HARASSMENT, CONTINUED

Investigating a Complaint Against a Student (Excluding Student Employees)

Complaints Against Students (Excluding Student Employees)

Generally, the Office of the Judicial Administrator investigates and resolves complaints against students. For complaints against graduate or undergraduate teaching or research assistants arising out of the performance of assigned academic duties, procedures governing faculty apply.

POLICY 6.4

Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

PROCEDURES: BIAS ACTIVITY

◆ **Note:** All individuals involved in the reporting and/or review of incidents of Bias Activity must maintain the confidentiality of those proceedings.

Initiating a Report of Bias Activity

Faculty, staff, and students are encouraged to report bias activity, including hate crimes, either experienced directly or observed, that occur within the university's jurisdiction or in the course of university activity, to the Office of Workforce Diversity and Inclusion (WDI) and comply with that office's procedures for resolution. They also may report the matter to a bias reporting team member. To find a member, see www.ohr.cornell.edu/contactHR/workLifeDiversity/index.html

If the activity is reported to a bias reporting team member, he or she will complete a "Bias Activity Report" and refer the complainant to the appropriate office for support and guidance. The team member will also provide a copy of the completed "Bias Activity Report" to the WDI.

Responding to Bias Incidents

Affected members of the Cornell community will be referred to support services and resources and, where appropriate, the Cornell University Police Department.

◆ **Note:** If the alleged respondent comes to be identified as a member of the university community, procedures relating to prohibited discrimination and protected status harassment may apply.

POLICY 6.4

Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

APPENDIX A: TITLE IX MEDIATION AND COMPLAINT RESOLUTION PROCEDURE

Title IX Mediation and Complaint Resolution

Complaints alleging discrimination in participation in interscholastic and intercollegiate athletics based on Title IX of the Education Amendments of 1972 must be directed to the Title IX Compliance Officer: Director, Office of Workforce Policy and Labor Relations, 391 Pine Tree Road, Ithaca, NY 14850. Complaints alleging any other sexual discrimination or harassment in educational opportunities will continue to be administered by WPLR under University Policy 6.4, Prohibited Discrimination, Protected Status (Including Sexual) Harassment, and Bias Activity, which establishes an internal university procedure to address sexual and protected status harassment and complaints of discrimination and bias activity.

Title IX Mediation and Complaint Resolution Procedure

A. Mediation Process

WPLR will offer to arrange a mediation of any dispute under Title IX upon request of any person involved or alleged to be involved in the dispute. Attempts at mediation may occur without filing a written complaint or at any time after a written complaint has been filed.

B. Complaint Resolution Process

Upon receipt of a written complaint, WPLR will conduct an informal investigation in accordance with the Investigation Process, except as indicated below. For information about the investigation process, see Appendix B. To initiate, and during the course of, an investigation, the following standards are observed:

1. An informal investigation will be conducted by WPLR upon receiving a discrimination complaint. This procedure affords the complainant and the person(s) against whom the allegation(s) of discrimination have been made an opportunity to submit information and documentation regarding the complaint allegations.
2. The investigation will be completed with a written determination issued and forwarded by WPLR to the appropriate university official within 45 working days of the receiving the complaint. The determination will contain the following information:
 - a. Statement of the issues under review.
 - b. The position of the parties.
 - c. A finding of facts resulting from the investigation.
 - d. A recommendation of action(s), if any, to be taken by the appropriate campus official. The factual findings contained in the determination will be binding upon the appropriate university official for the purposes of this determination.

POLICY 6.4

Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

APPENDIX A: TITLE IX MEDIATION AND COMPLAINT RESOLUTION PROCEDURE, CONTINUED

3. The appropriate campus official will make the determination about the action to be taken, if any, and will discuss the decision with WPLR before taking action if the action is to be different from that recommended.
4. After the decision is made, the appropriate campus official will notify the parties promptly, in writing of the disposition of the complaint. In the event that discipline of an employee is to be undertaken or the decision involves other elements personal to the accused or the complainant, information provided to the complainant and the accused will be in accordance with university policies governing the disclosure of such information.
5. A party may appeal the decision by submitting a written document to the Vice President for Academic and Student Services, 311 Day Hall, Ithaca, NY 14853. An appeal will be considered only if the party specifies with particularity the errors in the investigator's determination, such as inaccurate findings of fact or incorrect conclusions of law, the correction of which likely would change the outcome of the investigation determination. The appeal must be either postmarked by or received within 14 calendar days of the date of the determination. The decision by the Vice President on the appeal will be final and not subject to further review. A written decision on the appeal will be forwarded to the parties within 30 working days of the Vice President's receipt of the appeal.
6. Although the university will make every effort to comply with these timelines, circumstances such as school breaks, or other matters, may require an extension of time.

