

## Instructional Staff Grievance Procedure

Swarthmore College is committed to establishing and maintaining a community rich in equality and free from all forms of discrimination, harassment, and misconduct. The College's [Notice of Non-Discrimination](#) expressly prohibits any form of discrimination and harassment on the basis of any College-recognized protected classification. The College seeks to create an environment in which the greatest academic potential of students and professional potential of instructional staff and non-instructional staff may be realized. In order to create and maintain such an environment, the College recognizes that all who work and learn at the College are responsible for ensuring that the community is free from all forms of discrimination, harassment, assault, and other forms of misconduct. These behaviors threaten our learning, living, and work environments and will not be tolerated. The College provides methods for all members of the community to seek prompt, impartial, and balanced assessment of their concerns.

The outcomes of our process will vary depending on the nature of the concerns and the severity of the alleged infractions. Ultimately, we seek to create a healthy learning and working environment for all members of the College community through compassion, justice, and restoration. We emphasize consultative resolution as a preferred methodology, understanding its limitations, and the need in some cases for proceedings that can lead to formal sanctions.

The following procedures apply to complaints against instructional staff and may be initiated by any members of the College community, including students, instructional staff (which includes faculty), staff, or any individuals regularly employed, studying, living, or having any official capacity at the College. In this context, instructional staff includes all full-time and part-time faculty (whether or not appointed to regular faculty rank), lecturers, and lab instructors. A grievance or complaint against a member of the instructional staff is an allegation of inappropriate discrimination or substantial unfairness, relating to one's work as a member of the College's instructional staff. Such a grievance may include but is not limited to discrimination on grounds of sex, race, color, age, religion, national origin, marital status, sexual orientation, gender identity or expression, veteran status, medical condition, pregnancy, disability, or any other legally protected status.

Any member of the college community concerned about the actions of an instructional staff member who wishes to have a grievance considered by the College is required to follow this grievance procedure, except when:

(a) A complaint is contesting the outcome of a reappointment decision or a termination of a member of the instructional staff. In this case, the procedure in the *Handbook for*

*Instructional Staff* sections entitled “Review of Appointment Renewal Decisions” and “Termination of Appointments” shall be employed.

(b) A complaint is related to sexual misconduct of all forms, including:

- Sexual Harassment
- Sexual Assault
- Sexual Exploitation
- Indecent Exposure
- Intimate-Partner Violence, including Dating Violence and Domestic Violence
- Retaliation
- Stalking
- Other misconduct that is sex- or gender-based or in the context of an intimate partner relationship, including bullying and intimidation, physical assault, and discrimination.

Alleged violations of the College’s [Sexual Assault and Harassment Policy](#) will be addressed by the [Procedures for Resolution of Complaints Against Staff and Instructional Staff Including Faculty](#).

### **Preliminary Considerations**

Consultative Resolution: Prior to initiating the grievance procedure, a member of the community who asserts a grievance is expected to make timely and good faith efforts first to resolve a grievance through consultation without resort to the grievance procedure. Among the consultation steps deemed appropriate are: discussing the grievance with the person or persons who appear to be responsible for it; discussing the grievance with the Department Chair; discussing the grievance with the Provost and Dean of the Faculty. The complainant(s) may consult the Director, Equal Opportunity and Engagement at any time, informally and privately, about the grievance procedure and/or any means available for mediation, conciliation, or investigation of a grievance, whether or not the grievance is concerned with equal opportunity.

College personnel that may (or in some cases must) be involved in grievance procedures include the Director, Equal Opportunity and Engagement, the Provost and Dean of the Faculty, a Division Chair, the Department Chair(s) of the instructional staff involved, and members of the Committee on Faculty Procedures (COFP).

At any stage of this process, complainant(s) and respondent(s) may be assisted by campus support person(s) of their choice (one per complainant/respondent) to attend meetings in order to help the complainant(s)/respondent(s) prepare their cases

effectively and to provide moral support. Note that since this is an internal campus process, support persons must be Swarthmore College community members. The support person cannot be an identified witness or have any conflicting role in the grievance procedure (described below) or with a party in the proceedings.<sup>1</sup>

All parties to the grievance are expected to *refrain from retaliation*, to engage in *good faith participation*, and to *respect privacy*.

**Non-Retaliation:** Members of the College community who make use of this policy may do so without fear of retaliation from other members of the community. Retaliation against any member of the community for good faith participation in this policy is a violation of College policy, will not be tolerated, and will be subject to disciplinary procedures. Any violation of the non-retaliation policy should be reported to the Director, Equal Opportunity and Engagement or the Provost and Dean of the Faculty.

