

Comments to Proposed Revisions to SAM 01.D.07 – Discrimination and Harassment Policy
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Identifying and resolving discrimination and equal opportunity concerns in each of the University of Houston component campuses is critical to our future competitiveness and success. In a system as large as ours, mistakes, problems or misunderstandings related to discrimination and harassment are inevitable, even as efforts are made to minimize them. How these problems are addressed and responded to can be critical in attracting and retaining excellent leadership, faculty, staff, and students.

While I am the current president of our faculty senate, I am submitting these comments as an individual faculty member at the University of Houston – Clear Lake and not in a representative role. I will be referring to provisions using the numbering in the March 8, 2017 proposed draft of this policy.

NEW ISSUES ADDRESSED

I appreciate the addition of provisions addressing academic freedom (3.2), religious accommodations (6), and accommodating pregnant and parenting students (5). These add detail and clarity to the policy.

The addition of explicit “Resolution Agreement” language hopefully can encourage more settlements of issues brought to the Equal Opportunity Services’ (EOS) office. Ideally, this office should be a place where concerns about equal opportunity, discrimination and harassment issues can be safely raised, with most situations resolved by agreement if reasonably possible.

IMPLICIT BIAS ISSUES / PROMOTING PROBLEM SOLVING

The definition of discrimination includes “having a policy or practice that has a disproportionately adverse impact on Protected Class members.” (2.2)

Discrimination can result from implicit or unconscious bias. Such discrimination can have a very real impact, but is unlikely to be addressed effectively through the “complaint” process in this policy.

I understand that UH’s Central campus recognizes implicit bias as a concern, and requires implicit bias training for members of personnel search committees and campus leadership. I suggest that this requirement be extended to all 4 component campuses and be incorporated as part of the anti-discrimination policy.

Much of this policy focusses on a process which has complainants and respondents. By its structure, this arguably creates an adversarial framework rather than one focused toward resolving problems. Certainly, there needs to be a way for individuals who are subjected to intentional, explicit, and deliberate discrimination or harassment to have their claims addressed, but in today’s world, such situations are becoming increasingly rare. Few educated people will state explicitly that a decision is based on or influenced by sex, disability, age, race, national origin, or another protected class. A pretext will be used instead. Additionally, often there will not be enough “comparisons” to determine if there is a definitive trend – particularly if the focus of an investigation is limited in several ways -- department, particular dean’s tenure, etc.

This complainant / respondent focus does not seem to provide a framework for identifying, investigating, and resolving more pervasive problems. As an example, if all of the last 10 tenured faculty members who left a component university for reasons other than death or retirement appear to be from the same protected class,

this could raise a red flag with respect to diversity and discrimination concerns. These departures, and the resulting loss of diversity and talent, could be symptoms of cultural, structural, or other problems within the university that limit opportunities for some protected classes. However, the current policy, with its focus on individual complainants, does not appear to have an effective mechanism for addressing such situations. I could provide additional examples – what if most faculty who fail to earn tenure are from a specific protected class, or the ratio of the median wages for a protected class to the median overall wages at a component university is much lower (worse) at one campus than at the other component universities?

Under this “anti-discrimination” policy, how are situations addressed when a complaint brings to light areas or practices in a university that beg (desperately plead) to be addressed, but as presented by an individual complainant don’t neatly prove a clear “violation”? Is there a culture that seeks to work toward identifying (rather than denying) the inevitable problems that occur in a university and then takes steps toward improvement? Or is there a culture too focused on “whether it is more likely than not that the Respondent violated this Policy” (9.8.2) to see and pursue opportunities that could resolve an issue or result in improvements moving forward?

I understand that such cultural issues may be difficult to capture in a written policy, but they can be critical in “maintaining and strengthening an educational, working, and living environment . . . free from discrimination and harassment of any kind.” (1.1) Hopefully the priority is to “take appropriate action in an effort to eliminate discrimination and harassment from happening” and “prevent its recurrence and address its effects.” (1.1) We should be trying “to ensure that all persons are given appropriate support and fair treatment” (1.3)

HEARING BOARD / APPEAL PROCESS

I have some concerns with changes to the complaint process, but will focus on the appeal process. The revisions address creation of a “University’s Hearing Board” (9.11.4) in some detail. Currently, I think the process for selecting the pool or board from which appeal panels are chosen varies somewhat within the component universities.

