

INVESTIGATIVE PROCESS FOR INTERNAL COMPLAINTS UNDER THE NON-DISCRIMINATION POLICY

I. Who May Utilize this Procedure

Despite anything to the contrary provided in other University policies or procedures, the grievance procedure embodied herein governs all grievances (with the exception of grievances concerning sexual misconduct, discrimination and harassment which are governed by separate policy located at: <http://www.ou.edu/content/eoo/policies/misc.html>) filed with the University Equal Opportunity Officer (EEO) and shall be available to any person who, at the time of the acts complained of was employed by the University of Oklahoma, or is or was an applicant for employment or was enrolled as a student or an applicant for admission at the University. However, if the complainant initiates litigation or files a complaint with any state or federal agency, with respect to the issues presented to the EEO, any grievance under these procedures may be dismissed or stayed in the EEO's discretion as duplicative. The University EEO may, in his or her discretion, dismiss a grievance if he/she determines the person filing the complaint is not entitled to use this procedure.

II. Filing of Complaint

Persons who have complaints alleging discrimination based upon race, color, national origin, sex, sexual orientation, genetic information, gender identity, gender expression, age (40 or older), religion, political beliefs, disability, or status as a veteran (together, "discrimination and harassment or retaliation"), may file their complaints in writing with the EEO. Provided, however, where claims include sexual harassment, sexual orientation or gender discrimination, the entire process shall be handled through the procedures noted in the Sexual Misconduct, Discrimination and Harassment Policy. The Equal Opportunity Officer is also an Associate Title IX Coordinator and may receive and investigate all such claims as well as coordination with the Institutional Equity and Title IX Office.

Complainants who exercise their right to use this procedure agree to accept its conditions as outlined. Where multiple issues exist (i.e. racial harassment and violation of due process or grade appeal), the complainant must specify all of the grounds of the grievance that the complainant should have reasonably known about at the time of filing. A grievance filed under this procedure normally may not be filed under any other University grievance procedure. Depending on the nature of the issues involved, the complainant will be advised by the EEO about the appropriate procedure(s) to follow (e.g. applicable disciplinary policies and procedures for that campus). Parties to the complaint, including the respondent and/or the complainant may obtain the advice of any advisor/attorney at his/her own expense; however, advisors and attorneys may not be present during any meetings or hearings during this process.

The EOO may modify these procedures at any time as deemed appropriate for compliance with federal, state, local law or applicable guidance.

III. Timing of Complaint

Generally, any complaint should be filed with the EOO within 365 calendar days of the act of alleged discrimination or harassment. The EOO may reasonably extend this and all other time periods, and may, in his or her discretion, dismiss a grievance if the person is not entitled to use this procedure. Nothing herein should be construed to extend or restrict a person's right to file charges, lawsuits or claims with any other agency, law enforcement or court, and individuals are encouraged to ensure their rights have not expired through these other avenues. Further, to the extent the complainant's allegations involve criminal activity, the EOO may refer such matters to local law enforcement.

IV. Administrative Action

- A. The University recognizes its obligation to address incidents of discrimination and harassment on campus when it becomes aware of their existence even if no complaints are filed; therefore, the University reserves the right to take appropriate action unilaterally under this procedure.

- B. With respect to students, the University Vice President for Student Affairs and Dean of Students or other appropriate persons in authority may take immediate administrative or disciplinary action deemed necessary for the welfare or safety of the University community.

- C. With respect to employees, upon a determination at any stage in the investigation or grievance procedure that the continued performance of either party's regular duties or University responsibilities would be inappropriate, the proper executive officer may suspend or reassign said duties or responsibilities or place the individual on leave of absence pending the completion of the investigation or grievance procedure.

V. Withdrawal of Complaint

The complainant may withdraw the complaint at any point during the investigation; however, the EOO may determine in his or her discretion that the issues raised warrant further investigation despite the complainant's desire to withdraw the complaint.

VI. Privacy of Proceedings and Records

Individuals wishing to make legally confidential reports have the option of reporting those matters to licensed counselors, health professionals, clergy and attorneys.

