

Policy 2-32 Rev 8
Date October 9, 2000

Subject: DISCRIMINATION, HARASSMENT, STAFF EMPLOYMENT GRIEVANCES: OFFICE OF EQUAL OPPORTUNITY AND EMPLOYEE RELATIONS PROCEDURES FOR ALLEGING DISCRIMINATION OR HARASSMENT AND FOR INITIATING STAFF EMPLOYMENT GRIEVANCES.

I. PURPOSE

The Office of Equal Opportunity and Employee Relations (OEO/ER) reports to the Vice President for Human Resources. The office is responsible for providing a unitary, fair and expeditious process for investigating and resolving:

- A. claims of discrimination based upon race, color, religion, national origin, sex (including claims of sexual harassment), age, sexual orientation or status as a disabled individual, disabled veteran or veteran of the Vietnam era; and
- B. claims of permanent staff employees seeking to resolve work-related problems or conditions of employment believed to be unfair, inequitable, or a hindrance to effective job performance.

II. REFERENCES

[Policy and Procedures No. 2-0](#), Personnel Definitions

[Policy and Procedures No. 2-6](#), Policy Against Discrimination

[Policy and Procedures No. 2-6A](#), Policy On Sexual Harassment and Consensual Relationships

[Policy and Procedures No. 2-9](#) Termination of Nonacademic Staff and Disciplinary Sanctions

[Policy and Procedures No. 2-8.1](#), Reduction in Force and Severance Pay

[Policy and Procedures No. 8-10](#), Student Code

[Policy and Procedures No. 8-12.4](#), Code of Faculty Responsibility

[Policy and Procedures No. 8-12.5](#), Code of Faculty Responsibility

[Policy and Procedures No. 9-5.3](#), Faculty Regulations, Chapter V, Section IV

[Policy and Procedures No. 9-5.5](#), Faculty Regulations, Chapter V, Section VII

III. CONFIDENTIALITY

The confidentiality of all parties involved in a complaint investigation shall be strictly respected insofar as it does not interfere with the university's legal obligation to investigate allegations of misconduct and to take

corrective action or as otherwise provided by law.

IV. DEFINITIONS

A. Complaining party (or complainant) is an individual or group of individuals making a complaint.

B. Complaint is:

1. a claim by an aggrieved party or an administrator acting on behalf of the university that a specific named individual has violated a university policy against discrimination or harassment; or

2. a statement of a work-related problem or condition of employment which an employee believes to be unfair, inequitable, or a hindrance to his/her effective job performance. See also, Staff Employment Grievance, defined below.

C. Concern is a question or problem involving possible harassment, discrimination, or staff employment grievance that an individual wants to discuss without having made the decision to pursue the matter as a complaint or without having been personally harmed by the behavior in question.

D. Defined elsewhere:

[Policy and Procedures No. 2-6](#), Policy Against Discrimination

[Policy and Procedures No. 2-6A](#), Policy On Sexual Harassment and Consensual Relationships

E. Employee or Employment at-will: Employment that is terminable by the university for any reason or for no reason at all.

F. Final and Binding Decision: A final administrative decision. No party may appeal or further contest the issues decided, except through external remedies.

G. Permanent Staff: Those staff employees whose employment status is expected to last nine months or longer and who are regularly scheduled to work 20 or more hours per week. Permanent staff employees may be full-time (1.0 FTE) or part-time (equal to or greater than .5 FTE but less than 1.0 FTE).

H. Probationary Staff: Those staff employees hired for, or reinstated to, a permanent full-time or part-time position and serving a probationary period. Probationary staff employees are "at will" employees.

I. Responding party (or respondent) is the person against whom the complaint is made.

J. Staff Employment Grievance is a work-related problem or condition of employment which a permanent staff employee believes to be unfair, inequitable, or a hindrance to his/her effective job performance.

K. Temporary Staff: Those staff employees whose employment is for a period expected to last less than nine months or whose employment is expected to last nine months or longer and who are regularly scheduled to work less than 20 hours per week (.5 FTE). Temporary employees may be full-time or part-time, receive no benefits, and are employed "at will."

V. PROCEDURE: Intake

A. Concerns

1. The OEO/ER serves as a resource to the university to provide information, counseling, and advice regarding equal opportunity and employee relations issues. An individual with a concern is encouraged to discuss it with the OEO/ER in order to clarify whether there is a violation of university policy concerning discrimination or harassment, or whether there is a basis for a staff employment grievance, and to determine his/ her options, including the pursuit of more formal action.
2. Notwithstanding management's prerogative to reorganize and make necessary changes in job duties and responsibilities, the university encourages employees to discuss their concerns with their supervisors and to seek an informal resolution of work-related problems or conditions of employment that they believe to be unfair.

