

ISSUE RESOLUTION AND COMPLAINT PROCEDURES FOR PROHIBITED DISCRIMINATION

The University of Nebraska at Omaha declares and affirms a policy of equal education and employment opportunities, affirmative action in employment, and nondiscrimination in providing services to the public. Therefore, the University of Nebraska at Omaha shall not discriminate against anyone based upon race*, color, sex**, sexual orientation (includes other characteristics, see 3.1.1 Board of Regents policy for employees and 5.1.1 Board of Regents policy for students), age, religion, disability, national or ethnic origin, marital status, or Vietnam-era veteran status.

**Racial harassment is considered a form of racial discrimination.*

***Sexual harassment is considered a form of sex discrimination.*

Purpose

The purpose of these procedures is to secure, at the lowest possible level, equitable solutions to the problems which may affect student, faculty, staff, administrators, visitors, or other invitees, licensees, or university volunteers who believe they have been discriminated against within the university's prohibited discrimination policy. This prohibition extends to those activities that create a racially hostile environment, including peer-to-peer harassing conduct. If an official receives report of prohibited discrimination, the University will take action in accordance with internal policy and procedures. Resolution of any concern or complaint is encouraged, but not required, at each step of the procedures. Any form of retaliation for filing or assisting with an investigation or charge is not permitted. The University reserves the right to take appropriate action in cases of alleged prohibited discrimination affecting the academic or work environment in the absence of a complaint from an individual. In the event of a finding of racial harassment, the University will take appropriate disciplinary action ranging from verbal reprimand to termination. The resolution process for faculty members is covered by the relevant collective bargaining agreement in place at the time of the infraction, and is incorporated herein as reference for this statement of purpose.

Oversight and Information

The Assistant to the Chancellor for Diversity and Equal Opportunity (hereafter referred to as the Assistant to the Chancellor) is the established representative of the university on prohibited discrimination issues.

The university's nondiscrimination policy and complaint procedures will be widely disseminated through a variety of media and clearly posted in strategic locations throughout the university campus. Anyone seeking information about the nondiscrimination policy or complaint procedures should contact the Assistant to the Chancellor or designee.

Informal Resolution

If appropriate, persons are encouraged first to speak about their concerns with the party in question, relevant manager/supervisor, administrator or academic department chair/school director, or university ombudsperson to attempt to resolve the issue(s). A satisfactory resolution may be readily found.

Notification and Initial Investigation

Complainants who believe they have been discriminated against have thirty (30) working days after the occurrence of the alleged prohibited discrimination to informally resolve the issue(s) to their satisfaction or to contact the Assistant to the Chancellor. This time deadline can be extended if there are extenuating circumstances which must be documented by the complainant and determined by the Assistant to the Chancellor to justify a delay.

Informal Investigation

From the time the Assistant to the Chancellor or designee is made aware of a complaint, the Assistant to the Chancellor or designee will immediately notify the respondent, in writing, that a complaint has been received and will explain the nature of the complaint. The Assistant to the Chancellor or designee will have ten (10) working days to conduct an informal confidential investigation and determine whether or not the complaint merits further action. If it is determined by the Assistant to the Chancellor that further action is warranted, the formal procedures listed below will be begun within seven (7) working days of the decision. Both parties will be notified in writing as to the nature of this decision.

If the Assistant to the Chancellor or designee deems that the complaint merits no further action, the Chancellor or Chancellor's designee will appoint an individual, judged most qualified by the Chancellor or Chancellor's designee, from

among the three (3) university ombudspersons and the Academic Affairs, Student Affairs, and Business and Finance Vice Chancellors or their designated representatives to review the decision. The reviewer will have ten (10) working days to examine the case and respond to the Chancellor or designee and the Assistant to Chancellor or designee. If the reviewer agrees with the Assistant to the Chancellor's decision of no further action, no further action will be taken by the university. If the reviewer disagrees with the Assistant to the Chancellor's decision of no further action, the formal procedures listed below will be begun within seven (7) working days of the reviewer's decision.

Formal Procedures

Formal Complaint

Within seven (7) working days of the decision of the Assistant to the Chancellor or the reviewer determining further action is warranted, the complainant must meet with the Assistant to the Chancellor or designee to review/discuss the incident or situation, attempts at resolution (if any), as well as to learn about formal procedures. If the complainant wants to file a formal complaint, he or she must do so in writing directly to the Assistant to the Chancellor or designee within seven (7) working days following this consultation. If the complainant is unable to write the complaint, it will be related orally or via the appropriate medium, transcribed into written form, and verified for accuracy by the complainant.