POLICY 6.4

Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

APPENDIX B: THE INVESTIGATION PROCESS

The Investigation Process: Features and Steps

The investigation process for investigating complaints of prohibited discrimination and protected status (including sexual) harassment will be distinct from the mediation process. The same person may not perform the functions of mediator and investigator in a single case. Investigations conducted by the Office of Workforce Policy and Labor Relations (WPLR), or by the WPLR and a faculty co-investigator, will be guided by the following process:

1. Identify the individual alleged to have discriminated against or harassed the complainant (the accused).
2. Thoroughly ascertain all facts in connection with the alleged incident, beginning by initially and separately interviewing the complainant and the accused.
3. Ask how the complainant responded to the alleged discrimination or harassment and determine what efforts were made, if any, at informal resolution of the matter.
4. During the first interview with the accused, inform the accused of all of the charges being made, and remind the alleged respondent of the university's policy against retaliation for making a complaint of discrimination or harassment.
5. Determine the frequency and type of the alleged discrimination or harassment and, if possible, the dates and locations where the alleged discrimination or harassment occurred.
6. Develop a thorough understanding of the professional relationship, degree of control, and amount of interaction between the two parties.
7. Determine whether the complainant knows of or suspects that the accused has discriminated against or harassed other individuals.
8. Present to the accused all of the charges under investigation along with the evidence supporting them; ask for the accused's explanation of the alleged behavior; as appropriate, interview witnesses proposed by the accused; receive any other evidence that the accused wishes to present; and thoroughly examine and evaluate the rebuttals made by the accused.
9. Determine whether the complainant informed other parties or supervisors of the situation and what response, if any, the complainant received from these individuals.

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APPENDIX B: THE INVESTIGATION PROCESS, CONTINUED

10. Interview, as appropriate, witnesses who observed, or were told about, the alleged discrimination or harassment.
11. Remind all parties and witnesses of the need for confidentiality.
12. Review, as appropriate, personnel files maintained by departments and/or administrative units; previously concluded mediation agreements; previous records of findings for the charge of discrimination or harassment; and, after giving notice to the individual(s) to whom the files or records pertain and an opportunity for that individual(s) to raise objections, other relevant files and records not in WPLR's possession. The Vice President for Human Resources will rule upon any objections.

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APPENDIX C: ADJUDICATING CONTESTED INVESTIGATORY CHARGES AND RECOMMENDED SANCTIONS IN DISCRIMINATION OR HARASSMENT CASES

Committee on Academic Freedom and Professional Status of the Faculty Procedures for Adjudicating Contested Investigatory Charges and Recommended Sanctions in Discrimination or Harassment Cases

◆**Note:** Each year, the Office of Workforce Policy and Labor Relations (WPLR) must train members of the Committee on Academic Freedom and Professional Status of the Faculty (the "Committee") to recognize prohibited discrimination and protected status harassment.

