

Policy and Procedure for Discrimination and Harassment Complaints

Kansas State University will maintain academic and work environments that are free of discrimination, racial/ethnic harassment, sexual harassment and retaliation for filing a complaint under this policy. Discrimination based on race, ethnic or national origin, sex, sexual orientation, religion, age, ancestry, disability, military status, or veteran status is prohibited. Retaliation against a person for reporting or objecting to discrimination or harassment is a violation of this policy whether or not discrimination, racial/ethnic harassment or sexual harassment occurred. Persons who violate this policy are subjected to disciplinary action, up to and including dismissal from employment or expulsion from the University. Supervisors and administrators are obligated to report complaints to the Office of Affirmative Action, to keep complaints confidential, to protect the privacy of all parties involved in a complaint and to prevent or eliminate discrimination, harassment or retaliation; failure to do so is a violation of this policy. Appropriate sanctions and remedial actions will be taken. This policy is not intended or will not be used to infringe on academic freedom, or to censor or punish students, faculty, employees, or staff who exercise their First Amendment right to express ideas and opinions on any topic.

Complaints must be filed within one year of the alleged behavior, are confidential and will not be disclosed to anyone who does not have a need to know. The University cannot guarantee complainants, respondents or witnesses absolute confidentiality because the University is obligated to investigate complaints. A responsible administrator and a representative of the Office of Affirmative Action will evaluate each complaint and, if necessary conduct a prompt, thorough and fair administrative review. The time required for reviews may vary, but the goal is to complete reviews as expeditiously as possible.

Any person who knowingly files a false complaint, or who knowingly provides false or misleading information is subject to disciplinary action. No action will be taken against an individual who makes a good faith complaint, even if the allegations are not substantiated.

Definitions

- A. **Discrimination:** In this policy, discrimination means treating an individual adversely in employment or academic decisions based on race, ethnic or national origin, sex, sexual orientation, religion, age ancestry, disability, military status, or veteran status; or maintaining seemingly neutral policies, practices or requirements that have a negative effect on employment or academic opportunities of protected groups without a legitimate, nondiscriminatory reason for the treatment.
- B. **Racial/Ethnic Harassment**
 - 1. In this policy, racial/ethnic harassment is conduct toward a person or persons on the basis of race, ethnicity or racial affiliation that has the purpose and effect of:
 - a. Creating an intimidating, hostile, or offensive work or educational environment for the person(s). or
 - b. Unreasonably interfering with the work, academic performance, living environment, personal security, or participation in any University-sponsored activity of the person(s), or
 - c. Threatening the employment or academic opportunities of the person(s).
 - 2. Repeated incidents, even where each would not on its own constitute harassment, may collectively constitute harassment under this definition.
- C. **Sexual Harassment**
 - 1. In this Policy, sexual harassment is unwelcome sexual advances, requests for sexual favors, disparagement of members of one sex or other verbal or physical behavior of a sexual nature when:
 - a. submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education, living environment, or participation in a University activity or program; or
 - b. submission to or rejection of such conduct is used as the basis for or as a factor in decisions affecting that individual's employment, education, living environment or participation in a University activity or program; or
 - c. such conduct is sufficiently serious, and repeated often enough to (1) unreasonable interfere with an individual's job or educational performance, or (2) create an intimidating, hostile, offensive or abusive environment for that individual's employment, education, living environment or participation in a University activity or program.
 - 2. Sexual harassment may occur between persons of the same or opposite sex, and either as single or repeated incidents. The alleged conduct will be evaluated by considering the totality of the circumstances (the nature, frequency, intensity, location, context and duration of the alleged behavior).

- D. Retaliation: In this policy, retaliation is any attempted or completed adverse action taken without a legitimate reason against an individual because he or she has filed a complaint, opposed a policy or practice the individual believed was discriminatory or participated in the resolution of a complaint under this policy.

Procedure for Reviewing Complaints

Procedures for the resolution of complaints should be thorough yet expeditious. Should an administrative review be deemed necessary, both the complainant and the person against whom the complaint is brought (the respondent) will be informed of the content of the complaint and will have a full opportunity to be heard. All parties will have access to all supporting documentation and will be able to obtain information about the progress of the review at any time. The time period required for the review may vary from case to case, but all parties will be informed if an extended delay is anticipated. The Office of Affirmative Action staff member and the responsible administrator must remain impartial during the administrative review and work in concert to ensure that all involved are treated fairly.

