

Appendix B

Policy Comparison Appendix

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Appendix B

Policy Comparison Appendix

In this appendix, we provide a fuller treatment of how the University of Rochester's ("UR") policies and procedures compare with those in effect at other universities. We reviewed and compared the policies on (1) intimate relationships, (2) discrimination and harassment, (3) conflicting relationships, (4) email privacy, (5) investigation procedures and (6) harassment training, for both the University and a number of peer universities, which are specified in each section below.

I. Comparison of Intimate Relationships Policy with Peer Universities and Colleges

A majority of universities in our sample have policies that prohibit relationships between faculty members and students or post-doctoral fellows over whom they have supervisory authority. Stanford has the most restrictive policy, prohibiting sexual or romantic relationships between faculty members and students where the faculty member "has had, or in the future might reasonably be expected to have, academic responsibility over" the student.¹ This includes "any faculty member who teaches in a graduate student's department, program or division." At Stanford, a faculty member in a department cannot enter into an intimate relationship with any graduate students in the department and cannot have academic responsibility over a graduate student with whom the faculty member once had an intimate relationship. This goes beyond UR's policy, which does not expressly prohibit relationships between faculty members and graduate students in their department.

¹ Stanford, *Administrative Guide*, 1.7.2 "Consensual Sexual or Romantic Relationships in the Workplace and Educational Setting," (2017), <https://adminguide.stanford.edu/chapter-1/subchapter-7/policy-1-7-2>.

Northwestern, which also prohibits faculty-student relationships when the faculty member exercises “supervisory or evaluative authority” over the student, requires the disclosure of relationships between faculty members and graduate students in the same department, regardless of whether there is a supervisory relationship between the two. The policy explains that “the possibility exists that the faculty member may influence evaluation or academic or career advancement of the student even if the faculty member does not directly supervise the graduate/professional student.”² While less restrictive than Stanford’s policy, Northwestern’s policy is more prohibitive than UR’s, since UR does not require disclosure of relationships between faculty members and graduate students in the same department in cases where the faculty member has no academic responsibility over the student.

Harvard neither prohibits relationships between faculty members and students within the same department (like Stanford) nor requires the disclosure of such relationships (like Northwestern). Harvard includes, however, a cautionary statement in its policy noting that even in relationships between faculty members and students in which there is no supervisory relationship, “the instructor or other officer should be sensitive to the possibility that he or she may unexpectedly be placed in a position of responsibility for that individual’s instruction or evaluation.”³ This could involve being called upon to write a letter of recommendation or to serve on an admissions or selection committee involving the individual.”

² Northwestern University, *Consensual Romantic or Sexual Relationships between Faculty, Staff and Students*, 3 (2014), http://policies.northwestern.edu/docs/Consensual_Relations_011314.pdf.

³ Harvard University, *Sexual and Gender-Based Harassment Policy and Procedures for the Faculty of Arts and Sciences*, 9 (2016), http://www.fas.harvard.edu/files/fas/files/fas_sexual_and_gender-based_harassment_policy_and_procedures-1-13-16.pdf.

Other universities define the supervisory relationship broadly enough that relationships between faculty members and students within the same graduate department are effectively prohibited or require prompt disclosure and management. Brown, for example, prohibits consensual relationships when the student is subject to the faculty member's "academic supervision," which is defined to include, among other things, "overseeing and/or having influence upon funding and/or academic progress, and/or otherwise occupying a position of influence or power over a student's academic program."⁴ University of Chicago defines the supervisory relationship to include students that the faculty member "may reasonably expect to teach, advise, etc. in the future."⁵ Yale prohibits relationships with students over whom the faculty member has "or might reasonably expect to have direct pedagogical or supervisory responsibilities."⁶ UR's definition of "exercising academic authority," while broad, is not so broad as to effectively prohibit relationships between faculty members and all students or post-doctoral fellows in the department.

Many—though not most—universities in our analysis also restrict supervisory relationships between faculty members and students who had an intimate relationship in the past. Northwestern, for instance, requires that when a consensual relationship "exists or has existed between" a faculty member and student, the faculty member "must not hold any supervisory or

⁴ Brown University, *Sexual and Gender-Based Harassment, Sexual Violence, Relationship and Interpersonal Violence and Stalking Policy*, 8-9, <http://www.brown.edu/web/documents/title-ix/brown-university-title-ix-policy.pdf>.

⁵ University of Chicago, *Policy on Harassment, Discrimination, and Sexual Misconduct*, 14 (2016), <http://harassmentpolicy.uchicago.edu/page/policy>.

⁶ Yale University, *Faculty Handbook*, 163-64 (2016), https://provost.yale.edu/sites/default/files/files/Faculty%20Handbook_11-1-16.pdf.

evaluative authority” over the student.⁷ Columbia provides that “no faculty member shall exercise academic or professional authority over any student with whom he or she has or previously has had a consensual romantic or sexual relationship.”⁸

Vanderbilt is the only university in our analysis that prohibits “[e]fforts by members of the faculty . . . to *initiate*” a faculty-student relationship.⁹

A. Restrictions on Relationships with Undergraduate Students

A minority of universities join UR in prohibiting all relationships between faculty members and undergraduate students, regardless of the existence of a supervisory or advisory relationship. Brown, University of Chicago and Yale were the universities in our sample to prohibit all such relationships.¹⁰ In this regard, UR’s policy is more restrictive than most universities.

⁷ Northwestern University, *Consensual Romantic or Sexual Relationships between Faculty, Staff and Students*, 2-3 (2014), http://policies.northwestern.edu/docs/Consensual_Relations_011314.pdf.

⁸ Columbia University, *Consensual Romantic and Sexual Relationship Policy between Faculty and Students*, 1 (2015), http://eoaa.columbia.edu/files/eoaa/content/Consensual%20Relationship%20Policy%20100215.Final__0.pdf.

⁹ Vanderbilt University, *Faculty Manual*, Part III, Chapter 7 (2017), <https://www.vanderbilt.edu/faculty-manual/part-iii-university-principles-and-policies/ch7-consensual-relationships/>. This is similar to Complainant Elissa Newport’s failed attempt to prohibit such efforts.

¹⁰ Brown University, *Sexual and Gender-Based Harassment, Sexual Violence, Relationship and Interpersonal Violence and Stalking Policy*, 8, <http://www.brown.edu/web/documents/title-ix/brown-university-title-ix-policy.pdf>; University of Chicago, *Policy on Harassment, Discrimination, and Sexual Misconduct*, 14 (2016), <http://harassmentpolicy.uchicago.edu/page/policy>; Yale University, *Faculty Handbook*, 163 (2016), https://provost.yale.edu/sites/default/files/files/Faculty%20Handbook_11-1-16.pdf.

B. Management of Consensual Relationships

A majority of universities in our sample join UR in permitting consensual relationships between faculty members and students if the relationship is disclosed and a written plan is prepared and approved to manage the effects of the relationship.

