

Policy and Procedures on Unlawful Discrimination, Including Sexual and Other Prohibited Harassment

Preface

The University of Nebraska-Lincoln has an institutional obligation to provide a place where persons can work and study free of illegal discrimination. More specific aspects of that obligation are defined by Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Rehabilitation Act of 1978, the Americans with Disabilities Act of 1990, and the Age Discrimination in Employment Act, among other federal and state laws, agency regulations and judicial interpretations. University officials have a duty to promptly investigate and take appropriate action on all known incidents of illegal discrimination.

In addition to its legal obligations, the University of Nebraska-Lincoln is a community which, within legal restraints, may establish norms of behavior to govern the interaction of individuals within the community. These norms may, and often do, go beyond enforcement of any legal obligation established for the University as an institution. This document provides fair procedures for applying these norms and for resolving disputes between members of the University community relating thereto. In establishing these procedures the University does not accept legal responsibility for the behavior of individuals which may contravene the norms established in this document, nor does it intend to extend its institutional responsibility beyond that already imposed by law.

Nothing in this document shall be construed to violate the guarantees of academic freedom or other rights established by the First Amendment to the U.S. Constitution.

1. Policy

1.1. Introduction

The University of Nebraska-Lincoln (UNL) seeks to achieve a working and learning environment that is open to all people. Diversity is one hallmark of great institutions of learning and has long been one of the strengths of our society. Dignity and respect for all in the UNL community is the responsibility of each individual member of the community. The realization of that responsibility across the campus is critical to UNL's success.

1.2. Policy

UNL has a policy of equal educational and employment opportunities and of nondiscrimination in the classroom and workplace. Educational programs, support services and workplace behavior, including decisions regarding hiring, promotion, discipline, termination and all other terms and conditions of employment, should be made without discrimination on the basis of race, color, religion, sex, national origin, age, disability, veteran status, marital status or sexual orientation. No person should be subject to retaliation for seeking a review of a complaint of discrimination, for participating in an investigation of such a complaint, or for seeking redress for discrimination. One of the purposes of this document is to implement this policy.

1.3. Authority and Jurisdiction

Any student, employee or other invitee (e.g. vendor, volunteer, program spectator) shall have access to these procedures when concerns arise about discrimination, as described in this document. University officials have a duty to promptly investigate and take appropriate action on all reported violations of this policy. These procedures do not exempt supervisors or administrators from responsibility to exercise proper authority in achieving and maintaining an atmosphere of equity and professional conduct in their administrative units. A supervisor or an administrator may take disciplinary action, consistent with other University policies and procedures, to correct harassing or discriminating situations, notwithstanding any other provision of this document. An attempt to reach resolution through the informal procedures contained in this document does not jeopardize the ability to pursue a subsequent formal complaint, nor is it mandatory that the informal procedures be attempted prior to filing formally as described in Section 3 of this document. Miscellaneous provisions and definitions are included at the end of the document.

1.4. Sanctions

Acts and behaviors that violate this policy will result in corrective action up to and including dismissal.

2. Policy Implementation - Informal Procedures

2.1. Options

Members of the UNL campus community who believe they have been discriminated against may choose to pursue one or more of the following informal options. Exercising these options does not preclude the person from pursuing formal procedures within or external to UNL.

2.1.1. Make a clear verbal or written statement to the respondent that the behavior is not welcome and that it should stop;

2.1.2. Ask for help through the appropriate administrative structure, for example, the chair, dean, director, vice chancellor, or other supervisor of the complainant or the respondent;

2.1.3. Seek assistance through the following existing campus structures that can give meaningful advice and/or that have provisions for informal resolution of such conflicts:

2.1.3.1. Students:

- Student Ombudsperson (located in office of the Vice Chancellor for Student Affairs, 124 Canfield Administration Building, 472-9292);
- Counseling and Psychological Services (located in the University Health Center, 15th & U Streets, 472-7450);
- Women's Center (340 Nebraska Union, 472-2597);
- Student Judicial Affairs (located in the office of the Vice Chancellor for Student Affairs, 124 Canfield Administration Building, 472-3620);
- Office of Equity, Access and Diversity Programs (located in 128 Canfield Administration Building, 472-3417);
- Academic Rights and Responsibilities Committee (reached through current chair listed in Centrex under Academic Senate or through Senate Office at 472-2573).

2.1.3.2. Office/Service, Managerial/Professional Staff:

- Staff Ombudsperson (located in Department of Human Resources, 407 Canfield Administration Building, 472-3101);
- Employee Assistance Program (located at 700 N. 16th, 472-3107);
- UNL Grievance Committee (located in the Department of Human Resources, 407 Canfield Administration Building, 472-3101);
- Office of Equity, Access and Diversity Programs (located in 128 Canfield Administration Building, 472-3417);
- Academic Rights and Responsibilities Committee (reached through current chair listed in Centrex under Academic Senate or through Senate Office at 472-2573).

2.1.3.3. Faculty:

- Academic Rights and Responsibilities Committee (reached through current chair listed in Centrex under Academic Senate or through Senate Office at 472-2573).
- Employee Assistance Program (located at 700 N. 16th, 472-3107);
- Office of Equity, Access and Diversity Programs (located in 128 Canfield Administration Building, 472-3417).

