

UNIVERSITY OF HOUSTON SYSTEM  
ADMINISTRATIVE MEMORANDUM

SECTION: General Administration

NUMBER: 01.D.07

AREA: Legal Affairs

SUBJECT: ~~Discrimination and Harassment Policy~~ Anti-Discrimination Policy

---

1. PURPOSE

- 1.1. The University of Houston System and its component institutions (“University”) are committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff and visitors are free from discrimination and harassment of any kind. Discrimination and harassment is antithetical to the standards and ideals of the University. The University will take appropriate action in an effort to eliminate discrimination and harassment from happening, prevent its recurrence and address its effects.
- 1.2. This ~~Discrimination and Harassment~~ Anti-Discrimination Policy (“Policy”) defines and describes prohibited discrimination and harassment and establishes a mechanism for processing complaints of unlawful discrimination and harassment against University faculty, staff, students and visitors. This Policy does not address allegations of sexual misconduct, which includes sexual harassment. (Please see the University’s Sexual Misconduct Policy, [SAM 01.D.08](#), which defines and describes prohibited sexual misconduct and establishes a mechanism for processing complaints of sexual misconduct.) Nothing in this Policy shall be construed to limit the rights of University students or employees to seek remedies available to them outside of the University’s internal processes.
- 1.3. All members of the University community are expected to adhere to this Policy, to cooperate with the procedures for responding to complaints of unlawful discrimination and harassment and to report conduct or behavior that they believe to be in violation of this Policy to their component institution’s Equal Opportunity Coordinator, who will coordinate its investigation and response as necessary with the appropriate individuals from the applicable campus. The University will take seriously allegations of unlawful discrimination and harassment by conducting an investigation, and the University will work to ensure that all persons are given appropriate support and fair treatment.
- 1.4. This Policy provides the exclusive mechanism for handling the investigation of any alleged unlawful discrimination or harassment, the determination of whether this Policy was violated, and the appeal of Equal Opportunity Services’ (EOS’) finding as to violation/no violation of this Policy.

## 2. GENERAL DEFINITIONS

- 2.1. Complainant – A party or entity (in the case of the University) who formalizes a complaint of discrimination or harassment under Section 58.3 of this Policy.
- 2.2. Discrimination – Treating an individual or members of a Protected Class less favorably because of their membership in that class or having a policy or practice that has a disproportionately adverse impact on Protected Class members.
- 2.3. Equal Opportunity Coordinator – The person who is designated to coordinate efforts to comply with and implement this Policy. The Equal Opportunity Coordinator is responsible for conducting the administrative investigation of reports of discrimination or harassment and is available to discuss options, provide support, explain University policies and procedures and provide education on relevant issues. The Equal Opportunity Coordinator may designate one or more Assistant Equal Opportunity Coordinators. The Equal Opportunity Coordinators for each component institution campus are located ~~here~~herein:-
- University of Houston System/University of Houston  
Office of Equal Opportunity Services (EOS)  
eos@uh.edu  
713-743-8835
  - University of Houston – Downtown  
Faculty and Staff – Employment Services and Operations (ESO)  
713-221-8060
  - Students – Student Affairs  
713-221-8056
  - University of Houston – Clear Lake  
Human Resources  
281-283-2160
  - University of Houston – Victoria  
Human Resources  
(361) 570-4800
- 2.4. Harassment – Defined as subjecting an individual on the basis of her or his membership in a Protected Class to unlawful severe, pervasive, or persistent treatment that constitutes:
- Humiliating, abusive or threatening conduct or behavior that denigrates or shows hostility or aversion toward an individual or group;
  - An intimidating, hostile or abusive learning, living or working environment, or an environment that alters the conditions of learning, living or working; or

- An unreasonable interference with an individual's academic or work performance.

~~Harassment Examples~~ that ~~could satisfies-satisfy~~ this legal standard includes, but ~~is-are~~ not limited to: ~~;~~ epithets or slurs, negative stereotyping, threatening, intimidating or hostile acts, denigrating jokes and display or circulation (including through e-mail) of written or graphic material in the learning, living, or working environment.

2.5. Members of the University Community – Members of the University Community include:

- University faculty, staff, administrators, employees, and contractors;
- University students;
- Volunteers and participants in any University program or activity; and
- Guests and visitors to campus, to any property owned or leased by the University, or to any property owned or leased by any University-Affiliated organization or group.

2.6. Pregnant and Parenting Students – A student as defined in Section 2.9 who is pregnant or was pregnant, a birth parent, or an adoptive or foster parent. See also Section 5 below.

For guidance on pregnant and parenting students' rights, please see the following:

- <http://www.thepregnantscholar.org/wp-content/uploads/Model-Policy-on-Pregnancy-and-Parenting-Printable.pdf>;
- <https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>, and
- <https://nwlc.org/resources/pregnant-and-parenting-students-rights-faqs-college-and-graduate-students/>.

2.57. Protected Class – A class of persons who are protected under applicable federal or state laws against discrimination and harassment on the basis of race, color, sex (including pregnancy), genetic information, religion, age, national origin, disability, veteran status or any other legally protected status. Additionally, for purposes of this Policy, the term “Protected Class” includes: sexual orientation, gender identity and gender expression.

