

Discrimination Complaint/Grievance Procedure

Introduction

Coverage and Objectives. The procedures set forth below are used with regard to complaints or grievances alleging discrimination in violation of the University's Equal Opportunity and Affirmative Action Policy. The complaint may be made against a University student, faculty member, administrative/staff employee, or third party who is on campus and/or over whom the University has some control. These procedures are intended to provide a consistent, workable, and timely grievance/disciplinary mechanism through which complaints of discrimination, in any of its forms, may be addressed. Such a mechanism allows the University to carry out several important responsibilities. These responsibilities include protecting the campus environment against such unlawful discrimination, providing redress to individuals who have been or are victims of unlawful discriminatory conduct, and protecting those accused of such unlawful conduct against injury resulting from untrue charges.

General Responsibility. All members of the University community have a general responsibility to contribute in a positive way to a University environment that is free of unlawful discrimination. Beyond this, managers or administrators who have overall responsibility for the daily operations of an academic, support, or operational unit, designated in this policy as "responsible employees," have a special measure of responsibility. If they become aware of conduct involving possible unlawful discrimination in their respective units or elsewhere, whether from the complaining party or some other source and whether or not a complaint or grievance is filed, they must take immediate steps to deal with the matter appropriately. This includes advising the complaining party about the responsible employee's duty to report the conduct to the appropriate receiving official identified below and informing the complaining party about confidentiality issues. The receiving officials should be consulted for assistance. Finally, supervisors and administrators at all levels are responsible for educating and sensitizing employees in their units about the University's policies and procedures regarding unlawful discrimination.

Confidentiality. Disclosure of information relating to a discrimination case shall be limited, to the extent reasonably possible, to the parties and to those individuals involved in the institutional proceeding for handling the grievance. This includes information about any accommodations or protective measures provided to the victim. Information in a case in which a student is either the victim or the accused is subject to student privacy rights afforded by the federal Family Educational Rights and Privacy Act (FERPA), and disclosure beyond the foregoing parties and officials shall only be made in compliance with FERPA. Cases involving sexual harassment (including sexual violence) present special confidentiality issues. Resolution of those issues will be made pursuant to the relevant provisions in the University's Sexual Misconduct Policy.

Availability of Assistance. Counseling and personal help are available for individuals with concerns relating to unlawful discrimination. Such individuals can contact a receiving official identified below for referral to counseling personnel, or they may contact such personnel directly. Claims regarding discrimination based on disability will ordinarily be referred to, and may be brought initially to, the Disability Coordinator in the Counseling Center.

Civil or Criminal Proceedings. The fact that civil or criminal proceedings have been instituted against an individual (or the fact that the civil authorities failed to initiate criminal proceedings) shall not prevent a complaint of discrimination or harassment against that individual from being addressed by these procedures. Generally, the pendency of any such proceedings shall not delay the processing of a complaint by the University. The University shall also, in its determination of whether discrimination or harassment

occurred, not be bound by the outcome of any civil or criminal proceeding.

Prompt, Fair, and Impartial Process. The intent of this process is to provide a prompt, fair, and impartial investigation and resolution of complaints of discrimination. The process, when used for addressing charges of sexual misconduct, shall be administered by University officials who receive special training, at least annually, in conducting an investigation and a hearing that promotes the safety of victims and accountability for unlawful behavior of all members of the campus community and that is fair to all parties. Also, investigating or adjudicating officials are to be free of conflict of interest or bias for or against the complaining party or the accused.

Initiating and Filing a Complaint

Who May File. Anyone in the University community (the “complainant”) may file a complaint or grievance alleging a violation of the institution’s nondiscrimination policy. This includes but is not limited to the person against whom the alleged discriminatory conduct has been directed.

Receiving Official - Designation. Initially, a complaint may be oral or written and should be directed to one of the following University officials, depending on the status of the complainant:

- If the complainant is a *student* - the Student Equal Opportunity (EO) Coordinator (currently, the Dean of Students)
- If the complainant is an *administrative or staff employee* - the Staff EO Coordinator (currently, the Associate Vice President for Human Resources)
- If the complainant is a *faculty member* - the Faculty EO Coordinator (currently, the Vice President for Diversity)

Receiving Official - Actions.

