



Freedom of Expression Grievance Process

This process will be used to respond to alleged violations of Ohio University Policy 01.041: Campus Freedom of Expression, which provides the basis, rationale, and scope of the policy, as well as relevant definitions. Further, Policy 01.041 details behaviors prohibited by the policy and gives information about reporting alleged violations. Ohio University Policy 01.041 may be found at <https://www.ohio.edu/policy/01-041>.

Complaints must be filed within ten business days of the date a complainant thinks their speech was suppressed, restricted, limited, or otherwise hindered by an employee. In cases where a faculty member is alleged to have violated the freedom of expression rights of a student currently enrolled in the faculty member's class, the complaint will be held and processed only after grades have been submitted for the semester.

This process provides for a prompt, fair, and impartial investigation and resolution of allegations. ECRC will make every effort to resolve a complaint within 90 business days from the date the respondent is notified of the investigation. The staff in University Equity and Civil Rights Compliance (ECRC) are responsible for managing and implementing this process.

1. Complainant Initial Meeting/Interview

The investigator will contact the complainant as soon as possible to schedule an initial meeting and interview. The complainant may be accompanied by a support person of their choice at all meetings, but the support person may not otherwise participate in the process.

Should the complainant not respond after the investigator has made two attempts to schedule the initial meeting, the investigator will send the complainant written acknowledgment of their non-participation and notice of the next steps to be taken. Should the complainant decide not to participate in the grievance process at any point, the process may continue to a reasonable resolution. The complainant will continue to receive updates regarding the progress of the investigation and hearing, if any, and may re-engage with the grievance process at any point prior to its conclusion.

Following each complainant interview, the investigator will write a summary of the relevant information from the interview. The complainant will be given the opportunity to review and verify the summary of their interview written by the investigator. Clarifications resulting from a misunderstanding or error on the part of the investigator will be corrected before the summary is finalized. Additions or changes to the information provided by the complainant will be added to the summary with a notation.

2. Notice of Investigation

The respondent will be sent written notice of the investigation with sufficient time to prepare before they are interviewed about the matter. The delivery of the notice commences the Freedom of Expression Grievance Process.

The notice will be emailed to the respondent's Ohio University email account. At the discretion of the Director, an alternative means of delivering the notice may be utilized if circumstances warrant. Once emailed or otherwise sent or given in person, notice will be presumptively delivered.

3. Respondent Initial Meeting/Interview

The investigator will contact the respondent as soon as possible to schedule an initial meeting and interview. The respondent may be accompanied at all meetings by a support person of their choice, but the support person may not otherwise participate in the process.

Should the respondent not respond after the investigator has made two attempts to schedule the initial meeting, the investigator will send the respondent written acknowledgment of their non-participation and notice of the next steps to be taken. Should the respondent decide not to participate in the grievance process at any point, the process may continue to a reasonable resolution. The respondent will continue to receive updates regarding the progress of the investigation and hearing, if any, and may re-engage with the grievance process at any point prior to its conclusion.

Following each respondent interview, the investigator will write a summary of the relevant information from the interview. The respondent will be given the opportunity to review and verify the summary of their interview written by the investigator. Clarifications resulting from a misunderstanding or error on the part of the investigator will be corrected before the summary is finalized. Additions or changes to the information provided by the respondent will be added to the summary with a notation.

4. Witness Interviews

Throughout the investigation, the investigator will identify individuals they believe may have information relevant to the matter and will contact those individuals as potential witnesses. Additionally, the parties will be given the opportunity to suggest relevant witnesses. If unclear, the investigator may request that the parties explain how witnesses they suggest are connected to the matter being investigated and what relevant information they believe the person can provide to the investigator.

Following each witness interview, the investigator will write a summary of the relevant information from the interview. Interviewed witnesses will be given the opportunity to review and verify the summary of their respective interviews written by the investigator. Clarifications resulting from a misunderstanding or error on the part of the investigator will be corrected before the summary is finalized. Additions or changes to the information provided by the witness will be added to the summary with a notation.

5. Review of Draft Investigative Report and Evidence

Prior to the conclusion of the investigation, the parties will be provided access to a secured electronic copy of the draft investigative report, as well as an opportunity to inspect and review relevant evidence obtained as part of the investigation.

The draft investigative report and relevant evidence will be available to the parties for a five-business day review and comment period so that each party may meaningfully respond to the evidence in writing. The parties may elect to waive the full five days.

The parties may elect to provide additional evidence or identify additional witnesses in response to the draft investigative report but should understand that doing so at this point of the investigation may delay the completion of the grievance process.

