

RUSH UNIVERSITY SYSTEM for HEALTH

Resolution Process for Discrimination and Harassment and Related Retaliation

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INVESTIGATION AND ADJUDICATION PROCEDURES

I. SCOPE

These procedures explain the Office of Institutional Equity's ("OIE") process for receiving, assessing, investigating, and adjudicating reports under Rush's Policy Prohibiting Discrimination, Harassment, and Sexual Harassment (*the Policy*). This resolution process, the *Resolution Process for Discrimination, Harassment, and Retaliation*, applies to complaints of discrimination, harassment, and retaliation based on all protected personal characteristics except for sex, gender, gender identity, or gender orientation. This resolution process applies to both students and non-students. Sex-based harassment, sexual assault, dating violence, domestic violence, and stalking, as well as discrimination on the basis of sex (including discrimination based upon sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity) will be addressed by *the Resolution Process for Sex-Based Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking Involving Students*, and *the Resolution Process for Sex-Based Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking Involving Non-Students*, respectively, depending on the status of the parties. Nothing in these procedures shall limit the ability of Rush managers or administrators to stop and address inappropriate behavior occurring in the work and learning environment.

For purposes of these procedures:

- "Complainant" refers to an individual student, employee, visitor, guest, non-employed or private provider, member of the faculty, medical resident, graduate fellow, visiting student not enrolled at Rush, patient, applicant for admission or employment, volunteer, vendor, third-party with a contractual or business association with Rush, or program participant who is reported to have been the subject of conduct that could constitute Prohibited Conduct. Complainant includes a person other than a student or employee who is reported to have been subjected to conduct that could constitute Prohibited Conduct and who was participating or attempting to participate in the Rush's education program or activity at the time of the alleged conduct.
- "Respondent" refers to a person who is reported to have engaged in Prohibited Conduct in violation of *the Policy*.
- "Reporter" refers to a person other than the individual who reportedly experienced Prohibited Conduct who is aware of conduct arising under *the Policy* and reports the conduct to Rush.
- "Sanctioning Official" refers to the individual that is responsible for issuing a sanction, or sanctions, following the closure of an investigation.

II. INQUIRY

Upon receipt of a report or complaint, OIE will conduct an initial inquiry, which is an initial assessment of the underlying concerns in the report. OIE will seek to speak to the Complainant and/or Reporter during the initial inquiry, and may, in its discretion, speak to other witnesses and/or the Respondent. OIE will not, however, speak to the Respondent without first informing the

Complainant. The goal of this inquiry is to gather sufficient information to provide an informed and coordinated response to reports of Prohibited Conduct administered by OIE.

The inquiry will consider issues relating to the report including, but not limited to: the nature of the report; any safety concerns to impacted parties and the Rush community; the opportunity for alternative resolution; the necessity for reasonably available supportive measures or modifications to the academic or work environments; the short term operations of any impacted department, program or business unit; and Rush's obligation to provide a safe and non-discriminatory environment for all community members.

While balancing the need to respect the privacy of the parties, OIE may, as needed, consult with appropriate leaders such as managers, supervisors, advisors, and instructors regarding the alleged conduct to inform OIE's initial inquiry. As part of this inquiry and to determine next steps, OIE may:

- **Referral/dismissal** Determine that the reported concern does not meet the criteria for a possible violation of *the Policy* (this determination may result in a referral to another Rush department, business unit, or resource, or result in no further action taken);
- **Alternative Resolution** Seek alternative resolution that allows Rush to take action to address the reported conduct, which could include the imposition of supportive measures only or other action that typically does not involve disciplinary action against a Respondent; or
- **Investigation** Initiate an investigation to determine if disciplinary action is warranted. The goal of an investigation is to gather all relevant facts; make factual determinations; determine whether there is a violation of *the Policy*; and if warranted, refer the investigative conclusion or finding for disciplinary action as appropriate.

In addition, OIE will, where applicable:

- Address any immediate concerns about the physical safety and emotional well-being of the parties;
- Explain the availability of reasonable supportive measures;
- Notify the Complainant of the right to make a report (or decline to make a report) with law enforcement if the conduct is criminal in nature, and if requested, assist them with notifying law enforcement;
- Notify the Complainant of the availability of medical treatment to address any physical and mental health concerns and to preserve evidence; and/or
- Provide the Complainant with information about on and off campus resources.

