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Discrimination Complaint Procedures

These procedures will remain in effect while revised procedures are created to accompany the revised Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Violence, Dating Violence, Stalking and Retaliation policy.

Procedure for the Resolution of Discrimination Complaints (Other than Sexual Harassment)

I. Applicability of Policy

A. Students

Complaints against students shall be handled in accordance with procedures set forth in Students Rights and Responsibilities in the *University General Catalog*.

B. State Classified Staff

Complaints against State Classified Staff shall be handled in accordance with procedures set forth in Chapter 8 of the *State Personnel Board Rules*.

C. Academic Faculty, Administrative Professionals, Other Non-Student Employees (Excepting State Classified Staff), and Student Employees

Complaints against these individuals will be handled in accordance with the policy set forth in this Appendix.

II. Definitions (last revised January 27, 2006)

A. Complainant

A complainant is a current or former Colorado State University: student, student employee, academic faculty member, administrative professional, or employee who files a complaint. Volunteers and others who encounter issues covered by this policy are encouraged to contact the OEOD for guidance regarding appropriate channels to pursue.

B. Respondent

A respondent is a Colorado State University: academic faculty member, administrative professional, employee, or student employee against whom a complaint is filed.

C. Discriminatory Act or Policy

A discriminatory act or policy is an act or policy that violates state or federal law or University policy with regard to discrimination, including, but not limited to, discrimination based on race, color, religion, gender, age, national origin, veteran status, sexual orientation, and disability.

D. Office of Equal Opportunity and Diversity ("OEOD")

This office is a unit of the University that reports to the President. It is administered by the Director and Associate Director, it attempts to conciliate informal complaints of discrimination, and it investigates and hears formal complaints of discrimination.

E. Associate Director

The Associate Director of OEOD receives all complaints, both informal and formal, extends all deadlines as deemed appropriate, coordinates the procedures listed under this policy, and informs all parties of the procedures and deadlines under this policy.

F. Director/Hearing Officer

The Director of OEOD shall serve as the Hearing Officer for formal complaints that are referred for a hearing. Any party to the Hearing may submit to the vice president of his or her administrative unit a written statement claiming that the Director has a conflict of interest. If the vice president agrees, then he or she shall appoint a different Hearing Officer after consultation with the Office of the General Counsel. If the vice president is a party to the Hearing, then this duty shall be assumed by the President.

G. Complaint

A complaint is a written, signed allegation by a Complainant that one (1) or more Respondents has committed one (1) or more discriminatory acts and/or pursued one (1) or more discriminatory policies against the Complainant during the performance of the Respondent's official duties as a University employee. Complainants are advised that there are some instances in which the University has a responsibility to act, even if the Complainant request that no action be taken, such as, for example, where other members of the University community may be at risk.

There are two (2) types of complaints:

1. Informal Complaint

If the Complainant designates the complaint as informal, he or she thereby requests the Associate Director to review and conciliate the matter with the Respondent(s) in the alleged discrimination. The Complainant may change his or her informal complaint to a formal complaint at any time during the process in Section VI or within thirty (30) calendar days after

the completion of the process in Section VI, even if this extends beyond the time limit of one hundred eighty (180) calendar days mentioned in Section V.A. A failure to file a formal complaint within this time frame constitute a waiver of the right to file a formal complaint.

2. Formal Complaint

If the Complainant designates the complaint as formal, he or she thereby requests a hearing before the Hearing Officer with the right to appeal the decision to the vice president who oversees the Respondent's area of employment (or the President, if the Respondent is a vice president).

III. The Form of the Complaint

To file either an informal or formal complaint, a prospective complainant must submit to the Associate Director a written signed dated document containing the following information:

- A.** Identification of the Complainant and Respondent(s) and the nature of their relationships to the University;
- B.** The type of discrimination alleged (see Section III.C);
- C.** A description of the circumstances of the alleged discrimination, including the dates(s) and location(s), witnesses, and supporting documents, if available; and
- D.** A designation of whether the complaint is informal or formal.

