

UNIVERSITY of HOUSTON
MANUAL OF ADMINISTRATIVE POLICIES AND PROCEDURES

SECTION: Human Resources
AREA: Affirmative Action/Equal Employment

Number: 02.07.01

SUBJECT: Title IX Grievances and Other Discriminatory Complaints

I. PURPOSE AND SCOPE

The purpose of this document is to provide a fair, orderly, and systematic process for addressing allegations of discrimination. The Office of Affirmative Action/Equal Employment Opportunity (OAA/EEO) should be contacted for advice and consultation on all issues regarding the enforcement and/or violation of this document.

II. POLICY STATEMENT

The University of Houston is committed to providing a work and academic environment for employees and students free from all forms of discrimination based on protected categories. Protected categories are race, color, religion, national origin, sex, age, disability, veteran status or sexual orientation. Conduct that constitutes discrimination shall be considered to be a violation of university policy.

Members of the university community are encouraged to promptly report complaints alleging discrimination.

III. DEFINITIONS

- A. Grievance is a complaint alleging any action, policy, procedure or practice which is prohibited by Title IX, and/or other federal, state, local laws and university regulations prohibiting discrimination.
- B. Title IX refers to Title IX of the Education Amendments of 1972, the 1980 implementing regulations, and any related memoranda, directives, guidelines or subsequent legislation that may be issued or enacted.
- C. Title IX Grievance as used throughout this document may include complaints of discrimination based on:
 - 1. Executive Order 11246;
 - 2. The Equal Pay Act of 1963;
 - 3. Titles VI and VII of the Civil Rights Act of 1964, as amended;

4. The Age Discrimination in Employment Act (ADEA) of 1967;
5. Title IX of the Higher Education Amendments of 1972;
6. Sections 503 and 504 of the Rehabilitation Act of 1973;
7. The Vietnam Era Veterans' Readjustment Assistance Act of 1974;
8. The Civil Rights Restoration Act of 1988;
9. The Americans with Disabilities Act (ADA) of 1990;
10. The Civil Rights Act of 1991;
11. The Texas Commission on Human Rights Act; and
12. Other federal, state, local laws and university regulations.

The university also recognizes the right of all complainants to file charges of unlawful discrimination with the appropriate federal or state agency with or without first pursuing a resolution of the complaint through the university's procedures.

- D. Grievant is a student or employee who submits a grievance relevant to Title IX.
- E. Informal Complaint is the process of gathering information in an attempt to resolve a disagreement without following a formal complaint process.
- F. Formal Complaint is the process of investigating a case of alleged discrimination and making a determination as to whether or not discrimination occurred and, where appropriate, providing a resolution to the complaint.
- G. Title IX Grievance Coordinator is the person serving as the Executive Director of OAA/EEO and is designated to coordinate efforts to comply with and implement these Title IX grievance procedures. (This person also serves as the Equal Employment Opportunity Coordinator.)
- H. Respondent is the person alleged to be responsible, or who may be responsible for the Title IX violation alleged in a grievance. The term may be used to designate persons with direct responsibility for a particular action or those persons with supervisory responsibilities for procedures and policies in those areas covered in the grievance.

- I. Hearing Panel is comprised of representatives who have authority to hear a grievance, deliberate, and make a recommendation to the Executive Director of OAA/EEO.
- J. Corrective Action/Requested Relief is action or relief taken by the university to eliminate or modify any policy, procedure or practice found to be in violation of Title IX or to provide redress to any grievant injured by the identified violation.

IV. PROCEDURES

A. Relation to Sexual Harassment Procedures

This document does not replace the University of Houston Sexual Harassment Procedures, which shall be utilized for all allegations of sexual harassment.

B. Relation to Other Grievance Procedures

This document does not replace established faculty, graduate student, undergraduate student or staff grievance procedures. However, the chair of a faculty, graduate student, undergraduate student or staff grievance committee that receives a grievance that includes an allegation of discrimination must immediately notify the Executive Director of OAA/EEO of such allegations.

C. Notification of Executive Director of Affirmative Action

Upon receipt of a formal grievance, which includes an allegation of discrimination, the chair of a faculty, graduate student, undergraduate student or staff grievance committee shall send a copy of the grievance to the OAA/EEO. The Executive Director of OAA/EEO shall be notified if and when a hearing will take place and shall appoint a designee to attend the hearing to serve as a resource person to the hearing board. This individual shall not have a vote at the hearing nor be present during deliberations.

D. Student Disciplinary Proceedings Involving Allegations of Discrimination

Upon initiation of student disciplinary proceedings that include allegations of discrimination, the Dean of Students shall notify the Executive Director of OAA/EEO of such allegations. In cases where the grievant in a student disciplinary proceeding has also filed a complaint under these Title IX grievance procedures, the Dean of Students and the Executive Director of OAA/EEO shall coordinate appropriate efforts.

E. Eligibility for Filing

This policy applies to all persons who are enrolled or employed at the university while they are on university property or are participating in a university-sponsored activity off-campus.

