

# **Nondiscrimination Policy UML03-01**

## **University Management Letter**

February, 2003

UML 03-01

Supersedes UML 00-03

HUMBOLDT STATE UNIVERSITY NONDISCRIMINATION POLICY

Humboldt State University is committed to maintaining an environment free from unlawful discrimination. To fulfill this commitment, the University will work to prevent unlawful discrimination from occurring and will ensure that University policies prohibiting discrimination are fully enforced.

The University affirms and protects the rights of students and employees to seek and obtain the services of the University without discrimination. No employee or student shall on the basis of race, color, gender, religion, age, sexual orientation, marital status, pregnancy, disability, veteran status or national or ethnic origin be excluded from participation in, be denied the benefits of or be otherwise subjected to unlawful discrimination, including discriminatory harassment, under any program of the University.

Employees and students who cause these rights to be violated may be subject to discipline. This policy should not be interpreted as superseding or interfering with collective bargaining agreements or other California State University policies and procedures currently in effect. If discipline of an employee is sought as a remedy under this policy, the procedural rights under applicable collective bargaining agreements and system-wide procedures will continue to apply. However, those rights may not supersede or interfere with the requirements of state and federal law.

HUMBOLDT STATE UNIVERSITY PROCEDURES FOR PROCESSING DISCRIMINATION COMPLAINTS - FEBRUARY, 2003

### **I. PURPOSE**

The purpose of these procedures is to provide an opportunity to resolve matters alleging discrimination to students and to employees who are not covered by collective bargaining agreements or California State University system-wide procedures for processing complaints of discrimination. The procedures applicable to complaints by employees who are covered by collective bargaining agreements or system-wide procedures may be found at [www.calstate.edu/hr/ComplaintProcedures.pdf](http://www.calstate.edu/hr/ComplaintProcedures.pdf) and a copy (as of the date last amended prior to the adoption of these procedures) is attached as Exhibit A. Persons who believe they are being or have been subjected to Discriminatory Acts are encouraged to report such acts as soon as possible after an incident. They should also recognize that delay in taking formal action with respect to an incident for more than 180, or in some cases, 300 days might foreclose access to federal or state investigative agencies. Filing a complaint with the University is not a prerequisite to filing a complaint with a federal or state agency.

In addition to its general duty to create and maintain an environment free of discrimination and discriminatory harassment, the University also recognizes its obligations to all individuals involved in claims of discrimination, including claims of discriminatory harassment, to provide a fair framework for encouraging the resolution of such complaints.

## II. JURISDICTION

In carrying out the applicable policies of the University, the Office for Diversity and Compliance Services (ODCS) or its successor investigates complaints of discrimination at the University and makes findings of fact following such investigation.

Complaints by employees who are covered by collective bargaining agreements or system-wide procedures shall be processed in accordance with the applicable collective bargaining agreement or system-wide procedures, both as specified in Exhibit A, as amended from time to time.

Upon receipt of a complaint against a student charging unlawful discrimination, the ODCS shall refer the complaint to the Student Discipline Coordinator in accordance with subpart VII of these procedures. Upon receipt of a complaint alleging unlawful discrimination from applicants to, or participants in, any program administered by an approved University auxiliary organization, other than the Associated Students Incorporated (ASI), the ODCS shall promptly acknowledge receipt of the complaint in writing and refer the investigation and resolution of such complaint to the auxiliary organization. Complaints against the ASI will be referred to the Student Discipline Coordinator in accordance with subpart VII of these procedures.

## III. DEFINITIONS

A. Appropriate Administrator means the Management Personnel Plan (MPP) employee responsible for the employment unit. If an individual needs assistance in identifying the Appropriate Administrator to contact, the individual should seek assistance from the Director of Human Resources.

B. Appeals Designee means the person(s) designated by the President to hear appeals pursuant to these procedures.

C. "Cause" Finding means a determination made by an Appropriate Administrator or Designee that sufficient evidence exists to conclude that, more likely than not, a violation of University policies related to unlawful discrimination on the basis of race, color, gender, religion, age, sexual orientation, marital status, pregnancy, disability, veteran status or national or ethnic origin has occurred.

D. Complaint means a written charge filed in accordance with these University procedures that alleges a violation of University policies related to unlawful discrimination.

E. Complainant means a person not covered by an applicable collective bargaining agreement or other California State University system-wide discrimination complaint procedure who files a complaint alleging that s/he has been the subject of Discriminatory Action.

F. Day means calendar day, except as otherwise specified.

G. Designee means the person appointed by the President to make findings of "cause" or "no cause" following investigation of a Complaint.