• The receiving official shall advise a complainant about available options and may provide other assistance. A receiving official may also, in an appropriate case and subject to limitations stated below regarding a charge of sexual violence or assault, attempt to resolve the complaint informally and by voluntary means. In this effort, the receiving official may confer with and seek the assistance of the supervisor of the person alleged to have engaged in the discriminating conduct (the “respondent”). If such a settlement is achieved, the terms of the settlement or actions taken shall be summarized by the receiving official and placed in a file maintained by the official as a record of the complaint and its disposition. Attempts to resolve a complaint of discrimination based on disability shall involve, wherever possible, interaction and consultation by the receiving official with the Disability Coordinator in the Disability Support Services office. Except during the discussions described above, the identity of the complainant shall not be disclosed at this stage to the respondent or to other University officials.

• If the complaining party and/or the victim is unwilling to cooperate with regard to further actions against the respondent or requests nondisclosure of his/her name or other identifying information, the receiving official shall seek legal guidance from the Office of Counsel regarding the obligation of the University to proceed further and shall confer with the other receiving officials identified above (and, in a case involving a faculty member, the Associate Provost) to develop an appropriate response.

Preliminary Action

If the complainant desires that the matter be pursued further by the University, he/she shall request that it be referred for preliminary action. The following procedures shall apply to such a referral.

Written Complaint. The complainant shall state the facts and circumstances (what was done, by whom, when, where, who was a witness, etc.) pertinent to the alleged unlawful discriminatory conduct, shall be in writing, and shall be signed and dated. The original complaint shall be given to the receiving official.

Referral.

- *Under Student Code of Conduct.* If the respondent is a *student*, the case is handled in accordance with the disciplinary procedures set forth in the Student Code of Conduct.

- *To Preliminary Action Officer(s).* In *all other cases*, the receiving official shall meet with the vice president in whose division the respondent is employed (the “cognizant vice president”). In a case involving a respondent who is a third party (neither a student nor an employee), the vice president whose area of responsibility is most closely related to the third party’s activities shall be the cognizant vice president. They shall jointly appoint one or more University employees as Preliminary Action Officers (PAOs) to carry out certain duties stated below. The cognizant vice president shall give a copy of the complaint to the respondent, along with written notice indicating the appointment of the PAO and describing the general manner by which the complaint is to be handled.

Sex Harassment Charges. A notice or complaint of sexual harassment (including sexual violence or assault) shall ordinarily and with the concurrence of the cognizant vice president be investigated by the Coordinator identified above, or the official’s designee. The Coordinator shall utilize, in this investigation, the general procedures set forth below in describing the PAO duties, and the Coordinator’s investigation will take the place of actions by the PAO.

Dismissal. In the event that the complaint is, in the opinion of both the receiving official and the cognizant vice president, clearly frivolous or patently without merit, the complaint may be dismissed upon notice of such action to the complainant. If the respondent has been informed of the charges, notice of dismissal shall also be provided to him/her.

Protective Measures. If, in the opinion of both the receiving official and the cognizant vice president, interim measures to protect the complainant may be necessary or appropriate, one or more such measures may be imposed pending final outcome of this complaint/grievance process. Such measures may include, by way of example, a direction to the respondent to avoid any contact or interaction with the complainant, a change in work assignments (for employees) or in class scheduling or living arrangements (for students), etc.

PAO Duties: The Preliminary Action Officer shall carry out the following duties:

- *Investigation.* The PAO shall conduct a preliminary investigation of the facts alleged in the complaint. This investigation shall include a meeting with the complainant to obtain further information. Early in the investigation the respondent shall be given the opportunity to meet with

the PAO to explain, deny, or otherwise respond to the allegations. Persons who may have information as witnesses or otherwise may be interviewed, including persons identified by either party. The PAO may review documents or other materials, including documents identified and submitted by either party, that may be helpful. Notes of interviews shall be made, and copies of these notes and any important documents or materials shall be retained for the file.