B. Duties to Notify

1. Any university representative who is contacted by an individual with a concern shall advise that individual of the OEO/ER and the availability of university complaint procedures as contained herein.
2. Once informed of a concern related to harassment or discrimination, the supervisor, chair, dean or other representative of the university shall immediately inform the OEO/ER.
3. The OEO/ER shall advise as appropriate the cognizant dean, staff director or supervisor of any concerns of harassment or discrimination the OEO/ER receives regarding a member of his/her faculty, staff or student body.
4. The OEO/ER shall advise individuals of the university's procedures under this policy and provide information relating to any external remedies including state or federal agency procedures which may be applicable.

C. Emergencies

In emergency situations, it may be necessary to remove a person from contact with other employees, students or participants. During normal business hours, such action should not be taken without prior consultation with the OEO/ER. When it is impossible to consult with the OEO/ER because it is after normal business hours, a weekend or a holiday, supervisory personnel may take action without prior consultation with the OEO/ER. In such cases, an employee will not suffer a loss of pay, a student will not suffer a loss of academic standing or a participant will not suffer similar loss as a result of the emergency action. As soon as the

OEO/ER reopens, the supervisory personnel will consult with the OEO/ER to determine appropriate further action.

D. The decision to pursue a concern as a complaint is generally one for the individual who believes that she or he has experienced a grievable employment action or violation of university policy, although there may be situations in which the university must act even in the absence of a complaint (for example, when other students or employees are at risk). Nonetheless, the expression of a concern by an individual does not necessarily create any obligation on the part of the university to formally respond to the concern. Concerns will not be included in a person's file or a student's record.

E. Standing

1. Discrimination and Harassment:

Persons stating claims under [PPM 2-6, 2-6A, 8-10](#) (I)(E) and [8-12.4](#) have standing to file complaints with the OEO/ER.

2. Staff Employment Grievances:

Unless applicable university policies are alleged to have been violated, the following issues are non-grievable and there is no standing to assert complaints relative thereto:

- a. Wages and salaries
- b. Classification actions
- c. Reduction in Force except insofar as it is alleged that appropriate University procedures ([PPM 2-8.1](#)) have been violated
- d. Termination during probation and/or extension of the probationary period
- e. Performance evaluations
- f. Reassignment of job duties and responsibilities
- g. Reorganization that does not result in loss of pay

3. Complaints: a complaint may be filed with the OEO/ER:

- a. Regarding discrimination or harassment
 - 1) by any individual who believes s/he has been subjected to discrimination or harassment in violation of university policy; or
 - 2) by an administrator acting on behalf of the university

alleging a violation of university policy.

b. Regarding employee grievances

- 1) by any permanent staff employee who has completed his/her probationary period (unless the issue is non-grievable as set forth above).
- 2) Probationary, temporary or other "at-will" employees do not have standing to file complaints about problems or conditions of employment, except insofar as they are able to state a cognizable claim of discrimination or harassment.

F. Relationship to other University Proceedings

1. All discrimination and harassment complaints must be resolved under this policy. If allegations of discrimination or harassment are raised in proceedings under another established university complaint or grievance procedure, the university administrators or faculty involved shall immediately notify the OEO/ER and shall refer the harassment or discrimination complaint to the OEO/ER for investigation and resolution under this policy. During this process, all other proceedings shall be stayed, unless the referring committee obtains approval from the OEO/ER to proceed with specified tasks which are clearly separate and distinguishable from those tasks or factual bases arising pursuant to the harassment or discrimination complaint.
2. If the filing of the complaint raises other issues (e.g., questions of academic freedom), the OEO/ER will ensure that those issues are considered as part of the process. For example, if academic freedom issues are raised, the OEO/ER will request that the Academic Freedom and Tenure Committee take that element under consideration and advise the OEO/ER of its findings.

G. Non-Retaliation

Individuals shall not be subjected to retaliation for initiating or participating in this process. The non-retaliation provisions of PPM 2-6 are incorporated herein.

H. Reasonable Time Off

Reasonable time off with pay during scheduled working hours shall be provided to the parties, their representatives, or any witnesses called to testify, for reasonable time spent in preparation for or time spent in proceedings leading to resolution of the complaint. Time spent in such activities outside scheduled working hours is non-compensable.

I. Exceptions to Policy

A proposed resolution of a complaint that involves an exception to an applicable university

policy or regulation requires the prior approval of the cognizant vice president or the President, as appropriate.

