

Policy: 2-32 Rev: 6

Date: July 18, 1994

Subject: DISCRIMINATION AND SEXUAL HARASSMENT COMPLAINT PROCEDURES**I. PURPOSE**

To provide fair, uniform and expeditious procedures by which student, employee or participant claims of discrimination based upon race, color, religion, national origin, sex (including claims of sexual harassment), age, sexual orientation or status as a disabled individual, disabled veteran or veteran of the Vietnam era may be investigated and resolved.

II. REFERENCES

Policy and Procedures 2-6, Policy Against Discrimination

Policy and Procedures 2-6A, Policy On Sexual Harassment and Consensual Relationships

Policy and Procedures 2-9 Termination of Nonacademic Staff and Disciplinary Sanctions

Policy and Procedures 2-25, Employment Grievances

Policy and Procedures 8-10.10, Student Code

Policy and Procedures 8-12.4, Code of Faculty Responsibility

Policy and Procedures 8-12.5, Code of Faculty Responsibility

Policy and Procedures 9-5.3, (Faculty Regulations, Chapter V, Section IV)

Policy and Procedures 9-5.5, (Faculty Regulations, Chapter V, Section VII)

III. CONFIDENTIALITY

The confidentiality of all parties involved in a discrimination or sexual harassment complaint and investigation shall be strictly respected insofar as it does not interfere with the university's legal obligation to investigate allegations of misconduct and to take corrective action or as otherwise provided by law.

IV. DEFINITIONS

A. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education, living environment or participation in a university activity;

(2) submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or

participation in a university activity; or

(3) such conduct has the purpose or effect of unreasonably interfering with an individual's employment or educational performance or creating an intimidating, hostile, or offensive environment for that individual's employment, education, living environment, or participation in a university activity.

The free and open discussion of issues or theories relating to sexuality or gender in an academic or professional setting, when appropriate to subject matter, will be presumed not to constitute sexual harassment even if it offends or embarrasses an individual unless other factors are involved. Such factors include targeting the discussion to an individual or carrying out the discussion in terms that are both patently unnecessary and gratuitously offensive.

Conduct alleged to be sexual harassment will be evaluated by considering the totality of the particular circumstances, including the nature, frequency, intensity, location, context, and duration of the questioned behavior. Although repeated occurrences generally create a stronger claim, a single occurrence may constitute sexual harassment.

Sexually-related conduct may form the basis of a sexual harassment claim if a reasonable person would consider it sufficiently severe or pervasive to interfere unreasonably with academic, other educational or employment performance or participation in a university activity or living environment. Sexual harassment most often occurs when one person has actual or apparent power or authority over another, but that is not always the case. Sexual harassment may occur between males and females and between persons of the same gender.

- B. Faculty or Faculty Member. As used in this policy, the terms "faculty" or "faculty member" mean all those who teach or conduct research, of any rank, at or under the auspices of the university and include graduate students with teaching or research responsibilities and other instructional personnel.
- C. Participant. As used in this policy, participant means a person, other than a student, faculty or staff member, who is participating or attempting to participate in, or is receiving or attempting to receive the benefits of, any program, service or activity conducted under the sponsorship or auspices of the university, including but not limited to applicants for admission, applicants for employment, patients, clients, spectators, visitors, and volunteers.
- D. Staff or Staff Member. As used in this policy, the terms "staff" or "staff member" means a person other than a faculty member who receives compensation for work or services from funds controlled by the university, regardless of the source of the funds, the duties of the position, or the amount of compensation paid.
- E. Student. As used in this policy, a student means a person duly registered in any class or program of instruction or training offered by the university at any level, whether or not for credit.
- F. Employee. As used in this policy, the term "employee" refers to faculty and staff.
- G. A concern is a question or problem involving possible sexual harassment or discrimination that

an individual wants to discuss without having made the decision to pursue the matter as a complaint or without having been personally harmed by the behavior in question.

- H. A complaint is a claim by an aggrieved party or an administrator acting on behalf of the university that a specific named individual has violated a university policy against discrimination or sexual harassment. A complaint is made through OEO/AA and must be in writing and signed. It may be resolved using informal or formal resolution procedures.
- I. A complaining party is an individual or group of individuals making a complaint; the individual alleged to be harmed must consent to being identified to the responding party in the formal resolution procedure to the extent such identification is legally required.
- J. A responding party is the person against whom the claim is made.
- K. An informal resolution process is one in which the university attempts to resolve the complaint as soon as possible through an informal process such as advising or mediation as set forth in Section VII below.
- L. A formal resolution process is one in which a written response from the responding party is required and in which a hearing may occur as set forth in Section VII below.

