

EXHIBIT A

Disability Discrimination Complaint Procedure

1. Introduction

Xavier University is committed to promoting, maintaining and providing an inclusive and equitable environment reflective of our Jesuit Catholic identity. Xavier University does not discriminate in admission, educational opportunity, employment, programming or events based upon race, color, religion, sex, age, marital status, sexual orientation, gender identity, disability, military status, parental status, or any other characteristic protected by applicable law. At Xavier, we are committed to care of the whole person; discrimination and harassment violates this principle and will not be tolerated.

The Americans with Disabilities Act of 1990 (ADA) and Americans With Disabilities Act Amendments of 2008 (Amendments Act) and Section 504 of the Rehabilitation Act of 1973 as Amended in 2008 (Section 504) are federal laws applicable to private universities in the United States that set forth certain expectations and requirements for promoting accessibility to facilities, education, services, employment, and programs at the University.

Federal legislation requires the University to have clear and well communicated anti-discrimination policies, procedures for requesting accommodations, and processes in place through which students, faculty, staff and visitors may resolve grievances with the University.

The following procedures have been adopted for the prompt and equitable resolution of concerns alleging any action prohibited by Section 504 and/or the ADA on the basis of disability in any program or activity receiving federal financial assistance.

2. Informal Resolution Process

The University strongly encourages informal resolution options when the Reporting Party and Responding Party desire to resolve the situation cooperatively, or when inappropriate behavior does not rise to the level of violation of University policy, but nonetheless is adversely affecting the University or educational environment. Before engaging the ADA/Section 504 Coordinator (“Coordinator”) in the informal resolution process, the University encourages Reporting Parties to first discuss their concerns with either Accessibility and Disability Resources (students) or the Office of Human Resources(OHR) (employees), as applicable.

University students, faculty, and staff are encouraged to discuss their concerns with the Coordinator, if meeting with ADR or OHR does not resolve the matter. The Coordinator will attempt to resolve the issues by assisting the Reporting Party in discussing matters with the Responding party. The informal process may include an inquiry into the facts, but does not rise to the level of a full, formal investigation. Both parties should make reasonable efforts to resolve the issue in an informal manner.

If a satisfactory resolution is not achieved through the informal process, the Coordinator will inform the Reporting Party of their right to file a formal grievance. A Reporting Party may choose to begin the Formal Grievance process at any time before, during, or after participating in the Informal Grievance process.

3. Formal Hearing Process

In order to initiate a Formal Hearing Process for a discrimination grievance, a student, faculty, or staff member must fully complete the [Formal Grievance Form](#). Grievances must be submitted within 30 calendar days of the date the person filing the grievance becomes aware of the alleged discriminatory action. Complaints received later than 30 days after the individual became aware of the alleged violation may be dismissed as untimely. The Grievance Form must clearly state:

- i. The basis and rationale of the grievance;
- ii. The specific facts and/or applicable policies;
- iii. The remedy and resolution desired; and
- iv. All other information required on the form.

The Coordinator will investigate timely filed complaints arising under Section 504 or the ADA. This complaint procedure contemplates an informal but thorough, impartial, and timely investigation, affording all interested persons (Reporting and Responding Parties) an opportunity to submit information including documentation and the identification of witnesses relevant to a complaint.

3.1 Student Formal Hearing Process

When a student is alleged to have discriminated or retaliated against another (student as Responding Party), and the Reporting Party would like to pursue the formal hearing process, the allegations will be investigated as set forth herein and adjudicated consistent with the procedures provided in Sections 3.5 through 3.10 of the Xavier University Student Handbook.

3.1.1 Information Gathering - Investigation

Coordinator will promptly investigate all complaints of disability discrimination. This investigation will be adequate, reliable and impartial. The time it takes to conduct an investigation depends on the particular facts and circumstances; however, most investigations will begin within 10 business days of the determination that a formal hearing will be used. Timelines may expand or contract depending on many factors including, but not limited to, the complexity of the matter, the availability of witnesses or evidence, or the time in the school year when the investigation takes place. In general, the Coordinator's information-gathering investigation will include talking to the parties involved, other witnesses, and other individuals and collecting any materials or information that may be related to the allegations.

At the Coordinator's discretion, multiple incidents involving the same individual(s) may be considered in one investigation or in separate investigations. The order of separate investigations will be determined by the Coordinator.

After completion of the investigation, the Coordinator shall provide the investigation report to each party, the party's advisor (if applicable), and the Dean of Students Office.

