

OFFICE OF EQUITY & DIVERSITY

OPERATING PROCEDURES FOR PROCESSING COMPLAINTS OF DISCRIMINATION

EFFECTIVE: MARCH 1, 2006

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INTRODUCTION

Without changing the substantive provisions of the University’s Equal Opportunity and Anti-Harassment Policies, or curtailing the investigatory authority of the Office of Equity & Diversity (“OED”) or the Office of Student Life/Student Discipline (“Student Discipline Program”), the present practice for processing discrimination complaints has been revised. These revisions are intended to provide those making decisions on discrimination complaints (the “Decisional Authority”) an improved opportunity to receive and review the facts and to discuss policy and legal implications at meaningful times prior to decision making. The revised process will also provide more information on procedures and rights to both Complainants and to those alleged to have violated University policy (the “Respondents”). Similarly, supervisors and managers and the heads of affected operating units, such as department chairs, will receive notice and an opportunity, as appropriate, to provide input into the process. It is expected that these changes to the process will also promote consistency and uniformity in the type, timing, and content of communication shared with all concerned parties.

1. THE COMPLAINT

A complaint is an allegation of disparate treatment based on race, color, ethnicity, national origin or ancestry, gender (including sexual harassment), sexual orientation, age, disability status, religion, or any other type of invidious discrimination in violation of a University policy. The allegation may be made by a student, staff member, or a member of the faculty, or by any other person who has been subjected to such discriminatory conduct by a member of the University community, or has been subjected to discriminatory treatment on property owned or operated by the University. Information or awareness of prohibited discrimination developed independently of a complaint may also form an independent basis for commencing a University investigation.

2. RESPONSIBILITY

The following University entities shall have the responsibility for investigating complaints based on the primary status of the Respondent:

INVESTIGATING ENTITIES

RESPONDENT	OFFICE OF STUDENT LIFE	OFFICE OF EQUITY & DIVERSITY	BOT (DISINTERESTED MEMBERS)
Student	X		
Student Organization	X		
Faculty		X	
Staff		X	
Invitee		X	
Trustee			X
Officers			X

When complaints involve both students and non-students, the Vice President for Student Affairs and the Director of OED shall consult and coordinate their respective activities. The Office of the Provost shall also be consulted if the complaint involves or is likely to involve issues of academic freedom, academic integrity, or other issues that may involve an academic matter. The Office of Disability Services will be consulted if the complaint involves, or is likely to involve, actual or apparent disabilities or accommodations of the same. Issues primarily involving Title IX matters will be investigated in a manner determined most appropriate by the Title IX Coordinator.

3. NOTICE OF THE ALLEGATIONS

(a) OED Matters:

- (1) OED is to assess whether mediation is appropriate under the circumstances. Either the Complainant or the Respondent may refuse mediation or, once commenced, end mediation at any time. No adverse inference is to be drawn from any such decision. OED is also to perform a preliminary assessment of the need for immediate interim action, e.g. removal, reassignment, administrative leave, or suspension.
- (2) OED to send out either: (i) Form A – *Acknowledgement of Complaint, Mediation to Complainant (Mediation)* and Form B – *Notice of Complaint to the Respondent (Mediation)*; or (ii) *Acknowledgement of Complaint Commencement of Investigation*, Form C, to the Complainant and *Notice of Complaint*, Form D, to the Respondent.
- (3) OED is to provide notification to Provost or appropriate Vice President and those in the supervisory chain, as appropriate under the circumstances. The recommended interim action, if any, is to be taken by the appropriate contracting officer.

(b) Student Discipline Program

- (1) The Office of Student Life is to assess whether mediation is appropriate under the circumstances. Either the Complainant or the Respondent may refuse mediation or, once commenced, end mediation at any time. If the mediation fails, the matter will be resolved via the Student Discipline process. No adverse inference is to be drawn from any such decision. The Student Discipline Program investigator is also to perform a preliminary assessment of the need for interim suspension. If the need arises, the recommendation is to be made to the Vice President for Student Affairs for the imposition of the interim suspension.
- (2) The Office of Student Life completes the appropriate paperwork pertinent to the mediation process, including the written notification of the allegation to the Complainant and the Respondent.