2.68. Respondent – A party who has been accused of committing an act of discrimination or harassment by a Complainant. A party or person who is designated to respond to a complaint. Generally, the Respondent would be the person alleged to be responsible for the prohibited discrimination or harassment alleged in the complaint. The term “Respondent” may also be used to designate

persons with administrative responsibility for procedures and policies in those areas covered in a complaint.

- ~~2.79. Student – Any person currently or previously enrolled in the University pursuing undergraduate, graduate or professional studies, whether full-time or part-time, and a person who is registered for a future semester. Any person who has been accepted for admission, is currently enrolled, or was previously enrolled in the University pursuing undergraduate, graduate, or professional studies, whether full-time or part-time, and a person who is registered for a future semester.~~

### 3. JURISDICTION

- 3.1. The University has jurisdiction over, and will respond to, allegations of harassment or discrimination occurring on the University’s premises, at University-Affiliated Activities, and/or where both the accused person and alleged victim are a student, faculty, or staff. The University does not have jurisdiction over allegations between visitors or non-affiliated persons, or allegations which occur outside the jurisdiction of the University.

#### 3.2. Academic Freedom and Freedom of Expression

The University is committed to protecting, maintaining, and encouraging both freedom of expression and full academic freedom of inquiry, teaching, service, and research. Academic freedom and freedom of expression shall be strongly considered in investigating complaints and reports of discrimination or harassment, but academic freedom and freedom of expression will not excuse behavior that constitutes a violation of the law or this Policy.

### 34. DUTY TO ACT AND TO REPORTING

#### 4.1. Reporting Responsibility

- A. All members of the campus community are encouraged to take reasonable and necessary action to prevent unlawful discrimination and harassment and to report the conduct to the Equal Opportunity Coordinator.
- B. ~~A duty to act is imposed on all persons to take reasonable and necessary action~~ Employees in a supervisory capacity have a duty to act, to not only to prevent unlawful discrimination and harassment, but to also report the conduct and behavior to the Equal Opportunity Coordinator for advice and assistance. A supervisor who fails to act may be found to have violated this Policy, even if the underlying event does not constitute unlawful discrimination and harassment. ~~and for responding promptly and thoroughly to any such claims. Upon learning directly or indirectly of conduct or behavior that might violate this Policy, all persons shall report the conduct or behavior to the Equal Opportunity Coordinator for advice~~

~~and assistance on addressing the matter. A person who fails to act may be found to have violated this Policy, even if the underlying event does not constitute unlawful discrimination or harassment.~~

4.2. Anonymous Reporting

- A. Complaints and others not required to report may submit a report through a web-based reporting system called MySafeCampus, which allows the option of anonymity.
- B. The web address for MySafeCampus is <http://www.mysafecampus.com>.
- C. Reports received through this web site will be reviewed and may be investigated.
- D. The University will work with anyone who is identified via a MySafeCampus report or subsequent investigation to provide confidentially to the full extent possible under this Policy.
- E. Upon receipt of an anonymous report that implicates this Policy, the Equal Opportunity Coordinator will invite the reporter to formalize the report into a formal complaint. While interim measures and actions are available to anonymous reporters without filing a formal complaint, an EOS finding as described in Section 9.8 requires a formal complaint.
- F. After formalizing the anonymous report into a formal complaint, the complaint process will follow the process documented in Section 9.3, "Formalizing the Complaint."
- G. If the anonymous reporter declines to pursue a formal complaint, the Equal Opportunity Coordinator may pursue a complaint on behalf of the University after considering the factors explained in Section 9.2.
- H. Individuals who pursue an anonymous formal complaint will be unable to utilize the appellate process described in Section 9.11.

4.3. Reporting to Outside Entities:

- An individual wishing to make a complaint may also contact the U. S. Department of Education, Office of Civil Rights (OCR):  
  
Office of Civil Rights  
U. S. Department of Education  
1301 Young Street, Suite 1169  
Dallas, TX 75202  
Phone: (800) 537-76970  
Fax: (214) 767-0432
- Employees may also contact the U. S. Equal Employment Opportunity Commission to complain of sex discrimination or sexual harassment:

U.S. Equal Employment Opportunity Commission  
Dallas District Office  
207 S. Houston Street, 3<sup>rd</sup> Floor  
Dallas, TX 75202  
Phone: (800) 669-4000  
Fax: (214) 253-2730

5. ACCOMMODATING PREGNANT AND PARENTING STUDENTS

The University prohibits discrimination against any student, or exclusion of any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient. Among other requirements, this means the University must excuse student absences because of pregnancy, childbirth, or related conditions as long as the student's doctor deems the absences as medically necessary. Documentation of medical necessity will be required. Schools must also allow for make-up work and offer a method to regain points lost due to medically-required absences. Following a medically-required absence, the student shall be reinstated to the status which she held when the leave began (per 34 CFR 106.40). For additional guidance, please refer to <https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>.