University of Michigan, for example, requires the disclosure of faculty-student relationships in which the faculty member has supervisory responsibility over the student.¹¹ A written plan to resolve the conflict of interest must then be developed by the faculty member, the appropriate dean and the department head. Stanford requires the disclosure of preexisting sexual or romantic relationships between a faculty member and student that is prohibited by the policy.¹² Once disclosed, the faculty member must both recuse himself or herself from any supervisory or academic responsibility over the student, and notify his or her supervisor, department chair or dean about the situation so that adequate alternative supervisory or evaluative arrangements can be put in place.¹³

Northwestern requires the faculty member to “immediately report the relationship to his or her department chair, dean or the Office of the Provost.”¹⁴ When the faculty member and graduate student are in the same department or program, management of such relationships “will

¹¹ University of Michigan, *Standard Practice Guide, 601.22-1, “Employee-Student Relationships,”* 2 (2005), <http://www.spg.umich.edu/policy/601.22-1>.

¹² Stanford University, *Administrative Guide, 1.7.2 “Consensual Sexual or Romantic Relationships in the Workplace and Educational Setting,”* *supra* note 1.

¹³ *Id.*

¹⁴ Northwestern University, *Consensual Romantic or Sexual Relationships between Faculty, Staff and Students,* *supra* note 2, at 3.

be considered on a case-by-case basis, and, when possible, will lead to development of an appropriate plan in consultation with the department chair, dean and the Office of the Provost.”¹⁵

University of Chicago sets forth a process by which the department chair or dean will work with the Office of Provost to “develop and implement a plan to mitigate actual and perceived favoritism and conflicts of interest by establishing an instructional and supervisory arrangement in which all relevant parties may have confidence.”¹⁶

Duke requires faculty members to disclose the consensual relationship to his or her superior and reach an agreement for remediation. Remediation includes the termination of the position of authority, which can include:

the student withdrawing from a course taught by the faculty member; transfer of the student to another course or section, or assumption of the position of authority by a qualified alternative faculty member or teaching assistant; the student selecting or being assigned to another academic advisor and/or thesis or dissertation advisor; and changing the supervision of the student’s teaching or research assistantship.¹⁷

Washington University in St. Louis requires that the faculty member and/or student terminate the position of authority if the consensual relationship develops or is likely to develop, but provides for no other requirements or guidance.¹⁸ Likewise, Emory requires the faculty member to “decline to participate in any evaluative or supervisory academic activity with respect

¹⁵ *Id.* at 4.

¹⁶ University of Chicago, *Policy on Harassment, Discrimination, and Sexual Misconduct*, *supra* note 5, at 14.

¹⁷ Duke University, *Policy on Consensual Relationships*, 3 (2002), https://oie.duke.edu/sites/default/files/atoms/files/consensual_relationship_policy.pdf.

¹⁸ Washington University in St. Louis, *Policy on Consensual Faculty-Student Relationships*, <https://wustl.edu/about/compliance-policies/human-resource-policies/consensual-faculty-student-relationships/>.

to the student.”¹⁹ Tulane also requires that the faculty member “immediately remove him or herself from such position of authority.”²⁰

New York University is an outlier in requiring that a relationship between a professor and his or her student “be discontinued immediately.”²¹ In other words, rather than permitting the consensual relationship and modifying the supervisory relationship, New York University requires that the romantic relationship be ended.

C. Third-Party Disclosure Obligations and Complaints

Most universities in our sample were aligned with UR in requiring that the faculty member disclose the existence of the relationship to a supervisor. Some universities go further than this and require third parties with knowledge of the relationship to disclose it to an authority. University of Michigan, for example, imposes an affirmative obligation on an academic administrator who learns about a prohibited faculty-student relationship to develop a plan to resolve the conflict of interest.²² At Case Western, department chairs, deans and other

¹⁹ Emory University, *Faculty Handbook, Policies Regarding Conduct in the Workplace*, Chapter 12, <http://provost.emory.edu/faculty/handbook/chapters/twelve.html>.

²⁰ Tulane University, *Policy on Consensual Relationships*, 1, <http://www2.tulane.edu/senate/reports/upload/Proposal-for-policy-about-consensual-relationships-Final-Approved-2003.pdf>.

²¹ New York University, *Sexual Misconduct, Relationship Violence, and Stalking Policy*, 11 (2017), <https://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/sexual-misconduct--relationship-violence--and-stalking-policy.html>.

²² University of Michigan, *Standard Practice Guide, 601.22-1*, “*Employee-Student Relationships*,” *supra* note 11, at 2.

supervisors are required to report all allegations of prohibited faculty-student relationships to the Office of Equal Opportunity and Diversity.²³

Some universities also expressly permit third parties to complain about faculty-student relationships when they perceive favoritism or bias. The University of Michigan allows for any student or faculty member to file a complaint if “he or she has received inappropriately favorable or unfavorable treatment as the result of a romantic and/or sexual relationship between a faculty member and a student.”²⁴ Columbia encourages students and faculty concerned about “consensual romantic relationships involving others in their programs or classes” to report such concerns to their “dean, chair or other head of unit or the Associate Provost for Equal Opportunity and Affirmative Action.”²⁵ UR does not explicitly provide for third-party complaints about faculty-student relationships.²⁶

D. Investigations of Misconduct

At UR, alleged violations of the Intimate Relationships Policy are investigated under University Policy 106, which sets forth procedures for complaints about harassment and discrimination. Some universities provide for special investigative procedures to handle complaints of improper faculty-student relationships. Tulane, for instance, empowers the relevant dean’s office to conduct an initial investigation into complaints of violations of the

²³ Case Western Reserve University, *Policy no. I-10, Consensual Relationships* (2005), <https://case.edu/finadmin/humres/policies/standards/cr.html>.

²⁴ University of Michigan, *Standard Practice Guide, 601.22-1, “Employee-Student Relationships,”* *supra* note 11, at 2.

²⁵ Columbia University, *Consensual Romantic and Sexual Relationship Policy between Faculty and Students,* *supra* note 10, at 1.

²⁶ University of Rochester, *Faculty Handbook*, 11 (2017), http://www.rochester.edu/provost/assets/PDFs/Faculty_handbook.pdf.

faculty-student relationships policy.²⁷ The scope of the dean’s office’s initial inquiry is narrow—it is to determine that the complaint falls within the scope of the policy and confirm that all documentation has been prepared.²⁸ If the charge is deemed improper or insufficient, the complainant has the right to appeal that determination.²⁹ If the charge is deemed proper, it is brought to a hearing, where each party is entitled to be accompanied by a counselor or adviser.³⁰

Washington University in St. Louis provides for a thorough and prompt investigation conducted by the department chair or dean.³¹ At Case Western, potential violations of the policy are investigated by department chairs, deans or Human Resources.³² Emory empowers the Provost, deans, department chairs and other administrators to investigate reports of prohibited sexual relationships and initiating disciplinary measures where appropriate.³³

E. Sanctions and Disciplinary Measures

Many universities join UR in setting forth disciplinary measures for those who fail to disclose a faculty-student relationship. Northwestern provides for disciplinary actions for violations of its policy, including “written warnings, loss of privileges, mandatory training or counseling, probation, suspension, demotion, exclusion, expulsion and termination of

²⁷ Tulane University, *Policy on Consensual Relationships*, *supra* note 20, at 2-3.