- *Voluntary Resolution.* The PAO shall endeavor, in appropriate cases, to facilitate resolution of the charges through informal consultation with the principal parties, mediation, or other voluntary means. A complainant in a case involving sexual discrimination/harassment shall not, however, be required to deal directly with the respondent nor to continue efforts at voluntary resolution. Mediation or similar voluntary means of resolution will not be used when sexual assault or violence is alleged. If a case is settled in this manner and with the agreement of all parties involved, the PAO shall inform the cognizant vice president and the receiving official and shall summarize the settlement in writing for the file. The case shall then be deemed closed and the file forwarded to the receiving official for retention.

- *Findings and Recommendation.* For any case not settled through mediation or other voluntary means, the PAO shall make a written report to the cognizant vice president. The report shall include a summary of findings concerning the factual basis for the charge(s) and a recommendation for action to be taken by the University. Depending on the findings, two types of actions may be recommended:

- If the PAO concludes that, based on credible information acquired during the investigation, a reasonable basis does *not* exist for believing that unlawful discrimination occurred, he/she shall so state and shall recommend that the complaint be dismissed. The PAO shall send a copy of the report to the receiving official.

- If the PAO concludes that, based on credible information acquired during the investigation, there is a reasonable basis for believing that unlawful discrimination did occur, he/she shall so state and shall recommend that the respondent be subjected to discipline either by the cognizant vice president or as the result of formal proceedings.

Action by the Vice President. Upon receipt of the PAO report, the cognizant vice president shall have the following options:

- *Dismissal.* The vice president may agree with the “no reasonable basis” finding and dismiss the complaint. The file shall be returned to the receiving official for retention.

- *Referral.* The vice president may agree with the “reasonable basis” finding and refer the complaint for formal proceedings. A referral may also occur where the vice president disagrees with the PAO’s “no reasonable basis” finding and dismissal recommendation.

- *Imposition of sanction.* The vice president may agree with the “reasonable basis” finding and impose upon the respondent employee any disciplinary sanction less severe than termination, suspension without pay for thirty (30) days or more, or reduction in salary (*e.g.*, suspension without pay for less than thirty (30) days, probation, or warning, oral or written). The sanction for a third party will typically involve future exclusion from the campus.

- *Settlement.* Except in the case of a complaint of sexual violence, the vice president may endeavor to facilitate a settlement of the charges agreeable to the complainant, the respondent, and the University. If successful, such settlement shall be summarized in writing and placed in the case file, which shall be retained by the receiving official.

Notice to Parties. The complainant and the respondent shall be given, at the same time, written notice of the action taken by the cognizant vice president, along with information about the PAO findings and recommendations.

Appeal of Dismissal/Referral/Sanction to the President. The complainant or the respondent may appeal the vice president's decision to dismiss or refer the complaint, respectively, to the president by filing an appeal in writing in the Office of the President. Either party may also appeal to the president the vice president's imposition of sanction, as provided above. The president's decision on the appeal shall be final, and it shall be communicated at the same time in writing to both the complainant and the respondent, and to the receiving official and the cognizant vice president as well.

Formal Proceedings

If a case is referred for formal proceedings as provided above, the following procedures shall be followed:

Adversary Hearing.

- *Faculty respondent.* If the respondent is a *faculty member*, the complaint shall be submitted to an adversary hearing. The procedures established for the imposition of a major sanction on a faculty member for cause, as stated in the current Faculty Handbook (see 7.14.2), shall be used for this purpose.

- *Administrative/staff member respondent.* If the respondent is an *administrative or staff employee*, the complaint shall also be submitted to an adversary hearing. The method of selecting a hearing panel, pre-hearing and hearing procedures, rights accorded the complainant and the respondent, and similar matters shall be determined by the cognizant vice president, employing as a model the due process procedures already in use by the University in related contexts.

- *Third party respondent.* If the respondent is a *third party*, the cognizant vice president (or designee) shall conduct a proceeding consistent with due process standards, make a finding regarding the discrimination charge, and select an appropriate remedy if discrimination is found to have occurred.