IV. Time Restriction and Conditions for Filing Either an Informal or Formal Complaint *(last revised January 27, 2006)*

- A.** Both informal and formal complaints shall be submitted to the Associate Director within one hundred eighty (180) calendar days from the time the Complainant becomes aware of the alleged discrimination. The Associate Director has the discretion to consider a complaint outside this time frame, but compelling reasons must be given for extending the deadline.
- B.** The Associate Director shall, within ten (10) working days after the filing of a formal complaint, review the complaint and determine whether the issues raised are of a discriminatory nature (but not whether the claims are true or whether any action is required). If, in the opinion of the Associate Director, discriminatory issues are not present in the complaint, the complaint will not be forwarded to the Hearing Officer, and the Complainant and Respondent(s) shall be notified in writing of this decision. Otherwise, the Associate Director will certify in writing that the issues raised are of a discriminatory nature.
- C.** A Complainant who has filed a formal complaint that has been heard and resolved has invoked these procedures in lieu of any other internal procedures.

V. Resolution of Informal Complaints

Informal resolution of discrimination complaints is encouraged whenever possible. In order for an informal complaint to proceed, the parties must have agreed to participate. When an informal complaint is received by the Associate Director, the following steps shall be completed within twenty (20) working days of receipt;

A. The Associate Director shall interview the Complainant.

B. The Associate Director shall notify each Respondent in writing that an informal complaint has been filed against him or her and arrange for an interview with each Respondent.

C. The Associate Director shall interview each Respondent.

D. The Associate Director shall interview relevant witnesses as identified by the Associate Director, including, but not limited to, witnesses named by the Complainant and Respondent(s).

E. After the Associate Director conducts the above investigation, the Associate Director will examine the evidence. If the Associate Director finds the complaint to be without merit, it will be dismissed, and all parties shall be notified in writing of the dismissal. If the Associate Director finds merit in the informal complaint, the Associate Director shall attempt to negotiate and conciliate the matter in a manner satisfactory to all parties. Possible outcomes of an informal resolution may include, but are not limited to, an explicit written understanding about future conduct, changes in workplace assignment, or the substitution of one class for another.

F. Any written understanding that is created to resolve an informal complaint requires mutual acceptance by the Complainant, the Respondent(s), and the Associate Director. Such a written understanding shall state that the acceptance of the document by the parties does not imply an admission of wrongdoing or a clearance of charges. It shall also state which issues are being resolved by the document and which issues remain unresolved. Only issues that remain unresolved may be raised later in a formal complaint.

G. If an informal resolution is not achieved, the Associate Director shall notify all parties in writing that the informal process has terminated without a resolution. The Complainant has thirty (30) calendar days from the date that this notification is received to file a formal complaint.

A brief summary of the informal process shall be kept on file in the archives of the OEOD for the duration of the employment of the Complainant and Respondent(s), and it shall be considered to be part of the official Personnel Files of the Complainant and Respondent(s). If the Complaint is dismissed, the summary shall include the reasons for dismissal. If an informal resolution is achieved, the summary shall include the conditions of the resolution, including any written understandings. If a resolution is not achieved, the summary will include a statement to this effect.

VI. Resolution of Formal Complaints

A. Notification

When a formal complaint is filed within the allowed time frame (see Sections III.G.1 and V.A), the Associate Director shall send a written acknowledgment to the Complainant and provide a copy of the formal complaint to each Respondent within five (5) working days after certification of the complaint as set forth in Section V. B.

B. Respondent's Reply

Each Respondent shall submit a written reply to the Complaint to the Associate Director within fifteen (15) working days from the date of receipt. A copy of each reply shall be sent to the Complainant by the Associate Director within five (5) working days from the date of receipt.