F. Time limits

1. Complaints must be filed with the OAA/EEO within 60 calendar days from the date upon which the action took place or when the grievant had knowledge of the alleged discriminatory act. After the initial filing of a complaint, the Executive Director of OAA/EEO may reasonably extend all other time periods established in these guidelines. A request for a time extension by either the grievant or the respondent requires written justification and must be submitted 48 hours prior to date due. The 60 day time limit for filing however will not be extended.
2. If the last day for filing a complaint or for appealing a decision falls on a Saturday, Sunday or a day on which the university is closed for normal business, then the complaint or appeal must be filed by no later than by 5:00 PM the first business day after the Saturday, Sunday or university closure.

G. Confidentiality

1. Complaints of discrimination filed with the university will remain confidential. University personnel involved in or responsible for any aspect of a complaint, including the appeal process, shall maintain confidentiality throughout the processing of the complaint.
2. A breach of the duty to preserve confidentiality is considered a serious offense and will subject the offender to appropriate disciplinary action. Parties and witnesses also are required to maintain confidentiality with regard to these proceedings.

H. Retaliatory Action Prohibited

The university prohibits retaliatory action taken against persons who, in good faith, file complaints under this document or who file complaints under applicable state or federal nondiscrimination statutes, are suspected of having filed such complaints, have assisted or participated in an investigation or resolution of such complaints, or have protested practices alleged to violate nondiscrimination regulations or statutes.

I. False or Malicious Charges

Filing of false or malicious complaints may result in sanctions imposed against the grievant.

J. Record Keeping

A record of any complaint submitted for consideration in accordance with this document shall be kept on file in the OAA/EEO. The file shall include all pertinent documentation related to the complaint. These records may be open to the public in accordance with the Texas Open Records Act.

V. TITLE IX GRIEVANCE COMMITTEE

The President shall appoint the Title IX Grievance Committee, which shall consist of six staff, six faculty and six students, of which three shall be graduate students and three shall be undergraduate students. For hearings held under this document, the Executive Director of OAA/EEO will select a three person Hearing Panel from the committee, two from the constituency to which the respondent reports, and one from the constituency to which the grievant reports. The Executive Director of OAA/EEO appoints the chairperson of the committee.

All persons designated as Title IX Grievance Committee members shall receive a minimum of two hours of training regarding Title IX regulatory requirements, discrimination bases and issues and the basic principles and operation of this grievance document. The Executive Director of OAA/EEO shall arrange the training. The Executive Director of OAA/EEO or designated representative(s) shall provide continuing consultation regarding the implementation of this document.

VI. INFORMAL COMPLAINTS PROCEDURE

A. Informal complaint resolution focuses on conciliation. The goal of an informal resolution is to ensure that any discriminatory behavior ceases and that the matter is resolved expeditiously. The emphasis of an informal resolution is not to establish guilt or innocence, but to provide a resolution upon which both the grievant and the respondent agree.

B. Informal complaint resolution may be achieved by, but is not limited to, any of the following steps:

1. Action taken by the grievant to address the matter directly with the accused;
2. Action to resolve the complaint with the alleged offender's supervisor or department head; or,

3. Intervention by the OAA/EEO and the department head to record the complaint.

VII. FORMAL COMPLAINTS PROCEDURE

- A. Where to File: A formal complaint must be filed with the OAA/EEO, located in the Student Services Center II Building.
- B. Contents of a Complaint: A formal complaint must be signed and dated. It should include a detailed statement of the alleged incident(s) including:
 1. Name, address, university affiliation and telephone number of the grievant;
 2. Nature, date(s) and description of the alleged violation;
 3. Name(s) of persons responsible for the alleged violation;
 4. State a cause of action based upon membership in a protected category;
 5. Indicate some harm that the grievant has suffered, is suffering, or will suffer as a result of their protected category membership;
 6. Any background information that the grievant believes to be relevant, including possible witnesses; and,
 7. Requested relief or corrective action.

If a complaint contains incomplete information, the Office of OAA/EEO will promptly seek to gather the needed information.

- C. Notification of the Office of Dean of Students: Within five working days of receipt of a formal complaint from a student, the OAA/EEO shall forward a copy of the grievance to the Dean of Students. The Dean of Students or designated representative shall be notified and is required to attend all student Title IX grievance hearings, to serve as a resource person. The Dean of Students or designee will not have a vote, will not be present during deliberations of the Hearing Panel or have a voice at the hearing unless requested by the Hearing Panel.
- D. Notification of Line Officers: Within five working days of receipt of a formal grievance, the OAA/EEO will notify the appropriate administrative officers to whom the grievant and respondent report. All administrative officers will maintain the confidentiality of the information during the complaint process.

