

## **OFFICE OF EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION CONCERN/INVESTIGATION/MEDIATION/NEGOTIATION PROCEDURES**

### **1. RAISING A CONCERN**

A concern is a question or problem involving possible 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.

When a concern is conveyed to the OEO/AA, the OEO/AA shall advise individuals of their complaint options under PPM 2-32 and provide information relating to external remedies available through state and/or federal enforcement agencies.

The decision to pursue a concern as a complaint is generally one for the individual who believes that she or he has experienced a violation of university policy, although there may be situations in which the university will act even in the absence of a complaint (for example, when required by law, or when other students or employees are at risk). Nonetheless, the expression of a concern by an individual does not necessarily create any 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.

### **2. COMPLAINT PROCEDURES: RECEIPT OF COMPLAINT**

Receipt by the OEO/AA of a signed complaint form and statement of allegations commences the discrimination and sexual harassment complaint process. If the OEO/AA accepts the complaint for action in accordance with PPM 2-32, the 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. If the responding party is at a vice presidential level, another vice president will be selected as the "cognizant" vice president for purposes of this process.

If the complaint is dismissed pursuant to PPM 2-32 §V-C, the complainant may appeal the decision to dismiss within five (5) business days by submitting a written request for review to the Associate Vice President of Human Resources.

Under certain circumstances, the Director of the OEO/AA may determine that the investigation of a complaint be done by an outside entity. Additionally, in instances where an issue of

discrimination or sexual harassment is raised as part of a medical review board process at the University of Utah Hospitals and Clinics, an OEO/AA professional shall sit as an ad hoc member of the medical review board to advise as needed on discrimination and sexual harassment issues.

**3. COMPLAINT PROCEDURES: MEDIATION/NEGOTIATION**

At the initial request of the complainant, or at any stage of the discrimination/sexual harassment complaint process, the OEO/AA may attempt to resolve the case through mediation and negotiation with the parties involved.

If resolution is reached through mediation or negotiation, no further action will be taken and the matter will be considered closed. Issues not so resolved may require an investigation.

**4. COMPLAINT PROCEDURES: INVESTIGATION**

The OEO/AA shall interview the complaining party, the responding party and may interview any other persons believed to have pertinent factual knowledge of the allegations. The OEO/AA may also review any other relevant evidence, including documentary material. The responding party shall be afforded a full opportunity to respond to the allegations.

The OEO/AA shall endeavor to complete its investigation within 45 business days of the filing of the complaint. If, for any reason, an extension is necessary, the parties will be notified in writing of the status of the investigation and the probable date of completion.

At the conclusion of its investigation, the OEO/AA shall circulate a summary of its initial findings of fact and conclusions to the complaining party and the responding party. Both parties shall have 10 calendar days after receipt of the summary to submit documents and/or written comments to the OEO/AA. The OEO/AA shall append any materials received from the parties in response to the summary report, to the final report. If information from either party raises new issues or allegations, the OEO/AA may reinvestigate and make amendments to the final report as necessary. In such cases, the parties to the complaint will be afforded the opportunity to respond to any substantive amendments to the investigative report.

The OEO/AA shall notify the complaining party and the responding party of their right to request a formal hearing. If there is no request for a formal hearing, the initial findings of the OEO/AA shall become final and a copy of the investigative report will be made available to the cognizant vice-president.

In cases where the OEO/AA finds a violation of University policy and recommends that some action be taken, a copy of the OEO/AA summary report will be forwarded to the applicable supervisor or administrator who will make the decision regarding any disciplinary action. In the case of policy violations by students, the summary report will be forwarded to the Vice President for Student Affairs.

## **5. COMPLAINT PROCEDURES: HEARINGS**

Unless a complaint has been previously withdrawn, dismissed, settled or otherwise resolved, the matter may proceed to a hearing committee. Either party may request a formal hearing before a hearing committee within ten (10) calendar days of notification of the right to request a hearing, by submitting his/her request in writing to the OEO/AA. 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 the OEO/AA grants an exception for good cause.

### **A. Selection of Hearing Committee**

When a timely request for a formal hearing is filed, the OEO/AA shall convene a hearing committee.

The hearing committee ("Committee") shall be composed of five persons selected from a panel of individuals previously appointed for that purpose. The panel members, who shall be appointed annually in June, shall include at least 45 staff employees of the University appointed by the Vice-President for Human Resources for a three-year term—15 each year from a list of at least 20 staff members nominated by the University of Utah Staff Advisory Council. Finally, ASUU will appoint 15 students to a one-year term from a list of at least 20 students (graduate and undergraduate) nominated pursuant to procedures of ASUU. Faculty members will be chosen from the Consolidated Hearing Committee pool. Additional members from any group may be appointed as needed. The staff employees serving on this panel will also serve as the panel for Step III employee grievance hearings.

The Committee shall be selected in the following manner: the president (or designee) shall select a chairperson of the Committee; three members will be randomly selected from the responding party's peer group (faculty, staff, student); and three will be randomly selected from the complainant's peer group. One of the persons from each group shall be designated to serve as an alternate.

Members may be disqualified for good reason at the discretion of the director of the OEO/AA. In addition, without stating the reasons, the responding party may excuse one panel member and the complaining party may excuse one panel member. If necessary, any vacancies on the Committee resulting from disqualifications determined pursuant to the process above shall be filled by selection of replacements or alternates from the corresponding group.