²⁸ *Id.*

²⁹ *Id.* at 4.

³⁰ *Id.* at 2.

³¹ Washington University in St. Louis, *Policy on Consensual Faculty-Student Relationships*, *supra* note 18.

³² Case Western Reserve University, *Policy no. I-10, Consensual Relationships*, *supra* note 23.

³³ Emory University, *Faculty Handbook, Policies Regarding Conduct in the Workplace, Chapter 12*, *supra* note 19.

employment, including revocation of tenure.”³⁴ Faculty members who violate Stanford’s policy are “subject to disciplinary action up to and including dismissal, depending on the nature of and context for the violation. They will also be held accountable for any adverse consequences that result from those relationships.”³⁵

The University of Michigan considers violations of its consensual relationships policy to be misconduct on the part of the faculty member, and disciplinary measures include termination of appointment.³⁶ Washington University in St. Louis provides for disciplinary measures that include terminating the position of authority that the faculty member holds over the student, verbal warnings, dismissal and termination.³⁷ Case Western subjects violators to sanctions ranging from verbal warnings to termination.³⁸ Emory permits the initiation of disciplinary action or remedial measures against the teacher involved and considers an egregious breach of the policy as adequate cause for termination.³⁹

³⁴ Northwestern University, *Consensual Romantic or Sexual Relationships between Faculty, Staff and Students*, *supra* note 2, at 4.

³⁵ Stanford University, *Administrative Guide*, 1.7.2 “*Consensual Sexual or Romantic Relationships in the Workplace and Educational Setting*,” *supra* note 1.

³⁶ University of Michigan, *Standard Practice Guide*, 601.22-1, “*Employee-Student Relationships*,” *supra* note 11, at 2.

³⁷ Washington University in St. Louis, *Policy on Consensual Faculty-Student Relationships*, *supra* note 18.

³⁸ Case Western Policy, *no. I-10, Consensual Relationships*, *supra* note 23.

³⁹ Emory University, *Faculty Handbook, Policies Regarding Conduct in the Workplace*, Chapter 12, *supra* note 19.

II. Comparison of Policy against Discrimination and Harassment with Peer Universities and Colleges

Most Association of American Universities (“AAU”) universities in our sample define sexual harassment similarly to UR. That is not surprising, since the Policy 106 definition closely hews to Title VII and Title IX regulations and case law. University of Michigan, for example, uses substantially similar language—borrowed from Title VII and Title IX regulations—to define sexual harassment.⁴⁰

Some universities define sexual harassment more broadly than federal law to include different potential situations in which sexual harassment could arise in the university setting. Columbia, for example, defines *quid pro quo* sexual harassment as “submission to ... conduct [that] is made either explicitly or implicitly a term or condition of an individual’s employment, academic, co-curricular, or campus life activities; or [where] submission to or rejection of ... conduct by an individual is used as the basis for academic, student life or employment decisions affecting that individual.”⁴¹ Columbia defines the hostile work/academic environment as “conduct [that] has the purpose or effect of unreasonably interfering with another person’s academic or work performance or creating an intimidating, hostile, demeaning, or offensive working, learning, campus, or living environment.”

Some universities set forth a definition of sexual harassment that is more plain-language than the legalistic definition found in Policy 106. University of Pennsylvania, for example, succinctly defines sexual harassment as:

⁴⁰ University of Michigan, *Standard Practice Guide, 201.89-0, “Sexual Harassment,”* 1-2 (2005), <http://spg.umich.edu/policy/201.89-0>.

⁴¹ Columbia University, *Employee Policy and Procedures on Discrimination, Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking*, 4 (2017), http://eoaa.columbia.edu/files/eoaa/content/EOAAPolicyFebruary2017.final_.pdf.

Any unwanted conduct that is based on an individual's sex, sexual orientation, gender identity and/or gender expression and that:

1. Involves a stated or implicit threat to the victim's academic or employment status;
2. Has the purpose or effect of interfering with an individual's academic or work performance; and/or
3. Creates an intimidating or offensive academic, living or work environment.⁴²

Unlike UR, most universities in our sample provide specific examples of conduct that may constitute sexual harassment. For example, Brown's policy contains a lengthy list of unacceptable behaviors, including:

Inappropriate physical conduct, including unwelcome touching or sexual advances within the working, living, or learning environment;

Persistent and inappropriate personal attention from one colleague to another in the face of repeated rejection;

Inappropriate verbal conduct, including lewd or sexually suggestive comments, jokes, or innuendoes, or unwelcome comments about an individual's sexual orientation, gender, gender identity, or gender expression; or

Inappropriate written conduct, including letters, notes, or electronic communications, containing comments, words, jokes, or images that are lewd or sexually suggestive or relate in an unwelcome manner to an individual's sexual orientation, gender, gender identity, or gender expression.⁴³

Most universities in our sample prohibit retaliation in language that is consistent with Title VII and Title IX. Some universities set forth a definition of retaliation that is broader than

⁴² University of Pennsylvania, *Sexual Harassment Policy*, 3, (2016), <https://almanac.upenn.edu/archive/between/2016/070116-of-record.html#harassment>.

⁴³ Brown University, *Sexual and Gender-Based Harassment, Sexual Violence, Relationship and Interpersonal Violence and Stalking Policy*, *supra* note 4, at 5.

UR’s policy and the requirements of Title IX and Title VII. Case Western, for example, provides that retaliation can be committed by persons other than the University, including “the respondent or the complainant and other related persons, including, but not limited to, acquaintances, friends, and family members.”⁴⁴ Case Western also requires that the complainant and respondent discourage any retaliatory actions and provides that the complainant and respondent “will also be held responsible to the extent of their involvement in the retaliation.”⁴⁵ Columbia has a similar policy, prohibiting retaliation, even if it is committed by persons other than those acting on behalf of the University. Columbia also defines retaliation to include “threatened action” against an individual.⁴⁶

Duke has in place certain procedural protections for complainants in sexual harassment investigations to ensure that retaliation does not occur. Where warranted, a senior administrator will “monitor performance review, promotion, reappointment, grading or other evaluation—or, to the extent possible, may reassign the supervisory relationship—to ensure that retaliation does not occur.”⁴⁷ Duke also explicitly prohibits retaliation against the respondent, noting that a claim of sexual harassment “shall not be taken into account during performance review, promotion, reappointment or other evaluation unless a final determination has been made that the

⁴⁴ Case Western Reserve University, *Sexual Misconduct Policy*, 12 (2016), <https://students.case.edu/policy/sexual/doc/sexualmisconductpolicy.pdf>.