H. Discriminatory Act/Action means any action that is taken in violation of University policies because of an individual's race, color, gender, religion, age, sexual orientation, marital status, pregnancy, disability, veteran status or national or ethnic origin.

Discriminatory Act/Action also may include threats or other forms of improper conduct in retaliation against any person as a result of their filing of a Complaint of discrimination, participating in an investigation, or opposing a prohibited discriminatory practice or policy.

I. Instructional Day means any day during which University classes are in session, excluding Saturday, Sunday or an academic holiday as defined in 5 CCR Section 42800. Summer session days are not considered Instructional Days.

J. "No Cause" Finding means a determination that insufficient evidence exists to conclude that a violation of University policies related to prohibited discrimination on the basis of race, color, gender, religion, age, sexual orientation, marital status, pregnancy, disability, veteran status or national or ethnic origin has occurred.

#### IV. INFORMAL INQUIRY

Individuals, who believe they are or may have been victims of discrimination and/or discriminatory harassment, may initiate either an informal inquiry or file a formal Complaint.

The intent of the informal inquiry process is to provide persons who are concerned that they might have a discrimination complaint with an opportunity to receive information and advice about the definition of discrimination, the legitimacy of their concerns, and the procedures that exist for resolving complaints. It seeks to provide an opportunity for an informal, yet fair, resolution of the inquiry, while preserving, to the greatest extent possible, the confidentiality of the parties involved in an atmosphere of mediation and conciliation.

The University designates the ODCS to receive informal inquiries from Complainants who believe they are or may have been victims of discrimination by non-students. The President may designate additional individuals to receive informal inquiries.

In addition to giving information and advice, those designated to receive informal inquiries may seek to achieve informal resolution to problems by bringing together the two parties. This attempt will likely require the agreement of the inquirer to enlarge the scope of confidentiality to include the second party.

The University will endeavor to restrict confidentiality to the person making the informal inquiry and the designee receiving it, but this restriction cannot be guaranteed. As a means of fulfilling its obligation to create and maintain an environment free from discrimination and discriminatory harassment, the University may conduct reasonable and appropriate investigations designed to assess whether a violation of the nondiscrimination policy has occurred and this may require enlarging the scope of confidentiality. A confidential record of informal inquiries shall be maintained in the ODCS.

In the event this informal inquiry leads to a resolution, both parties are precluded from subsequently filing a formal Complaint under these procedures unless it is demonstrated to the satisfaction of the Director of ODCS (or designee) that the terms and conditions of the resolution, if any, have been violated. Both parties are encouraged to keep the results of the resolution confidential.

The University, under the charge of protecting its members from discrimination, may have a legal duty to initiate an investigation, a resolution, or disciplinary action, even if a formal Complaint is not filed and independent of the intent or wishes of the person making the informal inquiry. This does not mean, however, that the University has a duty to immediately or necessarily conduct an investigation any time an informal inquiry is made or a formal Complaint is filed. Such a decision must be made by the ODCS. At any time during the informal inquiry and resolution process, the person making the inquiry may initiate a formal Complaint as provided below.

## V. FORMAL COMPLAINT PROCEDURES

A. Who May File a Complaint. Complainants, as defined in III.E, may file a Complaint with the ODCS in accordance with these procedures. For complaints against students, see subpart VII of this document.

B. Time for Filing a Complaint. To be timely, a Complainant must submit a Complaint to the ODCS no later than 20 Instructional Days after the last Instructional Day of the academic term in which the most recent allegedly Discriminatory Act occurred. Either the Director of ODCS or the Appropriate Administrator or Designee may extend the deadline based on extenuating circumstances.

C. Consultant. Complainants may, but are not required to, have a consultant of their own choosing present at their interviews conducted during the course of the investigation into the Complaint. The consultant shall not be a person admitted to the practice of law before any state or federal court. The role of the consultant is limited to observing and consulting with the Complainant.

D. Requirements of a Complaint. Although not required to be accepted for filing, the Complaint should be on a form provided by the ODCS. Each Complaint shall include the following:

The full name, address and telephone number of the Complainant, who must be the individual claiming to be harmed by the discrimination;

The name of person(s) alleged to have committed a Discriminatory Act;

A clear and concise written statement of the facts that constitute the alleged Discriminatory Act(s), including pertinent dates and sufficient information to identify any other individuals who may provide information during the course of an investigation conducted under these procedures and to bring the matter within the jurisdiction of the ODCS to investigate;

A statement by Complainant verifying that the information supporting the allegations of unlawful discrimination is true and accurate to the best of Complainant's knowledge;

Complainant's signature;

The date of submission of the Complaint;

Information that establishes that both Complainant and person(s) alleged to have committed a Discriminatory Act have a sufficient relationship to the University to require application of University policies and procedures to the allegedly Discriminatory Act(s);  
and

The full name, address and telephone number of the Complainant's consultant, if any.