If students have questions about your rights as a pregnant or parenting student, please contact the component's Title IX Coordinator for accommodation requests or additional information.

6. RELIGIOUS ACCOMMODATION

The University prohibits discrimination against any student, faculty, or staff member based on their religion. Reasonable workplace accommodations will be made for persons with sincerely-held religious beliefs. Students should make requests for religious accommodation directly to their instructor. Employees should make requests for religious accommodation directory to their supervisor. If there are concerns by any party, please contact the Equal Opportunity Coordinator.

7. CONFIDENTIALITY

Equal Opportunity Services shall maintain documents related to complaints under this Policy as required by law. Documents related to sanctions and remedies shall be maintained as required by law by the sanctioning administrator.

The confidentiality of a complaint under this Policy and all documents relating to the investigation of the information contained in a Report or Complaint will be maintained on a business need-to-know basis to the extent permitted by law. Any person who knowingly and intentionally makes an unauthorized disclosure of confidential

information contained in a complaint or otherwise relating to the investigation of a complaint under this Policy is subject to disciplinary action.

## 8. RETALIATION

- 8.1. The University takes reports of discrimination or harassment very seriously and will not tolerate retaliation against those who make reports or who participate in the investigatory or adjudicatory process.
- 8.2. Retaliation includes, but is not limited to, any adverse employment or educational action taken for making a report of unlawful discrimination or harassment, or for otherwise participating under this Policy.
- 8.3. Any actual or threatened retaliation or any act of intimidation to prevent or otherwise obstruct the reporting of unlawful discrimination or harassment or the participation in proceedings relating to unlawful discrimination or harassment, may be considered a separate violation of this Policy.
- 8.4. ~~and may result in disciplinary sanctions.~~ Any person who believes that they have been subjected to retaliation should immediately report this concern to their Equal Opportunity Coordinator.

## 59. COMPLAINT PROCEDURES

### 59.1. **Step One: Self-Help**

- 59.1.1. An individual who believes that s/he is the subject of unlawful discrimination or harassment may choose to deal with the alleged offender directly through a face-to-face discussion, a personal telephone conversation, e-mail correspondence, or letters. In some cases, this approach may resolve the situation; in others, it may be ineffective or place the individual in an uncomfortable, insecure or compromised position. Under no circumstances should an individual feel pressured to address the alleged offender directly or handle the matter alone, and a decision not to confront a person she or he believes to be discriminatory or harassing will not be treated negatively under this Policy.
- 59.1.2. Other forms of self-help include taking the issue up the supervisory chain, to Human Resources or to the University's Ombudsperson, if available. If self-help measures prove unsuccessful or if the individual determines that it is not appropriate to engage in self-help measures, the individual may choose to pursue other appropriate methods of resolution.

### 59.2. **Step Two: Contacting an Equal Opportunity Coordinator**

- 59.2.1. To request any action under this Policy, an individual should contact an Equal Opportunity Coordinator as close to the date of the incident(s) as

possible. Early reporting and intervention have proven to be the most effective methods of resolving actual or perceived incidents of unlawful discrimination and harassment, and the University strongly urges the prompt reporting of concerns so that rapid and constructive action can be taken. To the extent that a concern is raised in an untimely manner, it is within the Equal Opportunity Coordinator's discretion not to pursue the matter. Individuals may discuss ~~with the Equal Opportunity Coordinator~~ issues relating to unlawful discrimination and harassment, with or without filing a formal complaint with the Equal Opportunity Coordinator or their designee. An individual should be aware that by contacting the Equal Opportunity Coordinator, s/he is placing the University on notice of potential unlawful discrimination or harassment and, depending on the facts and circumstances of the case, the Equal Opportunity Coordinator may not be able to keep the information confidential and may be obligated to act.

59.2.2. After reporting allegations of unlawful discrimination or harassment to the Equal Opportunity Coordinator, an individual may ask that no further action be taken. Depending on the facts and nature of the case, the Equal Opportunity Coordinator may or may not be able to honor the individual's request. The University reserves at all times the right to file a complaint on its own. Where the University cannot take disciplinary action against an alleged discriminator or harasser because of an individual's insistence on confidentiality, the University will pursue other steps to limit the effects of the alleged discrimination or harassment and attempt to prevent its recurrence.

59.2.3. The Equal Opportunity Coordinator may conduct a preliminary fact-finding review by gathering information from all sources judged necessary for a fair resolution of a concern. ~~In this process, confidentiality cannot be guaranteed; however, all parties and witnesses involved will be admonished to respect the integrity of the procedures and maintain confidentiality.~~ At the conclusion of the preliminary fact-finding review, the Equal Opportunity Coordinator will inform the individual of the available options. These options may include no further action, a mediated solution to the issues raised, or a full investigation. If the preliminary fact-finding review reveals a probable violation under the Policy, EOS will forward the information gathered during the preliminary fact-finding review to the Respondent for a response under Section 9.6 and the investigation will proceed as if a complaint was filed.

