



*Discrimination and Harassment
Investigation and Response Procedures*

Approved by the Board of Trustees
May 13, 2017

Discrimination and Harassment Investigation and Response Procedures

I. INTRODUCTION

Pomona College is committed to maintaining an environment of mutual respect among its students, faculty, staff and other members of the Pomona College and the Claremont Colleges community. All forms of discrimination and harassment, whether on the basis of sex, gender identity and expression, pregnancy, religion, creed, color, race, national or ethnic origin, ancestry, sexual orientation, medical condition, physical or mental disability, age, marital status, veteran status, family care leave status, genetic characteristics and information, or any other basis described in the College's Non-Discrimination Policy or otherwise prohibited by state or federal law, undermine that foundation of respect and violate the sense of community vital to the College's educational mission.

These Discrimination and Harassment Investigation and Response Procedures ("Procedures") reinforce the College's Non-Discrimination Policy's strict prohibition of discrimination against, or the harassment of, any individual at the College or at College activities occurring away from campus, including but not limited to all individuals regularly or temporarily employed, studying, or with an official capacity at Pomona College (such as Trustees, guest lecturers, volunteers, and contractors). Persons violating the Non-Discrimination Policy will be subject to disciplinary action up to and including discharge from employment, or expulsion from the College. Nothing in this Policy alters an employee's at will employment status.

Certain types of discrimination and harassment complaints will be addressed under some of the College's other policies. **Sexual misconduct offenses, which are a form of sexual harassment, are exclusively processed pursuant to the College's Sexual Misconduct, Harassment and Discrimination Policy and Procedures ("Sexual Misconduct Policy").** Gender discrimination involves treating someone unfavorably on the basis of that person's gender. When a complaint contains both sexual misconduct or gender discrimination claims as well as other claims of harassment and discrimination (e.g., race, religion, national origin), all related complaints will be investigated and adjudicated (if appropriate) under the College's Sexual Misconduct Policy.

It is the responsibility of all faculty, staff and students at the College to ensure compliance with the Non-Discrimination Policy. Individuals who believe they are being harassed or discriminated against, have observed harassment of, or discrimination against, another person at the College, or believe such conduct has occurred, should immediately report the incident following these Procedures.

Because harassment and discrimination can also constitute violations of federal and state law (Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and/or Section 12940 of the State of California Government Code), individuals who feel that they have been subjected to harassment or discrimination may, in addition to notifying the

College by using the complaint reporting procedures below, file a complaint with the appropriate state or federal agencies, as detailed below.

Consistent with California Education Code Section 94367, the definition of harassment contained in this policy and its application to student speech shall be subject to the limitations of the First Amendment to the United States Constitution and Article 1, Section 2 of the California Constitution.

As an educational institution, Pomona College is committed to the principle of free expression and the exploration of ideas in an atmosphere of civility and mutual respect. Thus, in keeping with the principles of academic freedom, there can be no forbidden ideas.

Pomona College also recognizes that the educational process can often be disturbing and unsettling, particularly when one's current ideas or values are being challenged. This means that the learning, working, and living environments might not always be comfortable for all members of the College community. The College does not proscribe speech simply because it is offensive, even gravely so. In determining whether an act constitutes discrimination or harassment, the context must be carefully reviewed and full consideration must be given to protection of individual rights, freedom of speech, and academic freedom.

II. SCOPE OF PROCEDURES

These Procedures apply to all Pomona College faculty, staff, students, and third parties, such as campus visitors and vendors who may have contact with members of the College community either on the College's campus or at other College events and programs. Students employed by the College will be considered students for purposes of these Procedures. If the subject of the complaint (hereafter referred to as "Respondent") is an employee or student from one of the other Claremont Colleges or the Claremont University Consortium ("CUC"), the College will investigate the matter and take steps to stop the conduct and remedy its effects to the extent reasonably possible; however, procedures related to any disciplinary action against the Respondent will be those of the Respondent's home institution. Throughout the complaint, investigation and/or disciplinary process, the College will maintain its authority to take action to ensure the rights of the parties. In addition, as to Respondents who at any time were previously enrolled at the College, the College's jurisdiction and disciplinary procedures extend to harassment and discrimination which occurs on Claremont Colleges premises, at an activity sponsored by any of the Claremont Colleges, and conduct which occurs off campus, even if it occurs outside of an academic term or when the student is not otherwise enrolled at the College. Moreover, the College retains the authority to administer this Policy with respect to any such conduct by a student Respondent (while a student) even if the student subsequently graduates, withdraws, takes leave, or is otherwise absent from the College, and even if the College does not learn of such conduct until after the student graduates, withdraws, takes leave, or is otherwise absent from the College.