2.2. Outcomes

Informal resolution may include, but is not limited to, the following voluntary options, if agreed to by the affected parties (see also Section 1.3):

- agreement as to the nature of the conflict and its resolution;
- oral or written promise that the behavior will stop or will not occur in the future;
- oral or written apology;
- correction of employment decisions, consistent with University policies and procedures, made as a result of the misconduct;
- arrangement to move one of the parties to a different work area;
- agreement about consequences for the accused;
- agreement about subsequent actions if the agreement is broken.

2.3. Actions necessary to an informal procedure shall be taken promptly and completed, if possible, within 20 working days of the time the complaint is brought forth. The filing of a complaint in a judicial or administrative forum outside of UNL shall not halt or otherwise alter the informal resolution process within UNL.

3. Policy Implementation - Formal Procedures

3.1. Formal Complaints

When the complainant wishes to forego an informal resolution, or when informal resolution fails, the complainant may file a formal complaint. Should the complainant's allegations provide the basis to file a formal complaint under more than one UNL grievance resolution procedure, the complainant must choose and file under only one procedure.

3.1.1. ADA Complaints.

For complaints concerning discrimination based upon disability, the ADA/504 Compliance Officer in the Office of Equity, Access and Diversity Programs, located in 127 Canfield Administration Building (472-3417) shall be contacted to access the separate formal grievance procedure governing disability issues.

3.1.2. The filing of a complaint in a judicial or administrative forum outside of UNL shall not halt or otherwise alter any formal resolution process within UNL.

3.2. Filing a Formal Complaint

A formal complaint must be filed within one year of the activity alleged to violate this policy, and shall set forth in writing a request for formal proceedings; the basis of the complaint; a specific description of the conditions, facts, events or circumstances upon which the complaint is based; and the remedy sought. The complaint must be signed by the complainant, and must also contain the name, mailing address and phone number at which the complainant may be reached. The formal complaint may be filed directly with a hearing committee (Section 3.4 below) or with the Office of Equity, Access and Diversity Programs (EAD). On receipt of the formal complaint, EAD shall conduct a preliminary investigation. If the complainant files a complaint directly with a hearing committee (Section 3.4 below), EAD will be asked by that committee to conduct the preliminary investigation.

3.3. EAD Preliminary Investigation

Within 15 working days of the receipt of the complaint from either the complainant or a hearing committee, EAD shall determine through a preliminary investigation whether it finds a basis for a complaint under this policy. The results of this investigation shall be presented to the complainant, the respondent, and the hearing committee. The hearing committee may consider the preliminary investigation report as evidence at the hearing.

3.4. Hearing Committees

A complainant may file a formal complaint with one of the committees listed below; alternatively, if the complaint is filed with EAD, EAD shall, within 15 working days of its receipt, forward the complaint with the results of the preliminary investigation to one of the following.

3.4.1. The chair of ARRC, for complaints against a member of the Academic/Administrative staff (as defined in Section 3.1.1.1 of the Bylaws of the Board of Regents of the University of Nebraska &X'6A.), and Other Academic Staff (as defined in Section 3.1.1.2 of the Regents Bylaws) ARRC shall also receive complaints filed generally against UNL as an institution, when a complainant seeks institutional action as a remedy to alleged discrimination. The Code of Procedures for Professional Conduct-A of the ARRC shall govern formal complaint proceedings filed under this Section.

3.4.2. UNL Grievance Committee (through the Department of Human Resources) for complaints against members of the Managerial/Professional staff (as defined in Section 3.1.1.3 of the Regents Bylaws) or Office/Service staff (as defined in Section 3.1.2 of the Regents Bylaws). Under those circumstances in which a member of the Academic/Administrative staff is acting in a non-academic capacity, a complaint may be filed with this committee. The Department of Human Resources shall adopt written procedures which are generally consistent with the Code of Procedures for Professional Conduct-A of the ARRC to govern formal complaint proceedings filed under this Section.

3.4.3. The Student Judicial Board (through the Office of Student Judicial Affairs) for a complaint filed against a student. Students occupy a variety of roles within the university setting. They may be engaged in traditional classroom study; they may be employees engaged in a variety of work opportunities at UNL; or they may be acting in an instructional role as a teaching or research assistant. EAD, in its discretion, will refer a complaint filed against a student to the committee described above, which most closely fits the role in which the student was acting when the alleged violation took place. The University Disciplinary Procedures applicable to misconduct under the Student Code of Conduct shall govern formal complaint proceedings filed under this Section.

3.4.4. Augmented Committees.

3.4.4.1. Should the complainant before the ARRC be a person other than a member of Academic/Administrative or Other Academic Staff, the hearing committee appointed shall be augmented by three members of the committee to which the complaint would have been referred had the complainant been formally charged under this Policy and Procedures. The chair of ARRC shall select the additional members for the augmented committee, who will participate fully in discussions, hearings, and deliberations. If the opinion of the students or staff added to the hearing committee differs from that of the regular committee, their opinion and the rationale for that opinion shall be included in the report of the committee.