It is possible that during the initial inquiry (or later in the investigation process), information may come to light that makes the inquiry better suited for Rush's procedures regarding incidents of Sex-Based Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking. If the investigators determine it is necessary to shift their investigation to another resolution procedure, they shall do so, with appropriate notice to the parties. Any information gathered under this investigation process will be admissible and carried over to the revised investigation.

III. ALTERNATIVE RESOLUTION

OIE retains sole discretion as to the appropriateness of alternative resolution. The decision to pursue alternative resolution will be made when OIE has sufficient information about the nature and scope of the conduct, which may occur at any time. Alternative resolution is a voluntary, remedies-based resolution designed to resolve a complaint without imposing disciplinary action against a Respondent. Examples of alternative resolution remedies include, but are not limited to:

- Mandatory counseling services
- Imposition of a “No-Contact Order”
- Rescheduling of exams and assignments
- Providing alternative course completion options
- Change in class schedule, including the ability to drop a course without penalty or to transfer sections
- Change in work schedule or job assignment
- Change in student’s campus housing
- Limiting access to certain Rush facilities or activities pending resolution of the matter
- Voluntary leave of absence
- Providing an escort to ensure safe movement about the Rush campus
- Referral for medical services
- Providing academic support services
- Any other remedy which can be tailored to the involved individuals to achieve the goals of Rush’s Policy Prohibiting Discrimination, Harassment, and Sexual Harassment

Other potential remedies include targeted or broad-based educational programming or training, supported, voluntary direct discussion with the Respondent and/or indirect action by OIE, a supervisor or administrator, or other official. Rush may offer mediation for appropriate cases but will not compel any party to engage in mediation, or to participate in any particular form of alternative resolution. Participation in alternative resolution that involves direct contact between the parties is voluntary, and either party can request to end alternative resolution at any time.

IV. INVESTIGATION

Where OIE’s initial inquiry concludes that the report, if substantiated, would rise to the level of violating *the Policy*, OIE will commence an investigation in accordance with these procedures. The investigation will be thorough and impartial, and all individuals will be treated with sensitivity and respect. While Rush will seek to honor the wishes of a complainant who prefers not to be involved in an investigation, Rush may investigate any and all allegations that may result in a violation of *the Policy*.

An investigator will investigate all complaints that, if true as reported, support a potential violation of *the Policy*. The investigation is designed to provide a fair and reliable gathering of the facts.

An investigator will presume the Respondent is not responsible for the alleged misconduct until a determination is made at the end of the resolution procedure that there is sufficient information, by a preponderance of the evidence, to support a finding of responsibility.

A. Procedural Steps

An investigation is not necessarily a linear function. As such, the Investigator retains discretion to determine the order of investigative steps, as needed, while maintaining fairness throughout the investigative process. Investigations will generally occur as follows:

Step 1: Initial Complainant Interview(s)

OIE will generally meet with a Complainant for an initial interview to learn more about the underlying allegation(s) and the interests of the Complainant in pursuing formal action. This interview may be a part of, or in addition to, any meetings with the Complainant during the initial inquiry. OIE may investigate any reports that could violate *the Policy*, regardless of the Complainant's expressed preferences.

Step 2: Notice to the Parties

Once the initial complainant interview has been completed, the Complainant and Respondent will be notified in writing by OIE that an investigation has been initiated, along with a summary of the underlying allegations (including the identities of the parties, the reported conduct, and the date and location of the reported conduct, if available) and identification of potential policy violations. This notice will include as much information as is reasonably known to OIE and will be updated if new allegations are uncovered/identified.

Step 3: Initial Respondent Interview(s)

After receiving notice, the Respondent will be invited to complete an initial interview with an investigator. The initial interview must generally be completed within seven (7) calendar days of the request, or the investigation will move forward without the Respondent's initial interview.

Step 4: Investigation Stage

The investigator will conduct interviews with witnesses as necessary, collect and review documents and any other relevant evidence concerning the reported conduct. The parties may provide any relevant information to the investigator, including the names of witnesses who may have relevant information and/or documents or other evidence to review.

The Complainant and Respondent will have an equal chance to be heard by the investigator, submit information, and identify witnesses who may have relevant information. Investigators will use their discretion to determine the relevance of proposed evidence and the necessity of interviewing witnesses.