J. Time Limits and Deadlines Strictly Observed

Failure to comply with deadlines may result in waiver of rights to proceed hereunder. The Director of the OEO/ER may extend a deadline upon a showing of good cause and in extraordinary circumstances. Time limits stated do not include weekends or holidays unless otherwise stated.

VI. PROCEDURE: Investigation

A. Complaint

1. Complaint form. A complaint form shall be obtained from the OEO/ER and completed by the complainant in order to file a complaint.
2. A complaint alleging harassment or discrimination must be filed within 120 calendar days of the date of the last alleged occurrence.
3. A complaint that is frivolous, fails to state a cognizable claim or is not timely may be dismissed by the director of the OEO/ER after an initial review. A complaint that is not timely may be received if the failure to file the complaint within the prescribed time limit was the result of excusable mistake, inadvertence or extenuating circumstances and that the interests of the university will not be seriously prejudiced by accepting the untimely complaint.

B. Mediation and Negotiation

1. At any stage of this process, the OEO/ER may attempt to resolve the case through mediation and negotiation with the parties involved. At any point, the parties, subject to the approval of the OEO/ER, may mutually agree to invite others to serve as resource persons to facilitate the resolution of the complaint. If deemed by the OEO/ER to be in the best interest of the university, and with the agreement of both parties, mediation may be offered in cases in which there is no standing to file a complaint under this policy.
2. If resolution is reached through mediation or negotiation, no further action will be taken and the matter will be considered closed. Issues not so resolved may require that an investigation be undertaken and/or that administrative personnel take a more active role in finding a solution to the problem.

C. Discrimination and Harassment Cases

1. Notice:

After a complaint has been filed, the OEO/ER shall notify the responding party of

the allegations of the complaint and shall also notify the cognizant vice president and the supervisor, chair or dean with direct line responsibility over the responding party. If the responding party is a student, the Vice President for Student Affairs and the appropriate dean and chair shall also be notified. The responding party shall be afforded a full opportunity to respond to the allegations.

2. The OEO/ER shall interview the complaining party, the responding party and any other persons believed to have pertinent factual knowledge of the allegations and shall also review any other relevant evidence, including documentary material. As in all situations, the responding party shall be afforded a full opportunity to respond to the allegations.

3. The OEO/ER shall endeavor to complete its investigation within 45 days of the filing of the complaint. If, for any reason, an extension is necessary, the parties will be notified in writing of the status of the investigation, and the probable date of completion. At the conclusion of its investigation, the OEO/ER shall circulate a summary of its initial findings of fact, conclusions and recommendations to the complaining party and the responding party. Both parties shall have 10 days after receipt of the summary to submit written comments to the OEO/ER. The OEO/ER shall append the comments to the summary and thereafter transmit its report to the cognizant vice president.

4. The OEO/ER shall notify the complaining party, the responding party, and the cognizant vice-president of their right to request a formal hearing.

D. Staff Employment Grievances

1. Step I - Discussion Between Employee and Immediate Supervisor

a. Permanent employees who wish to pursue a grievance should initially attempt to informally resolve the grievance with his/her immediate supervisor. Complaint forms are not used in Step I.

b. The employee should present the grievance orally to his/her immediate supervisor within five (5) working days of the problem or event prompting the grievance. The supervisor shall respond to the employee within ten (10) working days of the discussion. If the employee believes the matter cannot be prudently discussed or resolved with the immediate supervisor, the employee should contact the OEO/ER for progression to Step II, as set forth below. Complaints regarding involuntary termination of employment will proceed directly to formal hearing, bypassing Steps I and II.

c. If the grievance cannot be resolved through informal discussions, the employee may file a complaint in accordance with Step II of this policy.

2. Step II - Review by a Higher Level Supervisor

- a. If the supervisor's decision in Step I is not satisfactory to the employee, or if no response is received within ten (10) working days, the employee may file a complaint with the OEO/ER.
- b. A complaint form shall be obtained from the OEO/ER, completed by the party and submitted within fifteen (15) working days of receipt of the supervisor's response, or expiration of the ten (10) day response period.
- c. Upon receipt of the complaint, the OEO/ER shall refer the matter to the appropriate level of supervision or management that has not been involved in Step I.
- d. The supervisor or manager to whom the matter is referred shall meet with the employee and review the complaint and other relevant documentation. S/he shall discuss the matter with the individuals involved as appropriate, and render a written decision based on the facts of the case. The Step II decision will be forwarded to the employee, the immediate supervisor, and the OEO/ER within ten (10) working days from receipt of the complaint by the reviewing supervisor or manager.

3. If the employee receives a decision at any step of the procedure and does not ask for further review within the specified time limit, that particular matter will be considered closed.