In the proposed changed, while the “Faculty Senate, Staff Council, and Student Affairs department/offices” recommend individuals from which the Board is chosen, it is the component university’s president who ultimately selects the “Board of eight with representation from each group recommended.” The members serve “staggered terms of three years.” (9.11.5)

There could be more clarity about the process. Does each group recommend 5 each year? How are the terms staggered among 8, which is not a multiple of 3? Do students recommend the students – or does the professional student affairs staff? A “Non-affiliated Hearing Officer” is referenced in 9.11.12, 9.11.13, and 9.14, but I don’t find a process for taking an appeal to such an officer.

Why are these specific changes being made? Why such a small pool? Why have the President select a smaller pool, rather than just going with a larger group recommended by the constituencies? At our campus, we are moving toward a larger pool for faculty grievances. Leaving the recommendations for the Board membership to the constituencies, without the President’s involvement, would create the appearance of a more independent process.

The process as described could end up with only one or two faculty members on the eight member Board from which the smaller Hearing Panels will be selected. As a faculty member, I have serious concerns about such a result.

In the current appeal process, the Panel may “uphold or reject the EOS’ finding” in its investigation. (old 5.1; ~~strikeout in 9.14.2~~) Under the proposed policy, the Panel can “Affirm the original finding” or “Remand the case back to EOS to correct an error.” (9.14.3) The option of rejecting the EOS finding is removed.

The proposal does not address what happens when EOS “corrects” its error and a party still disagrees with the result. Is there an opportunity for a subsequent appeal? Does it go to the same Panel, which is familiar with the matter and knows the issue it wants corrected? Or does it go to a completely new panel which might not be aware of the specific concerns to be corrected? Is there a limit to the number of times a matter can be appealed?

Also, the proposed policy removes the “Final Appeal to Appropriate Administrator” that is included in the current policy. (Old 5.12, now found after 9.14.5)

If there are objections to an EOS finding, there seems to be no real path of accountability to get a matter outside the EOS office. While there is an appeal procedure, if there is a problem it can only send the matter back to the same office. The proposed revisions appear to create an internal loop with the EOS office from which there is no real escape.

A question is how effective are the university’s processes at addressing and resolving problems? I look at various universities that have made the national news in recent years with discrimination, harassment, or sexual misconduct claims. At Penn State, Baylor, Missouri, Brigham Young, and more, there were early attempts to have the problems addressed within the university. While addressing the problems when they initially were presented would have involved making some difficult choices, the consequences likely would have been much smaller than what ultimately occurred. On a human level, there would have been a smaller trail of victims. Typically, media and outside entities are contacted after attempts at an “internal” solution have failed. Do the proposed changes increase or decrease the likelihood that someone trying to address a genuine problem internally will trust the process and believe that their issues have been heard and considered?

VARIOUS / CLEAN-UP

In the Retaliation section (4 in the existing, 8 in the proposed), existing language stating that retaliation “may result in disciplinary sanctions” is proposed to be removed. From the EEOC’s website: “Retaliation is the most frequently alleged basis of discrimination in the federal sector and the most common discrimination finding in federal sector cases.” Individuals tend to be hesitant to file complaints due to the resulting stigma, fear of retaliation, or a mix of both. Imposing disciplinary sanctions for retaliation is important if the complaint and investigation process is to have any hope of being trusted. I strongly support retaining language that clearly states retaliation is a basis for sanctions.

In a few “clean-up” items, section 2.1 likely should reference 9.3 rather than 8.3. Section 4.3 likely should list the Houston office of the Equal Employment Opportunity Commission (EEOC) rather than the Dallas office.

If there are questions, I can be reached at gossett@uhcl.edu, or we can speak by phone at an agreed time if that is preferred.