Notification of the Respondent and the Equal Opportunity Review Panel

Within three (3) working days of receiving the written complaint, the Assistant to Chancellor or designee will notify the respondent that a formal written complaint has been filed, supply a copy of the written complaint to the respondent, and provide a description of the procedures to be followed. This notification will be made by certified or registered letter, postage prepaid, and return receipt requested, addressed to the most recent address listed in university records. Within five (5) working days of receiving the written complaint, the Assistant to Chancellor or designee will select and notify the Equal Opportunity Review Panel that a formal inquiry will be required.

Equal Opportunity Review Panel Composition

The Equal Opportunity Review Panel will consist of five members – two full-time faculty, two staff (administrative, managerial/professional, and office/service), and one student selected by the Assistant to the Chancellor from a pool of six faculty selected by the Faculty Senate, six staff selected by the Staff Advisory Council, and six students selected by Student Government. Students must be currently enrolled in at least 6 credit hours (undergraduate and/or graduate) and in good academic standing.

The pool of names will be used until the beginning of the following academic year. If during the year, a nominated person becomes ineligible to be in the pool, the appropriate body, (i.e., Faculty Senate, Staff Advisory Council or Student Government) will nominate a replacement for that person in the pool. Selection of pool members and actual Panel members will be done in a manner that attempts to provide the widest possible diversity with respect to gender, ethnic background and other relevant socio/demographic traits. Should a selected member of the panel identify himself/herself as having a legitimate conflict of interest, the Assistant to the Chancellor shall select a different member from the pool of names so as to maintain the required representation.

Formal Inquiry

Upon selection and contact by the Assistant to the Chancellor, panel members will have ten (10) working days to convene, select a chair (student members are not eligible to chair), and schedule the start of the formal inquiry. The inquiry will be conducted as expeditiously as possible. During the inquiry the Panel will review the complaint in its entirety and conduct an impartial inquiry on the complaint. Documents and other information relevant to the complaint may be requested by the Panel, and witnesses may be called by the Panel. The complainant (and his/her representative[s]), the respondent (and his/her representative[s]), and witnesses (if any) will only be present in the inquiry when their own testimony is being sought by the Panel. The inquiry will be audio taped.

The Panel has five (5) working days after the inquiry to reach a preliminary recommendation. In the event that it concludes that the complaint should proceed further, both parties will have access to all evidence presented before the Panel, including the audio tape. When the Panel concludes no additional action is warranted, neither of the parties will have access to the evidence. In cases where the Panel concludes that the complaint should go forward, both parties will have

five (5) working days to rebut the evidence. The Panel then will have ten (10) working days to consider rebuttals and present its advice in writing to the appropriate Vice Chancellor. This written advice should report any dissenting views or include a written minority statement if the minority on the Panel chooses to do so. The Panel's advice will be forwarded to the Vice Chancellor of the Administrative unit in which the respondent is assigned (i.e., Vice Chancellor for Academic and Student Affairs for faculty respondents, Vice Chancellor of Business and Finance for staff respondents, Associate Vice Chancellor for Academic and Student Affairs for student respondents).

Upon receipt of the Panel's advice, the Vice Chancellor will have seven (7) working days in which to reach a conclusion whether or not this set of circumstances warrants additional investigation. The Vice Chancellor will communicate his/her decision in writing to the complainant and to the respondent and shall have the authority to implement such action as is deemed appropriated for non-faculty respondents. If, the Vice Chancellor's conclusion is that no further action be taken, no further action will be taken by the university. If, on the other hand, for faculty respondents the conclusion is that additional investigation should be undertaken, it will be in accord with and/or follow procedures detailed in the Bylaws of the Board of Regents of the University of Nebraska and policies promulgated pursuant thereto, and, in the case of faculty respondents who are members of the bargaining unit, in accord with the Collective Bargaining Agreement between the Board of Regents of the University of Nebraska and the University of Nebraska at Omaha Chapter American Association of University Professors.