6. Finalizing the Investigative Report and Evidence

If the parties submit written responses to the draft report and evidence, the investigator will incorporate relevant elements of those written responses into the investigative report, include any additional relevant evidence, make any necessary revisions, and finalize the report.

The final report and evidence will be shared with the parties through secure electronic means at least ten business days prior to a hearing. If new evidence is provided by the parties after the investigative report is finalized, the Director may delay the hearing so that the investigation may be reopened to consider that evidence.

7. Notice of Hearing

No less than ten business days prior to the hearing, the investigator will send the notice of hearing to the parties. The notice will be emailed to the parties' Ohio University email accounts. At the discretion of the Director, an alternative means of delivering the notice may be utilized if circumstances warrant. Once emailed or otherwise sent or given in person, notice will be presumptively delivered.

8. Prehearing Meetings

Upon completion of the investigative report, the investigator will schedule separate pre-hearing meetings for the parties. The parties may each be accompanied at their pre-hearing meeting by a support person. The pre-hearing meetings will be scheduled at least five business days prior to the hearing. The purpose of the pre-hearing meeting is to allow the investigator to answer any final questions the parties may have and to clarify logistical matters regarding the hearing. If a party does not attend the scheduled pre-hearing meeting, it will be cancelled, but the party may ask questions of the investigator(s) as needed.

9. Hearing Procedures

The hearing panel has the authority to hear and make determinations on allegations of violations of University Policy 01.041: Campus Freedom of Expression. Participants at the hearing will include the hearing panel, the investigator(s) who conducted the investigation, the parties, the support persons to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services.

Parties must submit their questions for the other party and any witnesses to the hearing chair no later than 5:00 p.m., two business days prior to the hearing day. Any questions that arise during the hearing must be reduced to writing and forwarded to the hearing panel for consideration. All questions will be asked by the hearing panel during the hearing.

Hearings are recorded for purposes of review in the event of an appeal. The hearing panel, the parties, their support persons, the appeal officer (if appropriate), and appropriate Ohio University administrators will be permitted to listen to the recording, if needed, through a controlled means determined by the Director. No person will be given or allowed to make a copy of the recording without permission from the Director.

10. Decision-making, Standard of Proof, and Notice of Outcome

The hearing panel will use the preponderance of the evidence standard in deciding whether University policy was violated and prepare a notice of outcome.

The notice of outcome will specify the finding on each alleged policy violation; the findings of fact that support the determinations; conclusions regarding the application of relevant policy to the facts at issue; and a statement of, and rationale for, the result of each allegation. The notice of outcome will also include information about the appeal options and process.

The notice will be emailed to the parties' Ohio University email accounts. At the discretion of the Director, an alternative means of delivering the notice may be utilized if circumstances warrant. Once emailed or otherwise sent or given in person, notice will be presumptively delivered.

11. Appeal

Either party may file a request for appeal, which must be submitted in writing within five business days of the delivery of the notice of outcome. The notice of outcome will include a link to the online appeal form, which should be used to submit any appeal to the Director.

Appeals are limited to the following grounds:

- A procedural irregularity that significantly affected the outcome of the hearing and
- New evidence that was not reasonably available at the time of the determination regarding responsibility was made that could affect the outcome of the matter.

If either party submits an appeal, that appeal and a link to the online rebuttal form will be shared with the other party, who will then have five business days to submit a rebuttal.

The appeal and the rebuttal, if any, will be provided to the appeal officer, along with the case file. The appeal officer will be trained for this function and will not have previously been involved in the process. Once an appeal is decided, the outcome is final.

12. Resolutions and Sanctions

If the respondent is found in violation, the hearing and appeal decision, if any, will be forwarded to the Board of Trustees for a decision regarding a resolution to address the violation and prevent any further violation of Ohio University's policy. In the case of a faculty respondent, the Board of Trustees will consult with the General Counsel and Provost to determine whether further process is required by the Faculty Handbook prior to final resolution.

Resolutions may include sanctions imposed against the respondent. Potential sanctions are in keeping with the collective bargaining agreement and/or personnel policy or contract terms applicable to the respondent.

- For a faculty respondent, potential sanctions may include censure, reprimand, suspension without pay, demotion, and termination and/or revocation of tenure in accordance with the terms of the applicable personnel policy and/or contract.
- For a staff respondent, including student employees, potential sanctions may include all discipline, including, but not limited to, verbal warning, written warning, suspension without pay, or termination of employment, in accordance with the applicable personnel policy, collective bargaining agreement, and/or contract.
- A student or student group may be a respondent in a freedom of expression retaliation complaint. In this circumstance, potential sanctions may include reprimand, disciplinary probation, suspension, or expulsion from the university.