Although University officials will maintain an individual's privacy to the best of his or her ability, individuals should know that University officials (outside the context of licensed counselors and health professionals) may not be able to maintain legal confidentiality of the complainant, but will maintain his or her privacy as noted herein. Further, the University's ability to investigate may be limited if a complainant insists his or her name not be disclosed to the alleged perpetrator. The University must weigh such requests for privacy against its duty to provide a safe and nondiscriminatory environment. Investigators and those involved with the investigation are individually charged to preserve privacy with respect to any matter investigated or heard. A breach of the duty to preserve privacy is considered a serious offense and may subject the offender to appropriate disciplinary action. Parties and witnesses are also admonished to maintain privacy with regard to these proceedings, and if they are University employees, failure to maintain said privacy may result in appropriate disciplinary action. Furthermore, federal law prohibits retaliation against those who file complaints, and the University will take responsive action if such retaliation occurs, up to and including termination and/or expulsion.

Except with respect to hearings before the Faculty Appeals Board or an applicable student disciplinary procedure, all records involving discrimination or harassment, upon disposition of a complaint, shall be transmitted to and maintained by the EOO as confidential records except to the extent disclosure is permitted/required by applicable law or University policy. The University shall inform complainants if it is unable to ensure privacy.

VII. Proceedings

A. Investigation

Upon receipt of a complaint, the EOO will notify the complainant, via email, of his/her receipt of the complaint and is empowered to investigate the charge, to interview the parties and others, and to gather any evidence he or she deems pertinent. The investigation and findings should be completed within 60 calendar days of receipt of the complaint, or as soon as practical.

The EOO shall render his or her decision on a case-by-case basis based upon the evidence as a whole, the totality of the circumstances, and the context in which the alleged incident(s) occurred, utilizing a preponderance of the evidence standard, i.e. the facts complained of are more likely true than not.

Upon completion of the investigation, the EOO is authorized to take the following actions:

- 1. Satisfactory Resolution**—The matter is resolved to the satisfaction of the University and the complainant. If a resolution satisfactory to the University and the complainant is reached through the efforts of the EOO, he or she shall prepare a written statement indicating the resolution. At that time, the investigation and the record shall be closed.
- 2. Dismissal**—The EOO finds that no policy violation occurred and dismisses the complaint, giving written notice of said dismissal to each party involved. There shall be no appeal from a finding of no policy violation except in exceptional circumstances where additional evidence not otherwise available at the time of the report is submitted by the original complainant. Any such appeal shall be in writing within 15 business days of the report addressed to the executive officer over the area, who shall render a decision within 10 business days of receipt of the appeal. If the executive officer takes no action within 10 business days of receipt of the appeal, the EOO's findings are final. Further, the decision of the executive officer shall be final.
- 3. Determination of Impropriety**
 - a.** The EOO makes a finding of impropriety and notifies the parties of the decision and may recommend any action to be taken. Either party may appeal said determination in writing to the EOO within 15 business days of the date of the notice of determination, and the issue proceeds to an appellate review as described below. If no appeal is filed within the 15 business-day period, the case is considered closed.
 - b.** In the case of a complaint against a faculty member, the EOO may determine that the evidence is sufficiently clear and serious, warranting the immediate commencement of formal proceedings as provided in the Abrogation of Tenure, Dismissal before Expiration of a Term Appointment, and Severe Sanctions sections of the *Faculty Handbook*. If the President concurs with the finding of the EOO, the case may be removed from the grievance proceedings contained herein and further action in the case shall be governed by the Abrogation of Tenure, Dismissal before Expiration of a Term Appointment, and Severe Sanctions section in the *Faculty Handbook*; otherwise, this policy and procedure shall apply.
 - c.** In the case of a complaint against a student, where impropriety is found (if not earlier referred to the Student Conduct Office for action), the matter shall be referred to the Student Conduct Office for appropriate action under the Student Code.

B. Hearing

1. Request for an Appellate Hearing

- a.** Except as noted above, either party may request, in writing, a hearing within 15 business days of the issuance of the EOO's finding and the request must contain the particular facts upon which the appeal is based as well as the identity of the appropriate respondent(s). The EOO's staff or the University's designee, where appropriate, shall immediately provide a copy of the request to the proper respondent(s).

Where the EOO's decision is favorable to the initial complainant, and the alleged perpetrator appeals the finding, the EOO shall defend his or her report and findings, and the initial complainant shall be a witness in the appellate proceedings, rather than a "respondent." In this type of appeal, all references to "respondent" in the appellate procedures shall refer to the EOO and/or relevant members of the University administration. In such cases, an appropriate University official/employee shall be identified by the administration to manage the appeals process and the Equal Opportunity Office shall only be involved as the respondent.