These Procedures are administrative in nature and are separate and distinct from the criminal and civil legal systems. A complainant who uses these Procedures is not precluded from pursuing legal action now or in the future. If the conduct in question is alleged to be a

violation of both College policy and public law, the College will proceed with its normal process, regardless of action or inaction by outside authorities. Decisions made or sanctions imposed through these or other College procedures are not subject to change because criminal or civil charges arising from the same conduct are dismissed, reduced, or rejected in favor of or against the Respondent, unless otherwise compelled by a court of competent jurisdiction.

In the event of a conflict with any other Claremont Colleges policy, these Procedures will prevail. Changes to these Procedures may be made with the approval of the Board of Trustees and/or the President.

III. PROHIBITED CONDUCT UNDER NON-DISCRIMINATION POLICY

These Procedures specifically apply to **Discrimination, Harassment or Retaliation** prohibited on any basis described in the College's Non-Discrimination Policy or otherwise prohibited by state or federal law.

Discrimination involves treating someone unfavorably on the basis of any of the characteristics enumerated in the College's Non-Discrimination Policy. Discrimination also can involve treating someone less favorably because of his or her connection with an organization or group that is generally associated with people sharing any of these characteristics.

Harassment refers to unwelcome behavior that is offensive, fails to respect the rights of others and interferes with work effectiveness. Forms of harassment under the Non-Discrimination Policy include, but are not limited to the following:

- a. Verbal: Innuendos, epithets, derogatory slurs, off-color jokes, threats, suggestive or insulting sounds.
- b. Visual/Non-Verbal: Derogatory posters, cartoons or drawings; offensive emails, objects or pictures; graphic commentaries; obscene gestures.
- c. Physical: Unwanted physical contact including touching; interference with an individual's normal work or movement; assault.

IV. PROCEDURES FOR INITIATING HARASSMENT AND DISCRIMINATION COMPLAINTS

These Procedures govern the reporting, initial review, investigation, and resolution of complaints of alleged violations of the Non-Discrimination Policy (not otherwise within the scope of the Sexual Misconduct Policy) when they involve Pomona College students, faculty, staff, and/or third-party Respondents.

A. Reporting Alleged Harassment and/or Discrimination

Individuals who believe they have been subjected to harassment and/or discrimination, or have witnessed such conduct, are encouraged to report such conduct immediately to the following College representatives:

Harassment and Discrimination Grievance Coordinator (“Grievance Coordinator”)

Brenda Rushforth, Assistant Vice President/CHRO
909-607-1686; Email: brenda.rushforth@pomona.edu
Office: Pendleton Building

Grievance Intake Officers (“Intake Officers”):

Lisa Beckett, Professor of Physical Education and Associate Director of Athletics
909-621-8428; Email: lisa.beckett@pomona.edu
Office: Rains Center 225

Fernando Lozano, Associate Professor of Economics and Associate Dean of the College
909-621-8518; Email: fernando.lozano@pomona.edu
Office: Carnegie Building 215

Ellie Ash-Bala, Associate Dean, Student Affairs; Director, Smith Campus Center
909-621-8611; Email: ellie.ash-bala@pomona.edu
Office: Smith Campus Center Suite 244

B. Evaluation of Complaint for Possible Violation of the Sexual Misconduct Policy

In appropriate circumstances, Intake Officers will confer with the Title IX Coordinator who will determine if the complaint brought under these Procedures implicates elements of the College’s Sexual Misconduct Policy. If the Title IX Coordinator determines that the complaint involves the Sexual Misconduct Policy, then all aspects of the complaint (including other claims of harassment and/or discrimination outside the scope of the Sexual Misconduct Policy) will be investigated and adjudicated (as appropriate) under the College’s Sexual Misconduct Policy.

C. Expectations of Privacy

The College will make all reasonable efforts to maintain the privacy of the parties involved in an investigation for a complaint as well as the privacy of the details of an investigation and, except where permitted by law, the sanctions imposed. This may include redacting private, sensitive information unrelated to the facts and circumstances of the case pursuant to the federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) and other privacy protections, as well as the College’s instant Procedures. In

cases involving students, all documents provided as part of an investigation may not be disclosed to any other party under FERPA as such documents constitute education records which may not be disclosed outside of the proceedings, except as may be required or authorized by law. All investigations will be considered private matters that will not be discussed outside the process; this includes any witnesses.

Complainants and Respondents are not prohibited from sharing details of complaints with their family/partner. Those persons are also expected to maintain the same level of privacy as Complainants and Respondents.