The Director will issue a notice of final determination to both parties following the conclusion of the process. This notice will confirm that the grievance process has concluded.

13. Process Review

The offices of Legal Affairs and Equity and Civil Rights Compliance (ECRC) will review this process periodically to assess its effectiveness and continued compliance. Changes will be made as necessary, and once those changes are posted on the ECRC website, they are in effect. The versions of the Campus Freedom of Expression Policy and Process posted on the ECRC website are the versions in use at that time and control in the event of discrepancies between those versions and any other versions available online or elsewhere.

During the grievance process, the Director may make minor modifications to the process that do not materially jeopardize the fairness owed to any party (e.g., to accommodate summer schedules, medical leave, etc.).

14. Reasonable Accommodations for Persons with Disabilities

Any persons living with a disability who are involved in the Freedom of Expression Grievance Process have the right to request reasonable accommodation through the Office of Accessibility Services to ensure their full and equal participation. Parties do not have to disclose information about the complaint to request reasonable accommodation, except to the extent that it may assist in the determination of specific accommodations.

Accommodations will be determined on an individual basis by Accessibility Services and are implemented in consultation with the case investigator. Examples of reasonable accommodations include sign language interpretation, real-time communication access during hearings, large print documents, extended time to review documents, or assistance with transcribing questions during interviews or hearings.

15. Official Method of Communication

Formal correspondence to parties, witnesses, and others engaged in this process will be sent via e-mail to the person's Ohio University email address or to the email address provided by a participant who is not a member of the Ohio University community. At the discretion of the Director, an alternate means of delivering formal correspondence may be utilized if circumstances warrant. Once emailed or otherwise sent or given in person, correspondence will be presumptively delivered.

Appendix A: Definitions

For the purposes of this process, the following definitions apply:

Appeal Officer – Those who have decision-making authority when findings resulting from a hearing within the grievance process are appealed by one or more of the parties.

Business Day – Weekdays (Monday-Friday) when Ohio University offices are open for normal operations.

Complainant – An individual who is alleged to be the victim of conduct that could constitute a violation of University Policy 01.041. There may be more than one complainant for an incident.

Director – the Director of Equity and Civil Rights Compliance or their designee.

Employee – A person who performs work for the University and is paid for that work. For purposes of University Policy 01.041, employees include faculty, administrators, staff, graduate research and teaching assistants, and all student employees.

Final Determination – The final outcome of the Freedom of Expression Grievance Process.

Finding – A conclusion by the standard of proof that the alleged conduct did or did not occur, and if so, whether it did or did not violate policy.

Grievance Process – The method of resolution utilized to address allegations of violation of University Policy 01.041: Campus Freedom of Expression

Hearing Panel – Those who have decision-making authority when allegations proceed to a hearing within the grievance process.

Investigator – The person charged with gathering information about an alleged violation of University Policy 01.041 and compiling this information into an investigative report and file of evidence. An investigator will be assigned to each case and will conduct a prompt, thorough, and impartial investigation.

Parties – The complainant(s) and respondent(s) in a matter, collectively.

Preponderance of the Evidence – Standard of proof used by the hearing panel. Preponderance of the evidence means that the statements and information presented in the matter indicate to a reasonable person that it is more likely than not that the respondent committed a violation.

Report – Information provided to ECRC indicating that a violation of University Policy 01.041 may have occurred.

Resolutions – Post-finding actions taken to address the violation and prevent any further violation of Ohio University's policy.

Support Person – A person chosen by a party (the complainant or respondent) to accompany the party to meetings related to the grievance process. A party may have one support person with them at meetings, interviews, and the hearing, if any, although the support person does not have to be the same person at each.

The support person may be anyone of the party's choosing, including an attorney, as long as the person is eligible and available. "Available" means the party cannot insist on a support person who simply doesn't have the inclination, time, or availability. Also, the support person cannot have institutionally conflicting roles, such as being someone who has an active role in the matter or a supervisor who must monitor and implement sanctions. Parties have the right to choose not to have a support person.

Witness – Person who is requested to participate in the grievance process because they may have information about the alleged violation. Names of potential witnesses may be supplied by the complainant, respondent, or others with knowledge of the matter, or they may be identified by the investigator. All witnesses are considered to be witnesses called by the University.