In many cases, investigators will have follow-up questions for the Complainant and Respondent after their initial interviews and will provide each party the opportunity to respond to relevant information, facts and evidence provided by the other party and witnesses as the investigator deems appropriate. Each participant will be given the opportunity to complete any follow-up interview requested by an investigator. If the party declines to participate in a follow-up interview, the investigation will move forward without the follow up interview.

Step 5: Investigator Determination

The investigator will consider all relevant information learned during the investigation and prepare an analysis as to whether there is sufficient evidence to establish, by a preponderance of the evidence, that a violation of *the Policy* occurred, and the rationale for such determination. To reach this conclusion, the investigator will review, consider and determine the weight and materiality of relevant evidence, and the credibility of relevant statements that go to the elements of a violation of *the Policy*, such as: consistency, corroboration, plausibility, motive or lack thereof, and demeanor.

Based on this analysis, the investigator will determine the responsibility of the Respondent and whether a violation of *the Policy* occurred. If a finding of a policy violation is made, the investigation report will be forwarded to the designated Sanctioning Official(s) for possible sanctions.

Step 6: Notice of Outcome

OIE will notify the parties of the investigation's outcome in writing. The notice of outcome will include information about the sanction imposed, if any, and the procedures and permissible bases for appeal.

OIE will also notify the parties of any changes to the outcome, and when such changes, if any, become final.

B. Additional Considerations Related to Investigations

Investigators:

OIE will designate an investigator who has specific training and experience related to the investigation of allegations of discrimination and harassment. The investigator may be a Rush employee or an external professional. Any investigator chosen to investigate must be impartial and free of any actual conflict of interest or bias.

Conflicts of Interest:

Either party may request a substitution of investigator in the case of an actual or apparent conflict of interest or demonstrated bias by notifying OIE within five (5) business calendar days of being contacted by OIE. OIE maintains discretion to consider and determine the existence of a conflict of interest or bias, in which case it will substitute a new investigator.

Timeframe for Resolution:

Rush will make every effort to resolve all reports in a prompt and timely manner, and endeavor to conclude the investigation within sixty (60) calendar days of providing notice to the parties. This time frame may be extended for good cause as necessary to ensure the integrity and completeness of the investigation. Good cause for extension may include: to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for complexities of a case including the number of witnesses and volume of information provided by the parties, or for other reasonable reasons.

Investigations that exceed this timeframe will not serve as grounds for dismissing any matter, nor shall it limit Rush's ability to complete an investigation, issue findings, impose sanctioning outcomes, corrective actions, disciplinary actions, or limit Rush's ability to take any other action to address or respond to a complaint.

Apart from Rush managers who are required to participate in an investigation, Complainants, Respondents, and witnesses have the right to determine whether, and to what extent, they will participate in the investigation. An investigation will move forward at the time limit for each stage of the investigation irrespective of whether the noticed individual completes the identified component of the investigation, provided that there is sufficient available information to allow Rush to do so.

Time Extensions:

Extension of a deadline or investigator directive may be granted by the investigator for good cause based on reasonable or exigent circumstances. Parties may submit those requests at any time in writing to the investigator, who will have sole discretion to grant or deny the extension. The investigator may require support or documentation to verify the circumstance on which the request is based.

Privacy:

All reasonable measures will be taken to protect the privacy of the parties and witnesses, and to reduce disruption to affected departments, programs and business units to the extent possible. However, OIE will engage those Rush officials "with a need to know" to execute its responsibilities. Additionally, OIE will provide information pursuant to state and federal legal reporting requirements or as otherwise legally required.

Multiple Reports:

The Investigator has the discretion to consolidate multiple reports against a respondent into one investigation if the reports share the same nexus of material facts related to each incident as determined by OIE.

Recordings:

Recording of any meeting conducted as part of these resolution procedures is prohibited. Violations of this provision will be addressed under the applicable Rush policy.

C. Types of Evidence

The investigator will consider relevant evidence only. Relevant evidence includes information that is related to the report of Prohibited Conduct such that it may aid in showing whether the reported Prohibited Conduct occurred or may aid the investigator in determining whether the reported Prohibited Conduct occurred.

Some evidence is inherently irrelevant, prejudicial, biased, or otherwise inappropriate for consideration in an investigation. As such, OIE may limit consideration of the following categories of evidence, subject to the circumstances described below. Any party seeking to introduce such

information should bring it to the investigator's attention as soon as possible. The investigator may choose to consider this information with appropriate notice to the parties. Where sufficient informational foundation exists, the investigator will assess the relevance, form, and reliability of the information.