E. Intake Interview. At or after the time a Complainant initiates a Complaint, a representative from ODCS shall conduct an interview with the Complainant.

F. Signature by ODCS Representative and Filing of Complaint. If the proffered Complaint fulfills the requirements set forth in subpart V.D above, a designated staff member in the

ODCS shall sign the Complaint and provide Complainant a copy of the Complaint and the Complaint shall be deemed filed.

G. Notice Regarding Complaint. With the exception of notice to person(s) alleged in the Complaint to have committed a Discriminatory Act, only those persons with a legitimate need to know will be apprised of the filing of and final disposition of a Complaint. Those persons may include, but are not necessarily limited to, appropriate organization unit administrators (Deans, Department Heads, Directors or Vice Presidents) who may have an obligation to monitor the workplace to ensure that retaliatory action does not occur during or after the investigative process concludes, and who may be required to implement recommendations resulting from the investigation of the Complaint.

H. Access to Information Regarding the Investigation. Complainant, upon inquiry and during the course of an investigation, shall be advised of the status of the investigation.

I. Amending the Complaint. If, during the course of an investigation, a staff member from the ODCS determines that more information is required to enable a meaningful investigation, s/he may request Complainant to clarify or amplify allegations in the Complaint. Complainants may also be allowed to add a new charge of discrimination related to the original Complaint, so long as the addition falls within the time limits otherwise applicable to the filing of a Complaint pursuant to subpart V.B above.

J. Dismissal Based Upon Insufficiency of Complaint. If a Complaint alleges conduct that, if true, would not constitute a violation of University policies related to unlawful discrimination on the basis of race, color, gender, religion, age, sexual orientation, marital status, pregnancy, disability, veteran status or national or ethnic origin, the matter shall be dismissed without further investigation by the ODCS.

K. Investigation of Allegations in Complaint. Following the filing of a Complaint, the ODCS will act as a neutral fact-finder. This investigator shall assemble statements, documents and other relevant evidence, and interview witnesses and other identified individuals who have or may have information concerning the allegations set forth in the Complaint. The investigator will make every reasonable attempt to complete the investigation within 90 Instructional Days of the filing of a formal Complaint.

L. Report of Findings of Fact. Upon completion of an investigation, the investigator will make findings of fact regarding the allegations, which s/he shall reduce to an investigative report, which shall be submitted to the Appropriate Administrator or Designee.

M. Finding of "Cause" or "No Cause". After review of the investigative report, the Appropriate Administrator or Designee shall evaluate the evidence in accordance with University policies related to unlawful discrimination, and shall make a Finding of "Cause" or "No Cause" regarding the allegations.

N. Notice of Finding. The Appropriate Administrator or Designee shall notify Complainant in writing of the Finding of "Cause" or "No Cause". Such notice shall inform the Complainant of the outcome of the complaint, including sufficient detail so as to permit an informed decision as to whether to appeal the finding. The Appropriate Administrator or Designee may also notify those persons with a legitimate need to know identified in subpart V.G of these procedures. This information is to be treated as confidential and is not to be disclosed to third parties.

O. Corrective Actions. If the Appropriate Administrator or Designee finds "Cause", s/he shall also issue a separate recommendation regarding corrective actions. This may include individual remedies for the Complainant or a range of formal or informal disciplinary measures or other personnel actions. If it is determined that disciplinary charges should be initiated, disciplinary proceedings shall be conducted in accordance with the current applicable collective bargaining agreement or, for charges against administrators or other non-represented employees, appropriate University policies shall be utilized. Whenever any information concerning recommended corrective action in connection with allegations of discrimination is provided to the Complainant pursuant to subpart V.N above, such information shall be provided on a confidential basis. Failure on the part of the Complainant to respect confidentiality could result in civil action initiated by person(s) alleged in the Complaint to have committed a Discriminatory Act.

P. Withdrawal of Complaints. Once filed, the ODCS has an obligation to investigate Complaints raising significant claims of discrimination. However, in appropriate circumstances, and in the discretion and judgment of either the ODCS or Appropriate Administrator or Designee, the ODCS may agree, upon a written and signed request to do so by Complainant, to withdraw a Complaint. A Complainant seeking to withdraw a Complaint must set forth reasons in the request that support withdrawal. The ODCS shall notify Complainant of such withdrawal.

