



# Administrative Procedure

Number: 394  
Effective: 6/30/2011  
Supersedes: Interim  
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**Subject: Policy and Complaint Procedure for Discrimination, Harassment and Retaliation for Applicants, Students and Independent Contractors**

1.0. PURPOSE:

To establish the policy and procedures, for the equitable and prompt response to any allegations of discrimination, harassment, or retaliation made by a non-employee, as defined in Section 5.1., who is not covered by Administrative Procedure 395.

2.0. ORGANIZATIONS AFFECTED:

All organizational units of the University, excluding Auxiliary organizations\*.

3.0. REFERENCES:

- 3.1. [Title VII of the Civil Rights Act of 1964, as amended \(42 U.S.C. section 2000e et seq.\).](#)
- 3.2. [The Age Discrimination in Employment Act of 1967 \(29 U.S.C. section 621 et seq.\).](#)
- 3.3. [The Age Discrimination Act of 1975 \(42 U.S.C. section 6101 et seq.\).](#)
- 3.4. [The Americans with Disabilities Act of 1990 \(42 U.S.C. section 12101 et. seq.\).](#)
- 3.5. [California Fair Employment and Housing Act \(Government Code section 12900 et seq.\).](#)
- 3.6. [The Higher Education Act of 1965 \(20 U.S.C. section 1001 et seq.\).](#)
- 3.7. [Office of the Chancellor Executive Order 883, Subject: System-wide Guidelines for Nondiscrimination and Affirmative Action Programs in Employment, dated October 31, 2003.](#)
- 3.8. [Office of the Chancellor Executive Order 927, Subject: System-wide Policy Prohibiting Harassment in Employment and Retaliation for Reporting Harassment or Participation in a Harassment Investigation, dated January 6, 2005.](#)

4.0. POLICY:

- 4.1. This procedure provides non-employees the opportunity to file complaints alleging they were either discriminated against or harassed on the basis of a protected

\*Auxiliary organizations are governed by their own internal nondiscrimination/sexual harassment policies and procedures.

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

status or they were retaliated against for reporting conduct the individual reasonably and in good faith believes is discrimination/harassment or participating in any investigation of discrimination/harassment.

- 4.1.1. California State University, Los Angeles (CSULA) is committed to maintaining an environment where non-employees are treated with dignity and respect. CSULA will not tolerate unlawful harassment based on race, color, religion, national origin, ancestry, age, sex, gender, sexual orientation, marital status, pregnancy, veteran status (as defined by the Vietnam-Era Veterans' Readjustment Assistance Act of 1974, as amended), physical disability, mental disability or medical condition.
- 4.1.2. Individuals covered within the scope of this administrative procedure, who believe they have been subjected to harassment, discrimination or retaliation should promptly report it to the campus administrators designated to receive harassment complaints. This shall be the Equity and Diversity Specialist of Human Resources Management (HRM). Students also may use the Student Grievance Process for issues that are determined not to be related to harassment, discrimination or retaliation. The campus administrator designated to administer the Student Grievance Procedures is the Judicial Affairs Officer.
- 4.2. CSULA will respond to all harassment complaints brought to its attention in a timely and appropriate manner. If the complaints have merit, CSULA will promptly take actions to prevent recurrence and remedy the effects of the harassment. Persons who engage in harassment may be subject to discipline up to and including discharge. In determining whether the conduct at issue violates this policy, the totality of the circumstances shall be considered.
- 4.3. To prevent harassment, it is critical that individuals not be deterred from reporting it. CSULA will not retaliate, nor will it tolerate retaliation.

5.0. DEFINITIONS:

- 5.1. Examples of non-employees include, but are not limited to:
  - 5.1.1. Applicant - refers to an individual who has completed the application process for a specific, available position at CSULA.
  - 5.1.2. Student - refers to an individual in current or past student status at CSULA.
  - 5.1.3. Independent Contractor - refers to "a person providing services pursuant to a contract." As defined by the Fair Employment and Housing Act, "a person providing services pursuant to a contract" is a person who meets all of the following criteria:
    1. The person has the right to control the performance of the contract for services and discretion as to the manner of performance.
    2. The person is customarily engaged in an independently established business.