**Good Faith Participation:** This policy is dependent upon the willingness of all those involved to participate in good faith, whether as a complainant, respondent, witness, or support person. Accordingly, it is expected that community members will participate in an open, civil, and respectful manner aimed at productive resolution. Should a community member be found to have knowingly and intentionally brought forward a false charge, provided false witness, or in any other way knowingly and intentionally acted to thwart the resolution process, that person will be subject to disciplinary action.

**Privacy:** Understanding the nature of any complaint and facilitating resolution typically requires speaking with others. The Director, Equal Opportunity and Engagement and/or the Provost and Dean of the Faculty will take this step when necessary to resolve the complaint and with those persons relevant to the resolution of the complaint.

Participants in a complaint (i.e., complainant(s), respondent(s), interviewees, witnesses, support persons, members of COFP, any persons consulted by the complainant(s) and

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<sup>1</sup> The College's duty is to complainant(s)/respondent(s), not to support person(s). All communication is made directly with the complainant(s)/respondent(s), who can share information with their support person, at the discretion of the complainant(s)/respondent(s). At the discretion of the complainant(s) or respondent(s), support person(s) (one per complainant/respondent) may accompany the complainant(s) or respondent(s) to any meeting related to these procedures. Support person(s) are expected to be silent and non-participating observer(s), except to ask for a short break if the complainant(s)/respondent(s) requires some time for composure or to collect thoughts. Support person(s) may communicate with the complainant(s)/respondent(s) during proceedings in a non-disruptive manner. Support person(s) may be required to leave the meeting, if disruptive. Support person(s) may not delay, disrupt, or otherwise take action to interfere with the integrity of the grievance procedures.

respondent(s)) are expected to maintain the privacy of the proceedings to ensure an unencumbered resolution.

## **Grievance Procedure**

A member of the community who has a grievance involving the actions of an instructional staff member, and who has failed, despite timely and good-faith efforts, to resolve that grievance consultatively may invoke the grievance procedure. The first point of contact for the complainant(s) will be either the Director, Equal Opportunity and Engagement or the Provost and Dean of the Faculty. If the grievance is against the Provost and Dean of the Faculty, one of the Division Chairs may be notified as an alternative. The request to initiate the grievance procedure must be written and should include the following:

- a. A statement of the particulars of the grievance, including a specification of the grievance itself and allegations with respect to the act or acts constituting the grievance and the person or persons responsible for those acts.
- b. A statement detailing steps taken by the complainant(s) to resolve the grievance through consultation.

The Director, Equal Opportunity and Engagement and the Provost and Dean of the Faculty will consult about the timing and logistics of next steps, understanding that a Division Chair will substitute for the Provost and Dean of the Faculty if the latter is the subject of the grievance.

Within five (5) business days of the receipt of the written statement of the particulars of the grievance, the Director, Equal Opportunity and Engagement or Provost and Dean of the Faculty (or Division Chair) will share a copy of the written statement with the respondent(s). Respondent(s) may submit a written response within five (5) business days.

Both the complainant(s) and respondent(s) may consult with other members of the College community for advice in preparing their statements. Such consultations must adhere to the principles of good faith participation and respect for privacy described above.

A formal disposition of an individual grievance entails a determination of the basic facts of the issue by a faculty committee, as provided for below, and a finding that the facts do or do not substantiate the grievance. The final determination may be accompanied by a recommendation to the President for redress of the grievance. Final action is the responsibility of the President. If in their capacity as a faculty member, the President is

named as a party to the grievance, the Chair of the Board of Managers will take final action.<sup>2</sup>

Upon receipt of the request and supporting statements, the Director, Equal Opportunity and Engagement, Provost and Dean of the Faculty, or Division Chair shall notify the COFP of that request, and include a copy of the request of the complainant(s) and the written response of the respondent(s). COFP shall as soon as possible but in any case within 30 days of receipt of the request appoint a committee of three to five faculty members (“the Committee”) of whom at least a majority shall be tenured and none of whom have an identified interest in the matter. COFP shall appoint one of the tenured members to chair the Committee.<sup>3</sup> The request of the complainant(s) and supporting statements as well as the written response of the respondent(s) will be shared with the Committee.

The Committee will proceed in private as it deems best, resolving by majority vote any issues relating to procedure or its final determination, with provision for minority reports. Counsel may be made available for consultation by the Committee upon approval by the President. The Committee may consult with or interview whomever it chooses in reaching its determinations. However, if the Committee meets with one party, it will also offer to meet with the other party in an equitable manner.