I. General Provisions

1. Any member of the Committee whose personal or professional relationships might interfere with providing a fair and unbiased hearing will recuse himself or herself from the proceedings. A member of the Committee who is in the same department as the accused will recuse himself or herself.¹ The charged and complainant or parties may challenge any member of the Committee who does not recuse him or herself. Following such a challenge, if a majority of the other members of the Committee present and voting, not including recused members and student members, votes in favor of recusal, then the challenged member will recuse himself or herself.
2. The remaining members of the Committee, not including recused members and student members, will participate in the proceedings. If there are fewer than five such remaining members of the Committee, the Committee will decline to hear the grievance until the Nominations and Elections Committee of the Faculty Senate adds members to the Committee to make a complement of five participating members. The participating members will be referred to hereinafter as the "members of the Committee."
3. A majority of the members of the Committee will constitute a quorum for any hearing. Decisions of the Committee will be rendered by a majority vote of the members present and voting. The Chair (paragraph five) will not vote on any matter except in the case of a tie.
4. Each person who appears before the Committee will be advised that he or she is obligated to treat everything that he or she learns in the proceedings as confidential, and may not disclose this information to any other person, unless compelled by law to do so.
5. The members of the Committee will elect a chair from among themselves. Subject to paragraph six, the chair will control the conduct of all proceedings and will make such procedural rulings as may be

¹ For purposes of this sentence The Hotel School, the Johnson Graduate School of Management, the Law School, and the School of Industrial and Labor Relations will be treated as departments.

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APPENDIX C: ADJUDICATING CONTESTED INVESTIGATORY CHARGES AND RECOMMENDED SANCTIONS IN DISCRIMINATION OR HARASSMENT CASES, CONTINUED

necessary to assure fairness and to avoid unnecessary delay, including rulings on the relevance of suggested witnesses or lines of questioning. The Committee may overrule any such ruling by a majority vote of the members present and voting.

6. The Committee may appoint a faculty member who is a member of a state bar to serve as an independent legal advisor to advise the Committee on all matters relating to the performance of its responsibilities hereunder. The legal advisor will not be a Committee member and will not have a vote in the Committee's decisions. At the invitation of the Committee, the legal advisor may be present at any time during the proceedings and during the Committee's deliberations. The chair may authorize the legal advisor to control the conduct of the proceedings and to make procedural rulings. The Committee, by a majority vote of the members present and voting, may withdraw this authority at any time and may overrule any procedural ruling made by the legal advisor.
7. The Committee will recommend that the Faculty Senate maintain a list of individuals who have agreed to serve as volunteer advisors or attorneys for the parties in the Committee's proceedings. Nothing in these procedures will be interpreted, however, to obligate the Faculty Senate or the Committee to guarantee that the accused and the complainant or parties will be able to obtain the services of an advisor or attorney.
8. The Committee has a responsibility to conduct fair and even-handed proceedings, and to see that all parties and witnesses are treated in a polite, respectful manner.
9. The Committee will conduct formal hearings as provided in Section III, unless the accused waives his or her right to such hearings, in which case the Committee will conduct informal proceedings as provided in Section II. Any waiver of the right to formal hearings will be irrevocable.

II. Informal Proceedings

10. This Section will apply only if the accused waives his or her right to formal hearings. Section III will not apply in such a case.
11. The Committee will invite the accused to explain why he or she feels that the charges and/or recommended sanction of the investigation report are unjustified. The accused may be accompanied by an advisor or attorney of his or her own choice, who may advise the accused but may not participate in the proceedings in any other way.
12. The Committee may also call the complainant or parties and any witnesses. A complainant or witness who is called may be accompanied by an advisor or attorney of his or her own choice, who may advise the complainant or witness but may not participate in the proceedings in any other way.

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III. Formal Hearings

13. The university will provide an attorney whose sole responsibility in these proceedings will be to support the charges and recommended sanctions of the investigation report. This attorney will be entitled to present witnesses and cross-examine witnesses (including the complainant or parties and the accused) who appear before the Committee.
14. The accused will be entitled to be accompanied and represented by an advisor or attorney of his or her own choice.
15. The accused will be entitled to be present throughout the hearings and, either personally or through his or her advisor or attorney, will be entitled to give evidence and to present witnesses on his or her own behalf, to hear the evidence against him or her, and to confront and cross-examine adverse witnesses (including the complainant or parties) who appear before the Committee.
16. The Committee will encourage WPLR to turn over to the accused all exculpatory evidence in their investigatory files.
17. Each complainant will be entitled to be accompanied and represented by an advisor or attorney of his or her own choice.
18. Each complainant, either personally or, if accompanied and represented by an advisor or attorney, through that advisor or attorney, will be entitled to give evidence and to present witnesses on his or her behalf and to confront and cross-examine adverse witnesses (including the accused) who appear before the Committee.
19. Witnesses may raise objections to any question posed to them, either personally or, if represented by an advisor or attorney, through that person. The Committee will rule on such objections in accordance with paragraphs five and six.
20. The members of the Committee may question all those who appear in the hearings. The members of the Committee may adjourn temporarily to consult concerning the questions to be asked.
21. The Committee will endeavor to evaluate all of the relevant facts of a given case. The university, the complainant, and the accused, may offer evidence. The Committee will not convict the accused unless the Committee, after evaluating all of the evidence, is satisfied that the charge has been proven by clear and convincing evidence.
22. Prior convictions of prohibited discrimination or protected status harassment and prior mediation agreements in such cases will be admissible. Records of prior accusations not leading to convictions and records concerning similar behavior not subject to the complaint(s) in the case will not be admissible. Testimony about prior accusations or similar behavior will be admissible.