D. Retaliation Policy

Retaliation is defined as the taking of an adverse action by any student, faculty or staff member against another individual as a result of that individual's exercise of a right under these Procedures, including participation in the reporting, investigation or disciplinary process. Retaliation includes adverse actions intended to improperly deter involvement of another in these Procedures, and may involve actions intended either to intimidate or to penalize individuals for their participation. Retaliation is strictly prohibited by law and by various College policies; any person who is found to have engaged in retaliation shall be subject to disciplinary action. Persons who believe that they have been retaliated against for making a complaint/report or for cooperating in an investigation or disciplinary process should immediately contact the Grievance Coordinator.

A complaint filed in good faith under these Procedures shall not constitute retaliation. A complaint by an individual against another based on the filing of a knowingly false complaint may be pursued using the steps followed for harassment and discrimination-related complaints as outlined in these Procedures and may be filed only after there is completion of the underlying complaint. However, it is a violation of these Procedures to file a knowingly false complaint of alleged discrimination and/or harassment.

E. The Grievance Coordinator's Intake and Initial Review of a Complaint

1. The Grievance Coordinator and Grievance Coordinator's Team

The Grievance Coordinator's primary jobs are to administer these Procedures in order: (i) to provide equitable and prompt resolution of complaints and (ii) to uphold the College's Non-Discrimination Policy. At any time, the Grievance Coordinator may appoint a designee to fulfill some or all of its duties as set forth in these Procedures.

Although a report may come in through many sources, the College is committed to ensuring that all reports of harassment and/or discrimination are referred to the Grievance Coordinator, ensuring consistent application of these Procedures.

The Grievance Coordinator may enlist the Grievance Coordinator's Team to assist in the review, investigation, and/or resolution of the complaint. Members of this team include the Grievance Coordinator, its designee and intake officers. At any point during the process, from

initial intake through the final resolution, the Grievance Coordinator and the Grievance Coordinator's Team may consult with appropriate experts or with the College's legal counsel.

Depending on the relationship of the Complainant and the Respondent to the College (student, staff, faculty, or other) and the nature of the complaint, additional Grievance Coordinator's Team members may include representatives from other Pomona or CUC offices as necessary, such as Campus Safety, Dean of Students, Dean of the College, or the College's Office of Human Resources. The members of this Team oversee the resolution of the reported harassment or discrimination through these Procedures.

2. Meeting with Complainant

The first step of the Initial Review will typically include an initial meeting between the Complainant and the Grievance Coordinator or a member of the Grievance Coordinator's Team. The purpose of the meeting is to gain a basic understanding of the nature and circumstances of the complaint; it is not intended to be a full investigation interview. At this meeting, the Complainant will be provided with information about resources and procedural options (including informal resolution/mediation options, if appropriate).

3. Interim Measures

The College may take whatever measures it deems necessary in response to an allegation in order to protect an individual's rights or those of the broader College community, or if determined to be necessary to ensure the integrity of the investigation or adjudication process.

Determinations regarding interim measures are made by the Grievance Coordinator or, when appropriate, the designated Grievance Coordinator's Team member, on a case-by-case basis. Such measures include, but are not limited to, an interim suspension (immediate, temporary suspension pending the outcome of investigation and/or disciplinary process), a "no contact" letter (an order that an individual refrain from direct or indirect contact with another person or persons), restrictions on access to campus or areas of campus, and/or appropriate changes in academic/work schedule/worksite location.

Interim measures assume no determination of responsibility. Both parties will receive a document setting forth the interim measures that have been deemed appropriate. The Grievance Coordinator may increase, reduce or otherwise adjust interim measures as appropriate based on feedback from Complainants and Respondents.

Failure by any individual to adhere to the parameters of any interim measure is a violation of College policy and may lead to disciplinary action. Individuals are encouraged to report such failures by another party to the Grievance Coordinator. Depending on timing and other circumstances, allegations that an individual has violated any interim measure may be investigated and/or adjudicated (where appropriate) separately from or as part of an ongoing matter.

4. Conclusion of the Initial Review

At the completion of the Initial Review, the Grievance Coordinator will determine whether to refer the report for further investigation. The Complainant may choose not to go forward with an investigation; however, the College has the discretion to take any measures that ensure that any discrimination or harassment is remedied.

The Grievance Coordinator or a member of the Grievance Coordinator's Team will discuss the determination with the Complainant and provide information to assist in understanding available resources and procedural options, which will be communicated to the Complainant in writing.

The Grievance Coordinator will separately inform the Complainant and the Respondent that retaliation is prohibited by law under the Title VII, and California state law (e.g., Fair Employment and Housing Act), as well as College policy.