4. MEDIATION

- (a) OED Matters:
 - (1) Must be mutually acceptable to both the Respondent and the Complainant. Investigator meets individually and/or with both, as appropriate. If compromise is reached, it must be approved by OED, the relevant contracting office, the Vice President in the supervisory chain, with consultation, if appropriate, with affected supervisor(s).
 - (2) If mediation is not feasible, or if not successful within a reasonable period of time, OED is to commence a formal investigation. OED to forward: *Acknowledgement of Complaint Commencement of Investigation* – Form C to the Complainant and *Notice of Complaint* to the Respondent – Form D and to provide verbal notice to Provost or appropriate Vice President and those in the supervisory chain, as appropriate under the circumstances.
- (b) Student Discipline Program
 - (1) Must be mutually acceptable to both the Respondent and the Complainant. A mediator is assigned to the case, and schedules and implements the mediation process. If the mediation is successful, the Complainant and the Respondent sign the agreement. Both parties are reminded of their obligation to comply with the agreement.
 - (2) If the mediation fails (consensus is not reached), the case is referred back to the Student Discipline process for investigation and resolution.

5. INVESTIGATION

- (a) OED Matters:
 - (1) Identification by investigator of provisions of applicable policies that may be violated if the allegations prove more likely true than not. OED investigator is to conduct fact finding through interviews of Complainant, Respondent and other witnesses, and the examination of written statements from the parties, other relevant documents, and any other evidence that would tend to prove or disprove the factual allegations.
 - (2) Witnesses, including the Complainant and the Respondent, may have counsel at interviews but counsel may not participate in the interview and may be asked to leave the interview site if disruptive.
 - (3) A negative inference may not be drawn by failure of the Respondent to provide a statement or give an interview. In the event of such failure, the matter will be decided without the benefit of the Respondent's participation.
- (b) Student Discipline Program

- (1) Student Discipline Program investigator determines if sufficient information, using a standard of more likely than not, is present to charge the Respondent with a violation(s) of the Code of Conduct. This is accomplished through fact finding interviews with the Complainant, the Respondent, other witnesses, and the examination of written statements from the parties, other relevant documents, and any other information that would tend to prove or disprove the factual allegations.
- (2) Witnesses, including the Complainant and the Respondent, may have an advisor at the interviews; however, the advisor may not participate in the interview and may be asked to leave the interview if disruptive.
- (3) The Respondent may choose not to speak or provide a written statement. Their silence shall not be used to their detriment. Failure of the Respondent to attend an interview can result in the matter being decided in the Respondent's absence.

6. REPORT OF INVESTIGATION

(a) OED Matters:

- (1) Issuance of a *Report of Investigation* by OED (Form E). Report is to be confined to applicable University policy and findings of fact. No legal conclusions are to be presented in the Report as to the applicability of law or as to whether a particular law was violated, except that, it must be stated that retaliation is a violation of law and University policy.
- (2) Report is to be forwarded to the Decisional Authority through the Office of General Counsel ("OGC"). General Counsel may not amend the report in any way.
- (3) Following review by the OGC of the Report, General Counsel shall forward the Report along with a privileged legal memorandum to the Decisional Authority. The privileged memorandum will contain OGC's legal review, recitation of applicable University policies, and an explanation of the range of options legally available to the Decisional Authority to apply the findings of fact to such policies.

(b) Student Discipline Program

- (1) If sufficient information is found to support bringing forth a Code of Conduct charge, the charge will be put in writing to the Respondent using the standard Discipline Resolution Form.
- (2) Respondent will be given **two (2) business days** to either accept responsibility and resolve the charge informally or request formal resolution in a hearing before the University Discipline Committee.

- (3) If the Respondent chooses informal resolution, the investigator will determine the sanction to be imposed using the sanctions outlined in the Code of Conduct, with the understanding that violations involving persons or organizations intentionally targeted because of their race, sex, sexual orientation, color, national origin, ancestry, religion, age, marital status disability or status as a disabled or Vietnam-era veteran may result in enhanced sanctions.
- (4) If the Respondent chooses to have the charge resolved formally, the University Discipline Committee hearing process will be implemented as outlined in the Code of Conduct with the Associate Vice President for Student Affairs/Dean of Students rendering the final decision using the same sanctioning guidelines indicated in (3) above if the decision is that the Respondent is responsible for the charge.

7. CONSULTATION

For cases investigated by OED, prior to making a decision, consultation is to take place among the Decisional Authority (or designee), OED and OGC. Policy and program advice will be provided by OED; and privileged legal advice will be provided by the OGC. Other non-parties (e.g. immediate supervisor) may be invited, as appropriate, to participate in the consultation.