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APPENDIX C: ADJUDICATING CONTESTED INVESTIGATORY CHARGES AND RECOMMENDED SANCTIONS IN DISCRIMINATION OR HARASSMENT CASES, CONTINUED

23. The Committee will base its findings of fact and conclusions solely on the evidence presented at the hearings.
24. All hearings will be tape-recorded. The Committee will permit the accused and the complainant or parties to listen to the tape recordings upon request. However, the parties may not take any written notes of the recordings.

IV. Decision and Report

25. The Committee will decide by a majority vote of the members present and voting whether there is clear and convincing evidence to find that the accused is guilty of each of the charges specified in the investigation report. Only those members who attended all of the hearings may vote. The Chair will not vote except in the case of a tie.
26. The Committee will make a written report setting forth the Committee's findings of fact, conclusions, and recommendations. The Committee will transmit this report to the appropriate dean or equivalent unit head, the accused, each complainant, and WPLR. Before being given a copy of the Committee's report, the accused and each complainant will be required to sign a statement of confidentiality affirming that he or she will not divulge the contents of the report to any other person, unless compelled to do so by law. The Committee's report will include a discussion of the rationale for its findings of fact, conclusions, and recommendations.
27. The accused, a complainant, or WPLR may appeal the Committee's findings of fact and conclusions to the University Faculty Committee, as provided for in Cornell University Policy 6.4. Following the conclusion of an appeal, the accused, a complainant, or WPLR may rebut the Committee's recommendations concerning sanctions to the appropriate dean or equivalent unit head, as provided in Cornell University Policy 6.4.
28. The Committee will have discretion to release a public statement of its findings of fact, conclusions, and recommendations. In exercising its discretion, the Committee will take into account concerns about confidentiality.
29. These procedures and any subsequent amendments will become effective upon ratification by the Faculty Senate.

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APPENDIX D: ROMANTIC AND SEXUAL RELATIONSHIPS BETWEEN STUDENTS AND STAFF

The following resolution was adopted by the Faculty Council of Representatives on November 8, 1995, and approved by the President and Provost as Cornell University Policy on September 18, 1996.

The relationships between students and their teachers, advisors, coaches, and others holding positions of authority over them should be conducted in a manner that avoids potential conflicts of interest, exploitation, or personal bias. Given the inherent power differential, the possibility of intentional or unintentional abuse of that power should always be borne in mind. For example, a conflict of interest arises when an individual evaluates the work or performance of a person with whom he or she is engaged in a romantic or sexual relationship.

Romantic or sexual relationships between students and persons in positions of authority compromise the relationship between students and the university. No member of the university community should simultaneously be romantically or sexually involved with a student whom he or she teaches, advises, coaches, or supervises in any way. Individuals in such positions of authority must not allow these relationships to develop or continue.

In unusual circumstances, the supervising dean¹ of the person in a position of authority may grant an exemption from this policy when full severance of the university relationship would create undue academic or financial hardship for the student.

¹The “supervising dean” will mean the dean of the school or college of the staff member's primary appointment. In the case of graduate students, the Dean of the Graduate School; in the case of staff members holding appointments in centers, the Vice Provost for Research and Advanced Studies; and for Student and Academic Services for staff members holding appointments in that division, the Vice President.

