NUMBER: EOP 1.01

SECTION: Equal Opportunity Programs

SUBJECT: Equal Opportunity Complaint Processing Procedures

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Policy for: All Campuses
Procedure for: All Campuses
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I. Policy

The Office of Equal Opportunity Programs was established by the President of the University to provide equal opportunity and affirmative action in education and employment for all persons regardless of race, color, religion, sex, national origin, age, disability, sexual orientation, genetics or veteran status. The President appoints the Executive Assistant to the President for Equal Opportunity Programs to implement these functions. The Executive Assistant to the President is responsible for the overall operation of the office, and this individual is responsible for planning, developing, administering and evaluating the University's equal opportunity/affirmative action policies and practices to insure compliance with applicable federal and state statutes relating to non-discrimination in employment and education.

II. Procedure

A. Pre-Complaint Review (Who May File)

1. An individual (i.e., person, student, faculty, staff member or applicant) may file a complaint or seek information about illegal discrimination at the University of South Carolina based on race, color, religion, sex, national origin, age, disability, sexual orientation, genetics or veteran status through the Office of Equal Opportunity Programs (hereinafter referred to as EOP office). Inquiries may be made by telephone, in person, in writing or by e-mail.

2. The purpose of pre-complaint review is to provide an individual an opportunity to discuss confidentially the specifics of his/her complaint and to receive guidance and information on the administrative procedures followed by the Office of Equal Opportunity Programs should a complaint be filed.

3. It is not necessary for an individual to reveal his or her identity in seeking information about filing a possible discrimination complaint.

4. As a general rule, no formal administrative action will be taken on anonymous complaints of discrimination. However, the designated EOP official receiving the anonymous complaint may, depending on the seriousness of the incident described, bring the anonymous charge to the attention of the Legal Department, the department head and possibly the alleged offender.

5. An individual, faculty, staff member or student who is made aware of an incident of illegal discrimination should refer the person(s) to the Office of Equal Opportunity Programs for assistance immediately.

6. After receiving information or pre-complaint counseling from the EOP office, an individual may:

   a. choose not to pursue a complaint; or

   b. decide to take action directly with the alleged offender/respondent by verbally or in writing requesting the individual to cease the discriminatory behavior; or

   c. report the matter to the alleged offender's/respondent's supervisor or department head asking that steps be taken to ensure that the offending behavior ceases; or

   d. ask a designated university official or EOP officer to pursue informal resolution of the matter; or

   e. proceed with a formal complaint of discrimination through the Office of Equal Opportunity Programs.

7. If the identity of a complainant is known and if the Office of Equal Opportunity Programs has not been involved in the resolution of a problem, the EOP office should make follow-up contact within a reasonable period of time to ascertain whether the matter has been resolved and proceed to close its file if all parties agree to the resolution.

B. Informal Resolution Process

1. Informal complaint resolution focuses on conciliation, not sanctions; however, disciplinary action including an oral or written warning may be issued if warranted. The aim of informal resolution is to ensure that the discriminatory behavior ceases and that the matter is resolved promptly at the lowest possible

level to effect conciliation. The alleged offender may be asked, politely but firmly, to cease the offensive behavior. He or she may be told of the identity of the complainant at this stage. Investigation is optional, since the emphasis is not on establishing guilt or innocence, but on stopping the alleged discrimination.

Informal complaint resolution may be achieved by any of the following steps:

a. action taken by the complainant to address the matter directly with the alleged offender; or

b. action to negotiate a resolution taken by the alleged offender's supervisor or department head, after consultation with the Office of Equal Opportunity Programs upon the request of the complainant; or

c. mediation undertaken by the Office of Equal Opportunity Programs.

2. If mediated, the Office of Equal Opportunity Programs, the supervisor or department head, as applicable, is required to prepare a memorandum for the record indicating the complaint, the action taken and the resolution achieved. This memorandum will be filed in the Office of Equal Opportunity Programs permanent files.

3. The Office of Equal Opportunity Programs shall decide whether a complaint warrants an attempt at informal resolution. In some cases, a formal investigation may be appropriate and must be pursued to protect all parties to the complaint.

C. Formal Procedure

1. Filing a Formal Complaint of Discrimination

To initiate a formal complaint an individual (person, student, faculty, staff member, or applicant) is required to submit a written statement to the Office of Equal Opportunity Programs. The complaint is then submitted to the EOP official designated to receive the complaint. The EOP office shall be the principal investigator of all illegal complaints of alleged discrimination.