59.2.4. In cases of alleged unlawful discrimination or harassment under this Policy, the Equal Opportunity Coordinator will determine whether mediation is an appropriate mechanism of potential resolution based on the nature of the allegations. Mediation is an informal and confidential process where parties can participate in a search for fair and workable



solutions. Mediation requires the consent of both parties and suspends the complaint procedures for up to 30 calendar days, a period that can be extended at the discretion of the Equal Opportunity Coordinator upon consent of both parties. The parties may agree upon a variety of resolutions such as modification of work assignment, training for a department, or an apology. If mediation results in a resolution, the matter will be closed. If the parties are unable to reach a resolution, a formal complaint may be filed under Step Three (Section 59.3).

9.2.5. Resolution Agreement: If a report or complaint alleges a non-violent violation of this Policy other than Sexual Assault, the Complainant and Respondent may agree to resolve the report or complaint by agreement rather than after a finding by EOS under this Policy. Under a Resolution Agreement, the parties agree that without a finding by EOS, the Respondent will participate in training or other conditions as set forth in the Resolution Agreement. The Resolution Agreement is not an admission of guilt or responsibility by the Respondent, and neither party has the right to appeal.

### 59.3. Step Three: Formalizing the Complaint

59.3.1. If an individual wishes to formalize a complaint, s/he will be asked to complete a Formal Complaint Questionnaire with the Equal Opportunity Coordinator, who will forward the Complaint Questionnaire to EOS. The deadline for filing a discrimination or harassment complaint is 180 calendar days from the date of the alleged incident(s), although it is within EOS' discretion to pursue a matter that is untimely filed. It should be noted that once a complaint is filed, if the Complainant decides to withdraw the complaint, the University's investigation may still proceed. ~~The University has a responsibility to investigate reported allegations of unlawful discrimination and harassment in an adequate, prompt, reliable and impartial manner.~~

9.3.2. If the alleged Complainant does not wish to pursue a formal complaint:

- The University may determine that it will serve as the Complainant if the alleged Complainant declined to file a formal complaint.
- The decision for the University to file a complaint will be based on various factors, including but not limited to, the type of allegations alleged in the report, prior reports received, and/or potential for repeated behavior.

~~5.3.2. When an incident of discrimination or harassment is reported, the University will consider providing interim accommodations to protect the Complainant as necessary while the incident is adjudicated through this Policy. EOS and other appropriate University administrators~~

~~will work together to identify alternative arrangements that will preserve the rights of both the Complainant and the Respondent, as well as provide a safe overall educational or working environment until (and perhaps after) the complaint is investigated and adjudicated. Failure to adhere to the parameters of any interim measure may be considered a separate violation of this Policy and may result in disciplinary action.~~

#### 59.4. Step Four: ~~EOS Investigation~~Complaint Evaluation

~~EOS will begin a formal investigation upon its receipt of a complaint as defined under Section 5.3.1 of this policy. EOS will attempt to interview the Complainant, the Respondent and any witnesses, as appropriate. EOS will also gather and review any pertinent information as well as information submitted by the Complainant, the Respondent and/or any witness.~~

9.4.1. EOS reserves the right to not proceed with a formal complaint for the following, non-exclusive reasons:

- If a complaint is not filed timely;
- If the complaint, on its' face does not provide sufficient details or facts for a finding to be made under the Policy;
- If the Complainant expressly or by action declines to cooperate with the investigation;
- If an appropriate resolution or remedy has already been achieved;
- If the conduct/behavior described in the complaint is not covered by a policy enforced by EOS; and/or
- If the University no longer has control over the Respondent and, when appropriate, remedies have been offered to the Complainant.

9.4.2. If EOS decides to not proceed with a formal complaint, EOS will notify the Reporter or Complainant within five (5) business days of the decision, explaining the reason(s) for this decision. This notification will also include a statement informing the Complainant of his/her ability to refile the complaint and that this new complaint will be assessed on its own merits.

#### 9.5. Step Five: Consideration of Interim Measures

9.5.1. Although interim measures may have already been considered and implemented, EOS will again consider interim measures at this step to protect involved parties while the incident is investigated and adjudicated through this Policy.

9.5.2. EOS and other appropriate University administrators will work together to identify alternative arrangements that will preserve the rights of both the Complainant and the Respondent, as well as provide a safe overall

educational or working environment until (and perhaps after) the complaint is investigated and adjudicated.

9.5.3. Failure to adhere to the parameters of any interim measure may be considered a separate violation of this Policy and may result in disciplinary action.

**5.59.6. Step FiveSix: Response to a Complaint**

9.6.1. The Respondent's response to the complaint is due to EOS within five (5) business days from the Respondent's receipt of the complaint. EOS may grant an extension for good cause. Within five business days after receiving a complaint, EOS will contact the Respondent to obtain the Respondent's response. The response is due to EOS within 10 business days from the Respondent's receipt of the complaint. The response should address and respond to the specific allegations made in the complaint and can include any other rebuttal information. Failure to respond may be considered a separate violation of this Policy and may result in disciplinary action.

9.6.2. The response should address and respond to the specific allegations made in the complaint and can include rebuttal information.