V. CONCERNS

Students, employees, and participants should feel free to discuss concerns that do not amount to complaints with any of the following:

- A. the cognizant academic chair of the department or the dean of the college within which the conduct occurred;
- B. the immediate supervisor or director of the operational unit within which the conduct occurred;
- C. the Human Resources Department;
- D. directors or deans of Student Affairs and Services; or
- E. the Office of Equal Opportunity and Affirmative Action ("OEO/AA").

Once informed of a concern, the supervisor, chair or dean shall inform OEO/AA as appropriate. Similarly, OEO/AA shall advise as appropriate the cognizant dean, staff director or supervisor of any concerns of sexual harassment or discrimination OEO/AA receives regarding a member of his/her faculty, staff or student body.

Any of the parties listed above who is approached with a concern shall advise the individual of the option of an aggrieved party to file a complaint with OEO/AA and the availability of university grievance procedures as contained in this policy. In emergency situations, it may be necessary to remove an employee from contact with other employees, students or participants on the basis of an alleged discrimination or sexual harassment. During normal business hours, such action should not be taken without prior consultation with OEO/AA. When it is impossible to consult with OEO/AA because it is after normal business hours, a weekend or a holiday,

supervisory personnel may take action without prior consultation with OEO/AA. In such cases, the employee will not suffer a loss of pay as a result of the emergency action. As soon as OEO/AA reopens, the supervisory personnel will consult with OEO/AA to determine appropriate further action.

OEO/AA serves as a resource to the university to provide information, counseling, and advice regarding illegal discrimination. An individual with a concern is encouraged to discuss it with OEO/AA in order to clarify whether discrimination or sexual harassment may be occurring and to determine his or her options, including the pursuit of more formal action.

The decision to pursue a concern as a complaint is always one for the individual who believes that she or he has experienced discrimination or sexual harassment, although there may be situations in which the university must act even in the absence of a complaint (for example, when other students or employees are at risk). Nonetheless, the expression of a concern by an individual creates no obligation on the part of the university to formally respond to the concern. Concerns will not be included in an employee's file or a student's record.

VI. COMPLAINTS

A. Filing a Complaint

A student, employee, or participant in university services or activities who believes he/she has been harmed and who wishes to assert a discrimination or sexual harassment complaint or an administrator acting on behalf of the university shall file a complaint with OEO/AA. A complaint shall be made in writing, setting forth in plain language the circumstances which the complaining party believes support the allegation of discrimination or sexual harassment, identifying the individual(s) against whom the claim is made and describing the remedy which the complaining party seeks. In order to ensure that the university's procedures can be utilized without any risk of precluding the possibility of an individual's filing a complaint under state or federal guidelines, a person wishing to file a complaint must do so within 120 days of the date of the occurrence of the alleged discrimination or sexual harassment. A complaint that is frivolous, fails to state facts that raise an issue of illegal discrimination or harassment or is not timely may be dismissed by the director of OEO/AA after an initial review. A person who knowingly and intentionally files a false complaint will be subject to measures as described in 2-6A, IV A. A complaint that is not timely may be received if the director of OEO/AA determines that the failure to file the complaint within the prescribed time limit was the result of excusable mistake, inadvertence or extenuating circumstances and that the interests of the university will not be seriously prejudiced by accepting the untimely complaint.

A complaint may be handled informally or formally. Informal procedures may include advising and mediation. While a request for informal resolution may be made at any time, the more promptly the complaint is made, and the more information the complainant can provide, the more likely it is that a satisfactory resolution can occur.

OEO/AA shall advise the complaining party of the university's procedures under this policy and provide information relating to any external remedies including state or federal agency procedures which may be applicable.

At its discretion, OEO/AA may choose not to investigate a complaint as long as any external administrative or judicial proceeding initiated by the complaining party is being actively pursued against the university or any university officer or employee.

B. Relationship to other University Proceedings

All discrimination and sexual harassment complaints shall be handled under this policy. If allegations of discrimination or sexual harassment are raised in proceedings under another established university complaint or grievance procedure, the university administrators or faculty involved shall notify OEO/AA and shall refer the sexual harassment or discrimination complaint to OEO/AA for investigation under this policy. During the investigation, all other proceedings shall be stayed, unless the referring committee obtains approval from OEO/AA to proceed with specified tasks which are clearly separate and distinguishable from those tasks or factual bases arising pursuant to the sexual harassment or discrimination complaint. In addition, if the filing of the complaint raises other issues, e.g., questions of academic freedom, OEO/AA will ensure that those issues are considered as part of the process. For example, if academic freedom issues are raised, OEO/AA will request that the Academic Freedom and Tenure Committee take that element under consideration and advise OEO/AA of its findings. OEO/AA shall investigate the complaint of discrimination or sexual harassment, hold a formal hearing when necessary and forward any determination of reasonable cause and recommendation for remedial action to the cognizant vice president (or designee) over the referring procedural committee or entity. The cognizant vice president shall consult with the referring committee and OEO/AA and then advise the committee of his/her recommendation regarding OEO/AA's determination and the committee's course of action.