In order to file a complaint, the complainant must be able to:

a. state a cause of action based upon one's membership in a protected class: race, color, religion, sex, national origin, age, disability, sexual orientation, genetics or veteran status and the complaint must be;

b. timely, the date of the alleged violation(s) must have occurred within the past 180 days, and the complainant must be able to identify, with

specificity, the dates of the alleged offense(s), and the complaint must be;

c. reduced to writing and signed before a notary public or EOP official, and;

d. must indicate some harm that the complainant has suffered, is suffering, or will suffer as a result of their protected class membership status, and;

e. specify the relief the complainant is seeking as a result of the complaint.

2. Acknowledging Receipt of Formal Complaint of Discrimination

After receipt of a discrimination complaint form, the EOP designated investigator shall meet with the complainant as soon as possible, generally no later than five work days after receiving the complaint. The purpose of this meeting is to review the complaint and clarify issues which may be unclear to the complainant or to the EOP Investigator. The complainant will be asked to identify witnesses to the incident(s) or other possible victims of discrimination by the same alleged offender, steps taken to resolve the matter, and the outcome being sought through this process. The complainant will be advised that notice of the charge of discrimination and a copy of the complaint will be provided to the alleged offender.

3. Notice of Charge/Service of Complaint of Discrimination

The Notice of Charge will contain the name of the complainant, the specific allegations made (date, places and nature of the discrimination) and a copy of the complaint. The Notice of Charge is processed as follows:

a. The Notice of Charge along with a copy of the complaint will be provided to the alleged offender or his/her representative by the EOP Investigator, or other designated university official, in a timely manner, normally within one week of receipt of the formal complaint. The Notice of Charge and copy of complaint will be served either personally or by certified mail.

b. The alleged offender shall answer the charge(s) in writing within ten (10) University work days of receiving the Notice of Charge. The time limit to provide a written response may be extended with the approval of the designated official handling the complaint. If the alleged offender fails to respond, notice of such failure to respond will be provided to the dean/department head of the alleged offender and the investigation will proceed. The alleged offender may be compelled by the University to respond to a charge of discrimination, to the extent permitted by or consistent with federal and state law.

c. A copy or summation of the response to the Notice of Charge will be provided to the complainant by the designated EOP official.

4. Negotiated Resolution of Complaint of Discrimination

After reviewing the response to the charge, the EOP designated official may attempt a negotiated resolution of the complaint which is agreeable to both parties. The proceedings may be terminated by the designated official upon receipt of a written resolution of the complaint acceptable to both parties. In those instances, a formal negotiated settlement agreement will be developed and signed by all parties.

5. Investigating Formal Complaints of Discrimination

The process of formal investigation includes the following:

a. An investigator of record will be assigned by the Executive Assistant to the President for Equal Opportunity Programs or the Executive Assistant may elect to process the matter.

b. The investigator will interview separately the complainant, alleged offender, and witnesses identified by each party.

c. The investigator may meet with the complainant and alleged offender together if, in his/her judgment, such a meeting could foster a resolution to the problem and the complainant and alleged offender agree to such a meeting.

d. Normally the investigation should be completed within 15 University work days of receipt of the formal complaint; however, if warranted by the circumstances of the complaint, this time may be increased at the discretion of the investigator.

e. Based upon the information obtained during the investigation, the investigator or the Executive Assistant to the President shall issue a report of the findings and make appropriate recommendations to the Executive Assistant to the President for Equal Opportunity Programs. The investigator, as appropriate, may consult the Vice President for Human Resources, the Vice President for Student Affairs, the Vice President for Academic Affairs, and Provost and the Legal Department regarding the appropriate recommendation of disciplinary action to be taken.

The report of findings and recommendations shall include a statement of the complaint, a chronology of the investigation (who was interviewed and by

whom), the information discovered, a list of documents pertinent to the investigation, the conclusions reached, the investigators' recommendations, the investigator's name and date of the report.

If disciplinary action is recommended, the report shall be presented, as appropriate, to the President, Vice President for Academic Affairs and Provost, Vice President for Human Resources, Vice President for Student Affairs, Chancellor, Dean, Department Chair or Director by the Executive Assistant to the President for Equal Opportunity Programs. The EOP designated official will then notify the complainant and the alleged offender, in writing, of the findings of the investigation within five University work days after the conclusion of the formal investigation. This notice will not include the recommendations. The investigative record shall be maintained by the Office of Equal Opportunity Programs.