Guidelines/Clarification

1. Accusations of prohibited discrimination are of utmost seriousness and should not be made casually or without cause. This policy shall not be used to bring frivolous or malicious charges against students, faculty, staff, administrators, visitors or other invitees, licensees, or university volunteers. The University reserves the right to take appropriate action against individuals who are determined to have brought frivolous or malicious charges. However, this provision shall not be construed in any manner that might unreasonably deter any person from bringing forth a concern. No person shall be retaliated against for exercising his/her rights under these procedures.
2. In cases of alleged harassment, protections of the First Amendment must be considered if issues of speech or expression are involved. Free speech rights apply in the classroom and in all other education programs and activities of the University. In addition, First Amendment rights apply to the speech of students and faculty. (Federal Register/Vol.62, No. 49, March 13, 1997)
3. Working days are those days that University offices are scheduled to be open.
4. Time limits can be extended by the Assistant to the Chancellor if there are documented extenuating circumstances which are determined by the Assistant to the Chancellor to justify a delay.
5. Failure by University representatives to communicate the decision on a complaint within the specified time limits at any step of these procedures will not prejudice the complaint.
6. Failure by the complainant to pursue a complaint to the next step within the specified time limits at any step of the procedures, barring any extenuating circumstances which must be documented by the Assistant to the Chancellor to justify a delay, will be considered acceptance of the last decision rendered.
7. All documents, communications, and records dealing with a complaint and processing of a complaint (except for those materials allowed in personnel files by existing policies or agreements) will be kept confidential and secured in the Office of the Assistant to the Chancellor. The records will be retained for such time as may be legally required and/or deemed appropriate by the university; thereafter, all records will be destroyed.
8. All meetings and inquiries under this procedure will be conducted privately and will include only the parties specified in the procedure for that stage of the procedure.

9. If, as determined by the Panel, additional highly relevant facts that might alter the outcome of the decision are presented during the Panel's proceedings, a recess of reasonable length as determined by the Panel may occur.
10. These are regarded as administrative, not legal procedures. However, in the formal stage(s) the complainant and/or the respondent has the right to legal representation in the form of an advisor at his/her own expense.
11. For hourly paid employees, time spent during scheduled working hours in meeting with the Assistant to the Chancellor or designee or in the formal steps of the procedure is treated as time worked for pay purposes.
12. For faculty respondents, any decision on the part of the Vice Chancellor that additional investigation is warranted that could lead to disciplinary action must be forwarded to the Professional Conduct Committee. (Such sanctions could include sensitivity training, formal or informal reprimands, and an oral or written apology.)
13. Inquiry panels will not include faculty members currently serving on the Professional Conduct or Academic Freedom and Tenure Committees.
14. Failure or lack of clarity of the audio tape will not compromise the proceedings. In order to avoid such circumstances, two separate recordings will be made.

NON-ACADEMIC GRIEVANCE PROCEDURES

Introduction

The Board of Regents is committed to preserving and improving cooperative and effective work relationships among all University employees. The Board encourages any employee who feels he or she is not receiving fair treatment at the University to use the grievance procedures set forth in this policy. Employees who believe they may have a grievance are encouraged to contact the Human Resources Department at their campus or administrative unit for assistance with interpretation or implementation of this policy. This policy supersedes any college or departmental grievance policies for office-service and managerial-professional employees.

In order that grievances are handled on a consistent basis throughout the University, these procedures are adopted for implementation by the administrative units that compose the University.

Eligibility

All regular managerial-professional and office-service staff who have successfully completed their six (6) month post hire probationary period, and such academic-administrative staff and other academic staff for whom access to established academic grievance procedures is not available (any of whom are referred to herein as a "Staff Member"), are eligible to access the process described in this policy.

Grievance Procedure

For purposes of this policy, a grievance must be based upon a difference arising between the Staff Member and the University as to the interpretation or application of written University policy, rules or procedures relating to terms and conditions of the Staff Member's employment, except that the determination of position classification, salary or wage levels, performance evaluation, reduction-in-force decisions, and terminations of an "employment-at-will" (as that term is defined under Nebraska law) are not subjects covered or deemed grievable under this policy; provided however, that any termination of the "employment-at-will" of a Staff Member must first be reviewed and approved by the Director of Human Resources. (Throughout this policy, any reference to the Director of Human Resources means the Director of the administrative unit where the Staff Member works. Any responsibility or authority assigned to a Director of Human Resources in this policy may be delegated to a member of the Human Resources staff or other appropriate designee.) Terminations which are deemed to be "terminations-for-cause" are grievable under this policy.

Grievances are limited to matters of interpretation and application of University employment policies, rules and procedures; the establishment or substantive content of such a policy, rule or procedure is not grievable. College or Departmental policies and rules may be grieved if the Staff Member can show that the College or Departmental policy or rule is contrary to a University policy, rule or procedure. In such cases, University policies, rules and procedures shall take precedence.