C. Complaint and Reply

The Complaint and the Reply shall define the issue(s) to be addressed at the Hearing. The Associate Director shall inform the Complainant of this limitation prior to the filing of the Complaint. The Respondent shall be informed of this limitation when the Complaint is sent to him or her. The Associate Director shall forward the Complaint and Reply and other appropriate materials to the Hearing Officer within five (5) working days from the date of receipt.

D. Notification of Hearing

The Hearing Officer shall notify all parties of the date, time, and location of the hearing at least thirty (30) working days prior to the Hearing date.

E. Submission of Names of Witnesses and Exhibits by the Parties

Within ten (10) working days of being notified of the Hearing date, each party shall submit to the Associate Director a list of proposed witnesses, together with the relevance of each, and all exhibits that he or she intends to present at the Hearing. The Associate Director shall make this material available to all other parties and the Hearing Officer within five (5) working days of the date of receipt. Within five (5) working days after receipt of this material, the parties shall provide a list of rebuttal witnesses to the Associate Director, who will then forward them to the Hearing Officer.

F. Hearing Proceedings

1. *Rights of Participants* (last revised January 27, 2006)

a. Hearing Officer

The Hearing Officer shall be advised by a representative from the Office of the State Attorney General or the Office of the General Counsel.

b. Complainant and Respondent(s)

Each party may seek the aid and assistance of counsel, both legal and peer, at his or her expense. Legal counsel refers to those counselors selected by the parties who are licensed to practice law, whether or not they are members of the University Community. Peer counsel refers to a member of the University community at the time the complaint was filed. A member of the University community is a current employee or a

matriculating student. Each party may select one legal counsel and one peer counsel to serve as advisors during the Hearing.

c. Questioning of Witnesses

The Complainant, each Respondent, and the Hearing Officer shall have the right to hear all testimony and question all witnesses. Furthermore, each Respondent must be afforded the opportunity to question the Complainant. If the Complainant refuses to appear as a witness, then the Hearing shall conclude immediately, and no disciplinary action shall be taken as a result of this Hearing. If the Hearing Officer decides that special circumstances warrant it, the questioning of one or more witnesses may occur with the parties being in different physical locations, but the questioning must occur in a real-time, spontaneous format (e.g., a video conference or a teleconference).

d. Role of Advisors

All advisors shall have the right to be present during the proceedings, to advise their client(s), and to present written material on behalf of their client(s), but they may not speak on behalf of their client(s) during the proceedings.

2. Rules of Evidence

The Hearing Officer shall not be strictly bound by state law governing the use and admissibility of evidence. However, he or she shall not allow evidence that is irrelevant to the issues defined by the Complaint and Reply.

3. Identification of Witnesses and Exhibits

The Hearing Officer shall review the list of witnesses submitted by the Complainant and Respondent(s). The Hearing Officer may add additional witnesses that he or she believes may have knowledge of facts pertinent to the charge. The Hearing Officer shall submit to all parties the names of all witnesses, together with the relevance of each, at least ten (10) working days prior to the Hearing date. Each party shall have five (5) working days from the date of receipt to submit to the Hearing Officer a list of additional rebuttal witnesses, together with the relevance of each. The Hearing Officer shall make this material available to all other parties within five (5) working days of receipt, and at least two (2) working days prior to the Hearing date.

4. Notification of Witnesses

Each proposed witness shall be informed in writing by the Associate Director of the date and place of the formal Hearing and the approximate time the witness is expected to give testimony.

5. Role of Hearing Officer

During the Hearing, the Hearing Officer shall call witnesses, receive exhibits into evidence, and rule on objections, as needed.