6. Findings

There are two categories of findings: (1) no reasonable cause to believe discrimination occurred, or (2) reasonable cause to believe a violation has occurred.

a. If no reasonable cause is found, the charge is dismissed. The complainant is advised that if he or she is dissatisfied with the decision, a Presidential Review may be requested, or a complaint may be filed with Federal or State agencies which enforce compliance with laws prohibiting illegal discrimination. [Request for a Presidential Review must be submitted in writing to the President within five University work days of receipt of the notice of findings. A Presidential Review does not guarantee an audience with the President, only review of the record.]

b. If a reasonable cause violation is found, appropriate disciplinary action shall be taken, where appropriate, by the President, Vice President for Academic Affairs and Provost, Vice President for Human Resources, Vice President for Student Affairs, Chancellor, Dean, Department Chair or Director, who must notify the charged party, in writing, of the action to be taken, the reasons for the action and avenues of appeal. The nature of the discipline to be imposed on the offender/charged party shall not be communicated to the complainant, but the complainant may be informed whether the offender will be disciplined. The charged party may appeal the findings by requesting a Presidential Review. If the disciplinary action taken is grievable, it may be grieved through appropriate channels; however, a copy of the reasonable cause violation will be made a part of the University's defense.

7. Sanctions/Disciplinary Action

Persons found to be in violation of the University's anti-discrimination policy will be subjected to disciplinary action which may include, but not limited to, oral or written warnings, suspension, transfer, demotion or dismissal and request for revocation of tenure procedures in cases involving tenured members of the faculty.

8. If the complainant can demonstrate that he/she has suffered a loss as a consequence of illegal discrimination, a remedy may be recommended. The objective is to restore the complainant to his/her status before suffering the consequences of the discrimination. A remedy may consist of a reassignment, transfer, letter of apology, or other appropriate action. A remedy is not subject to appeal through the Presidential Review process.

D. Presidential Review/Appeal

A request for a Presidential Review shall be made in writing to the President by either party to the complaint within five University work days after receiving notification of the findings at the conclusion of the formal investigation.

1. Composition of Review Panel

a. Within five University work days after receipt of a request for a Presidential Review/Appeal, the President or the President's designee will appoint an impartial Review Panel of three individuals who will conduct a closed review of the record and provide recommendations to the President.

b. No Review Panel member will be appointed from the college or department of either the complainant or the alleged offender.

c. The Chairperson of the Review Panel will be appointed by the President or the President's designee.

2. Consideration of the Complaint by the Review Panel

a. The President's Review Panel shall conduct a review of the record as soon as possible, normally within seven University work days of the appointment of the Panel. The EOP office will be required to present the rationale for its recommendations /findings.

b. Both parties may be present during the presentation of the case to the Review Panel by the EOP office. Questioning of witnesses is at the discretion of the Review Panel and shall be conducted solely by members

of the Panel.

c. Each party shall have the right to provide additional evidence in writing relevant to the complaint.

d. Each party to a complaint may be accompanied to the review by an advisor or legal counsel. The parties shall notify the chairperson of the Review Panel at least five (5) University work days in advance of the Presidential Review hearing if he or she will be assisted by an advisor or counsel.

e. The Chairperson of the Review Panel shall be authorized to request additional files, records, and documents relevant to the complaint, including the report of the findings and recommendations of the EOP investigator.

f. The Review Panel shall report its findings and recommendations to the President in a timely manner, normally within five University work days of the conclusion of its review.

g. The President or the President's designee shall issue a decision on the matter including appropriate sanctions, and will notify the parties of his or her decision as soon as possible after the receipt of the Review Panel's findings.

h. There is no further internal appeal under these procedures available to the complainant. The charged party may appeal disciplinary action through the student grievance procedure, the employee grievance procedure or faculty grievance procedure, as applicable, provided the disciplinary action is subject to appeal through one of these processes. Complainants may also have the right to file a complaint with the S.C. Human Affairs Commission, the U.S. Office of Civil Rights, the U.S. Department of Education, the U.S. Office of Federal Contract Compliance, or the U.S. Equal Employment Opportunity Commission, as appropriate.

i. Every effort shall be made to conclude the Presidential Review process within thirty University work days after appointment of the Presidential Review Panel.