### **B. Initial Committee Review in No Violation Cases**

In cases where the OEO/AA found no violation of policy or determined that no sanction should occur, the hearing 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, the OEO/AA's investigative report, and any comments received from the parties 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 sexual harassment, 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 OEO/AA shall inform the interested parties in writing. Either party may appeal the decision to deny a hearing within 10 calendar days to the president.

The 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, the OEO/AA shall notify the vice president for student affairs and the appropriate dean or chair.

### **C. Hearing Guidelines**

To facilitate the work of the Committee, the 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, the OEO/AA's investigative report 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 parties, the cognizant vice president, 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 OEO/AA may not participate in the Committee's deliberations and shall have no vote.

Hearings shall be closed to the public.

The parties shall be notified in writing of the date of the hearing, the process for selecting the Committee and be given a copy of these guidelines at least ten (10) calendar days prior to the hearing.

Both parties may be accompanied and counseled by an advisor of their choice who may be an attorney and who may participate in the hearing as described below. The parties must notify the Committee of the advisors selected at least five (5) calendar days prior to the date of the hearing. If timely notice is not made, the advisor can advise but not participate in the hearing.

Each party shall personally make a narrative opening statement that states her/his position

on the issues and the facts. The narrative statement shall also describe the relief sought. Thereafter, the party or his/her advisor (if any), but only one of them, shall conduct any examinations and cross-examinations, or summary statement at the conclusion of the hearing. However, if the hearing does not arise out of the termination of employment or loss of pay, the advisor will be permitted to attend, but not participate in, the proceedings.

The Committee and each party may request the appearance of witnesses and may produce documentary evidence. Whenever possible, advance notice of witnesses to be present shall be given to all parties.

Whenever possible, all materials submitted for consideration by any party or otherwise considered by the Committee shall be made available to all parties at least five (5) calendar days 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. The Committee may also request witnesses and/or documentary evidence.

The hearing, except for deliberations, shall be recorded and a copy made available to either party upon request, at the party's expense.

At the hearing, the parties or their advisors, as determined above, shall have the right (through the Committee Chair) to question witnesses (including the other party), to present evidence and call witnesses on their own behalf, in accordance with the procedures established for the conduct of hearings.

If the person requesting a hearing fails to attend the hearing without prior notification and good cause, the Committee is dissolved, the hearing will not be held, and both the findings of the OEO/AA and any resulting employment action will stand.

The Committee shall not be bound by strict rules of legal evidence or procedure and may consider any evidence deemed relevant. Regardless of whether or not a party is represented by an advisor, the Committee may ask questions at any time of either party and the parties (not their advisors) shall respond to the questions of the Committee.

The Office of General Counsel may provide a staff attorney to be present at hearings in order to provide guidance to the Committee on substantive law and procedural matters.

Committee Chairs and other committee members are prohibited from discussing any matter related to the hearing with the parties or the witnesses, or with others before or after the hearing. Violation of confidentiality may result in dismissal from the Committee and/or other corrective action.

The parties shall not communicate directly to each other about the complaint.

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 who attended the hearing shall be required for decisions. The chairperson shall be entitled to vote on all questions.

If there is more than one hearing in a matter, or if the hearing continues over more than one session, the same members are to be present for all sessions.

The Committee shall make its findings of fact and its recommendations to the applicable vice president within ten (10) calendar days after the conclusion of the hearing.

The OEO/AA shall send a copy of the Committee's findings and recommendations to the cognizant vice president, the complaining party and the responding party.

**D. Vice Presidential Decision**

The cognizant vice president shall consider all of the documentation s/he feels will be helpful, including the findings and recommendations of the Committee. The vice president may not base a decision on new information not presented at the hearing unless the nature of that information is fairly communicated to the parties and a reasonable opportunity to respond is given to the parties. The vice president may seek advice from his or her advisors who were not involved in taking the action or making the decision under review.

Written notification of the vice president's decision shall be communicated within fourteen (14) calendar days to the parties concerned. The vice president should also provide written justification for the final decision if it is inconsistent with the Committee's recommendations.

The decision of the vice president is final and binding, unless either party files a timely, written request with the OEO/AA for presidential review.

**6. COMPLAINT PROCEDURES: PRESIDENTIAL REVIEW**

Either party may file with the OEO/AA a written request for presidential review within ten (10) calendar days of notice of the vice president's decision. Upon such request, the vice president shall transmit to the president the final decision as well as all documentation considered by the Committee, including the Committee's findings and recommendations.

The president shall consider all of the documentation s/he feels will be helpful, including the

findings and recommendations of the Committee. The president may not base a decision on new information not presented at the hearing unless the nature of that information is fairly communicated to the parties and a reasonable opportunity to respond is given to the parties. The president may seek advice from his or her advisors who were not involved in taking the action or making the decision under review.

The president should issue a final and binding decision within fourteen (14) calendar days. For good cause, the president may extend the time for action specified in this section. It shall be the responsibility of the OEO/AA to supply the complaining party, the responding party, and the supervisor, dean, chair, or others as appropriate with a copy of the final decision.

OUTDATED -  
Refer to Rule 1-012