⁴⁵ *Id.*

⁴⁶ Columbia University, *Employee Policy and Procedures on Discrimination, Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking*, *supra* note 41, at 5.

⁴⁷ Duke University, *Harassment Policy and Procedures*, 5-6 (2016), <https://oie.duke.edu/sites/default/files/u32/Harassment%20Policy%20and%20Procedures%2007November2016.pdf>.

University’s Harassment Policy has been violated.” The policy notes further that, “[i]f necessary and appropriate, such decisions shall be deferred until the claim is resolved.”⁴⁸

New York University also provides resources for complainants to protect them from retaliation. Their policy provides that NYU will take “reasonable and appropriate measures to protect the Complainant and the Complainant’s access to NYU employment or education programs and activities, prevent retaliation, and avoid an ongoing hostile environment.”⁴⁹

The University of Southern California’s policy lays out examples of behavior that constitute retaliation:

- Lowering a grade
- Giving a poor academic recommendation
- Exclusion from employment or educational opportunities
- Limited scholarly activities (e.g., exclusion from teaching or research, or interfering with publication)
- Spreading negative information about individual involved in complaint⁵⁰

The 2007 version of UR’s Policy 106 included examples of conduct that constituted retaliation, but this was excluded from subsequent versions of the policy.⁵¹

⁴⁸ *Id.* at 6.

⁴⁹ New York University, *Sexual Misconduct, Relationship Violence, and Stalking Policy*, *supra* note 21, at 4.

⁵⁰ University of Southern California, *Discrimination, Harassment, Sexual Harassment and Sexual Assault*, 2-3 (2011), <https://policy.usc.edu/discrimination/>.

⁵¹ University of Rochester, *Policy 106* (revised July 2007); University of Rochester, *Policy 106* (revised June 2014).

III. Comparison of Policy on Conflicting Relationships with Peer Universities and Colleges

Compared with the AAU universities in our sample, UR has one of the most robust and restrictive nepotism policies from the perspective of prohibiting intimate relationships, providing for procedures for reporting and management of such relationships, and establishing discipline for violations of the policy.

Many AAU universities in our sample have rules seeking to avoid or minimize conflicts of interest created by intimate relationships in the workplace. Case Western prohibits intimate relationships between a supervisor and his or her supervised employee absent disclosure and the creation of a management plan.⁵² Cornell's and Emory's policies provide that a conflict of interest exists when there is a consensual romantic or sexual relationship in the context of employment supervision or evaluation.⁵³

Some universities are not as restrictive as UR. Duke's nepotism policy applies to "immediate or extended families," which is not defined to include those in an intimate relationship.⁵⁴ Washington University in St. Louis likewise does not include intimate relationships in its nepotism policy.⁵⁵

⁵² Case Western Reserve University, *no. I-13 Relationships in the Workplace* (2008), <https://case.edu/finadmin/humres/policies/standards/relationships.html>.

⁵³ Cornell University, *Standards of Ethical Conduct*, 6 (2013), https://www.dfa.cornell.edu/sites/default/files/policy/vol4_6.pdf; Emory University, *Policy 4.122, Nepotism & Personal Relationships in the Workplace*, 1 (2015), http://policies.emory.edu/policy/index_pdf.php?policy_number=4.122.

⁵⁴ Duke University, *Policy 02.05, Nepotism (Hiring of Relatives) Policy* (2006), <https://hr.duke.edu/policies/hiring/nepotism-hiring-relatives>.

⁵⁵ Washington University in St. Louis, *Policy 2.11, Employment of Relatives – Nepotism*, <https://collaboration.wustl.edu/depts/supervisors/Employment/Pages/EmploymentofRelations-Nepotism.aspx>.

Only a few universities have explicit instructions for reporting and managing relationships that potentially violate the conflicting relationships policy. Brown requires employees to report the relationship to their supervisor and Human Resources and to develop a management plan to mitigate the conflict of interest.⁵⁶ Case Western and Emory also have a disclosure and management plan requirement.⁵⁷ Case Western’s policy provides that an effective management plan can include “changing the supervisor [or] having a different [supervisor] evaluate . . . job-related work.”⁵⁸

UR is an outlier in requiring that third parties who learn about the existence of a relationship in violation of Policy 121 report the relationship to an appropriate administrator. Case Western and Emory were the only universities in our sample to have a similar third-party reporting requirement.⁵⁹

UR is also one of the few universities to explicitly provide for disciplinary measures for violations of its conflicting relationships policy.

⁵⁶ Brown University, *Policy 22.11, Nepotism*, <https://www.brown.edu/about/administration/dean-of-faculty/handbook-academic-administration/chapter-22-miscellaneous-matters>.

⁵⁷ Case Western Reserve University, no. I-13 *Relationships in the Workplace*, *supra* note 52; Emory University, *Policy 4.122, Nepotism & Personal Relationships in the Workplace*, *supra* note 53, at 1.

⁵⁸ Case Western Reserve University, no. I-13 *Relationships in the Workplace*, *supra* note 52.

⁵⁹ *Id.*; Emory University, *Policy 4.122, Nepotism & Personal Relationships in the Workplace*, *supra* note 53, at 2.

IV. Comparison of Policies Regarding Email Privacy with Peer Universities and Colleges

We reviewed and analyzed policies governing email privacy at thirteen peer universities.⁶⁰ The overwhelming majority of these universities also authorize accessing the emails of students and faculty members under a variety of circumstances. The most permissive policies simply grant University officials access to student and faculty emails by reserving the University's right to access these communications.⁶¹ Even when University policies limit access to particular circumstances or purposes, the purposes and circumstances are broadly defined.⁶² Many of these policies explicitly reference investigations into violations of University policies or procedures as one such circumstance.⁶³

⁶⁰ These universities are: Brandeis University, Johns Hopkins University, Emory University, Harvard University, Boston University, Columbia University, Georgia Tech University, Iowa State University, Massachusetts Institute of Technology, Brown University, Indiana University, University of Michigan, and Carnegie Mellon University.

⁶¹ Emory University, *Information Technology Conditions of Use* (“Authorized Emory staff may without notice: Monitor, inspect, or copy network communications, IT resources, and the data they contain. Use of the Emory network and/or IT resources constitutes consent to such monitoring”) (2017), <http://policies.emory.edu/5.1>. Harvard University, *Information Security and Privacy* (“Employees have no expectation or right of privacy in anything they create, store, send, or receive on Harvard’s computers, networks or telecommunications systems. Although many employees have individual computers or computer accounts, and while employees may make incidental personal use of University technology information systems, ultimately Harvard University has ownership over, and the right to obtain access to, the systems and contents”), <https://www.hsph.harvard.edu/information-technology/resources/policies/security-privacy-policies/information-security/>.