E. Related Procedures

1. Suspension or Withdrawal of Complaints of Discrimination

a. The University may suspend its investigative proceedings at any stage if

the designated EOP official receives a written resolution of the complaint agreed to by both parties.

b. A complaint, or any part thereof, may be withdrawn at any time upon receipt of a written request from the complainant that the complaint be withdrawn. The charged party will be notified of the withdrawal of the complaint. Such withdrawal shall be without prejudice to the rights of the complainant to refile the complaint at a later date, so long as the matter is timely (within 180 days of the date of the alleged violation).

c. If the complainant files an external complaint with a State or Federal enforcement agency or an action in State or Federal Court during the EOP office review/investigation, the EOP office shall immediately cease to process the complaint internally and defer to the State or Federal Agency/Court all rights to process the complaint.

2. Dismissal of Complaints of Discrimination

a. A complaint may be dismissed if the designated official investigating the complaint determines that the complaint is without merit, or the accusations/charges are false.

b. A complaint may be dismissed if the designated official in the EOP office determines that the complainant has not cooperated and the action or actions of the complainant impairs or compromises the EOP office's ability to conduct an objective investigation. In such instances, where applicable, the EOP office will cease its' investigation, remove itself and refer the complainant to the appropriate federal/state administrative agencies that are empowered to conduct investigations/resolution of illegal/prohibited discrimination.

c. Willful false accusations by complainants or abuse of the EOP process may result in actions and sanctions, to include reprimand, suspension, demotion, or dismissal.

3. Appealing a Sanction

As a result of an investigation in which reasonable cause is found to believe a discriminatory violation has occurred, disciplinary action may be taken against the charged party. If the disciplinary action is a demotion, dismissal, or suspension, it may be grievable by staff employees under the University Grievance Procedure administered by the Division of Human Resources. Faculty should consult the Faculty Manual for appropriate grievance procedures. Students may appeal disciplinary actions to the Judicial Appeal Board.

Information on the Judicial Appeal Board is contained in The Carolina Community: Student Policy Manual.

F. Record Keeping

1. While a complaint is being investigated all documentary evidence regarding the complaint must be maintained in the confidential files of the officials handling the complaint.

2. After final resolution of the complaint within the university system, all records regarding the complaint must be transferred to the confidential files of the EOP office.

3. Access to these confidential records shall be on a need to know basis only. Persons who may have access include: the President of the University, Vice President for Academic Affairs and Provost, Chancellor or Dean of the campus, the Legal Department, the members of the President's Review Panel, the Vice President for Human Resources and/or Campus Personnel Director, Campus Affirmative Action Coordinator, the Vice President for Student Affairs or equivalent campus student affairs official, and any other designated official appointed by the President.

G. Confidentiality

1. Every effort shall be made, to the extent possible, to protect the privacy of the persons involved in the complaint.

2. The following steps should be taken to help assure confidentiality:

a. The number of persons with knowledge of the complaint shall be kept to a minimum. Only persons with a need to know shall be notified of the complaint.

b. The EOP office shall exercise discretion in the setting of dates and locations of interviews, and the placing of, and responding to, telephone calls related to the complaint.

c. The EOP office will interview, in person, individuals named as witnesses by parties to the complaint. Solicitation of comments from others, unless there is reason to believe they have relevant, first-hand knowledge about the complaint, will be avoided.

d. Correspondence concerning the complaint shall be issued in sealed envelopes and marked "Confidential to the Personal Attention of the

Addressee."

H. Exceptions

In exceptional circumstances, depending on the nature of the alleged offense, it may be necessary for the President, upon the advice of the Vice President of Human Resources, the Vice President for Student Affairs and the General Counsel, to suspend/remove an alleged offender prior to beginning a formal investigation of a complaint. Reinstatement or further disciplinary action may be appropriate based upon the findings. The disciplinary action may be appealed as outlined in Section E.3 above.

I. Non-Retaliation

It shall be deemed a violation of the University of South Carolina's policies and procedures for any person to retaliate intimidate or take reprisals against a person who has filed a complaint, testified, assisted or participated in any manner in the investigation/resolution of a complaint of illegal discrimination as filed with the Office of Equal Opportunity Programs. Appropriate sanctions/disciplinary actions shall be taken against any person who has been found to have violated this policy.

III. Reason for Revision

Policy updated to ensure compliance with State and Federal laws.