3. The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

5.2. Disability - A person with a "disability" is a person who:

- Has a physical or mental impairment which limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

5.3. Medical Condition:

- A health impairment related to a diagnosis of cancer or a record or history of cancer; or
- Genetic characteristics. For the purposes of this section, "genetic characteristics" means either of the following:
  - (A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk or development of a disease or disorder, and that is presently not associated with any symptoms or any disease or disorder.
  - (B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

5.4. Harassment - occurs when unwelcome conduct is engaged in because of a protected status of an individual, which includes race, color, religion, national origin, ancestry, age, sex, gender, sexual orientation, marital status, pregnancy, veteran status, physical disability, mental disability or medical condition, and:

1. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's application, student status, or contractual status;
2. Submission to or rejection of such conduct by an individual is used as the basis or threatened to be used as the basis for admissions decisions, contracting decisions, employment or assessments affecting an individual; or
3. Such conduct is so severe or pervasive that its effect, whether or not intended, is an environment that could be considered by a reasonable person in the shoes of the individual, and is in fact considered by the individual, as intimidating, hostile or offensive.

Harassment can be written (in print or electronically), verbal, visual, or physical. Examples of harassment include:

- Written communications, such as sending inappropriate jokes or comments in print or by e-mail;
- Verbal communications, such as making graphic or degrading comments about an individual and/or his or her body or personal characteristics, or using epithets, derogatory comments or slurs;
- Physical acts, such as unwanted touching, physical interference, or even assault;
- Visual acts or displays, such as derogatory cartoons, drawings, posters, or inappropriate gestures;
- Making unwelcome sexual advances or propositions, or offering employment benefits or giving preferential treatment in exchange for sexual favors; or
- Making or threatening reprisals after a negative response to unwelcome conduct.

"Sex" includes, but is not limited to, the victim's actual sex; the harasser's perception of the victim's sex; the harasser's perception of the victim's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the victim's sex at birth; and pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

Sexual harassment is prohibited whether perpetrated by a CSULA employee or a non-employee. Where the CSULA employee who engages in unlawful sexual harassment is a supervisor or manager, the conduct is especially invidious. Sexual harassment may be perpetrated by someone who is of the same sex as the victim. The person who complains of sexual harassment may be the victim toward whom the harassing conduct was directed or, in some circumstances, a third party who witnessed the harassing conduct.

- 5.5. Campus Administrator – Individual in charge of administering California State University (CSU) policies on nondiscrimination, anti-harassment and non-retaliation or someone else designated by the President. The President's designee for the University is the Assistant Vice President, Human Resources Management.

6.0. RESPONSIBILITIES:

- 6.1. The Office for Equity and Diversity will distribute the annual notification of the Campus Statement on Nondiscrimination, Compliance with the Americans with Disabilities Act, and the Prohibition of Sexual Harassment.
- 6.2. The individual with a potential complaint may:
- 6.2.1. Seek the advice and counsel of the Office for Equity and Diversity in an informal meeting in order to determine the nature of any claim of discriminatory practices and/or harassment or retaliation and to facilitate an expeditious resolution of the complaint.
- 6.2.2. File a complaint no later than **twenty (20) working days** after the complainant knew or reasonably should have known of the event giving rise for the claim by completing and sending in a Complaint Form (Appendix 8.1.) or by contacting the Office of Equity and Diversity in person or by phone.

6.2.3. File a written appeal with the President or the President's designee within **five (5) working days** of receipt of the decision from the Equity and Diversity Specialist, if not satisfied with the outcome of the complaint process. The appeal shall outline the basis upon which the complainant believes the appeal should be granted.

6.3. The Office for Equity and Diversity shall:

6.3.1. Make contact with the complainant within **twenty-four (24) hours, weekends and holidays excluded**, of his/her initial contact.

6.3.2. Hold an initial meeting with the complainant as soon as possible but no later than **fourteen (14) working days** after receiving the complaint.

6.3.3. Discuss the complaint with the complainant, recording all appropriate information on the complaint and review it with the complainant for accuracy.

6.3.4. Discuss the matter with any witnesses he/she deems relevant to the investigation, the respondent(s) and all appropriate parties within **thirty (30) working days** of the interview with the complainant, and review appropriate records and documents.

6.3.5. Determine whether or not the alleged discrimination or harassment has been demonstrated and, if so, discuss the determination as to what, if any, corrective action shall be taken with the Assistant Vice President, Human Resources Management.