- A. Any applicant for employment, employee, staff or faculty member, student graduate student or participant in a university activity or program who experiences conduct that the person believes constitutes discrimination, racial/ethnic harassment, sexual harassment or retaliation should:
1. Report the complaint to the responsible administrator in charge of the department or unit in which the conduct occurred. However, if that person's conduct is the reason for the complaint, then report the conduct to the next higher level of supervision; or
 2. Report the complaint to the Office of Affirmative action.
- B. Students may also report the conduct of another student to the Office of Student Life. In such cases, an assistant or associate dean will be regarded as the responsible administrator.
- C. If the complaint is made to the responsible administrator, that administrator will inform the Office of Affirmative Action of the complaint. Likewise, if the complainant reports the complaint to the Office of Affirmative Action, a staff member from that office will inform the responsible administrator of the complaint. When the contact is made a staff member of the Office of Affirmative Action and the responsible administrator become the administrative review team for the complaint.
- D. The team will interview the complainant as soon as possible after the report so that both team members hear the complaint and get sufficient information to decide how to resolve the complaint. If the team determines that the conduct, as reported, does not warrant further review under this policy, the team will notify the complainant of its decision within five (995) calendar days or as soon as possible. That notice will explain the team's decision, explain how the complainant can appeal the decision and refer the complainant to the appropriate University office, service or program with the expertise to address the person's complaint. Time for the notice may be extended for good cause.
- E. If the complaint warrants further review, the administrative review team will accept a written complaint, or will draft a complaint based on information obtained during the interview. In the latter case, the team will ask the complainant to read and, if necessary, to revise the complaint, then sign it, and will tell the complainant that he or she is not required to sign the complaint.
- F. With or without a signed complaint, the administrative review team will:
1. Meet with the respondent to provide a copy of the complaint, explain procedures, caution against retaliation, ask the respondent to provide an oral or written response within ten (10) calendar days, and inform the respondent that the review will proceed with or without the response;
 2. Receive, clarify and evaluate the respondent's response to the complaint, if a response is made;
 3. Interview any persons with specific knowledge of the alleged incident(s) and review relevant policies, procedures, files, documents and records; and
 4. Consider all the information it gathered then decide whether discrimination, racial/ethnic harassment, sexual harassment or retaliation as defined in this policy has occurred.
- G. If the team determines that discrimination, harassment or retaliation did not occur, it will provide written notice of its determination to the complainant, the respondent and the provost, vice president or dean responsible for the department or unit. The notice will describe the steps taken to review the complaint and explain what the complainant and respondent must do to file an appeal or a grievance.
- H. If the team determines that discrimination, harassment or retaliation occurred, the team will;
1. Recommend appropriate sanctions;
 2. Identify remedial actions to try to restore any losses suffered by persons as a result of the discrimination, harassment or retaliation, including referral for counseling by appropriately trained University personnel, when that is desired by the complainant;
 3. Determine follow-up actions to prevent further acts of discrimination, harassment or retaliation; and
 4. Prepare a written notice to the complainant, the respondent and the provost, vice president or dean responsible for the department or unit. The notice will describe the steps taken to review the

complaint, detail the recommendations for remedial actions, sanctions, referrals and follow-up and explain what the complainant and respondent must do to file an appeal or a grievance.

- I. Confidentiality and Disclosure of Information: Complaints filed under this policy are confidential and will not be disclosed to anyone who does not have a need to know. The University cannot guarantee absolute confidentiality because the University is obligated to investigate complaints. Supervisors and administrators are obligated to keep complaints confidential and protect the privacy of all parties to the extent possible consistent with preventing future acts of discrimination, harassment or retaliation, providing a remedy to persons injured and allowing respondents to reply to a complaint if any disciplinary action is anticipated. Complaint information may be disclosed to state or federal anti-discrimination agencies for investigations and during litigation.
- J. Sanctions: Sanctions for violations of this policy will be based on the seriousness of the conduct and may range from an apology to dismissal or expulsion. (See university Handbook, Section C, subsection C161.1 Reasons for Dismissing Faculty, Article 10 Guidance and Discipline of the Kansas Personnel Regulations, or Article VI of the By-Laws to the Constitution of the KSU Student Governing Association).
- K. Remedial Actions: Remedial actions will be taken to restore any losses. Examples of remedial actions include, but are not limited to reevaluation of a grade, an evaluation completed by someone other than the respondent, reconsideration of an application for employment, placement in a position, back pay and lost benefits, rescission of a disciplinary action, or a change of housing.
- L. Referral: At any point during the administrative review, the team may refer either or both parties to other University offices for assistance. These offices include the ombudspersons, Employee Assistance, Employee Relations, University Counseling Services, Dean of Student Life, Human Resources, dean or department head, Mediation Services or the human system consultant on contract with the Office of the Provost.
- M. Follow-up: The administrative review team report will include instructions to the responsible administrator to provide the Office of Affirmative Action periodic written reports regarding actions taken to impose the sanctions identified in the report and to provide the remedies and remedial actions recommended in the report. The Office of Affirmative Action will discuss the report with the responsible administrator and the complainant, and will follow through to encourage the responsible administrator to implement the appropriate actions. Reports will be added to the case file.
- N. Appeals Beyond the Administrative Review Process: Depending on their status, parties who are not satisfied with the resolution of a complaint may file an appeal. Classified employees with permanent status may appeal to the Classified Employee Peer Review Committee. Current and former unclassified professionals and faculty may appeal to the General Grievance Board. Students may appeal to the Student Discrimination Review Committee. Graduate Students may appeal to the Dean of the Graduate School.