Standard of Proof. The burden of showing that discrimination occurred in any formal proceeding shall be on the complainant. A preponderance of evidence standard shall apply with regard to this burden. This requires credible information to be presented by or on behalf of the complainant indicating to the fact finder that it is more likely than not that the discrimination occurred.

Advisors. The complainant and the respondent may each select an advisor to assist him/her. An attorney may serve as advisor for either party and may provide advice to the party during a meeting or proceeding but may not otherwise participate directly.

Meetings and Information. Both parties, along with their respective advisors, are entitled to be present at any meeting or proceeding, except during a time when the fact finder is engaged in deliberations regarding the charges or an issue of procedure. Upon request, the University will make arrangements (e.g. closed circuit television) that will avoid requiring the complainant and the respondent to be physically located in the same room at the same time, while preserving the right of each party to be present for each phase of the proceeding. Both parties shall also be entitled to timely access to information that will be used in the proceeding.

Complainant and Respondent as Witnesses. Questioning of the complainant by the respondent, and vice versa, during a hearing shall not be permitted. An alternative means of presenting questions to the parties shall instead be utilized for the hearing. In a case involving charges of sexual violence, questions about the personal sexual history of the complainant with anyone other than the respondent shall not be permitted.

Notice. Both parties are entitled to receive simultaneous, timely written notification of meetings at which either or both may be present, of the outcome of the proceeding, of any appeal rights, of any changes in the outcome of the proceeding during an appeal, and of the time the determination is final.

Case File. Only the complaint shall be forwarded to the hearing panel (or, where the respondent is a third party, the cognizant vice president). Notes written and materials gathered by the PAO shall not be provided to the panel but shall be sent to the receiving official for retention in the permanent case file.

Decision by the President. The report of the hearing panel (or cognizant vice president) containing findings and recommendations with respect to the discrimination charges shall be submitted for action to the president. The president's decision may include a finding that the charges were not established and are to be dismissed; a finding that the charges were established and warrant imposition on the respondent of a sanction, either that recommended by the hearing panel or a different sanction (greater or lesser) selected by the president; a re-submission of the case to the hearing panel for reconsideration of the matter; or any other action deemed appropriate. The ultimate decision by the president shall be final.

Sanctions. A range of sanctions may be imposed by the president up to and including suspension or termination of employment for an employee perpetrator. Lesser disciplinary sanctions include probation and warnings (oral or written) for employees.

Reporting and Disposition of Cases

Time Concerns.

- *Timeliness of Filing of a Complaint.* A complaint of unlawful discrimination should be made as soon as possible after the alleged acts occur. Unusual delay in bringing such allegations under these procedures may cast doubt on the credibility of the complaint and lead to early dismissal of the case.

- *Promptness of University Action.* All phases of the handling of a complaint shall be completed as expeditiously as is practical under the circumstances. The University is committed to resolving complaints of discrimination without undue delay. Every effort shall be made to complete the actions described under "Preliminary Action" above, within twenty-one (21) calendar days and to complete the actions set forth under "Formal Proceedings" above within an additional

fifty-six (56) calendar days. Delays requested or caused by the complainant, however, or necessitated by good cause may extend these target time periods.

Procedural Departures. The procedures set forth above have been developed to insure an orderly and fair disposition of unlawful discriminatory conduct. While it is anticipated that these procedures will generally be followed, the University reserves the right to modify or depart from them in any instance in which, in its sole discretion, it is deemed appropriate or prudent to do so.

Records. All documents relating to the University's processing of a complaint, or a copy of such documents, shall be placed in a case file. The case file shall be maintained by the receiving official as a permanent record.

Non-Retaliation

It is a violation of the law and University policy for an employee or student to be disciplined or otherwise disadvantaged as a result of good faith resort to this complaint/grievance procedure or his/her other participation in these proceedings. The latter actions shall not therefore be grounds for discipline or other adverse action. A claim that a complainant or a witness has been subjected to retaliatory action in violation of this policy may be brought as a separate claim of discrimination under this procedure.

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