VII. RESOLUTION PROCESS

The resolution process can be either formal or informal as appropriate or at the request of the complaining or responding party.

After a complaint of discrimination or sexual harassment has been filed, OEO/AA shall notify the responding party of the allegations of the complaint and shall also notify the cognizant vice president and the supervisor, chair or dean with direct line responsibility over the responding party. If the responding party is a student, the Vice president for Student Affairs and the appropriate dean and chair shall also be notified. The responding party shall be afforded a full opportunity to respond to the allegations.

- A. **Informal Process.** In an informal process, the responding party may reply either orally or in writing. OEO/AA shall attempt to resolve the case through mediation and negotiation with the parties involved. At any point in the procedure, the parties in consultation with OEO/AA may mutually agree to invite others to serve as resource persons to facilitate the resolution of the complaint.

If resolution is reached through the informal process, no further actions will be taken and the matter will be considered closed. Issues not so resolved may require that the more formal process be undertaken and/or that administrative personnel take a more active role in finding a solution to the problem.

At any time, the informal resolution process can be changed to a formal process.

- B. Formal Process. In a formal process, OEO/AA shall interview the complaining party, the responding party and any other persons believed to have pertinent factual knowledge of the allegations and shall also review any other relevant evidence, including documentary material. As in all situations, the responding party shall be afforded a full opportunity to respond to the allegations.

The person accused of discrimination or sexual harassment shall respond in writing to the complaint. During this sensitive investigative period, parties are expected to behave in a professional manner. No one may retaliate against either party.

OEO/AA shall endeavor to complete its investigation within 60 days of the filing of the complaint. If, for any reason, an extension is necessary, the parties will be informed of the reasons for the extension, the status of the investigation, and the probable date of completion. At the conclusion of its investigation, OEO/AA shall circulate a summary of its initial findings of fact, conclusions and recommendations to the complaining party and the responding party. Both parties shall have 10 days after receipt of the summary to submit written comments to OEO/AA. OEO/AA shall append the comments to the summary and thereafter transmit its report to the cognizant vice president. The cognizant vice president, in consultation with OEO/AA, may thereafter facilitate a resolution between the parties. If the complaint is not resolved through this process in a timely fashion, the vice president shall notify the complaining party and the responding party of the right of each of the parties to request a formal hearing.

Either party may request a formal hearing within ten days of the notification by submitting his/her request in writing to OEO/AA. The cognizant vice president may also request a formal hearing. Failure to file a written request for a formal hearing within this time shall be considered a waiver of the right to a formal hearing unless the director of OEO/AA grants an exception. If neither party requests a formal hearing, the initial findings and recommendations of OEO/AA shall become final. The filing of a request for a formal hearing, or the pendency of hearing procedures, does not preclude a voluntary settlement of the complaint by agreement. Formal Hearings. When a timely request for a formal hearing is filed, the director of OEO/AA shall convene a special committee of the Discrimination Complaint Hearing Panel ("Committee")¹. The committee shall determine whether a hearing should be held based on a review of the complaining party's statement, the reply of the responding party, the written request for the formal hearing and OEO/AA's initial determination and recommendations, (and any comments of the parties received in response to the initial summary). The committee may determine that it is unnecessary to hold a hearing based on the following factors: insufficient evidence to support a claim of discrimination, or the issue is no longer relevant or has become moot. If the committee determines that there is insufficient evidence to warrant a hearing, it will issue a finding of 'no merit.' If the committee determines that a hearing shall not be held, the director of OEO/AA shall inform the interested parties in writing. Either party may appeal the decision to deny a hearing within 10 days to the president.

OEO/AA shall inform the vice president, the supervisor, the chair and the cognizant dean of the responding party of the decision to hold or deny a hearing. If the responding party is a student, OEO/AA shall notify the vice president for student affairs and the appropriate dean or chair.

To facilitate the work of the committee, the director of OEO/AA shall (a) serve as the secretary to the committee; (b) provide it with the complaint, statement(s) of the responding party, the written request for the formal hearing, OEO/AA's initial findings and recommendations and the parties' comments thereto, if any; (c) make appropriate physical arrangements; (d) give notice of the time and place of the hearing to the complaining party, the cognizant vice president, each responding party, and all other persons requested by any party or by the committee to testify at the hearing; (e) distribute the committee's hearing guidelines to the parties; (f) provide for the making of an electronic record of all oral testimony received and oral arguments made during the hearing; and (g) provide such other investigatory and support services as the committee may request. The director of OEO/AA may not participate in the committee's deliberations and shall have no vote.