If the Committee determines either that the complainant(s) has failed to make good-faith efforts to resolve the grievance through consultation prior to invoking the grievance procedure or that the complainant(s) has failed to establish a prima facie case of a grievance, it shall so notify the complainant(s) and respondent(s). The complainant(s) shall have an opportunity to respond within five (5) business days, but if the Committee remains convinced either that good-faith efforts were lacking or that a

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<sup>2</sup> In some cases, grievances may highlight issues of policy or practice that are broader or more pervasive than a single individual situation. If so, then the responsible parties informed of the grievance (the Provost and Dean of the Faculty, the Division Chair and/or the Director, Equal Opportunity and Engagement) will consult with the relevant governance committees to address these policy or practice concerns through the normal process of College decision-making. This consultation could include, for example, the Equal Opportunity Advisory Committee, the COFP, the Council of Educational Policy, or others, as deemed appropriate, respecting as always the privacy of the College community members involved in the individual grievance. At no time, however, should resolution of broader policy or practice concerns be seen as a substitute, impediment, or reason to delay addressing an individual complaint or grievance.

<sup>3</sup> If the request is received less than 30 days from the last day of Spring finals, COFP shall appoint the committee within 30 days of September 1 or the start of fall classes, whichever comes first.

prima facie case was not established, it shall so notify the complainant(s) and respondents(s) in writing and terminate the grievance procedure. The Committee will also report its determination, with or without recommendations, to the President and to the Director, Equal Opportunity and Engagement, Provost and Dean of the Faculty, or Division Chair.

The Committee's determination to terminate the grievance procedure at this stage is subject to Procedural Review (see below) at the request of the complainant(s).

If the complainant(s) is not satisfied with this disposition of an equal opportunity grievance and wishes to pursue the matter further, the complainant(s) may request information from the Director, Equal Opportunity and Engagement about other remedies available from state or federal agencies.

If the Committee determines that the complainant(s) has made good faith efforts toward a consultative resolution of the grievance and that a prima facie case for the grievance has been established, it shall proceed to a formal determination, to which the following provisions apply.

- a. The Committee will proceed by considering the complainant(s)'s allegations and all of the relevant information submitted in the grievance. The Committee will determine whether the evidence, considered altogether, substantiates the grievance. Once submitted to the Committee, neither the grievance nor the allegations supporting it may be amended except following further attempts at conciliation or mediation or except when the Committee concludes that justice would not be served by denying the amendment(s).
- b. The Committee need not adhere to strict rules of evidence and may consider any evidence of probative value with respect to the issues involved.
- c. The burden of proof shall rest with the complainant(s) asserting the grievance; but the Committee shall not be foreclosed from seeking additional evidence, relating to the grievance, on its own initiative.
- d. The Committee shall have the power to conduct the proceedings in an orderly manner. The Committee may secure the presentation of evidence and attendance of witnesses concerning facts in dispute and may expect to have the assistance of the College administration in obtaining the attendance of witnesses. The Committee may, at any time it deems appropriate, exclude any or all other persons and deliberate in private.
- e. The complainant(s) and the respondent(s) can be accompanied by their support person in their appearances before the Committee (see note 1). At

the request of the respondent(s), the complainant(s), or the Committee, a representative of the College administration (as long as they are not in the position of being a respondent) may also be present during the taking of testimony.

f. The complainant(s) and respondent(s) shall, at some stage or stages of the proceedings, appear together before the Committee, testify, and respond to one another.

g. The deliberations of the Committee and testimony given before the Committee shall be private but for the specific exceptions provided below. Obligations to respect the privacy of the testimony, the proceedings, and the recommendations and reports of the Committee extend to all members of the College community and to all persons involved in the proceedings. Violations of privacy by any party may be considered with prejudice by the Committee.

h. At any point in its proceedings the Committee, on its own initiative or in response to the parties, may recommend further efforts at conciliation or mediation. While the parties consider alternatives to resolve their dispute, the Committee may suspend its proceedings during this period.

The Committee shall formulate an initial determination as to whether the evidence, considered altogether, substantiates the grievance. Its determination shall include a statement, with appropriate specificity, of the facts and the conclusions from these facts that support their decision. This statement shall be given to the complainant(s), the respondent(s), the Director, Equal Opportunity and Engagement, the Provost and Dean of the Faculty, or the Division Chair, and the President. Within a reasonable time, but not more than 30 days, either the complainant(s) or the respondent(s) may:

- a. initiate further attempts at conciliation or mediation;
- b. make a request for amendments in the determination of the facts or conclusions from those facts. This request should be in writing and may be supported by oral argument.