6. Hearing

- a. Attendance at the formal Hearing shall be limited to the Hearing Officer, Complainant, Respondent(s), advisors, representative from the Office of General Counsel, representative from the Office of the State Attorney General, recorder, and any others the Hearing Officer may deem appropriate (the Hearing Officer shall provide a justification for each such additional attendee).
- b. Witnesses other than those persons listed in Section VII.F.6.a shall not be present at the formal Hearing, except when giving testimony before the Hearing Officer.
- c. The duplication and dissemination of the formal Complaint, Reply, list of proposed witnesses, and exhibits to be presented at the formal Hearing shall be limited to the Complainant, Respondent(s), Hearing Officer, Associate Director, and advisors. Witnesses may be given access to relevant materials as deemed appropriate by the Hearing Officer. All documents shall be considered confidential to the extent permitted by law.
- d. A verbatim record of the Hearing shall be taken, and a printed copy shall be made available, without cost, to the Complainant and each Respondent at his or her request. The University shall bear the cost.

7. Issuance of Hearing Officer's Written Report

The Hearing Officer shall issue a written report within ten (10) working days after the close of the Hearing. The report shall include the Hearing Officer's factual findings and conclusions of law. If the Hearing Officer finds that discrimination did occur, the report shall also contain recommended remedial or disciplinary action, which may include, but is not limited to, training, letter of reprimand, salary reduction, demotion, suspension, or termination of employment. The report shall be sent to all parties and the vice president who oversees each Respondent's area of employment (or the President, if the Respondent is a vice president).

8. Written Records

All written records, including the Complaint and each Reply; the verbatim record of the Hearing; supporting documents; the written report of the Hearing Officer; administrative reviews of the Hearing Officer's recommendations; appeals, replies, and results of appeals; and final actions, shall be kept on file in the archives of the OEOD for the duration of the employment of the Complainant and Respondent(s), and these shall be considered to be part of the official Personnel Files of the Complainant and Respondent(s).

VII. Appeals and Administrative Review*(last revised January 27, 2006)*

A. Appeals

1. Appeal of Hearing Officer's Recommendations

If either the Complainant or any Respondent wishes to appeal the Hearing Officer's recommendations, he or she must file such an appeal in writing with the Hearing Officer and the vice president charged with overseeing each Respondent's area of employment (or the President, if the Respondent is a vice president) within ten (10) working days of the receipt of the Hearing Officer's report. The Hearing Officer shall prepare a written reply to the Appeal within ten (10) working days after receipt. No remedial measures or disciplinary action related to this complaint shall occur until the appeals process has been completed.

2. Vice President's Review of Hearing Officer's Report (last revised January 27, 2006)

Within ten (10) working days of receipt of the Appeal, the Hearing Officer shall forward the Appeal, the reply, and the record of the Hearing to the vice president charged with overseeing each Respondent's area of employment (or the President, if the Respondent is a vice president). The vice presidential (Presidential) review shall be completed within twenty (20) working days. The decision from this review is final. Each party and the Hearing Officer shall be provided with the written result of the vice presidential (Presidential) review, specifying in writing the reasons for support or modification of the Hearing Officer's recommendations with regard to the Respondent(s) overseen by him or her.

3. Administrative Action Following Review of Hearing Officers' Report

If remedial measures are recommended, the vice president (President) will work with the Respondent's supervisor to implement these measures. In the event that disciplinary action is recommended, the vice president will forward the matter to the Respondent's supervisor for consideration of appropriate action as provided for in the *Manual* or the *State Personnel Rules*.

B. Administrative Review

1. Vice President's Review of Hearing Officer's Report

If the Hearing Officer's report is not appealed pursuant to Section VIII.A, the vice president (or the President, if the Respondent is a vice president), at his or her sole discretion, may send a written statement to all parties and the Hearing Officer making modifications to the recommendations contained in the report with regard to the Respondent(s) overseen by him or her and providing a written rationale for these modifications.

2. Administrative Action Following Review of Hearing Officer's Report

If remedial measures are recommended, the vice president (President) will work with the Respondent's supervisor to implement these measures. In the event that disciplinary action is recommended, the vice president (President) will forward the matter to the Respondent's supervisor for consideration of appropriate action as provided for in the *Manual* or the *State Personnel Rules*.