Hearings will be conducted according to the following guidelines:

- (1) Hearings will be closed.
- (2) The parties will be notified in writing of the date of the hearing, the charges, the process for selecting the committee and these guidelines at least ten (10) working days prior to the hearing.
- (3) Both parties may be accompanied and counseled by an advisor of their choice who will be permitted to attend, but not participate in, the proceedings. The parties must notify the committee of the advisors selected at least three (3) days prior to the date of the hearing.
- (4) The committee and each party may request the appearance of witnesses and the production of documentary evidence.
- (5) All materials submitted for consideration by any party or otherwise considered by the committee shall be made available to all parties at least one week prior to the scheduled hearing. In exceptional circumstances, the committee may allow a party to submit evidence or materials at the time of the hearing.
- (6) The committee will determine which persons it wishes to interview at the hearing, after consultation with the parties and with due regard for the need both to proceed expeditiously and to assure full and fair consideration of the claims of the parties. Whenever possible, advance notice of witnesses to be interviewed shall be given to all parties.
- (7) The parties shall not communicate directly to each other about the complaint.
- (8) The committee shall not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in determining the issues involved.
- (9) Legal counsel representing the university shall be present at the hearing to provide guidance on substantive and procedural matters to the committee.
- (10) Committee deliberations and voting shall be closed sessions from which all other persons are excluded. Upon request of any member of the committee, votes shall be taken by secret written ballot. A majority vote by the members of the committee shall be required for decisions on findings and sanctions. The chairperson shall be entitled to vote on all questions.

(11) The committee shall submit its findings of fact, its determination of reasonable cause or no cause and its recommendations for sanctions (if it has made a determination of reasonable cause) to the vice president within 15 working days after the conclusion of the hearing.

(12) The committee shall send a copy of its determination and recommendations to the complaining party and the responding party.

- C. Final Determination. After reviewing the determination and recommendation of the committee, the cognizant vice president shall issue a final decision including recommendations for sanctions, if any, pursuant to Section F below. The vice president shall transmit to the president the final decision as well as the entire record of the matter including the committee's findings, conclusions and recommendations. The vice president shall also provide written justification for the final decision if it is inconsistent with that of the committee.

The president shall consider and review the record in its entirety, and may solicit whatever counsel and advice the president deems appropriate to assist in arriving at a final determination. Neither the president nor vice president may base a decision on confidential information unless the nature of that information is fairly communicated to the parties and a reasonable opportunity to respond is given to the parties. The decision by the cognizant vice president shall be final on the tenth (10th) working day after it is received by the president, unless within that time the president files with the director of OEO/AA a written decision that modifies or disapproves it in whole or in part and which sets forth the reasons for the president's decision and specifies how the complaint is to be resolved. For good cause, the president may extend the time for action specified in this section. It shall be the responsibility of the director of OEO/AA to supply the complaining party, the responding party, and the supervisor, dean, or chair as appropriate with a copy of the final decision.

- D. Appeals.

Either party may file with the president a written request for reconsideration within 20 days of its mailing by the director of OEO/AA.

- E. Remedial Action.

The corrective and remedial action that may be imposed upon a university faculty member, student, or staff member under this policy shall be appropriate to the circumstances and may include the imposition of a fine, suspension, or termination or expulsion.

VIII. ANNUAL REPORT

OEO/AA shall issue an annual report to the president summarizing the nature and types of complaints filed with OEO/AA pursuant to this policy, the identity of the parties by category (faculty, staff, student, participant) and the ultimate disposition of the complaints. The names and identities of the parties shall not be released. The annual report shall be made available to the university community.

Approved: Academic Senate 6/7/94
Board of Trustees 7/18/94

1. The special hearing committee shall be composed of five persons selected from a panel of 30 individuals previously appointed for that purpose. The panel members, who shall be appointed annually in June shall include 10 faculty members appointed by the vice president for academic affairs from a list of at least 15 persons nominated by the Personnel and Elections Committee of the Academic Senate, 10 nonacademic employees of the university appointed by the vice president for administrative services from a list of at least 15 persons nominated by the director of human resources, and 10 students appointed by the ASUU from a list of at least 15 students (graduate and undergraduate) nominated pursuant to procedures of ASUU. The special committee shall be selected from panel membership in the following manner: the president shall select a member from the panel to serve as chairperson of the special committee; two members will be selected by lot from the responding party's peer group (faculty, staff, student); and two additional members will be selected by lot consisting of one person from each of the remaining two groups. Members may be disqualified for good reason at the discretion of the director of OEO/AA. In addition, without stating the reasons, the responding party may excuse one panel member; the complaining party may excuse one panel member; and the cognizant vice president may excuse one panel member. Any vacancies on the hearing committee resulting from disqualifications determined pursuant to the process above shall be filled by selection of replacements from the corresponding group.

OUTDATED