In discussing the interim report with the complainant(s) or the respondent(s), the Committee will strive at all times to preserve privacy, especially with respect to those who are not parties to the dispute, except that some information may be divulged by the Committee with the consent of the affected parties, or after notification of the affected parties and insofar as necessary to procedural fairness.

After the Committee has received and considered the comments of the complainant(s) and those of the respondent(s), it shall proceed to a final determination. Its final

determination shall include an explicit and reasoned statement of the Committee's conclusion with respect to the merits of the grievance, and the Committee may make recommendations for disposition of the complaint and/or for dealing with the circumstances that gave rise to it.

Copies of the Committee's statement shall be given to the complainant(s), the respondent(s), the President, and the Director, Equal Opportunity and Engagement.

Either party to the grievance may initiate a Procedural Review (see below) after the Committee's final determination is received.

The President shall decide what further steps to take, either to redress the grievance or to act upon advice given by the Committee, informing the Committee and the parties of the decision and giving the reasons for it. The decisions of the President will be final and not subject to further review.

### **Outcomes**

The options available for the resolution of a grievance against a member of the instructional staff are varied and depend on the nature of the alleged behavior. Restoration of a healthy learning and working environment is the goal to be achieved; resort to formal sanctions may not be the most effective means to achieve that end. Depending on the circumstances, for example, mandatory training or other educational efforts might be appropriate.

In other cases, formal sanctions may be required to take corrective action and to deter future infractions. In this context, formal sanctions can also be viewed as consistent with restoration of a healthy learning and working environment.

If the Committee finds, and the President agrees, that a member of the instructional staff has behaved in a manner that is sufficiently unprofessional to constitute "serious shortcomings" as defined in section III-A-14 of this Handbook, then an appropriate response would be initiation of the procedures described in section III-A-14 for the "Termination of Appointments."

Less serious behavior could result in sanctions that include, but are not limited to: oral reprimand; written reprimand; restitution (for instance, payment for damage due to individuals or to the institution); loss of prospective benefits for a stated period (for instance, suspension of increase in salary or suspension of promotion eligibility);

reduction in salary for a stated period; suspension from service for a stated period, without other prejudice.<sup>4</sup>

Other situations may require adjustments in the working expectations of instructional staff in response to the resolution of a grievance. These could include, but are not limited to: withdrawal from future personnel decisions regarding an individual, a department or a program; restrictions from serving on particular committees or in specific roles in the College; restrictions regarding future teaching assignments or modes of interaction with students; no-contact or avoidance measures that continue in place beyond the resolution of the grievance.

### **Procedural Review**

Decisions made by the Committee may be subject to review under two circumstances (as referenced above):

1. The complainant(s) may request a review of the Committee's determination to terminate the grievance procedure because either the complainant(s) have failed to make good-faith efforts to resolve the grievance through consultation prior to invoking the grievance procedure or the complainant(s) have failed to establish a prima facie case of a grievance.
2. Either party to the grievance may initiate a review after the Committee's final determination is received.

In either of these circumstances, the limited grounds for review are:

- (a) new evidence that could affect the determination of the Committee and that was unavailable during the grievance procedure
- (b) procedural error(s) that had a material impact on the Committee's decisions
- (c) the Committee's recommendations to the President are grossly disproportionate to the severity of the complaint

Dissatisfaction with the substance of the Committee's determination is not grounds for review.

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<sup>4</sup> The disciplinary actions listed in this section are consistent with AAUP policies on Faculty Misconduct and Discipline (see "Report of the Joint Subcommittee on Faculty Responsibility" *AAUP Bulletin* vol. 57, no. 4, 1971, pp. 524-527).

The respondent(s) or complainant(s) may request a review based on one or more of criteria (a) - (c) by the elected members of the Committee on Faculty Procedures (COFP). The request for review will consist of a concise written statement of the grounds for review, to be submitted to the elected members of COFP within fifteen (15) business days of the receipt of the determination of the Committee which prompts the request for review.<sup>5</sup> In carrying out the review, the burden of proof lies with the party requesting the review; the original determination is presumed to have been decided reasonably and appropriately.

The COFP will communicate the result of their review within five (5) business days from the date of submission of all documents by both parties. The decision of the COFP is not subject to further review.

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<sup>5</sup> If the request for review is received less than 30 days from the last day of Spring finals, COFP shall undertake the review within 30 days of September 1 or the start of fall classes, whichever comes first.