9.6.3. A response may be provided in writing or through an in-person interview with the investigator(s).

9.6.4. A Respondent is not required to provide a statement or submit any rebuttal material; however, this will not stop the formal complaint process. Findings will be made based on the information gathered during an investigation.

9.6.5. While a Respondent is not required to provide any response to the complaint or answer questions related to the investigation, failure to recognize the receipt of the complaint may be considered a violation of relevant University policies and could result in an additional action.

**9.7. Step Seven: EOS Investigation**

9.7.1. Absent extenuating circumstances, an investigation will begin upon receipt of a complaint or other notice of alleged discrimination or harassment.

9.7.2. An investigation may begin prior to receiving a response from the Respondent.

9.7.3. The investigator(s) will attempt to interview the Complainant, the Respondent and any witnesses, as appropriate.

9.7.4. The investigator(s) will also gather and review any information it deems pertinent, as well as any information submitted by the Complainant, the Respondent, and/or any witnesses.

**5.69.8. Step SixEight: EOS Finding**

9.8.1. A finding by EOS will be issued ~~a finding~~ as soon as practicable. EOS will ~~and~~ make every effort to issue its finding within 60 business days from its receipt of the ~~formalized~~ complaint. In investigations exceeding 60 business days, a justification for the delay will be presented to and reviewed by the Equal Opportunity Coordinator or his/her supervisor. The Complainant, Respondent, and Supervisor should be provided updates on the progress of the investigation and issuance of the report.

9.8.2. The finding will be determined by a preponderance of the evidence ~~standard~~; that is, whether it is more likely than not that the Respondent violated this Policy.

9.8.3. If EOS determines that this Policy was violated, ~~EOS will recommend~~ appropriate ~~university~~ University action ~~will be recommended~~ in an effort to eliminate ~~unlawful~~ discrimination or harassment ~~from happening~~, prevent its recurrence and address its effects.

9.8.4. Even if ~~EOS determines~~ it is determined that this Policy was not violated, ~~EOS may recommend~~ a recommendation may be made that the Respondent undertake educational initiatives and/or trainings.

9.8.5. ~~EOS will concurrently notify~~ The Complainant and the Respondent ~~will be simultaneously notified~~ in writing of the outcome of its finding and any appeal rights under this Policy, ~~to the extent permissible by law~~.

9.8.6. ~~EOS will notify~~ The appropriate university administrator(s) ~~will also be notified~~ of any recommended ~~university~~ University action. The appropriate administrator will depend on the status of the Respondent (i.e., student, faculty, or employee).

9.8.7. At any time after a finding has been made that the Respondent has violated the Policy, the University may implement an interim sanction against the Respondent while the complaint is being further adjudicated.

9.8.8. Once a finding has been made, any party to the complaint may request to meet with the investigator(s) to discuss the investigation, finding, and/or to inspect the investigative file.

**5.79.9. Step SevenNine: Sanctions**

9.9.1. If there is a finding of a violation of this Policy, EOS will recommend that appropriate University action be taken, and any sanctions imposed on the

Respondent will be determined by and implemented by the appropriate administrator after consultation with the Equal Opportunity Coordinator.

A. If ~~EOS finds~~there is a finding of a violation of this Policy against a faculty member, ~~EOS will recommend appropriate university action, and~~ any sanctions imposed on the faculty member will be determined by and implemented- by the appropriate administrator after consultation with ~~EOS~~the Equal Opportunity Coordinator and consistent with the component institution's faculty handbook/manual.

~~5.7.2.~~B. If ~~EOS finds~~there is a finding of a violation of this Policy against a non-faculty ~~university~~University employee, ~~EOS will recommend appropriate university action, and~~ any sanction imposed on the employee will be determined by and implemented by the appropriate administrator after consultation with ~~EOS~~the Equal Opportunity Coordinator and consistent with ~~the~~ component institution's policies and procedures related to employee discipline.

~~5.7.3C.~~ If ~~EOS finds~~there is a finding of a violation of this Policy against a student, ~~EOS will recommend appropriate university action, and~~ any sanction imposed on the student will be determined by and imposed by the Dean of Student's Office or its equivalent after consultation with ~~EOS~~the Equal Opportunity Coordinator and consistent with the component institution's policies and procedures related to student conduct/discipline.

9.9.2. The sanctions for committing an act of discrimination or harassment will be commensurate to the offense and may include, but are not limited to, the following:

- Probation (including disciplinary probation);
- Temporary or permanent ban from campus locations (such as residence hall communities);
- Ban from participating in campus organizations;
- Disqualification from employment positions;
- Withholding of transcripts, grades, diploma, or degree;
- Partial or full criminal trespass;
- Suspension from employment and/or enrollment;
- Revocation of admission and/or degree;
- Termination of employment, and/or
- Expulsion.

9.9.3. If a party is dissatisfied with a sanction determined by the appropriate administrator under Section 9.9.2, they may appeal the sanction as follows:

- A. Any appeal to the sanction against a faculty member must be addressed through the component institution's faculty handbook/manual.
- B. Any appeal to the sanction against an employee must be addressed through the component institution's policies and procedures related to employee grievances.
- C. Any appeal to the sanction against a student must be addressed through the appeal process in the component institution's student code of conduct or its equivalent.