6.3.6. Respond in writing to the complainant and respondent(s) no later than **sixty (60) working days** from the initial meeting with the complainant, unless an extension of the timeline has been obtained in writing, to convey the University's decision.

6.3.7. Maintain a confidential file of all documentation with the Office for Equity and Diversity, at the end of the investigation and following corrective action, if any.

6.4. The Assistant Vice President, Human Resources Management will:

6.4.1. Seek consultation with University Counsel and other appropriate administrators, and approve any corrective action recommended by the Equity and Diversity Specialist.

6.4.2. Convey the determination to the respondent(s), if it is determined that disciplinary action is warranted.

If disciplinary action is warranted, the grievance/reconsideration procedure within the appropriate collective bargaining agreement, student disciplinary process, or non-represented employee reconsideration procedure will be followed.

6.5. The President or designee will:

6.5.1. Acknowledge receipt of the appeal within **five (5) working days**.

6.5.2. Provide a written decision to the complainant and respondent(s) within **twenty (20) working days**. The President's decision will be the final University decision.

7.0. PROCEDURES:

- 7.1. In order to determine the nature of any claim of discriminatory practices and/or harassment or retaliation and to facilitate an expeditious resolution of the complaint, the individual with a potential complaint may seek the advice and counsel of the Office for Equity and Diversity in an informal meeting.
- 7.2. A complaint may be filed no later than **twenty (20) working days** after the complainant knew or reasonably should have known of the event giving rise for the claim by completing and sending in a Complaint Form (Appendix 8.1.) or by contacting the Office of Equity and Diversity in person or by phone.
- 7.3. The Office for Equity and Diversity:
  - 7.3.1. Makes contact with the complainant within **twenty-four (24) hours, weekends and holidays excluded**, of his/her initial contact and holds an initial meeting with the complainant as soon as possible, but no later than **fourteen (14) working days** after receiving the complaint.
  - 7.3.2. Discusses the complaint with the complainant, recording all appropriate information on the complaint and reviews it with the complainant for accuracy.
  - 7.3.3. Discusses the matter with any witnesses he/she deems relevant to the investigation, the respondent(s) and all appropriate parties within **thirty (30) working days** of the interview with the complainant, and reviews appropriate records and documents.
  - 7.3.4. Determines whether or not the alleged discrimination or harassment has been demonstrated and, if so, discusses the determination as to what, if any, corrective action shall be taken with the Assistant Vice President, Human Resources Management.
  - 7.3.5. Responds to the complainant no later than **sixty (60) working days** from the initial meeting with the complainant, unless an extension of the timeline has been obtained in writing.
- 7.4. The Assistant Vice President, Human Resources Management, seeks consultation when necessary with University Counsel and other appropriate administrators, and approves any corrective action recommended by the Equity and Diversity Specialist.
- 7.5. The Equity and Diversity Specialist conveys the outcome of the University's investigation to the complainant and respondent(s) verbally and in writing.
- 7.6. If it is determined that corrective action is warranted, the Assistant Vice President, Human Resources Management, will issue the corrective action to the respondent(s). If disciplinary action is warranted, then the Assistant Vice President, Human Resources Management, will make a recommendation to the appropriate administrators.
- 7.7. At the end of the investigation and following corrective action, if any, the Equity and Diversity Specialist maintains a confidential file of all documentation with the Office for Equity and Diversity.

- 7.8. If disciplinary action is warranted, the grievance/reconsideration procedure within the appropriate collective bargaining agreement, student disciplinary process, or non-represented employee reconsideration process will be followed.
  - 7.9. The complainant may file a written appeal with the President or the President's designee within **five (5) working days** of receipt of the decision from the Equity and Diversity Specialist if he/she is not satisfied with the outcome of the complaint process described above. The appeal shall outline the basis upon which the complainant believes the appeal should be granted.
  - 7.10. The President or the President's designee will acknowledge receipt of the appeal within **five (5) working days** and will, within **twenty (20) working days**, provide a written decision to the complainant and respondent(s). The President's decision will be the final University decision.
- 8.0. APPENDICES:
- 8.1. [Complaint Form.](#)
  - 8.2. [ADA Complaint Form.](#)
  - 8.3. [Chancellor's Office System-wide Employment Discrimination Complaint Procedures.](#)