NOTE: Student Respondents will not be eligible to be considered for graduation until the completion of the entire process, including investigation and disciplinary review (if applicable). In such circumstances, fair and reasonable efforts will be made to expedite the process, including seeking the cooperation of all parties.

F. Reporting Options Outside of the College: State and Federal Enforcement Agencies

The College's internal procedures are administrative in nature and are separate and distinct from the criminal and civil legal systems. Pursuing resolution through these procedures does not preclude someone from pursuing legal action now or in the future.

1. Prohibited Harassment and Discrimination in Employment-Reporting to State and Federal Enforcement Agencies

In addition to the College's internal remedies, staff, faculty and students should also be aware that the agencies below investigate and prosecute complaints of prohibited harassment and discrimination in employment and the broader campus environment (as appropriate). These agencies may be contacted at the addresses listed below:

Equal Employment Opportunity Commission (EEOC) Los Angeles District Office

255 East Temple Street, 4th Floor
Los Angeles, CA 90012
(213) 894-1000

Department of Fair Employment and Housing (DFEH) Los Angeles Office

611 W. Sixth Street, Suite 1500
Los Angeles, CA 90017
(213) 439-6799

2. Prohibited Harassment and Discrimination - Reporting to Federal Enforcement Agencies

Students, staff and faculty also have the right to file a formal complaint with the United States Department of Education:

Office for Civil Rights (OCR)

400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

V. INVESTIGATION PROCEDURES FOR DISCRIMINATION/HARASSMENT COMPLAINTS (NON-GENDER-BASED)

The following procedures apply once a determination has been made by the Grievance Coordinator to proceed with an investigation, and where appropriate, disciplinary review. These procedures will normally be completed within 90 calendar days of receipt of the Complainant's written statement or a written statement by the Grievance Coordinator, although the process may sometimes take longer.

A. Appointment of Investigators

The Grievance Coordinator will select investigator(s), who may either be external, third-party or an internal investigator employed by the College.

The Grievance Coordinator will promptly notify the parties of the identity of the Investigator(s). If a party objects to the proposed Investigator's involvement based upon a perceived conflict of interest, the party must provide written notice to the Grievance Coordinator within three (3) calendar days from the notification explaining the conflict of interest. A conflict of interest occurs where an individual's personal interests or relationships conflict with their ability to be a neutral fact finder in a particular case. For example, if a member has also served as an advisor for a party to a complaint or has a close personal relationship with one of the parties, there may be a conflict of interest. The Grievance Coordinator will promptly rule on the objection and provide notice to the parties. If a conflict of interest is found, the Grievance Coordinator will expedite selection of another Investigator(s), and shall promptly notify the parties of the selection.

B. Written Statement by Complainant

As part of the investigation process, the Grievance Coordinator or other investigator may ask, but may not require, the Complainant to submit a signed, written statement concerning the allegations. This statement should contain all relevant details, such as the names of the people

involved, the names of any witnesses, and the times and locations of the alleged discriminatory or harassing behavior.

C. Investigation Structure

In conducting an investigation, the Investigator will be particularly sensitive to concerns regarding retaliation relating to an individual's participation in the process as a party or witness. The Investigator will conduct interviews as needed with all appropriate individuals, including the Complainant and Respondent, and will gather any pertinent evidentiary materials.

After concluding the investigation, the Investigator will draft an Investigation Report summarizing witnesses interviewed, evidentiary materials gathered, and conclusions concerning any violations of College policy. The Investigation Report shall identify the evidence (or lack thereof) considered material to the Investigator's finding(s). The Investigator shall use the preponderance of the evidence standard of proof in resolving the complaint ("more likely than not").

1. Cases Involving Student and Faculty Respondents

Once the Investigation Report is completed, the Grievance Coordinator will provide a copy of the Investigation Report to the parties for review (redacted if appropriate).

After receiving the Investigation Report, the parties may submit a written response to the Grievance Coordinator for transmission to the College's Investigator. Such written responses, if any, must be submitted within seven (7) calendar days after receipt of Investigation Report. Exceptions to the seven-day period will be limited and rare.

Through this written response, either party may identify improper investigative procedures and/or the discovery of new evidence that was not reasonably available at the time of the investigation interviews. Any party asserting improper investigative procedures should outline additional steps that party believes are necessary for a proper investigation, including:

- Posing any follow-up issues or questions for any witness, the Complainant or Respondent;
- Requesting a follow-up interview with the Investigators to clarify or provide any additional information that such party believes is relevant to the investigation or to seek clarification from the Investigator on aspects of the Investigation Report;

Any party asserting new evidence should clearly identify that evidence, including:

- Identifying any new witnesses who should be interviewed (including a description of what topics/issues the witness should be asked to address and why this is necessary for the investigation); and
- Explaining any additional new evidentiary materials that should be collected and reviewed to the extent that such items are reasonably available (e.g., emails, text messages, social media postings, etc.), understanding that the Investigator lacks the power to subpoena evidence.