#### 9.9.4. Remedies

Regardless of the finding, and in addition to sanctions which may be imposed pursuant to the appropriate disciplinary policy, the University will take appropriate action(s) to resolve complaints of discrimination or harassment, prevent any reoccurrence and, as appropriate, remedy any effects. These actions may include, but are not limited, to the following:

- Imposing sanctions against the Respondent, including attending training;
- Determining whether the discrimination or harassment adversely affected the Complainant's University standing;
- Conducting, in conjunction with University leaders, a University climate check to assess the effectiveness of efforts to ensure that the University is free from discrimination or harassment, and using that information to inform future proactive steps that the University will take;
- Providing targeted groups training; and/or
- Issuing policy statements or taking other steps to clearly communicate that the University does not tolerate discrimination or harassment and will respond to any incidents and to any individual who reports such incidents.

These remedies are separate from, and in addition to, any interim measures that may have been provided before the end of the University's investigation. If the Complainant did not take advantage of a specific service (e.g., counseling) when offered as an interim measure, the Complainant should still be offered, and is still entitled to, appropriate final remedies that may include services the complainant declined as an interim measure.

**9.10. Step Ten: New Information**

9.10.1. If a party has new information they believe would have significantly impacted the finding, they may submit that information to the Equal Opportunity Coordinator.

9.10.2. If the Equal Opportunity Coordinator determines that the submitted information should be reviewed, and the information was not available for the party to present during the time of the investigation, the case may be re-opened.

**9.11. Step ~~Eight~~Eleven: Appeal**

9.11.1. An appeal must be submitted in writing to the Equal Opportunity Coordinator within five (5) business days of receiving the finding. ~~If the Complainant or the Respondent is dissatisfied with EOS' finding, the party can appeal to the component institution's appellate board ("Board"). An appeal must be filed with the component institution's Equal Opportunity Coordinator within 10 business days of receiving EOS' finding. Absent extenuating circumstances, the Equal Opportunity Coordinator will schedule a hearing to be held within 30 business days from the filing of the appeal. Written requests for rescheduling the hearing will be considered by the Board's chairperson in consultation with the Equal Opportunity Coordinator. No later than five business days prior to the hearing, all materials that will be used at the hearing must be submitted to the Equal Opportunity Coordinator, who will forward the materials to the Board's chairperson and will simultaneously provide to the other party. The materials must include the names of any witnesses intended to be called during the hearing (along with a brief summary concerning the subject matter of the witness' expected testimony), and the name of any advisor to be in attendance at the hearing (and whether that advisor is an attorney). No witness, document/tangible evidence, or advisor will be permitted at the hearing unless such information was timely submitted.~~

9.11.2. The Complainant and the Respondent both have the right to appeal a finding for an error occurring during the investigation that could have significantly impacted the finding.

9.11.3. An appeal is not a new investigation of the complaint.

9.11.4. If an appeal is filed in accordance with this Section, the appeal will automatically be presented to the University's Hearing Board ("Board") by the Equal Opportunity Coordinator.

9.11.5. Members of the Board are selected from recommendations from the component's Faculty Senate, Staff Council, and Student Affairs

department/offices, who shall each recommend at least five individuals to the component's President. The President shall then select a Board of eight with representation from each group recommended. Except for the first Board, members shall serve staggered terms of three years.

9.11.6. If a conflict of interest arises for any of the Board members, the Equal Opportunity Coordinator will make a recommendation to the Board Chair to reduce or eliminate the conflict of interest.

9.11.7. Upon the Board's receipt of the appeal, a poll will be taken of the Board members by the Equal Opportunity Coordinator to identify four members to hear the appeal and compose the Hearing Panel (three members of the Hearing Panel will serve as voting members and one will serve as an alternate, non-voting member). The role of the Hearing Panel is to review any evidence presented in the appeal for any error occurring during the investigation that could have significantly impacted the finding and is not for the purpose of conducting a de novo review of the complaint.

9.11.8. The Hearing Board will make decisions using a preponderance of the evidence standard.

9.11.9. The role of the Hearing Panel is to accept or remand EOS' finding by determining by a preponderance of the evidence if any error occurred during the investigation that could have significantly impacted its finding. While the Hearing Panel will have the opportunity to review any evidence presented on appeal, their role is not to reinvestigate the original complaint or to review allegations that would otherwise constitute a new complaint under this Policy or any other University policy.

9.11.10. Absent extenuating circumstances, the Equal Opportunity Coordinator will schedule a hearing to be held within 15 business days from the filing of the appeal.

9.11.11. Once the hearing is scheduled, requests to reschedule the hearing must be submitted in writing to the Equal Opportunity Coordinator and will be considered by the Hearing Panel and the Equal Opportunity Coordinator.