- b.** Typically, only unresolved complaints following an investigation may result in a hearing before a panel selected from the membership of the Committee on Discrimination and Harassment, as described below. For the Norman campus, faculty-versus-faculty grievances with multiple issues are heard by the Faculty Appeals Board. For all campuses, grievances against students may, in the EOO's discretion, be heard by the appropriate hearing body as set forth in the disciplinary policies and procedures applicable to each campus. The request for a hearing is to be addressed to the Equal Opportunity Office.
- c.** If a hearing is requested, the respondent's written response to the request for a hearing must be sent to the Equal Opportunity Office's staff or the University's designee within ten (10) business days of receiving notice that a hearing has been requested. The Equal Opportunity Office staff or University designee shall provide immediately a copy of the response to the party requesting the hearing.

2. Selection of a Hearing Panel

Within ten (10) business days following receipt of the written request for a hearing, the Equal Opportunity Office staff or the University's designee shall initiate the process to determine the members of the hearing panel.

- a.** Panel - A five-member hearing panel will be chosen by the parties to the complaint from the following groups:

- on the Health Sciences Center campus and for HSC-based programs at the Tulsa campus, the 24-member Committee on Discrimination and Harassment;

- on the Norman campus and for Norman-based programs on the Tulsa campus, from the 16-member Committee on Discrimination and/or from the 50-member Faculty Appeals Board.

b. Committee on Discrimination

A committee on discrimination and harassment shall be established on each campus and comprised of staff members, students, and faculty in the following groupings:

- on the Health Sciences Center campus and for HSC-based Tulsa campus programs, eight (8) staff members appointed by the Staff Senate, eight (8) students appointed by the HSC Student Government Association, and eight (8) faculty members appointed by the Faculty Senate.

- on the Norman campus and for Norman-based Tulsa campus programs, eight (8) staff members with five (5) of those members appointed by Staff Senate and the remaining three (3) members appointed by the President, and eight (8) student members with five (5) members appointed by UOSA and the three (3) remaining members appointed by the President, with faculty representation being selected from the 50 member Faculty Appeals Board.

The terms of appointment shall be for three (3) years with initial terms of one (1), two (2), and three (3) years in each category to provide the staggered membership, except that each student shall be appointed for a one-year term.

c. Process of Panel Selection

The Equal Opportunity Office staff or University designee immediately shall contact the parties informally to select the panel. The complainant and the respondent will select five (5) names each from the list of pool members provided by the Equal Opportunity Office staff or University designee within five (5) business days of contact from the EOO. The names will be listed in rank order with name number one (1) on each list being the preferred panelist. Failure to timely provide names shall result in EOO or University designee appointing the panel.

The Equal Opportunity Office staff or the University's designee will contact the individuals in the order selected. The first two (2) names on each list available to serve will make up the hearing panel.

Those individuals selected will choose a fifth name from the entire pool to serve as a panel member and chair. If the individuals selected for the panel cannot agree on the fifth name or who shall serve as chair, the Equal Opportunity Office staff or University designee shall appoint the fifth panel member and chair.

Either party to the complaint may ask the Equal Opportunity Office staff or the University's designee to disqualify any member of the hearing panel. Such requests will be in writing and show sufficient grounds for removal. Furthermore, no panelist shall be expected to serve if he or she feels that a conflict of interest exists. Replacements shall be selected in the same manner as the original panel.

3. Orientation Conference/Pre-Hearing

Within ten (10) business days of receiving notice of service on the appellate panel, or sooner if feasible, the chair shall convene the hearing panel for an orientation and discussion of the grievance, and determine whether a formal hearing is warranted. A member of the Equal Opportunity Office staff and/or the University's designee shall be present during the orientation conference, where he or she will provide each panel member with a copy of the hearing guidelines, the written complaint, the request for a hearing, the written response, and the EOO's report.

Only panel members shall be present during the discussion of whether a hearing is warranted. The appellant must show through the written appeal, that the EOO's report is erroneous and a hearing would substantially alter the findings because (a) there is additional evidence to be presented that was not available at the time of the investigation that may substantially alter the EOO's findings, or (b) the investigation's findings are not supported by any evidence (i.e. the EOO must have evaluated the evidence using a preponderance of the evidence standard, i.e. more likely than not a policy violation occurred). Based on this review and analysis, the hearing panel, within its reasonable discretion and by majority vote, shall determine whether a formal hearing is warranted. The finding a formal hearing is warranted does not necessarily imply the EOO's findings are erroneous. The hearing panel shall notify the parties and the EOO of its decision within five (5) business days of the prehearing.