Any response to the Investigation Report shall not exceed 5,000 words (approximately 20 pages, double-spaced). The Grievance Coordinator will also ensure that each of the parties will receive any response submitted by the other party. Late submissions will not be accepted.

The Investigator has seven (7) calendar days from receipt of these documents to review these submitted responses and related documents and make a determination of whether there were improper investigative procedures and/or whether there is new evidence, as defined in this section of the Policy, and make any of following decisions: (i) revise the Investigation Report; (ii) conduct further investigation; or (iii) review and reject claims of improper investigative procedures/new evidence.

If the Investigator confirms that it is more likely than not that a respondent is responsible for violating College policy, the Investigator prepares a Statement of Policy Violation, which will summarize why the College believes it is more likely than not that the alleged conduct did occur and the Respondent is responsible for violating College policy. If the Investigator confirms that it is less likely than not that respondent is not responsible for violation College policy, the Investigator prepares a Results Notification Memorandum, which will summarize why the College believes it is more likely than not that the alleged conduct did not occur and the Respondent is not responsible for violating College policies.

2. Cases Involving Staff Respondents

In cases involving staff respondents, once the Investigation Report is completed, the Grievance Coordinator will prepare an Investigation Summary, which summarizes the Investigation Report, and will provide only the Investigation Summary to the Complainant and Respondent.

D. Disciplinary Review by Appropriate Vice President

If the Investigation Report/Statement of Policy Violation concludes that that the alleged conduct did occur and the Respondent is responsible for violating College policy, the Grievance Coordinator will forward the Investigation Report and/or Investigation Summary for review by the appropriate Vice President for review and a determination of sanctions:

- the Vice President/Dean of Students will conduct this review for student respondents;
- the relevant Vice President for the particular business unit/division of the College will conduct this review for staff/third respondents;
- the Vice President for Academic Affairs/Dean of the College will conduct this review for faculty respondents.

Sanctions for a violation of these policies may range from a warning, suspension (with or without pay, if the individual is an employee of the College), campus ban(s), or expulsion/termination, as appropriate. Intermediate sanctions may include suspension or required attendance at training courses and seminars, among other things. The College will also

take steps to prevent recurrence of any discrimination or harassing conduct and to correct any discriminatory effects on the Complainant(s) or other students, faculty, staff, or contractors, if appropriate.

The appropriate Vice President may consult with Grievance Coordinator and/or the College's Office of Human Resources if appropriate to ensure consistency of sanctions/discipline and will have access to the complete record of the case in order to determine any sanctions to be imposed or corrective action to be taken. In addition, the Respondent's prior disciplinary conduct shall be taken into account when recommending a sanction.

The appropriate Vice President will communicate the decision in a notice to the Grievance Coordinator and the parties within two weeks. The Complainant's notice of the details of the sanction(s) imposed on Respondent, if any, may be limited due to Respondent's FERPA or other applicable rights to privacy concerning educational or work records.

If appropriate, the appropriate Vice President will also enter the decision into the Respondent's personnel file (if an employee) or academic record (if a student). It is the College's intent that the sanction(s) imposed will be implemented immediately; however, any decision rendered may be subject to grievance and arbitration procedures of any applicable collective bargaining agreement. If the Respondent is a member of the executive staff of the President, the President will serve as the disciplinary authority to determine sanctions. If the President is the Respondent, the Chair of the Board of Trustees will serve as the disciplinary authority to determine sanctions.

VI. SPECIAL PROVISIONS

A. College as Complainant:

As necessary, the College reserves the right to initiate a complaint, to serve as Complainant, and to initiate proceedings without a formal complaint by the subject of the discrimination/harassment.

B. Alcohol and substance use:

The use of alcohol or other drugs will never function as a defense for any behavior that violates College policy.

C. Good Samaritan Policy:

Sanctions related to alcohol or drug policy violations will not be imposed on students cooperating in an investigation or hearing.

D. Record Retention

The Grievance Coordinator will review and retain copies of all Investigation Reports generated as result of investigations. These records will be kept confidential to the extent

permitted by law. Records of investigations and disciplinary review are maintained by the College for five (5) years as indicated below.

If the Respondent is a student and there is a finding of responsibility for a Policy violation, the records will be maintained for five (5) years past the student's graduation or if the student leaves the College before graduation, for five (5) years past their original expected graduation date.