9.11.12. The Complainant and Respondent will be notified of the composition of the Hearing Panel or the identity of Non-affiliated Hearing Officer for their hearing. Within five (5) business days of this notification, the Complainant and Respondent have the opportunity to object to a panel member or the Non-affiliated Hearing Officer for cause. The objection should be made in writing. The Equal Opportunity Coordinator, in consultation with the members of the panel, will consider any objection and replace the panel member or the Non-affiliated Hearing Officer if



appropriate.

9.11.13. No later than five (5) business days prior to the hearing, all materials that will be used at the hearing must be submitted to the Equal Opportunity Coordinator, who will forward the materials to the Hearing Panel/Non-affiliated Hearing Officer and will simultaneously provide the materials to both parties. The materials must include:

- All documents and other tangible evidence that will be used as evidence during the hearing.
- The names of any witnesses and a brief summary concerning the subject matter of the witness' expected testimony.
- The name of any advisor to be in attendance at the hearing and whether that person is an attorney.

9.11.14. No witness, advisor, or document/tangible evidence will be permitted at the hearing unless such information was timely submitted.

9.11.15. It is the responsibility of the party wanting to present a witness to secure that witness.

9.11.16. Appeals/Grievances relating to sanctions assessed by the appropriate administrators are not considered under this Policy. Therefore, if the Complainant or the Respondent is dissatisfied with any sanction determined by the appropriate administrator under Sections 9.11.1 through 9.11.3 above, he/she may appeal the sanction as follows:

- Any challenge to the sanction against a faculty member must be addressed through the component institution's faculty handbook/manual;
- Any challenge to the sanction against an employee must be addressed through the component institution's policies and procedures related to employee grievances; and
- Any challenge to the sanction against a student must be addressed through the appeal process in the component institution's student code of conduct or its equivalent.

~~5.8.2. Appeals/Grievances relating to sanctions assessed by the appropriate administrators are not considered under this Policy. Therefore, if the Complainant or the Respondent is dissatisfied with any sanction determined by the appropriate administrator under Sections 5.7.1 through 5.7.3 above, he/she may appeal the sanction as follows: any challenge to the sanction against a faculty member must be addressed through the component institution's faculty handbook/manual; any challenge to the~~

~~sanction against an employee must be addressed through the component institution's policies and procedures related to employee grievances; any challenge to the sanction against a student must be addressed through the appeal process in the component institution's student code of conduct or its equivalent.~~

**9.12. Step ~~Nine~~Twelve: Designation of Hearing Panel**

The hearing will be conducted by a hearing panel ("Panel"), which is charged with upholding or rejecting EOS' finding based on the preponderance of the evidence. The Board's chairperson is responsible for selecting the Panel members from available Board members. The Panel will be comprised of three Board members. The Board's chairperson will select the Panel's chairperson. The appellant and the appellee shall be notified of the Panel's composition. Within five (5) business days of such notification, the appellant and the appellee shall have an opportunity to challenge in writing any Panel member for cause. The Board's chairperson, in consultation with the Equal Opportunity Coordinator, will consider any challenge and replace the Panel member if appropriate.

**9.13. Step ~~Ten~~Thirteen: Hearing**

9.13.1. The general course of the hearing procedure will be as follows, subject to the discretion of the Panel chairperson:

- A. The Panel chairperson will convene the hearing, introduce the individuals present, give a brief description of the process, and invite questions about the process;
- B. The appellant shall present his or her evidence (including calling and questioning his or her own witnesses) to the Panel;
- C. The appellee shall present his or her evidence (including calling and questioning his or her own witnesses) to the Panel; and
- D. An investigative summary will be presented to the Panel by EOS.

9.13.2. The Panel chairperson and/or Panel may question any individual at any time during the hearing.

9.13.3. The Panel chairperson may impose reasonable time limits on any stage of the hearing. The Panel chairperson may also determine the relevance of, and place restrictions on, any witness or information presented.

9.13.4. The appellant and the appellee may question their own witness and the EOS representative, but not the opposing party's witnesses. However, both parties may request that the Panel chairperson ask questions of the

other witnesses by submitting proposed questions to the Panel chairperson in writing either prior to, or during, the hearing. The Panel chairperson may determine which questions are relevant and the Panel chairperson has the discretion to revise a question or to decline asking the question.

9.13.5. An audio recording of the hearing will be kept for the use of the Panel and for any appeal.

9.13.6. In cases where an appellant or an appellee refuses to participate in the hearing, the Panel will convene and make a decision based on the evidence and testimony available to the Panel. Any party who declines to participate in a hearing waives any additional right to appeal.

9.13.7. Because the hearing process is an internal University process and not a formal courtroom process in which rules of evidence and courtroom procedures apply, this procedure is intended to reduce the adversarial nature of the hearing and will be conducted accordingly. As such, the appellant and the appellee may bring an advisor. This advisor may be an attorney. Advisors may attend the hearing and sit with their respective advisee during the hearing, communicate quietly orally and/or in writing with their respective advisee during the hearing, and may respond to a direct question from the Panel. However, an advisor will not be permitted to speak on behalf of the advisee, make an oral presentation, including an opening statement or closing argument, or ~~to~~ question witnesses, the EOS representative or the Panel during the hearing.