⁶² Boston University, *Policy on Access to Electronic Information*: (“Access to User Information stored on BU Systems may be necessary to meet the University’s obligations to preserve and provide electronic information . . . to investigate allegations of misconduct. . .”) (2017), <http://www.bu.edu/policies/information-security-home/electronic-information-access/> (“Boston Access Policy”). Columbia, *Acceptable Information Resources Usage* (“[I]n the context of a litigation or an investigation, it may be necessary to access Data with potentially relevant information”) (2017), <http://policylibrary.columbia.edu/acceptable-usage-information-resources-policy> (“Columbia Acceptable Use Policy”).

⁶³ Boston Access Policy, *supra* note 62; Columbia Acceptable Use Policy, *supra* note 62.

Some institutions' policies are vague or incomplete, requiring "reasonable belief" that violations of policy have occurred or "legitimate reasons" to access the data in question, but even these policies do not prohibit access for the purpose of conducting or facilitating an internal investigation.⁶⁴ The institutions that require some justification for granting access to personal information typically set a low threshold.

Only Carnegie Mellon University's policy explicitly prohibits access except in cases of emergency or responses to valid subpoenas, and allows only a limited category of officials to determine if circumstances meet the "emergency" standard.⁶⁵ In this regard, Carnegie Mellon University is an outlier.

V. Comparison of Investigation Policies and Procedures with Peer Universities and Colleges

A. Offices with Jurisdiction

UR follows a multi-faceted approach in handling and investigating complaints, with multiple offices having overlapping administrative authority over Policy 106. Other universities

⁶⁴ Brown University, *Emergency Access to Accounts and Information* ("While efforts are made to ensure reasonable expectations of privacy for Brown University computer users, legitimate reasons will arise that require access to information held on Brown workstations, servers or peripherals") (2007), <https://it.brown.edu/computing-policies/emergency-access-accounts-and-information#22>; Indiana University, *Privacy of Electronic Information and Information Technology Resources* ("A technician or administrator may access or permit access to specific information technology resources and electronic information as defined in this policy . . . where there is reasonable belief that the individual to whom the account or device is assigned or owned has engaged, is engaging, or imminently intends to engage, in illegal activities or violations of university policy using the account or device in question...") (2008), <https://policies.iu.edu/policies/it-07-privacy-it-resources/index.html>.

⁶⁵ Carnegie Mellon University, *Computing Policy* ("Electronic data on a faculty member's account, whether stored on a computer in the faculty member's office or elsewhere under the proprietary control of that faculty member, may not be examined, i.e., the contents of the data read by a person, without the faculty member's consent, except in cases of emergency or in response to a valid subpoena, search warrant, or order of a court"), <https://www.cmu.edu/policies/information-technology/computing.html>.

also have adopted a decentralized approach. At Duke, a complaint can be filed with Human Resources, Labor Relations, the department head or the Office for Institutional Equity.⁶⁶ The University of Pennsylvania also follows a decentralized approach that is “designed to encourage the reporting and resolution of complaints of sexual harassment.”⁶⁷

Some universities have a more centralized process, designating one office for accepting and handling all complaints. At Harvard, for example, the Office of Dispute Resolution is responsible for receiving and investigating complaints of harassment and preparing a final report with recommendations for corrective and disciplinary action.⁶⁸ Brown directs all complainants to submit a complaint with the Director of Diversity and Inclusion, who will review the complaint and provide guidance and counseling regarding options for proceeding with an investigation.⁶⁹

Columbia has a hybrid approach, allowing complaints to be filed in multiple offices, which forward the complaints to a single office.⁷⁰ Complainants have the option of filing their complaint with the Office of Equal Opportunity and Affirmative Action, their supervisor or department head, or Human Resources. Regardless of where filed, the complaint will be forwarded to the Office of Equal Opportunity and Affirmative Action for resolution.

⁶⁶ Duke University, *Harassment Policy and Procedures*, *supra* note 47.

⁶⁷ University of Pennsylvania, *Sexual Harassment Policy*, *supra* note 42.

⁶⁸ Harvard University, *Sexual and Gender-Based Harassment Policy and Procedures for the Faculty of Arts and Sciences*, *supra* note 3.

⁶⁹ Brown University, *Sexual and Gender-Based Harassment, Sexual Violence, Relationship and Interpersonal Violence and Stalking Policy*, *supra* note 4.

⁷⁰ Columbia University, *Employee Policy and Procedures on Discrimination, Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking*, *supra* note 41.

UR is an outlier with respect to the involvement of the Office of Counsel (“OOC”) in conducting investigations of complaints into harassment and discrimination. It is possible that the OOC is more involved in investigations in response to President Joel Seligman’s direction—expressed in a July 19, 2012 email—that the University “have in place an approach from [the Office of Counsel] that [it be] involved in investigation of cases [involving faculty-student relationships] which appear to involve pretty fundamental questions of inappropriate behavior.”⁷¹

B. Reports and Complaints about Violations

All universities have procedures for handling complaints about harassment and discrimination. Harvard, for example, is similar to UR in providing guidance on what information should be included in a complaint—including the name of the accused, a description of the alleged harassment, and the date and place of such incidents.⁷² Tulane states that a complaint should include, among other things, witnesses to the harassment.⁷³

Like UR, some universities conduct an initial assessment of the complaint and channel some of them into the informal resolution route. At Brown, the Director of Diversity and Inclusion will conduct an initial assessment of the complaint and provide guidance to the complainant about options for proceeding, including an investigation or informal resolution.⁷⁴ At Johns Hopkins, the Title IX Coordinator makes a preliminary determination as to whether a

⁷¹ Jul. 19, 2012 Email from J. Seligman to S. Stewart.

⁷² Harvard University, *Sexual and Gender-Based Harassment Policy and Procedures for the Faculty of Arts and Sciences*, *supra* note 3, at 25.

⁷³ Tulane University, *Equal Opportunity/Anti-Discrimination Policies*, 7 (2016), <https://www2.tulane.edu/studentaffairs/upload/Equity-Policies.pdf>.

⁷⁴ Brown University, *Sexual and Gender-Based Harassment, Sexual Violence, Relationship and Interpersonal Violence and Stalking Policy*, *supra* note 4, at 11.

complaint should be investigated.⁷⁵ At Tulane, the Office of Institutional Equity will try to informally resolve the complaint after an “initial investigation,” and if it cannot, it will either continue the investigation or designate a third party to conduct the investigation, which can include a “neutral third party.”⁷⁶ At Duke, an informal resolution of a complaint can include, among other things, one-on-one meetings, supervisory intervention, mediation and education and training.⁷⁷ At least one university—Tulane—allows complaints to be submitted anonymously and these will be accepted and investigated.⁷⁸

In some universities, the Title IX Coordinator has a more formalized role in the process when compared to UR. At Harvard, for instance, complainants can file a report with the Title IX Coordinator, and the Title IX Coordinator is responsible for assigning the case to an investigator for review.⁷⁹ Washington University in St. Louis authorizes the Title IX Coordinator to receive complaints and assign them to the appropriate investigator.⁸⁰ At Johns Hopkins, the Title IX Coordinator determines whether a complaint merits the initiation of an investigation or some different resolution mechanism.⁸¹

⁷⁵ John Hopkins University, *Harassment and Discrimination Procedures*, 6, <http://oie.jhu.edu/discrimination-and-harassment/harassment-and-discrimination-complaint-procedures/index.html>.