8. DECISION

(a) OED Matters:

- (1) Decision issued by Decisional Authority. Decision to contain determination as to the material facts established (deemed more probably true than not), as to whether established facts constitute a violation of University policy and, if so, what sanctions are to be imposed. In lieu of a decision, the matter may also be remanded to OED for more investigation.
- (2) Separately addressed notification to Complainant and Respondent of decision with copies to OED, OGC, and to individuals in supervisory chain, up to and including the relevant Vice President. Notice to state that decisions may be appealed to the President but that reconsideration may be first requested of the Decisional Authority within **seven (7) calendar days** of notice of the decision. Report of Investigation to be made available upon request to either party.
- (3) A party may request reconsideration of the Decisional Authority's decision only once based on one or more of the matters stated in a. or b. below. Such a request must be in writing and addressed to the Decisional Authority, with a copy provided to the other party. A request for reconsideration may only be based on one or both of the following:
 - a. newly discovered evidence that was previously unknown and that could affect the outcome; or

- b. irregularity in the process that affected the finding of a material fact or that could have otherwise affected the outcome.
- (4) If a party fails to satisfy one of the two reasons, the Decisional Authority will decline the reconsideration and indicate to both parties that the request failed to demonstrate a basis for reconsideration. The Decisional Authority will have **ten (10) calendar days** from the date of receipt to respond to a request for reconsideration. Thereafter, the disappointed party may appeal to the President within **seven (7) calendar days** of the issuance of the decision on the reconsideration request.
- (5) In the case of a faculty member, a request for reconsideration of a decision adverse to a faculty member may be made by the Faculty Personnel Conciliation Committee (“FPCC”), provided that the concerned faculty member on whose behalf the request is made concurs with the position of the FPCC. The general **seven (7) calendar day** time for providing a request for reconsideration may be extended to a total of **fifteen (15) scheduled school days** in the event that the Chair of the FPCC notifies the Provost within **seven (7) calendar days** of notice of the decision of an intent to submit a request for reconsideration. It is within the discretion of the Decisional Authority whether to suspend the sanction(s) during the reconsideration or any ensuing appeal to the President. After the reconsideration is decided, only a disappointed party may appeal to the President. That appeal must be received by the President within **seven (7) calendar days** of the issuance of the decision on the reconsideration request.
- (6) In lieu of asking for a reconsideration, a disappointed party may appeal directly to the President within **seven (7) calendar days** of notice of the decision.
- (7) Notice of the decision will also advise the parties that on appeal the factual findings of the Decisional Authority will be overturned only if the President determines that there was no circumstance under which a reasonable person could reach the same factual conclusion based on the evidence presented. The sanctions imposed in a case will not be modified unless the President determines that they are materially disproportionate to the severity of the violation or not supported by the factual conclusions of the Decisional Authority. In all other cases (except for those involving a recommendation for the revocation of tenure), the President’s decision is non-appealable and not subject to further review.

In cases involving the recommendation for revoking tenure, the affected faculty member may challenge the President’s recommendation by filing a position directly with the Board of Trustees (either directly with each voting member of the Board or through a single submission of documents with the Secretary of the Board). Nothing contained in these Operating Procedures is intended to repeal or supersede the grievance procedures otherwise available to faculty under the *Academic Charter* (see e.g. B-1. E 4 r)).

Written appeals to the President must be made within **seven (7) calendar days** from either (i) notification of the original decision (if no reconsideration is requested), or (ii) from notice of the decision on the reconsideration (if reconsideration was requested), from the Decisional Authority. The President will decide all appeals within **ten (10) calendar days** after receiving the appeal and the decision of the President will be sent to all involved parties.

(b) Student Discipline Program

- (1) The Respondent and the Complainant receive separate copies of the decision. If the Respondent is found responsible, the letter will include the sanctions to be imposed and an explanation of the Respondent and Complainant's appeal rights.
- (2) If the charge was resolved informally, only the sanctions may be appealed to the Associate Vice President for Student Affairs/Dean of Students within **five (5) calendar days** of the receipt of the sanction letter. The decision of the Associate Vice President for Student Affairs/Dean of Students is considered as final.
- (3) If the charge was resolved formally, the appeal is forwarded to the Vice President for Student Affairs and must be based on procedural error, revelation of new information, or the information presented at the hearing was not sufficient to support the decision. The decision of the Vice President for Student Affairs is final.

OED Investigation Complaint Process