If the panel agrees by a majority vote that adequate grounds for a hearing do not exist in its reasonable discretion, then they shall notify the Equal Opportunity Office staff or University designee immediately, who in turn, shall

immediately notify the parties and the executive officer. The panel's services shall be concluded and the EOO's findings shall be final.

The appropriate executive officer shall render his or her decision and notify the parties and the EOO within ten (10) business days of receipt of the panel's decision. Either party may appeal the Executive Officer's decision in writing to the President within ten (10) business days of the notification of the decision. If the President does not act within ten (10) business days of the request, the executive officer's decision is final. Any decision by the President is likewise final.

4. Formal Hearing

If the hearing panel determines a formal hearing is warranted, the chair will schedule the formal hearing to be held within 30 calendar days of the decision of the need for a formal hearing. The chair shall notify the parties and the Equal Opportunity Office within five (5) days of the prehearing conference.

The hearing panel procedures shall be established with reference to the Hearing Guidelines provided by the Equal Opportunity Office or the University's designee at the orientation conference, and as determined by the chair in consultation with the Equal Opportunity Officer and/or University Legal Counsel, and shall provide that the parties may present relevant evidence.

The chair shall notify the parties of the date, time, and location of the hearing, along with other relevant information concerning the hearing process. Parties are responsible for giving such notice to their witnesses. The hearing shall be scheduled to reasonably ensure that the complainant, respondent, and essential witnesses are able to participate. However, the chair shall ultimately determine all relevant scheduling requirements. The parties shall present their own cases. No advisors or counsel may be present in the hearing.

The hearing panel shall determine whether the report, or its result (a) is unsupported by any evidence, or (b) is arbitrary and capricious, or (c) would be altered substantially by new evidence not previously available. The EOO must have evaluated the evidence using a preponderance of the evidence standard, i.e. more likely than not a policy violation occurred. The hearing panel shall evaluate the evidence in light of this standard of review.

The parties may call relevant witnesses to testify and may cross-examine witnesses called by the other party as determined by the chair. The hearing shall be closed unless all parties agree to an open hearing. Audiotape recordings of the proceedings shall be arranged by the chair and paid for by the University. Copies of the recording will not be provided. Transcripts may be charged to the requesting party; the original version of the recording shall remain the property of the University.

If the matter is resolved to the satisfaction of all parties prior to completion of the hearing, a written statement shall indicate the agreement recommended by the parties and the statement shall be signed and dated by each party and by the chair. The recommendation will be referred to the EOO, who in turn, shall immediately notify the appropriate executive officer for final determination. The executive officer shall notify the parties of his/her final determination within five (5) business days of notification of the agreed resolution. Assuming the executive officer agrees with the resolution, the matter shall be closed. To the extent the executive officer disagrees with the resolution, he/she may render his/her decision and notify the parties. Any party may appeal the decision in writing to the President with a copy to the EOO and all other parties. The President shall render a decision within five (5) business days of notice of the appeal.

C. Findings and Recommendations

In the event that no solution satisfactory to the parties is reached prior to the completion of the hearing, the hearing panel shall determine by majority vote whether the relevant decisions should be upheld or modified or remanded for further reconsideration, and shall render its findings and recommendations within ten (10) business days of the hearing (unless the hearing panel determines that because of unforeseen circumstances additional time is needed) and notify the Equal Opportunity Office staff/University designee, who in turn, shall notify immediately the proper executive officer with copies to the President.

D. Executive Officer's Decision

Within 15 business days of receipt of the hearing panel's findings and recommendations, the proper executive officer shall inform the complainant and the respondent of the findings of the hearing panel and the executive officer's decision. A copy of the executive officer's decision shall be immediately transmitted to the chair of the hearing panel, with copies to the President and the EOO.

E. Appeal to the President

The executive officer's decision may be appealed to the President within ten (10) business days of the executive officer's decision. If the President does not act to change the decision of the executive officer within ten (10) business days of receiving the appeal, the decision of the executive officer shall become final under the executive authority of the President. Any decision of the President shall likewise be final. The University Equal Opportunity Officer can be contacted for more information:

- For Norman campus and for Norman-based Tulsa campus programs, Room 102, Evans Hall, (405) 325-3546;
- For Health Sciences Center campus and for HSC-based Tulsa campus programs, Room 127, Biomedical Services Building, (405) 271-2110.