⁷⁶ Tulane University, *Equal Opportunity/Anti-Discrimination Policies*, *supra* note 73, at 9.

⁷⁷ Duke University, *Harassment Policy & Procedures*, *supra* note 47, at 7.

⁷⁸ Tulane University, *Equal Opportunity/Anti-Discrimination Policies*, *supra* note 73, at 7.

⁷⁹ Harvard University, *Sexual and Gender-Based Harassment Policy and Procedures for the Faculty of Arts and Sciences*, *supra* note 3, at 14.

⁸⁰ Washington University in St. Louis, *Discrimination and Harassment* (2017), <https://hr.wustl.edu/items/discrimination-harassment-policy/>.

⁸¹ Johns Hopkins University, *Harassment and Discrimination Procedures*, *supra* note 75.

Some universities provide complainants and respondents with information at the outset of the process about their rights and about the investigative process, which UR does not appear to do. Case Western provides the complainant and respondent with information about the policy and process, including the rights of the complainant and the respondent under its policy.⁸² Brown, at the beginning of an investigation, provides complainants with information about resources, procedural options, and remedial measures and an opportunity to discuss the university's policies.⁸³ At Vanderbilt, the Equal Opportunity, Affirmative Action, and Disability Services Department will explain the process to all parties involved and notify them of the need for confidentiality to be maintained throughout.⁸⁴

At Johns Hopkins, upon receiving a complaint, the university will provide the complainant with a written explanation of his or her rights and options and the resources available to assist the complainant. If an investigation is opened, the Title IX Coordinator will notify the complainant and respondent simultaneously in writing of the alleged violation being investigated and will provide the complainant and respondent with a written explanation of their rights and options during the resolution process, including the availability of interim measures and support services. The Title IX Coordinator also ensures that both the complainant and respondent are updated throughout the investigative process.⁸⁵

⁸² Case Western Reserve University, *Sexual Misconduct Policy*, *supra* note 44, at 10.

⁸³ Brown University, *Sexual and Gender-Based Harassment, Sexual Violence, Relationship and Interpersonal Violence and Stalking Policy*, *supra* note 4, at 10.

⁸⁴ Vanderbilt University, *Human Resources Policies and Procedures on Anti-Harassment*, 3 (2015), <https://hr.vanderbilt.edu/policies/anti-harassment.php>.

⁸⁵ Johns Hopkins University, *Harassment and Discrimination Procedures*, *supra* note 75.

Before any investigation proceeds, Duke provides the respondent with an opportunity to prepare a written response to the complaint. Once the response is received, the Office of Institutional Equity will consult with the complainant about the appropriate process to be followed in handling the complaint.⁸⁶ UR does not allow the respondent to prepare a written response to the complaint before initiating an investigation.

C. Conduct of Investigations

Most universities' policies give investigators wide discretion and latitude to investigate the allegations of the complaint. Columbia, for example, authorizes the investigator to interview any person and "gather information from all sources judged necessary for a fair resolution of a complaint," including personnel records.⁸⁷ Columbia's policy is explicit that while the complainant and the respondent may suggest witnesses that the investigator should interview and documents the investigator should consider, the investigator has complete discretion to decide what to review.⁸⁸

Consistent with Title VII and Title IX, universities apply a preponderance of the standard in determining whether a policy violation has occurred. This standard is set forth explicitly in Columbia's policies, which add that in making a determination, university investigators review the evidence in its totality and consider any attendant circumstances.⁸⁹

⁸⁶ Duke University, *Harassment Policy & Procedures*, *supra* note 47, at 9.

⁸⁷ Columbia University, *Employee Policy and Procedures on Discrimination, Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking*, *supra* note 41, at 13.

⁸⁸ *Id.*

⁸⁹ *Id.*

Some universities allow complainants and respondents to have representatives during the investigative process. Harvard allows the complainant and respondent to bring a personal adviser to any interviews. Personal advisers are allowed to “view a redacted version of the complaint or other documents provided to the parties, offer feedback on their advisee’s written statements, and provide general advice.”⁹⁰ During interviews, personal advisers may not speak for their advisees, but can ask to “suspend the interviews briefly if they feel their advisees would benefit from a short break.”⁹¹

Case Western allows complainants and respondents to have an adviser at meetings during the initial inquiry and during the informal process or formal hearing process. During hearings, the adviser “may talk quietly with the complainant or the respondent or pass notes in a non-disruptive manner.” The adviser may not intervene in the hearing or address the panel.⁹²

Columbia allows students to be accompanied by an adviser of their choice who may assist and advise throughout the investigative process.⁹³ Cornell allows the complainant and respondent to seek the advice of personal attorneys and advisers throughout the investigative process, and such advisers may attend interviews, but may not respond to questions or pose

⁹⁰ Harvard University, *Sexual and Gender-Based Harassment Policy and Procedures for the Faculty of Arts and Sciences*, *supra* note 3, at 16.

⁹¹ *Id.*

⁹² Case Western Reserve University, *Sexual Misconduct Policy*, *supra* note 44, at 22.

⁹³ Columbia University, *Employee Policy and Procedures on Discrimination, Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking*, *supra* note 41, at 18.

questions.⁹⁴ Brown’s policy provides that the university will consider requests from the complainant and respondent to bring an adviser to meetings.⁹⁵

Some universities in our sample provide complainants with the option to have their complaint considered before a hearing. Duke, for instance, gives complainants the option to submit their complaint to a five-member hearing panel. The hearing panel is empowered to make findings and recommend corrective actions.⁹⁶ Washington University in St. Louis also provides complainants with the option to submit their formal complaint before a hearing.⁹⁷

Case Western also allows for hearings if the Title IX Coordinator and Office of General Counsel determine that it is appropriate. In making this determination, the Title IX Coordinator and Office of General Counsel consider the wishes of the complainant and respondent and the nature and severity of the conduct. The complainant, respondent and their respective advisers are entitled to review all information and materials submitted to the hearing panel. The hearing panel’s findings are disclosed to the complainant, respondent and the respondent’s department chair and dean.⁹⁸

Some universities only allow for hearings when the complaint is brought against a faculty member. Cornell provides the option of a hearing to faculty members who are facing sanctions in an investigation report. Such hearings apply a “clear and convincing evidence” standard—

⁹⁴ Cornell University, *Procedures for Resolution of Reports Against Faculty Under Cornell University Policy 6.4*, 8 (2017), https://hr.cornell.edu/sites/default/files/documents/faculty_policy6.4procedures.pdf.

⁹⁵ Brown University, *Discrimination and Workplace Harassment 20.072*, 3 (2017), <https://www.brown.edu/about/administration/policies/node/230>.