The Director of Human Resources for the relevant campus or Central Administration in cases involving Central Administration has the responsibility of interpreting this policy and will determine whether or not a matter is grievable. If a matter is found to be non-grievable, such Director will work with the appropriate parties to try to resolve the concern.

The grievance process described in this policy is an internal, informal process, intended to facilitate open communication and exchange of relevant information and to allow for a meaningful, honest review of the grievance. In order to promote the informal and open exchange of information, attorneys (whether or not they are acting in the capacity of the Staff Member's lawyer) shall not be permitted to participate in meetings or physically accompany either the University representatives or the grieving Staff Member throughout this process. Other venues are better suited to accommodate the formalities interjected by legal counsel. A non-lawyer advisor may not actively participate in the process; e.g. presenting evidence and directing questions to or otherwise communicating with supervisors, panel members or University representatives are not permitted activities. No activity or documentation arising as a result of this policy is deemed to be subject to Public Records laws or Open Meetings laws, unless University legal counsel advises otherwise. The Staff Member alleging a violation of policy is encouraged to informally discuss the matter with his/her immediate supervisor in an attempt to reach a resolution prior to initiating a formal grievance. No audio or video recordings shall be made in relation to the processes described in this policy.

Step 1: Appeal To The Immediate Supervisor

If the discussion surrounding the alleged incident or occurrence does not resolve the matter to the satisfaction of the Staff Member, the Staff Member may file a formal grievance with his/her immediate supervisor and the Director of Human Resources within twenty (20) workdays following the discussion.

If the grievance is based in any part upon the immediate supervisor's acts, the Staff Member may present the written grievance solely to the Director of Human Resources who will determine whether the immediate supervisor or another individual associated with the Staff Member's work area is more appropriate to respond to the grievance.

The written grievance shall specify:

- the exact nature of the alleged grievance;
- details regarding the policy, rule, or procedure allegedly violated;
- the specific remedy requested;
- a specific statement that the Staff Member wishes to initiate a grievance pursuant to the procedures contained in this policy.

While supporting information or clarification may be requested or presented in subsequent steps of the grievance process, the Staff Member is responsible for identifying all issues and allegations relevant to the grievance in this writing. No additional matters may be raised once the written grievance is filed with the Director of Human Resources. Additional allegations or requested remedies may be addressed only through a separate grievance process. At the discretion of the Director of Human Resources, multiple grievances filed by one or more Staff Members may be combined into a single grievance, if such an action promotes a more meaningful review of the matter.

Within ten (10) workdays of receiving the written grievance, the immediate supervisor (or other individual designated by the Director of Human Resources) will draft and deliver to the grieving Staff Member a written response to the written grievance. The person writing the response may confer with a Human Resources representative, his/her supervisors or other parties relevant to the grievance, as needed.

Step 2: Appeal To The Next Level Supervisor

Should the Staff Member remain dissatisfied, he/she may, within five (5) workdays of receiving the Step 1 written response, submit a written request to the Director of Human Resources to appeal to the "next-level supervisor". The

request to appeal shall include a clear explanation of why the Staff Member disagrees with the Step 1 response. *(Due to the complexity of the University's organizational structure, the Director of Human Resources shall have the authority and discretion to determine the person best suited within the Staff Member's work unit to serve as the "next-level supervisor".)*

The Director of Human Resources shall deliver to the next-level supervisor the Step 1 written grievance and response, along with the Step 2 written request to appeal. The next-level supervisor shall review those documents and may gather such other information from such sources as he/she deems necessary and relevant to the appeal. After considering all of the relevant information, the next-level supervisor shall render a written decision. This decision must be submitted to the Director of Human Resources within fifteen (15) workdays following receipt of the Staff Member's request to appeal. The Director of Human Resources shall promptly deliver the decision to the Staff Member.

Step 3: Appeal To The Chancellor/President Through A Grievance Panel

Should the Staff Member remain dissatisfied, he/she may, within five (5) workdays of receiving the Step 2 decision from the next-level supervisor, submit a written request to the Director of Human Resources to appeal through a Grievance Panel to the President (for Staff Members employed at Central Administration) or to his/her Chancellor (for Staff Members employed at a campus). The request to appeal shall include a clear explanation of why the Staff Member disagrees with the Step 2 decision.