3.2 Employee Formal Hearing Process

3.2.1 Pre-Hearing Procedures – Employee

Within seven (7) business days of the determination to address a complaint using the formal procedures, the Coordinator will provide the Responding Party with a copy of the complaint. The Responding Party may submit a written response to the allegation of discrimination to the Coordinator within ten business days of the date the copy of the complaint was sent to the Responding Party. Upon receipt of an answer by the Responding Party, the Coordinator will forward a copy of the response to the Reporting Party.

3.2.2 Pre-Hearing Timeline – Employee

Within ten (10) business days of the initiation of the formal hearing process the Coordinator will notify the Reporting Party and Responding Party of the members of the Hearing Panel. The Reporting Party and Responding Party will then have three (3) business days to object in writing to any one or more of the members of the Hearing Panel, or raise potential conflicts of interest. Any decision to change a member or members of a Hearing Panel will be in the sole discretion of the Coordinator. If any objections are raised, the Coordinator will notify the Reporting Party and the Responding Party of the final Hearing Panel members (whether changed or not) within five (5) business days after receiving the last objection.

The Coordinator will notify the Reporting Party and the Responding Party of the hearing date, time and place, which shall be set for no less than ten (10) but no more than twenty-one (21) business days after the date the Hearing Panel members are finalized. The hearing may be set for an earlier or later time for good cause as determined in the discretion of the Coordinator or by agreement of the Reporting Party and the Responding Party.

At least five (5) business days before the hearing, the Coordinator will provide the Reporting Party and the Responding Party with the documentation and information gathered to date that will be presented to the Hearing Panel, including the Coordinator's Investigation Report. FERPA protected information may be redacted.

At least three (3) business days before the hearing, the Reporting Party and the Responding Party must submit to the Coordinator any additional documents or other materials they want considered in the hearing as well as a written list of witnesses they want to testify at the hearing.

At least three (3) business days before the hearing the Reporting Party and the Responding Party will be provided a list of all witnesses who will be called at the hearing, including witnesses submitted by the Reporting Party, Responding Party, and Xavier.

As soon as possible after their selection, the Hearing Panel shall select a Chairperson from among the members of the Panel to serve for the duration of the Hearing procedures for which this Panel was selected. The Chair may then consult with the Coordinator about the complaint to determine the need for any consultants to assist the Hearing Panel during or after the formal hearing.

3.2.3 Harassment Hearing Board

Recognizing both the overlap and continuum of discrimination and harassment, Xavier utilizes its trained Harassment Hearing Board for the Disability Discrimination Complaints, Formal Hearing Process. The Harassment Hearing Board consists of twenty-four (24) members and are selected and serve as described in [Xavier University Committees](#).

3.2.4 Selection of Formal Hearing Panel Members

- The Coordinator maintains a roster of faculty, staff, and students on the Hearing Board.
- The Coordinator will select a Hearing Panel of three members to hear each complaint set for a formal hearing. The Coordinator will adhere to the following guidelines in making the selection:
 - A Panel will include one student, one faculty, and one staff member. Either the faculty or staff member of the Hearing Panel will be trained to serve as the Chair.
- No member of the Panel may hear a case involving a party if the Coordinator deems it to be a conflict of interest.
- Any member who has a conflict of interest will be removed and may be replaced by another member from the same category in the same manner that the conflicted member was selected.

3.2.5 Formal Hearing Procedures

- Both parties have the right to attend the hearing. Failure of one party to appear will have no effect on the hearing proceeding, and the Hearing Panel will reach a decision based on the evidence available.
- Neither party may be compelled to testify.
- Both parties have the right to present evidence and to call a reasonable number of witnesses as determined by the Hearing Panel.
- Witnesses may be present only when testifying.

- The Reporting Party, Responding Party, and Xavier may identify witnesses to be called at the hearing. Only witnesses with knowledge directly related to the pending allegation will be allowed to testify at the hearing. Witnesses may be dismissed from the hearing if their statements are based on opinion or perceived character alone. A Hearing Panel may reasonably limit the scope and time devoted to each case or item of discussion during the hearing, including the number of people testifying or providing information.
- Both Parties have the right to question all witnesses.
- Using a general measure of relevance and credibility to the complaint being heard, the Hearing Panel will determine what statements will be permitted at the hearing.
- Upon request by the Reporting Party or the Hearing Panel, the Coordinator may provide for the Hearing Panel's consideration, information regarding any conduct admitted to by the Responding Party while attempting to informally resolve, or in an informal resolution of a complaint filed by the same Reporting Party against the same Responding Party.
- At the Coordinator's discretion, multiple incidents involving the same individual may be considered in one hearing.
- Hearing Panel proceedings are not governed by the rules of evidence used by the courts.
- A non-party witness may not testify about any misconduct by the parties except the conduct alleged in the complaint.
- Each party has a right to an advisor from the student body, faculty, administration or staff. This representative, not someone with legal training, may help with preparation of the case, may be present when the case is heard, and may confer with the party during the hearing. Neither party may have legal counsel present at the hearing. The advisor may help the party prepare their position but may not present it or speak for or on behalf of the party in the meeting or proceeding.
- Hearings will be audio tape recorded by the University. No audio or video recording of any nature may be taken by parties or witnesses.