⁹⁶ Duke University, *Harassment Policy & Procedures*, *supra* note 47, at 10-11.

⁹⁷ University of Washington in St. Louis, *Discrimination and Harassment*, *supra* note 80.

⁹⁸ Case Western Reserve University, *Sexual Misconduct Policy*, *supra* note 44, at 19-21.

which is a higher evidentiary burden than the “preponderance of the evidence” standard that applies in Title VII and Title IX investigations—in determining whether the faculty member violated the university policy.⁹⁹ Emory also directs certain complaints against faculty members to the hearing track. If, for instance, a *bona fide* conflict exists between the principles of academic freedom and the requirements of the university’s anti-harassment policy, the investigation will be referred to the faculty review panel, which will make a determination as to whether there was a violation of policy.¹⁰⁰

Complaints of harassment made against faculty members at University of Chicago are brought before the Panel on Unlawful Harassment. The Panel consists of four faculty members appointed by the Provost for three-year terms and the Student Ombudsperson (as a non-voting student member). The Director of the Office for Equal Opportunity Programs sits with the Panel *ex officio* and does not vote. The Panel is authorized to investigate the complaint and interview those with knowledge of the matter, including the complainant and respondent. If the complaint is found to have merit, the Panel will relay its findings to the Provost, who will take appropriate action.¹⁰¹

Cornell and Brown were the only universities in our sample to compel participation in university investigations into sexual harassment and discrimination. According to Cornell’s policy, 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

⁹⁹ Cornell University, *Procedures for Resolution of Reports Against Faculty Under Cornell University Policy 6.4*, *supra* note 94, at 17.

¹⁰⁰ Emory University, *Policy 1.3 Equal Opportunity and Discriminatory Harassment Policy*, 5 (2015), <http://policies.emory.edu/1.3>.

¹⁰¹ University of Chicago, *Policy on Harassment, Discrimination, and Sexual Misconduct*, *supra* note 5, at 24.

action.”¹⁰² Brown provides that “Staff and other members of the University Community who have relevant information are required to cooperate with the University’s investigation of allegations of discrimination and harassment.”¹⁰³

Cornell is also unique in designating a faculty member to serve as a co-investigator when the complaint arises out of the “nature of a subordinate-supervisory relationship between a faculty member and the student (such as while engaged in teaching, advising, research, and thesis or dissertation supervision).”¹⁰⁴

Policy 106 sets out formal complaint investigation procedures at UR.¹⁰⁵ Under Policy 106, an investigation of a formal complaint will include an interview with the person making the complaint, interviews of witnesses with knowledge relevant to the complaint, and may include gathering witness statements.¹⁰⁶

D. Confidentiality of the Investigative Process

Some universities make clear in their policies that confidentiality cannot be guaranteed during the investigative process. Harvard notes that it will take “reasonable steps to protect the privacy of all involved,” and once a complaint is filed, the complainant, respondent, and all witnesses will be notified that disclosing information about the case has the potential for compromising the integrity of the investigation and might, in certain circumstances, be construed

¹⁰² Cornell University, *Procedures for Resolution of Reports Against Faculty Under Cornell University Policy 6.4*, *supra* note 94, at 8.

¹⁰³ Brown University, *Discrimination and Workplace Harassment*, *supra* note 95, at 1.

¹⁰⁴ Cornell University, *Procedures for Resolution of Reports against Faculty Under Cornell University Policy 6.4*, *supra* note 94, at 8.

¹⁰⁵ University of Rochester, Policy 106 (revised 2014).

¹⁰⁶ *Id.* at 4.

as retaliatory.¹⁰⁷ Washington University in St. Louis cautions that it “cannot guarantee complete confidentiality where it would conflict with the University’s obligation to investigate meaningfully or take corrective action.”¹⁰⁸ Case Western states that it “weigh[s] requests for confidentiality against the need to investigate and protect the university community.” If the request for confidentiality cannot be granted, the university “will discuss with the complainant this determination and what information will be disclosed and to whom it will be disclosed as necessary to conduct an investigation or take appropriate action.”¹⁰⁹ Tulane provides that it “cannot guarantee complete confidentiality where it would conflict with the University’s obligation to investigate or where confidentiality concerns are outweighed by the University’s interest in protecting the safety or rights of others.”¹¹⁰ UR states that “while every effort will be made to protect the privacy of all parties, confidentiality cannot be guaranteed.”¹¹¹

Other universities compel participants in investigations to respect the confidentiality of the process. Cornell instructs witness about respecting confidentiality and such persons are required to comply with the university’s rules regarding privacy.¹¹² University of Chicago likewise provides that “all parties and witnesses involved in an investigation or hearing under this policy are prohibited from disclosing, at any time and through any medium (including social

¹⁰⁷ Harvard University, *Sexual and Gender-Based Harassment Policy and Procedures for the Faculty of Arts and Sciences*, *supra* note 3, at 16.

¹⁰⁸ University of Washington in St. Louis, *Discrimination and Harassment*, *supra* note 80.

¹⁰⁹ Case Western Reserve University, *Sexual Misconduct Policy*, *supra* note 44, at 12.

¹¹⁰ Tulane University, *Equal Opportunity/Anti-Discrimination Policies*, *supra* note 73, at 6.

¹¹¹ University of Rochester, *Policy 106* (revised 2014).

¹¹² Cornell University, *Prohibited Bias, Discrimination, Harassment, and Sexual and Related Misconduct*, 18 (2017), <https://www.dfa.cornell.edu/policy/policies/prohibited-bias-discrimination-harassment-sexual-misconduct>.

media), the identity of the parties and witnesses, and any details or information regarding an incident, investigation or hearing. Those who fail to preserve confidentiality may face disciplinary action.”¹¹³

Still other universities allow parties to disclose otherwise confidential information to others or to review otherwise confidential information. Cornell permits parties to “choose whether to disclose or discuss with others the outcome of a complaint under this policy.”¹¹⁴ University of Southern California shares witness testimony with the complainant and respondent.¹¹⁵

E. Reports of Findings & Determination

Most universities in our sample provide that the complainant and respondent will be notified of the outcome of a complaint or investigation; witnesses who participate in the investigation are not notified. Some universities provide drafts of the investigative report to the complainant and respondent and invite the parties to submit a written response. Harvard, for example, allows both parties one week to respond to a draft of the findings of fact and analysis, and the investigator considers these responses before finalizing the report.¹¹⁶ Cornell also

¹¹³ University of Chicago, *Policy on Harassment, Discrimination, and Sexual Misconduct*, *supra* note 5, at 19.

¹¹⁴ Cornell University, *Prohibited Bias, Discrimination, Harassment, and Sexual and Related Misconduct*, *supra* note 112, at 17.

¹¹⁵ University of Southern California, *Complaints and Appeals* (2011), <https://equity.usc.edu/filing-a-complaint/>.