## VI. APPEAL

Following receipt of a finding, Complainant may seek to have the finding reviewed by the Appeals Designee. The issues raised on appeal shall be limited to those issues raised during the investigation by the ODCS. Any issues not raised during the investigation or new issues that could have been raised, but were not, shall be precluded on appeal.

A. Filing. To secure an appeal, Appellant must file a written request with the Appeals Designee no later than fourteen (14) Days from the date on which Appellant receives a copy of the finding, seeking to have such finding reviewed.

B. Notice. Upon acceptance of an appeal, the Appeals Designee shall notify the Complainant, person(s) alleged in the Complaint to have committed a Discriminatory Act, the ODCS and those individuals who received a copy of the finding.

C. Review. The Appeals Designee shall consider the facts in support of the request and develop any additional facts deemed necessary. The Appeals Designee may request the ODCS do additional investigation or address particular issues. If the Appeals Designee receives new information pursuant to his/her request for further investigation that s/he believes may change the outcome, the Appeals Designee shall ask the Appropriate Administrator or Designee to reconsider his/her findings in light of the new information. The Appropriate Administrator or Designee shall advise the Appeals Designee of his/her reconsidered finding. The Appeals Designee shall apprise parties to the Complaint of the new information and the reconsidered finding so that each has an opportunity to review and refute any such additional information before the Appeals Designee renders a final decision.

D. Decision. The Appeals Designee shall complete the review in a timely manner and shall prepare and provide a written decision to Complainant, the ODCS, the Appropriate Administrator or Designee, and to those individuals who received a copy of the finding. The Appeals Designee may endorse or reject the finding.

E. Final Decision. The decision by the Appeals Designee shall be final.

F. Closure. An investigation shall be considered complete and the investigation shall be closed after the period has passed within which an appeal may be timely filed, if no appeal has been filed, or following a final decision by the Appeals Designee. A matter also may be closed administratively when the ODCS decides that further investigation is either impossible or unnecessary.

## VII.

COMPLAINTS AGAINST STUDENTS When a Complaint is made to the ODCS alleging discrimination by a student, the Complainant shall be referred to the University Student Discipline Coordinator in accordance with the University's Student Code of Conduct. Upon receiving a formal Complaint, or upon determining that the University has an obligation to pursue an inquiry into possible incidents of discrimination even without a signed Complaint, the Student Discipline Coordinator or appropriate University personnel shall promptly begin an investigation. The Student Discipline Coordinator or designee shall complete the investigation within ninety (90) Instructional Days from receipt of the Complaint against a student and shall thereafter inform the Complainant in writing as to whether the University will or will not initiate formal disciplinary charges. If the Student Discipline Coordinator (or designee) concludes that disciplinary action may be required, formal disciplinary charges shall be initiated in accordance with the Student Disciplinary Procedures for the California State University.

Information regarding how to file a complaint against a student is posted at [www.humboldt.edu/~judicial/html/complaint\\_student.shtml](http://www.humboldt.edu/~judicial/html/complaint_student.shtml) and is available at the Office of the Vice President for Student Affairs.

## VIII. GENERAL PROVISIONS

A. Confidentiality. ODCS and the Appropriate Administrator or Designee shall respect confidentiality of information obtained during the course of an investigation, except where disclosure is required by an obligation imposed on the University by law, to investigate a Complaint or to advise parties to the Complaint or an individual identified in subpart V.G of these procedures of the outcome of an investigation or to facilitate other legitimate University processes. As a means of fulfilling its obligation to create and maintain an environment free from discrimination and discriminatory harassment, the University may conduct reasonable and appropriate investigations designed to assess whether a violation of the University policies related to nondiscrimination has occurred and this activity may require enlarging the scope of disclosure.

B. Retaliation; Cooperation. Threats or other forms of intimidation or retaliation against any person who files a Complaint of discrimination, participates in an investigation or opposes an unlawful discriminatory practice or policy are prohibited and shall form an independent basis for investigation under the procedures. Employees and students are expected to cooperate in an investigation into a Complaint of discrimination.

C. Complaints Filed with Outside Agencies. The University acknowledges that individuals have rights to file charges with external agencies at any time within that agency's deadlines, and that those charges may be filed concurrently with Complaints that are filed with the ODCS in accordance with these procedures. The fact that a charge has been filed with an external agency will in no way deter an investigation by the University concerning the same or similar events, so long as the Complaint is filed in a timely manner pursuant to these procedures

Distribution: All University

## EXHIBIT A

The Employment Discrimination Complaint Procedures Systemwide Provisions may be found at [www.calstate.edu/hr/ComplaintProcedures.pdf](http://www.calstate.edu/hr/ComplaintProcedures.pdf).