- E. Processing of Complaint: Within five working days of receipt of a formal complaint, the OAA/EEO will provide a copy of the complaint to the respondent. The respondent must submit to the OAA/EEO a written response to the allegations of discrimination within 10 calendar days to the OAA/EEO.
- F. Role of the OAA/EEO: Within 30 working days after receipt of respondent's written response, the OAA/EEO must conduct an investigation and take one of the following steps: 1) dismiss the complaint on the grounds that the evidence submitted in support of the complaint or developed in the investigation does not warrant further action; 2) resolve this matter with the appropriate administrator; or 3) allow the parties to sign a written statement of agreement resolving the complaint.
- G. Withdrawal of a Complaint: Withdrawal of a complaint by the grievant for any reason, including an agreement between the parties, will not necessarily result in the termination of the university's investigation into the allegations. Withdrawal of complaints must be communicated in writing to the OAA/EEO.
- H. Appeal to Hearing Panel: Upon failure to reach an agreement resolving the complaint or if the OAA/EEO dismisses the complaint, a written appeal must be made by the grievant within 10 calendar days of notification. If an appeal is filed, the OAA/EEO will forward the investigative file to the chair of the Title IX Grievance Committee.
- I. Hearing: The Executive Director of OAA/EEO will convene a Hearing Panel who shall conduct a hearing within 20 calendar days of request of the appeal. The respondent may not challenge that action. Decisions of the Hearing Panel shall be made by simple majority vote.
- J. Objections to Hearing Panel Member(s): The grievant or the respondent may voice objections, at least five (5) working days prior to the hearing, to any member of the Hearing Panel. The Executive Director of OAA/EEO will consider the objections, along with any concerns about alleged conflicts of interest and shall determine whether any member of the Hearing Panel has any conflict of interest that disqualifies them from service on the Panel. Another member from the same constituency from which the conflicted member was selected shall replace any member who has a conflict.
- K. Representation: Each party has the right to representation by advisors at any point during the initiation, filing, processing, or hearing of the grievance.
- L. Standard of Proof: The grievant has the burden of proof. The standard of proof is established by a preponderance of evidence. This standard of proof means that the evidence submitted by either the grievant or the respondent is of greater weight or more convincing than the evidence that is offered in opposition to it.

- M. Recorded Hearing: The hearing will be recorded on recording devices supplied by the OAA/EEO. Recordings shall be maintained for a period of three years after final ruling of the grievance. Either party may obtain a copy of the tapes by written request and at the requesting party's expense. Deliberations of the Hearing Panel will not be recorded.
- N. Hearing Panel's Decision: The Hearing Panel shall prepare a written decision addressed to the Executive Director of the OAA/EEO, including the reason(s) for its decision, within five working days after the hearing. Within five working days of receipt of the decision, the Executive Director of OAA/EEO shall provide a copy of the written decision to the complainant and the respondent.

If the Hearing Panel overturns the findings of the OAA/EEO, it will be forwarded to the appropriate vice president.

- O. Appeal of Hearing Panel's Findings: If either party takes exception to the decision of the Hearing Panel and wishes to appeal, that party shall, within five working days of receipt of the Hearing Panel's decision, notify the Executive Director of OAA/EEO of the intent to appeal. The notification must be in writing. If no appeal is received within the allotted time, the case is closed.

VIII. HEARINGS PROCEDURE

- A. The parties shall provide the Executive Director of OAA/EEO with all documents to be used and relied on at the hearing and with the name, address and telephone number of counsel and witnesses no later than five working days prior to the date of the hearing. There will be an exchange of this information between the parties three days before the date of the hearing. The OAA/EEO will facilitate the exchange of information.
- B. The parties shall be afforded a reasonable opportunity for oral opening and closing statements and to present witnesses and relevant documents or other evidence concerning the subject matter of the complaint.
- C. The parties shall have the right to cross-examine witnesses against them. Should a witness be unable to appear, an affidavit of the witness may be accepted into the record.
- D. The Hearing Panel shall have the right to question witnesses, to examine documentary evidence presented, and to summon other witnesses. Witnesses shall not be present during the testimony of any party or other witness.
- E. The Executive Director of OAA/EEO shall notify the parties of the date, time and location of the hearing. The hearing shall be scheduled to reasonably ensure that the grievant, respondent and witnesses are able to participate.

- F. Immediately after the hearing, the Hearing Panel will go into closed session to deliberate. The decision will be rendered within five working days.
- G. If any participant in the hearing requires special accommodations, the OAA/EEO should be notified within two working days of the hearing.

IX. VICE PRESIDENT APPEAL

The vice president, or designee, to whom the respondent ultimately reports, shall issue a written decision within 20 working days from the date of the appeal. Either party may be requested to appear for an interview by the appropriate vice president or designee. The intent of the vice president's review is not to hear new evidence but rather to ensure that the hearing and recommendations of the Hearing Panel were not arbitrary, capricious or discriminatory, did not violate the rights of the parties, and did not violate the concepts of fair play to both parties. The vice president's decision is not open to appeal and is the final step in the university's Title IX grievance process. However, nothing precludes the grievant from filing a complaint with any external agency that handles discrimination complaints.

X. REVIEW AND RESPONSIBILITY

Responsible Party: Associate Vice President for Legal Affairs

Review: Every three years, on or before July 1

XI. APPROVAL

John M. Rudley
Vice President for Administration and Finance

Dona G. Hamilton
Vice President for Legal Affairs and General Counsel

Jay Gogue
President

Date of President's Approval: June 18, 2004

XII. REFERENCES

SAM 02.A.05 Employee Relations, Grievance and Appeal

Index Terms: Appeal
Discrimination
Discipline
Dismissal
Grievance
Post Dismissal Appeal