¹¹⁶ Harvard University, *Sexual and Gender-Based Harassment Policy and Procedures for the Faculty of Arts and Sciences*, *supra* note 3, at 17.

provides both parties a reasonable opportunity to submit written comments.¹¹⁷ UR sends a written determination of the outcome of the investigation to the complaining individual, the accused, and appropriate administrative personnel, and any party to the investigation may appeal the decision within 15 days.¹¹⁸

Cornell requires that before being given a copy of the report, the complainant and respondent each must sign a statement of confidentiality affirming that the contents of the report will not be disclosed to any other person. Cornell allows for the release of a “public statement of its findings of fact, conclusions, and recommendations,” although will only do so after taking into account any concerns about confidentiality. In certain circumstances, Cornell also engages in actions to restore the respondent’s reputation, such as notifying persons who participated in the investigation, and/or a public announcement of the outcome.¹¹⁹

F. Disciplinary Measures for Violations

Unlike UR, some universities explicitly set forth which punishments are available when someone is found to have violated the harassment or discrimination policy. Washington University in St. Louis states that consequences for violations of its policy include “an apology to the victim, required counseling or training, oral or written reprimand, loss of salary, transfer or change of job/location, suspension, probation, demotion, termination, dismissal or expulsion.”¹²⁰

Columbia provides for the following disciplinary actions:

¹¹⁷ Cornell University, *Procedures for Resolution of Reports against Faculty Under Cornell University Policy 6.4*, *supra* note 94, at 9-10.

¹¹⁸ University of Rochester, *Policy 106* (revised 2014).

¹¹⁹ *Id.* at 9.

¹²⁰ University of Washington in St. Louis, *Discrimination and Harassment*, *supra* note 80.

reprimand/warning, change of the Respondent's job duties, disciplinary probations, revocation of honors and awards, restricted access to University facilities or activities, a "no contact" order, movement of a Respondent's University-provided residence, movement of Respondent's workplace/station, demotion, suspension, and dismissal or restriction from University employment. The University may also require training or recommend counseling.¹²¹

Disciplinary action for violations of Cornell's policy include: "an oral or a written warning, a written reprimand, a requirement to attend training, work restrictions, salary reduction or limitation, suspension, dismissal/termination, community work, fine, probation, educational classes, counseling, papers, directed study, letters of apology, restitution, orders to perform or to stop certain actions, or other educational sanctions."¹²²

Most universities separate the roles of the fact finder and the person who decides upon disciplinary action, similar to UR. At Emory, for example, the Office of Equity and Inclusion is responsible for issuing a final written determination of whether there was a violation of a university policy, while the relevant academic dean is responsible for deciding upon and issuing disciplinary action.¹²³ At Johns Hopkins, the dean is responsible for determining sanctions following the issuance of an investigative report.¹²⁴ At University of Chicago, the Panel on

¹²¹ Columbia University, *Employee Policy and Procedures on Discrimination, Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking*, *supra* note 41, at 24.

¹²² Cornell University, *Procedures for Resolution of Reports against Faculty Under Cornell University Policy 6.4*, *supra* note 94, at 9.

¹²³ Emory University, *Policy 1.3 Equal Opportunity and Discriminatory Harassment Policy*, *supra* note 100, at 5.

¹²⁴ Johns Hopkins University, *Harassment and Discrimination Procedures*, *supra* note 75.

Unlawful Harassment adjudicates complaints against faculty members and makes findings of fact. The Provost then is responsible for taking appropriate disciplinary action.¹²⁵

At Columbia, however, the investigator not only makes a determination of whether there has been a violation, but also may recommend appropriate disciplinary action for any violation.¹²⁶

G. Appeals

Any party to a UR Policy 106 investigation has the right to appeal the decision within 15 days of the determination letter. The appeal is limited to considering (i) evidence not previously available to the investigator, (ii) material defects in the process leading to the decision, or (iii) severity or appropriateness of the imposed corrective action. Appeals are handled by the Provost where the accused is a faculty member and the senior officer's decision is final. UR aligns with other universities in this respect. For example, at Emory, if a faculty member receives a sanction of suspension, transfer or termination arising out of harassment or discrimination, the faculty member can appeal the determination before a hearing of the Faculty Hearing Committee.¹²⁷

VI. Sexual Harassment Training

Relatively little information is publicly available regarding other universities' training content and requirements. However, a minority of AAU universities include training requirements within their harassment and discrimination policies. These policies often list

¹²⁵ University of Chicago, *Policy on Harassment, Discrimination, and Sexual Misconduct*, *supra* note 5, at 24-25.

¹²⁶ Columbia University, *Employee Policy and Procedures on Discrimination, Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking*, *supra* note 41, at 14.

¹²⁷ Emory University, *Policy 1.3 Equal Opportunity and Discriminatory Harassment*, *supra* note 100, at 5.

informal informational events as examples of training resources available to the student and faculty community at large, and do not require these events to occur on a frequent or fixed basis with any kind of follow-up or review.

For example, Johns Hopkins' and Brown University's policies state that incoming students and new faculty and staff receive prevention and awareness programming as part of their orientation, and all students and faculty and staff receive ongoing training and related programs on an annual basis.¹²⁸ The policies do not specify whether attendance is mandatory or what the content of these trainings must include.

NYU's policy also lists sexual misconduct prevention and awareness programs available to employees, such as "Preventing Harassment on Campus" and "Preventing Harassment, Supervisor's Workshop," but they are not mandatory.¹²⁹ The University of Pennsylvania encourages deans and heads of major administrative units to "discuss this policy and issues of sexual harassment at meetings of faculty and staff."¹³⁰

The University of Wisconsin requires online training for sexual harassment "fairly regularly."¹³¹ One witness with whom we spoke mentioned that her department at another university recently held a "Town Hall," where representatives from the Title IX Office and an ombudsman were present to address the group and answer questions.

¹²⁸ Johns Hopkins University, *Harassment and Discrimination Procedures*, *supra* note 75; Brown University, *Discrimination and Workplace Harassment*, *supra* note 95.

¹²⁹ New York University, *Sexual Misconduct, Relationship Violence, and Stalking Policy*, *supra* note 21.

¹³⁰ University of Pennsylvania, *Sexual Harassment Policy*, *supra* note 42.

¹³¹ University of Wisconsin-Madison, *Employee Training: Preventing Sexual Harassment and Sexual Violence*, (<https://compliance.wisc.edu/titleix/employee-training/>).

Of the universities surveyed, only USC's policy states that training for employees, including faculty, is mandatory.¹³² USC states that all employees must periodically complete required awareness training programs provided by the university, and failure to complete the required training can result in discipline. This is not to say that no other university mandates employee and faculty training, but only that no other school that we have reviewed includes this requirement in its publicly available policies. UR's Policy 106 does not reference any mandatory or optional sexual harassment training.¹³³

¹³² University of Southern California, *Discrimination, Harassment, Sexual Harassment and Sexual Assault*, *supra* note 50.

¹³³ University of Rochester, *Policy 106* (revised 2014).