Character Witnesses:

Witnesses must generally have observed the acts in question or have information relevant to the incident and cannot participate in an investigation solely to speak about an individual's character.

Pattern:

In gathering the facts, the investigator may consider prior allegations of, or findings of responsibility for, similar conduct by the Respondent to the extent such information is relevant. Where there is evidence of a pattern or conduct similar in nature by the Respondent, either prior to or after the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant and probative in the investigation. The determination of relevance will be based on an inquiry of whether:

- The previous incident was substantially similar to the present allegation.
- The information indicates a potential pattern of behavior and substantial conformity with that pattern by the Respondent; or
- The Respondent was subject to a previous credible allegation and/or previously found responsible for a Policy violation.

V. SANCTIONING

For complaints against *employees, providers, non-students, or other third parties*, OIE's investigation report will be shared with the Respondent's direct supervisor and/or other responsible administrator and Human Resources. The respondent's direct supervisor shall, in consultation with Human Resources, have disciplinary authority to serve as the Sanctioning Official(s) and impose appropriate sanction(s).

For complaints against *students*, the investigative findings will be referred to the Dean of the College who shall have disciplinary authority to serve as the Sanctioning Official(s) and impose appropriate sanction(s) in consultation with the Vice Provost for Student Affairs.

Possible Sanctions: Sanctions may include, at a minimum, a verbal warning, and at a maximum, termination or expulsion from Rush. Violations of Rush's Policy Prohibiting Discrimination, Harassment, and Sexual Harassment may result in sanctions, which can include, but are not limited to:

- Verbal warning
- Written warning
- Disciplinary hold on academic and/or financial records
- Performance improvement/management process
- Required counseling

- Required training or education
- Rush campus access restrictions
- No trespass order (with respect to campus locations)
- No contact directive (with respect to an individual)
- Loss of privileges
- Loss of oversight, teaching or supervisory responsibility
- Probation
- Demotion
- Loss of pay increase
- Transfer (employment)
- Revocation of offer (employment or admissions)
- Disciplinary suspension
- Suspension with pay
- Suspension without pay
- Expulsion
- Degree revocation
- Termination of employment
- Revocation of tenure
- Termination of contract (for contractors)

Rush may assign other sanctions as appropriate depending on the violation.

VI. REMEDIES

If there is a determination that Prohibited Conduct occurred, OIE will coordinate the provision and implementation of remedies to a Complainant and other persons OIE identifies as having had equal access to Rush's education program or activities limited or denied by the Prohibited Conduct. OIE will also take other appropriate prompt and effective steps to ensure that Prohibited Conduct does not continue or recur within Rush's education program or activity.

VI. APPEALS

Appeals may be filed after the notice of outcome has been issued.

Mere disagreement with the investigation finding(s) is not grounds for appeal. A Complainant or Respondent may appeal **only** on the following grounds:

- New evidence that was not reasonably available when the investigation finding was made would change the outcome;
- There was a procedural irregularity that would change the outcome of the investigation; and/or
- There was a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent on the part of the Title IX Officers or investigator that would change the outcome of the investigation.

This section, and the process herein, addresses appeals related to the investigation itself and its findings.

Other Rush employee or student appeal processes are not applicable to findings made or sanctions issued pursuant to *this Policy*.

Method of Appeal

Appeal must be filed with the Appeal Official within seven (7) calendar days of receipt of the investigation's outcome. The appeal must be in writing and contain the following:

1. Name of the parties;
2. A detailed statement of the grounds for the appeal including the specific facts, circumstances, and argument in support of it; and
3. Requested action, if any.

Once an appeal is submitted, the non-appealing party will be notified of the appeal in writing. The non-appealing party will be granted an opportunity to respond to the appeal.

Resolution of the Appeal

The Appeal Official will generally resolve the appeal within twenty-one (21) calendar days of receiving it and may take all actions necessary in the interest of a fair and just decision. The parties will be notified in writing if the Appeal Official's decision will take longer than twenty-one (21) calendar days. The decision of the Appeal Official is final.

The Appeal Official shall issue a short and plain written statement of the resolution of the appeal, including any changes made to the investigator's previous written determination and/or the sanctions and remedial measures imposed. The written statement shall be simultaneously provided to the complainant, respondent, and OIE within three (3) calendar days of the resolution.

The Appeal Official will be the University Compliance Officer or designee.