9.13.8. If the Panel determines it is necessary or advisable, Alternative alternative testimony options will be available such as allowing a witness to appear via other virtual means (e.g., via telephone) ~~if determined by the Panel to be necessary.~~

#### 9.14. Step ~~Eleven~~Fourteen: Panel Decision

9.14.1. After the hearing has concluded, the three voting members of the Panel will deliberate in private.

9.14.2. ~~The Panel will uphold or reject EOS' finding based on the preponderance of the evidence.~~ The Panel's decision will be by majority vote.

9.14.3. The Panel/Non-affiliated Hearing Officer can make the following decisions:

- Affirm the original finding; or
- Remand the case back to EOS to correct an error.

9.14.4. The Panel will communicate its decision ~~in writing~~ by completing the Hearing Decision Form and forwarding it- to the Equal Opportunity

Coordinator within three (3) business days of the hearing. If the decision is to remand the case to EOS to correct an investigative error(s), the Panel/Non-affiliated Hearing Officer will indicate the error(s) to be corrected.

9.14.5. The Equal Opportunity Coordinator will then provide a copy of the decision simultaneously to the appellant, the appellee and EOS to all parties involved in the complaint.

#### 5.12. ~~Step Twelve: Final Appeal to Appropriate Administrator~~

~~If the Panel upholds EOS' finding, the appellant may appeal the Panel's decision to the appropriate administrator. Conversely, if the Panel rejects EOS' finding, the appellee and/or EOS may appeal the Panel's decision to the appropriate administrator. Any appeal must be filed in writing within 10 business days of the Panel's decision. The administrator will render a decision within 10 business days from the date that the appeal is filed.~~

### 10. SPECIAL PROVISIONS

#### 10.1. Reports Outside of University Jurisdiction

If the University is notified that a member of the University community has reported an incident of discrimination or harassment, but the action occurred outside of the University's jurisdiction, the University will still take reasonable steps to ensure the individual's safety while on campus and to offer the individual information about resources both on campus and in the community.

#### 10.2. Employee Training

Employees will receive initial mandatory training within thirty (30) days after their hire date and supplemental training every two (2) years.

#### 10.3. Hearing Board Training

Members of the Hearing Board will receive training at least annually on the issues related to Discrimination and Harassment. These individuals will also receive training on the role of EOS to enforce this Policy, best practices for hearings and hearing panelists, and that their role is to ensure and promote safety, due process and accountability.

#### 10.4. Allegations Involving University-Affiliated Organizations

10.4.1. If a report is made alleging that a University-affiliated organization has violated this Policy, EOS will make a referral to the appropriate administrative department and/or adjudicative body over that organization to ensure a timely, equitable process to determine if an Organization violated relevant University policies.

10.4.2. EOS will work in partnership with the appropriate adjudicative body should there be concurrent investigations involving individuals and organizations, including, but not limited to, sharing information with appropriate University administrators who have a legitimate need to know.

10.4.3. If a report is made involving an organization, EOS will seek to identify any individuals who may be involved. EOS will, in collaboration with the alleged victim whenever possible, determine whether a formal complaint will be filed against any identified individuals, as per this Policy.

10.5. Effect on Pending Disciplinary Actions

The filing of a complaint of harassment, discrimination, or retaliation under this Policy will not stop or delay any disciplinary action related to the Complainant who has been found to not be performing up to acceptable standards or who has violated University rules, policies, or procedures.

611. REVIEW AND RESPONSIBILITY

Responsible Party: Vice Chancellor for Legal Affairs and General Counsel

Review: Every three years on or before August 31

712. APPROVAL

Approved: Dona Cornell  
Vice Chancellor for Legal Affairs and General Counsel

Renu Khator  
Chancellor

Date: June 29, 2016

## REVISION LOG

Revision Number	Approval Date	Description of Changes
Interim	11/29/2012	Initial version (submitted as Interim)
1	05/22/2013	This SAM is being submitted for review and approval to remove the Interim designation. Retitled Section 5.5 from “EOS Investigation” to “Response to a Complaint”
2	06/29/2016	Updated Section 2.3 with a hyperlink to the current component Equal Opportunity Coordinators
<u>3</u>	<u>TBD</u>	<u>Changed the title from “Discrimination and Harassment Policy” to “Anti-Discrimination Policy.” Added contact information in Section 2.3 about Equal Opportunity Coordinators. Added Section 2.5 on members of the University community, and Section 2.6 on pregnant and parenting students. Updated the definition of Respondent in Section 2.8, and the definition of Student in Section 2.9. Added Section 3, Jurisdiction. Added information to Section 4, Reporting. Added Section 5, Accommodating Pregnant and Parenting Students; Section 6 on Religious Accommodations; and Section 7 on Confidentiality. Added Section 9.2.5 on Resolution Agreement. Updated all Steps in Section 9, including a new Step Five (Section 9.5) on Consideration of Interim Measures and a new Step Seven (Section 9.7) on EOS Investigation. Added extensive information to Section 9.9, Sanctions. Added Section 10 on Special Provisions</u>