Questions – Please refer questions regarding policy and procedure for discrimination and harassment complaints to the Office of Affirmative Action, telephone 532-6220.

Student Discrimination Review Committee Guidelines

1. Introduction

These guidelines apply to students who have a complaint of discrimination based on race, religion, national origin, sex, sexual orientation, disability or age in employment, academic areas, or other programs, services or activities in the University community. This procedure is intended for those situations not resolved through other means. Prior to review under these guidelines, complaints alleging sexual or racial harassment, as a specific form of discrimination, must be addressed in accordance with the University's policies on sexual or racial harassment, under which the initial review includes the Office of Affirmative Action. For all other discrimination complaints, students should attempt to resolve the matter through regular channels, normally the Department or Unit Head, Dean, Provost, or appropriate Vice President. If a complaint of discrimination (other than sexual or racial harassment) is not satisfactorily resolved at any of those levels, it should be referred to the Office of Affirmative Action.

2. Jurisdiction

If a student's complaint of discrimination (including sexual or racial harassment) is not resolved to the satisfaction of the complainant or to the satisfaction of a student respondent after review by the Office of Affirmative Action, a written complaint may be made to the Student Discrimination Review Committee (SDRC). The written complaint shall be addressed to the Dean of Student Life. [Any employee aggrieved by sanctions imposed in relation to alleged discrimination by the employee may appeal to the appropriate grievance body, including the General Faculty Grievance Board and the Civil Service Peer Review Committee. Unresolved

sexual or racial harassment complaints by students against other students alternatively may be appealed to the appropriate student judicial board.]

3. Composition of SDRC

The SDRC shall be composed of a chair of twelve members, appointed at the beginning of each academic year. The Student Body President shall recommend to the University President the appointment of six student members, and the President of Faculty Senate shall recommend to the University President the appointment of four faculty members and two unclassified non-faculty members. The University President shall appoint the chairperson. At least four members shall be women and at least four shall be minorities. The Dean of Student Life or designee will convene the panel.

4. Selection

Each unresolved complaint shall be heard by a panel composed of the chair and six committee members. The panel shall be selected by the chair. Prior to the hearing the chair shall inquire as to whether any member of the committee is closely associated with either party. If so, that committee member shall be disqualified from serving on the hearing panel. The chair shall make reasonable efforts to include on the panel some members who are representative of the parties, based on the issues involved. During summer months or other periods when the University is not in full session and committee members are unavailable, the University President shall have the authority to appoint an add hoc committee to ensure prompt hearing of discrimination complaints. To the extent feasible, the composition of any ad hoc committee shall be consistent with the guidelines set forth in this paragraph.

5. Hearing

A written complaint must be submitted to the chair by the complainant prior to the hearing. The complaint must contain the identity of the individuals against whom the complaint is being brought, and must specify the conduct which is alleged to be discriminatory and the basis for the complainant's belief that the conduct is discriminatory. The chair shall determine whether the complaint is within the jurisdiction of the committee and whether the complaint contains the required information. The party or parties complained against shall receive a copy of the complaint at least 10 calendar days before the hearing. The hearing shall be held within 21 calendar days after the committee's receipt of the written complaint. The chair may postpone the hearing for good cause.

The complainant shall appear personally throughout the hearing and will be first to present relevant evidence in support of his or her complaint. The party or parties complained against shall have the right to be present throughout the hearing and shall be permitted to present any relevant evidence in support of their position. Each party is permitted to have a non-attorney advocate who may speak on his or her behalf. Under normal circumstances it is anticipated that neither party would have legal counsel present. Any party intending to have legal counsel present shall notify the opposing party and the chair at least 48 hours before the hearing. Any legal counsel present will not have speaking privileges. Evidence may be presented through documents and witnesses. Each party shall have the opportunity to question opposing parties and witnesses. No evidence or information shall be considered unless presented at the hearing. The committee may adopt additional procedures to facilitate a fair hearing.

6. Report

Within 21 calendar days after the close of the hearing, the hearing panel shall make a written report of its findings and recommendation(s) to the University President. A copy of the report shall be provided to all parties. Any party, if dissatisfied, may make a written appeal to the President of the panel's findings and recommendation(s) within 7 calendar days after that party's receipt of the report. The parties and the chair shall be advised of the President's decision within 21 calendar days after the President's receipt of the panel's report.

7. Confidentiality

The complaint and the proceedings on the complaint, including the hearing, shall be closed unless a student respondent requests an open hearing, in which case the hearing shall be open. All records of the panel's proceedings shall be kept in the Office of Affirmative Action. Each party shall have the right to inspect and copy such records.

NOTE: This is a KSU institutional policy adopted by the University administration and may be amended by the authority of the University President.

APPROVED: President Jon Wefald, October 31, 1995