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APPENDIX E: EXAMPLES OF PROHIBITED DISCRIMINATION AND PROTECTED STATUS (INCLUDING SEXUAL) HARASSMENT

Prohibited Discrimination

Discriminatory conduct may take many forms and includes, but is not limited to, the following types of conduct when it is based upon a person's EEO-protected class status:

- Denying an opportunity for which an individual is qualified
- Not considering a person for an opportunity that is open to others
- Paying disparate wages for equal work in positions that require equal skill, effort, and responsibility and that are performed under similar working conditions (except in cases of a seniority system; a merit system; a system that measures earnings by quantity or quality of production; or a differential based on anything other than an Equal Employment Opportunity (EEO)-protected class status)
- Singling out or targeting a person for different or adverse treatment because of his or her EEO-protected class status
- Failure to provide reasonable accommodation for a disability or religious belief or practice (unless the employer can establish that providing such reasonable accommodation will create an undue hardship on the operation of the business or academic program, or will violate another university policy)
- Reinforcing the use of stereotypes that unreasonably impact a person's environment or opportunities
- Failing or refusing to hire, discharging an employee, or discriminating against an individual in admission to, or employment in, any program established to provide apprenticeships or other training or retraining, because of genetic information with respect to the employee that, for example, reveals the potential manifestation of a disease or disorder.
- Failing or refusing to hire or promote, or discharging an employee because of known or suspected caregiver responsibilities. For example, denial of promotion based on sex-based stereotypes that mothers with young children neglect their work duties or are unwilling to travel.

◆**Note:** In the employment context, excluding student employment, the university has a/an selection/employment program that must comply with federal affirmative action regulations. These regulations permit the establishment and use of numerical goals to insure that the university meets its affirmative action obligation. These

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Prohibited Discrimination, Protected Status (Including Sexual) Harassment and Bias Activity

APPENDIX E: EXAMPLES OF PROHIBITED DISCRIMINATION AND PROTECTED STATUS (INCLUDING SEXUAL) HARASSMENT, CONTINUED

regulations prohibit the use of goals to discriminate against any applicant or employee because of his or her EEO-protected class status.

Protected Status Harassment

Harassment may take many forms and includes, but is not limited to, the following conduct when it is direct and based upon a person's EEO-protected class status:

- Making direct or implied threats
- Making bias-motivated jokes or statements
- Establishing a pattern of conduct that could be construed as harassment by a reasonable person
- Committing a bias or hate crime

Sexual Harassment

Sexual harassment can take many forms, and the determination of what constitutes sexual harassment will vary according to the particular circumstances.

◆**Note:** Sexual harassment may involve behavior by a person of either sex against a person of the same or opposite sex.

Examples of sexual harassment may include, but are not limited to, the following types of behavior:

- Seeking sexual favors or relationships in return for the promise of a favorable grade or other academic opportunity
- Conditioning an employment-related action (such as hiring, promotion, salary increase, or performance appraisal) on a sexual favor or relationship
- or -
- Making intentional and undesired physical contact
- Using sexually explicit language or writing, lewd pictures or notes, and other forms of sexually offensive conduct

The first two examples illustrate what is characterized as “quid pro quo” sexual harassment.

When individuals in positions of authority or co-workers exhibit the last two behaviors, and doing so interferes unreasonably with a person’s ability to perform his or her employment or academic responsibilities, they are known to be creating a “hostile environment.”

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APPENDIX E: EXAMPLES OF PROHIBITED DISCRIMINATION AND PROTECTED STATUS (INCLUDING SEXUAL) HARASSMENT, CONTINUED

A hostile environment is created by unwelcome sexual behavior toward another employee or a student "that is sufficiently severe or pervasive to alter the conditions of the victim's employment" or academic pursuits, and creates a work or educational environment that a reasonable person would find abusive. *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986).

Isolated instances (for example, a sexual overture, comment, or joke) ordinarily will not constitute sexual harassment unless the circumstances are egregious. Also, welcomed sexual behavior does not constitute harassment.

◆**Note:** Romantic or sexual relationships between students and those with authority over them is prohibited by university policy. For more information, see Appendix D.

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