A Grievance Panel will be appointed by the President or the Chancellor, as applicable, and shall be composed of three (3) full-time employees, at least one of which shall be of the same employment category (Academic-Administrative, Office-Service or Managerial-Professional) as the grieving Staff Member. No one with a personal or professional interest in the outcome of the grievance is qualified to serve on the Panel. The Panel members shall select a chair from among themselves. *(In accordance with their individual modes of governance, administrative units may or may not establish standing committees or pools eligible to stand for appointment to the Panel.)* The grieving Staff Member and his/her supervisor(s) shall be promptly notified of the composition of the Panel.

Within five (5) workdays of receiving notice of the appointments to the Panel, the grieving Staff Member or his/her supervisor(s) may notify the Director of Human Resources in writing of any reason why any member of the Panel is not qualified to serve. The Director of Human Resources shall consult with the Chancellor or the President, as applicable, regarding the Panel composition. In the Chancellor's or President's discretion, another appointee may be substituted, if it is determined the grievance process would be better served by another person.

The Panel will meet with the Staff Member, the immediate supervisor and any other person deemed by the Panel to have relevant information about the subject of the grievance. The Panel may gather such information from such sources as are available and meaningful to the appeal. The activities and deliberations of the Panel are not open to the public. The Panel's work will be confidential, except to the extent the Panel's work must be revealed to those with a legitimate need to know (e.g. Staff Member's supervisors, persons with information relevant to the grievance, Human Resources staff). The Panel will be guided by University policy in reaching its decision. Irrelevant or exceedingly redundant information may be excluded from its consideration. The Panel shall not supplement, subtract or otherwise alter the content of the allegations contained in the grievance; nor is it authorized to impose or recant sanctions. The Panel acts only in an advisory capacity to the President or relevant Chancellor.

The chairperson of the Panel will, within twenty (20) workdays after the Director of Human Resources receives the Staff Member's written request to appeal under this Step 3, submit the written recommendations of the Panel to the President or relevant Chancellor, who oversees the administrative unit.

Within twenty (20) workdays after receiving the Panel's recommendations, the President, the Chancellor or a designee on his/her behalf will notify the grieving Staff Member, in writing of the final disposition of the grievance. Such decision will be final and binding on all parties. There will be no further appeal within the University of Nebraska.

Timelines

The amount of time for filing and decision making under this policy is intended to provide for a prompt, yet thorough, review and resolution of grievances. Parties must adhere to this timeline in order to ensure the benefits of participating in this process. However, should the Director of Human Resources determine that special circumstances or the nature of the grievance are such that additional time allow for a more meaningful, well-supported resolution of the matter, then the Director may grant an extension of a specific amount of time in writing, delivered to all parties with a need to know.

If the grieving Staff Member does not submit a written request to move the grievance forward within the specified time period and is not granted an extension prior to the passing of that deadline, it will be assumed the Staff Member is satisfied and the grievance will be discontinued.

If the immediate supervisor, the next-level supervisor or the Panel fails to deliver a written response or decision within the specified time period and is not granted an extension of time prior to the passing of that deadline, the grievance will automatically advance to the next level of review.

The Director of Human Resources shall record and maintain the timeline associated with each grievance.

Withdrawing A Grievance

A Staff Member may terminate his/her grievance under this policy at any time by delivering to the Director of Human Resources a written notification requesting such withdrawal.

Retaliation; Pending Employment Actions

Retaliation of any type shall not befall any person for participating in the grievance procedure set forth herein. University employees engaged in such retaliation will be subject to disciplinary action, including the potential for dismissal. A grievance based upon retaliation may be treated as a separate offense and is grievable under this policy. While such retaliation is prohibited, the mere filing of a grievance will not forestall any employment action, unless the Director of Human Resources determines otherwise.

Pay Status When Participating In The Grievance Procedure

For an employee in-pay status, whose participation is required at a meeting, interview, or other activity as part of a grievance under this policy, time devoted to such participation will be considered as regular hours worked. Grievances relating to alleged discrimination based on race, age, color, religion, sex, disability, national origin, marital status, veteran status, sexual orientation, or retaliation due to an individual's initiation of or participation in an investigation regarding such discrimination allegations are covered under a separate policy entitled Issue Resolution And Complaint Procedures For Prohibited Discrimination.

For issues in the area of disability and/or accommodation, grievances are to be filed with the University's ADA/504 Compliance Officer, (402-172-8404).

Complaints against members of the academic-administrative staff when acting in an academic capacity are to be filed with the Professional Conduct Committee.