VII. PROCEDURE: Hearing

A. Discrimination and Harassment Cases

1. Unless a complaint or matter has been previously withdrawn, dismissed, settled or otherwise resolved, the matter may proceed to a hearing committee. Either party may request a formal hearing before a hearing committee within ten (10) days of notification of the right to request a hearing, by submitting his/her request in writing to the OEO/ER. The cognizant vice president may also request a formal hearing. Failure to file a written request for a formal hearing within this time shall be considered a waiver of the right to a formal hearing unless the director of the OEO/ER grants an exception. If there is no request for a formal hearing, the initial findings and recommendations of the OEO/ER shall become final and binding.
2. In cases where the OEO/ER found no violation of policy or determined that no sanction should occur, the hearing committee shall determine whether a hearing should be held based on a review of the complaining party's statement, the reply of the responding party, the written request for the formal hearing and the OEO/ER's initial determination and recommendations, and any comments of the parties received in response to the initial summary. The committee may determine that it is unnecessary to hold a hearing based on the following factors: insufficient evidence to support a claim of discrimination or harassment, or the issue is no longer relevant

or has become moot. If the committee determines that there is insufficient evidence to warrant a hearing, it will issue a finding of 'no merit.' If the committee determines that a hearing shall not be held, the OEO/ER shall inform the interested parties in writing.

3. Either party may appeal the decision to deny a hearing within 10 days to the president.

B. Staff Employment Grievances

1. If the complainant is not satisfied with the Step II decision, s/he may request a hearing. Complaints regarding involuntary termination of employment will proceed directly to formal hearing, bypassing Steps I and II..

2. Requests for formal hearing shall be submitted in writing to the OEO/ER within ten (10) days of notification of termination or of the Step II decision. Forms for "Request for Formal Hearing" shall be provided by the OEO/ER.

C. Request for Formal Hearing:

1. When a timely request for a formal hearing is filed, the OEO/ER shall convene a hearing committee.

2. The hearing committee ("Committee") shall be composed of five persons selected from a panel of [30] individuals previously appointed for that purpose. The panel members, who shall be appointed annually in June shall include at least 15 faculty members appointed by the vice president for academic affairs from a list of at least 20 persons nominated by the Personnel and Elections Committee of the Academic Senate; at least 45 nonacademic employees of the university appointed by the vice president for human resources from a list of at least 60 persons nominated by the University of Utah Staff Advisory Council (UUSAC), and at least 15 students appointed by the ASUU from a list of at least 20 students (graduate and undergraduate) nominated pursuant to procedures of ASUU.

3. The Committee shall be selected in the following manner: the president shall select a chairperson of the Committee; three members will be selected by lot from the responding party's peer group (faculty, staff, student); and three will be selected by lot from the complainant's peer group. One of the persons from each group shall be designated to serve as an alternate.

4. Members may be disqualified for good reason at the discretion of the director of the OEO/ER. In addition, without stating the reasons, the responding party may excuse one panel member; the complaining party may excuse one panel member; and the cognizant vice president may excuse one panel member. If necessary, any vacancies on the Committee resulting from disqualifications determined pursuant to the process above shall be filled by selection of replacements or alternates from the corresponding group.

5. The OEO/ER shall inform the vice president, the supervisor, the chair and the cognizant dean of the responding party of the decision to hold or deny a hearing. If the responding party is a student, the OEO/ER shall notify the vice president for student affairs and the appropriate dean or chair.

6. To facilitate the work of the Committee, the OEO/ER shall (a) serve as the Secretary to the Committee; (b) provide it with the complaint, statement(s) of the responding party, the written request for the formal hearing, the OEO/ER's initial findings and recommendations, a copy of the Step II determination, if any, and the parties' comments thereto, if any; (c) make appropriate physical arrangements; (d) give notice of the time and place of the hearing to the parties, the cognizant vice president, and all other persons requested by any party or by the Committee to testify at the hearing; (e) distribute the Committee's hearing guidelines to the parties; (f) provide for the making of an electronic record of all oral testimony received and oral arguments made during the hearing; and (g) provide such other investigatory and support services as the Committee may request. The OEO/ER may not participate in the Committee's deliberations and shall have no vote.

