

## **Grievance/Disciplinary Procedure - Discrimination**

### 1. Introduction.

a. Coverage. The procedures set forth below shall be used with regard to complaints of discrimination based on race, color, religion, sex, age, national origin, or disability made against a University student, faculty member, or administrative/staff employee.

b. Objectives. These procedures are intended to provide a consistent, workable, and timely grievance/- disciplinary mechanism through which complaints of discrimination may be addressed. Such a mechanism allows the University to carry out several important responsibilities, including specifically the following:

- to protect the campus environment against such unlawful discrimination,
- to provide redress to individuals who have been or are victims of such unlawful conduct, and
- to protect those accused of such unlawful conduct against injury resulting from untrue charges.

2. Confidentiality. Disclosure of information relating to a case shall be limited, to the extent reasonably possible, in all institutional proceedings.

3. 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, supervisors and administrators have a special measure of responsibility. Any time such individuals become aware of conduct involving possible unlawful discrimination in their respective units, whether or not a complaint or grievance is filed, immediate steps must be taken to deal with the matter appropriately. The officials identified below should be consulted for assistance. Supervisors and administrators are also responsible for educating and sensitizing employees in their units about this issue.

4. Availability of Counseling. Counseling and personal help are available for individuals with concerns relating to unlawful discrimination. Such individuals should contact the appropriate receiving official identified below for referral to counseling personnel.

### 5. Initiation/Filing of Complaint.

a. Who May File. Anyone in the University community (the "complainant") may file a complaint 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.

b. Receiving Official. A complaint may initially 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 Educational Opportunity Officer (currently, the Vice President for Student Affairs).
- If the complainant is an administrative or staff employee - the Staff Equal Employment Coordinator (currently, the Assistant Vice President for Human Resources).
- If the complainant is a faculty member - the Faculty Equal Employment Coordinator (currently, the Associate Vice President for Academic Affairs).

These individuals shall advise complainants about options available to them and may provide other assistance. A receiving official may also, in an appropriate case, attempt to resolve the complaint informally and by voluntary means and, in this effort, may confer with and seek the assistance of the supervisor of the person charged with the discriminating conduct (the "respondent"). If such settlement is achieved, the terms or actions taken shall be summarized by the receiving official and placed in a file maintained by the receiving official as a record of the complaint and its disposition. Except for the discussions described above, the identity of the complainant shall not be disclosed at this stage to the respondent or to other University officials.

6. 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:

a. 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 in writing and shall give a signed copy to the receiving official.

b. Referral under the UAH Student Code of Conduct. If the respondent is a student, the case shall be handled in accordance with the disciplinary procedures set forth in the UAH Student Code of Conduct.

c. Referral 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"). 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 the general manner by which the complaint is to be handled. In the event, however, 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.

d. PAO Duties. The PAO shall carry out the following duties:

(i). 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 its allegations. Persons who may have information as witnesses or otherwise may also be interviewed, and the PAO may review documents or other materials which may be helpful. Notes of interviews shall be made, and copies of any important documents or materials shall be retained for the file.

(ii). 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. 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 be deemed closed, and the file shall be forwarded to the receiving official for retention.

(iii). Findings and recommendations. For any case not settled through mediation, 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 charges and a recommendation concerning 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, there is a reasonable basis for believing that unlawful discrimination did occur, he/she shall so state and shall recommend that the complaint be referred for formal proceedings.

- If the PAO concludes that, based on credible information acquired during the investigation, a reasonable basis does not exist for believing that discrimination did occur, he/she shall so state and shall recommend that the complaint be dismissed.

The PAO shall also send a copy of the report to the receiving official.

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

(i). 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.

(ii). 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 a "no reasonable basis" finding and dismissal

recommendation from the PAO.

(iii). The Vice President may agree with the "reasonable basis" finding and impose upon the respondent the sanction of oral or written reprimand or warning.

(iv). 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.

f. Appeal of Dismissal/Referral/Sanction to 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 the Vice President's imposition of sanction, as provided above. The President's decision on the appeal shall be final.

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

a. Adversary Hearing.

(i). Faculty Member. If the respondent is a faculty member, the complaint shall be submitted to an adversary hearing. The procedures established for a grievance hearing before the Faculty Hearing Committee and for termination of a faculty member for cause, as stated in the current Faculty Handbook, shall be used in combination for this purpose.

(ii). Administrative/Staff Employee. 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 hearing procedures already in use by the University in related contexts.

b. Case File. Only the complaint shall be forwarded to the hearing panel. 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.

c. Decision by President. The report of the hearing panel 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 an appropriate sanction (either that recommended by the hearing panel or a different sanction selected by the President), a resubmission of the case to the hearing panel for reconsideration of the matter, or any other action deemed appropriate by him. The

ultimate decision by the President shall be final.

8. Time Concerns.

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

b. 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.

9. Procedural Departures. The procedures set forth above have been developed to insure an orderly and fair disposition of charges 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.

10. 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 appropriate receiving official as a permanent record.

11. 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 procedure. The initiation of a complaint of unlawful discrimination in good faith shall not therefore be grounds for discipline of other adverse action.