3.2.6 Hearing Panel Deliberation

In deciding whether a violation of University Policy related to Section 504 and/or ADA has occurred, the Hearing Panel attempts to reach a consensus. If consensus cannot be reached, a vote is taken. All decisions of the Hearing Panel are made by a majority.

3.2.7 Standard of Evidence

To find a violation of Xavier University's Americans with Disabilities Act Policy & Complaint Resolution, the Hearing Panel must find sufficient evidence to conclude by a preponderance of the evidence that the Respondent violated the policy. While the Hearing Panel does not draw a negative inference from the failure of either party to attend a hearing or to testify, a choice not to appear or testify does not change the burden of proof.

3.2.8 Sanctioning

If the Hearing Panel finds that the Responding Party violated the University' ADA Policy, it will determine the appropriate remedial action, taking into consideration all of the circumstances of the Responding Party's conduct. Once it has determined that the Responding Party violated the ADA Policy, it may seek a statement from the Coordinator about prior instances brought against the Responding Party by a complainant alleging discrimination. The Coordinator statement will be limited to the following:

- The fact that a complaint was filed by the same or a different Reporting Party against this same respondent and the outcome of that complaint;
- Any conduct admitted to by the Responding Party while attempting to informally resolve or in an informal resolution of a complaint filed by the same Reporting Party against this same Responding Party;
- The fact that a complaint was made by the same or a different Reporting Party (whose name will be redacted) against this same Responding Party and the outcome

The Hearing Panel shall consult with the Coordinator for sanctioning and, may consider the preceding information in determining an appropriate sanction.

Examples of the types of sanctions that the Hearing Panel may issue include, but are not limited to the following: educational training; required community service; prohibition of the Responding Party from participating in grading, honors, recommendations, reappointment and promotion decisions, or other evaluations of the Reporting Party; letter of reprimand and copy of grievance record placed in the Responding Party's permanent file; restrictions on the Responding Party's access to University resources, such as merit pay or other salary increases for a specific period; or suspension or dismissal from the University.

In addition, the Hearing Panel may seek to make the Reporting Party whole by requiring a review of the Reporting Party's grade or by providing a benefit denied to the Reporting Party in whole or in part by the Responding Party. Any such decision by the Hearing Panel shall be given to the Responding Party's supervisor in a position to conduct such a review to determine if a change is proper, and to effect the change.

3.2.9 Implementation of the Hearing Panel's Decision

In all cases in which a Hearing Panel finds that the Responding Party violated the University's ADA Policy, the decision and sanctions of the Hearing Panel will be implemented by the official responsible for the Responding Party:

- In cases in which the Responding Party is a member of the faculty, the responsible official is the Dean of the school to which the respondent serves, as the immediate supervisor.
- In cases in which the Responding Party is a non-faculty staff member, the responsible official is the appropriate Senior Leadership Council member or designee.

- In cases in which the Responding Party is a student, the responsible officer is the Dean of Students Office, Student Integrity Officer or designee.
- In cases in which the Responding Party is not otherwise defined, the responsible official is the immediate Supervisor in consultation with their department head or dean.

The implementation of the hearing panel's decision will occur after the appeal window has closed, or an appellate decision has been made.

4. Appeals – Employee

The Responding Party may request an appeal of the Hearing Panel's findings and/or sanctions. Requests for appeal will be granted only for the following reasons:

- There was a denial of the elements of a fair hearing;
- There was insufficient evidence to establish responsibility for the alleged discrimination;
- The sanctions imposed can be shown to be arbitrary or capricious; or
- There is new information to present that was not available at the time of the hearing, and that may have a bearing on the Hearing Panel's decision or sanctions.

The request for appeal shall be made to the Vice President of the Office of Institutional Diversity and Inclusion/Deputy 504 and ADA Coordinator or designee.

5. Retaliation Prohibited

Neither Xavier, nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured through Section 504, the ADA, or University policy and procedures, or because the person made a report or complaint, testified, assisted or participated in or refused to participate in any manner in an investigation, proceeding, or hearing under university policy.

Complaints alleging retaliation should be filed consistent with the procedure outlined in Discrimination Complaint Procedure.