D. Hearing Guidelines:

1. Hearings shall be closed to the public.
2. The parties shall be notified in writing of the date of the hearing, the charges, the process for selecting the Committee and these guidelines at least ten (10) working days prior to the hearing.
3. Both parties may be accompanied and counseled by an advisor of their choice who will be permitted to attend, but not participate in the proceedings. The parties must notify the Committee of the advisors selected at least five (5) days prior to the date of the hearing.
4. The Committee and each party may request the appearance of witnesses and the production of documentary evidence. Whenever possible, advance notice of witnesses to be interviewed shall be given to all parties.
5. Whenever possible, all materials submitted for consideration by any party or otherwise considered by the Committee shall be made available to all parties at least three (3) days prior to the scheduled hearing. In exceptional circumstances, the Committee may allow a party to submit evidence or materials at the time of the hearing.
6. The hearing, except for deliberations, shall be recorded and a copy made available to either party upon request.
7. At the hearing, the parties or their advisors, as determined above, shall have the right (through the Committee Chair) to question witnesses (including the other party), to present evidence and call witnesses on their own behalf, in accordance with the Committee's procedures established for the conduct of hearings.

8. If either the complainant or the respondent fails to attend the hearing without prior notification and good cause, the Committee may proceed with the hearing and take testimony and evidence, and reach a decision on the basis of such testimony and evidence.

9. The Committee shall not be bound by strict rules of legal evidence or procedure and may consider any evidence deemed relevant.

10. The Office of General Counsel shall serve as a resource to the Committee, and a staff attorney may be present at hearings to provide guidance on substantive law and procedural matters.

11. Committee Chairs and other committee members are prohibited from discussing any matter related to the hearing with the parties or the witnesses, or with others before or after the hearing. Violation of confidentiality shall result in dismissal from the Committee.

12. The parties shall not communicate directly to each other about the complaint.

13. Committee deliberations and voting shall be closed sessions from which all other persons are excluded. Upon request of any member of the Committee, votes shall be taken by secret written ballot.

14. A majority vote by the members of the Committee who attended the hearing shall be required for decisions. The chairperson shall be entitled to vote on all questions.

15. If there is more than one hearing in a matter, or if the hearing continues over more than one session, the same members are to be present for all sessions.

16. In staff employment grievances, the Committee shall confine its determinations to the following: (1) was there a reasonable basis for the supervisor to take the action and (2) whether the action taken was reasonable. In addition, the Committee may examine the procedures followed at any or all stages in the formal review process to determine whether such procedures were consistent with this policy and without substantial defects which operated to deny the complainant basic fairness and due process. The burden of establishing by a preponderance of evidence that procedural defects, if any, operated to deny basic fairness and due process rests upon the complainant.

17. The Committee shall make its findings of fact and its recommendations within 10 working days after the conclusion of the hearing.

18. The OEO/ER shall send a copy of the Committee's findings and recommendations to the cognizant vice president, the complaining party and the responding party.

VIII. Final and Binding Decision

A. Vice President: The cognizant vice president shall consider all of the documentation s/he feels will be helpful, including the findings and recommendations of the Committee, and may seek advice from other appropriate persons, before making a decision. Written notification of the vice president's decision be communicated within ten (10) working days to the parties concerned. The decision of the vice president is final and binding, unless either party files a timely, written request with the OEO/ER for presidential review.

B. President:

1. Either party may file with the OEO/ER a written request for presidential review within ten (10) days of notice of the vice president's decision. Upon such request, the vice president shall transmit to the president the final decision as well as the entire record of the matter including the Committee's findings, and recommendations. The vice president shall also provide written justification for the final decision if it is inconsistent with that of the Committee.
2. The president shall consider and review the record in its entirety, and may solicit whatever counsel and advice the president deems appropriate to assist in arriving at a final determination. Neither the president nor vice president may base a decision on confidential information unless the nature of that information is fairly communicated to the parties and a reasonable opportunity to respond is given to the parties.
3. The president shall issue a final and binding decision within ten (10) days. For good cause, the president may extend the time for action specified in this section. It shall be the responsibility of the OEO/ER to supply the complaining party, the responding party, and the supervisor, dean, or chair as appropriate with a copy of the final decision.

IX. Sanctions and Remedial Action.

A. In discrimination and harassment cases, the corrective and remedial action that may be imposed upon a university faculty member, student, or staff member under this policy shall be appropriate to the circumstances and may include the imposition of a fine, suspension, or termination or expulsion.

B. In staff employment grievance cases, see PPM 2-9.

X. ANNUAL REPORT

The OEO/ER shall issue an annual report to the president summarizing the nature and types of complaints filed pursuant to this policy, the identity of the parties by category (faculty, staff, student, participant) and the ultimate disposition of the complaints. The names and identities of the parties shall not be released. The annual report shall be made available to the university community. The OEO/ER may also make a confidential report to the Academic Senate Executive Committee and the cognizant Vice President regarding a serious concern about the systemic operation of a program, department or college.

Approved: Academic Senate 7/13/00

Board of Trustees 10/09/00

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OUTDATED