3.4.4.2. Should the complainant before the UNL Grievance Committee be a person other than a member of Managerial Professional Staff or the Office/Service Staff, the membership of the UNL Grievance Committee shall be augmented by two members of the committee to which the complaint would have been referred had the complainant been formally charged under this Policy and Procedures. The Director of Human Resources shall select the additional members for the augmented committee. Further, the Director shall designate one person of the UNL Grievance Committee to act as chair.

3.4.4.3. No changes or additions to the Student Judicial Board membership shall be made in consideration of the complainant's relationship to UNL. When this document refers to the chair of the hearing panel, the student chair and the faculty chair shall coordinate their efforts to accomplish the duties of the chair for purposes of this procedure.

4. Particular Policy Amplifications

4.1. Prohibitions

4.1.1. Discrimination

The University of Nebraska-Lincoln shall not discriminate based upon race, color, religion, sex, national origin, age, disability, veteran status, marital status or sexual orientation, except to the extent that such factors may conflict with bona fide occupational qualifications.

4.1.2. Discrimination in the Form of Sexual Harassment.

It is the policy of the University of Nebraska-Lincoln that no member of the UNL community may sexually harass another. Sexual harassment is a form of discrimination based upon gender. It is prohibited at UNL and is subject to the procedures and sanctions contained in this policy. Sexual harassment is unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic standing; or
2. Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions or academic decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with the individual's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment.

4.1.3. Discrimination in the Form of Prohibited Harassment Based Upon Protected Status.

Contributing to the creation of a hostile environment for any UNL student or employee based upon his or her race, color, religion, sex, national origin, age, disability, veteran status or sexual orientation is a form of discrimination prohibited by this policy. No person shall contribute to a hostile or abusive environment at UNL based upon race, color, religion, sex, national origin, age, disability, veteran status, marital status or sexual orientation (collectively "protected status") by engaging in harassing conduct (e.g. physical, verbal, graphic, or written) that is unwelcome and sufficiently severe, pervasive or persistent so as to clearly interfere with or limit the ability of (1) a student to participate in or benefit from the services, activities or privileges provided by UNL; or (2) an employee to engage in his or her work duties. UNL shall not knowingly cause, encourage, accept, tolerate or fail to correct such a hostile environment. By authorizing a complaint against a person contributing to a hostile environment based upon protected status, these procedures provide one method of implementing UNL's responsibility. Speech protected by the First Amendment to the Constitution of the United States shall not be subject to sanctions under this section or any other section of this policy.

Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances. The harassing conduct must be severe, pervasive or persistent. Generally, the severity of the incidents needed to establish a hostile environment varies inversely with their pervasiveness or persistence. The context, nature, scope, frequency, duration, and location of the harassing incidents, as well as the identity, number, and relationships of the persons involved should be considered.

4.1.4. Discrimination in the Form of Hostile Institutional Climate.

The University of Nebraska-Lincoln recognizes its responsibility to provide to its students, employees and others considered members of the UNL community, in all of its facilities and programs, an environment which permits such persons the opportunity to successfully engage in study or perform work duties. Should any such environment become hostile in relation to one's race, color, religion, sex, national origin, age, disability, veteran status, marital status or sexual orientation, such that it unreasonably interferes with an individual's ability to engage in study, work or other UNL business, then such an individual may seek redress against UNL (Section 3.4), as an entity in and of itself, under this policy for knowingly failing to maintain the appropriate work/study environment.

4.1.5. Academic Freedom.

Academic freedom does not protect persons who discriminate against or harass others on the basis of race, color, religion, sex, national origin, age, disability, veteran status, marital status or sexual orientation. However,

discussion or inclusion of germane, sensitive issues such as those relating to sexual relationships or race relations within the context of teaching, research, extension or other academic activities does not constitute harassment based upon protected status and does not contribute to a hostile environment. Moreover, the academic setting is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material.

4.2. Consensual and Domestic Relationships

UNL policy requires recusal (the relinquishment of the supervisory role; see also Definition 7.6) when supervisory or evaluative relationships exist between members of the university community who share sexual, romantic, or domestic relationships. This policy covers, but is not limited to, persons in the following professional relationships: line officers and faculty; faculty and students; tenured and non-tenured faculty; graduate assistants and students; supervisors and the employees they supervise; and student or employee and administrator, coach, advisor, counselor, or residential staff member who has supervisory responsibility for that student or employee.

4.2.1. Such work or academic relationships typically involve a power differential that makes mutual consent inherently suspect and that raises questions of conflict of interest. Maintaining either the appearance or the reality of impartiality in the face of such a relationship is equally difficult. As described in Definition 7.6, should a personal relationship develop between members of the UNL community who are also in a supervisory or an evaluative relationship, the person in the position of greater authority shall recuse himself or herself; that is, shall relinquish (with or without explanation) the supervisory or evaluative role and make suitable arrangements for the objective performance or academic evaluation of the other. Much the same procedure is already in practice when members of the same family find themselves in situations in which one supervises the other.

4.2.2. In the event that recusal as described would seriously and adversely disadvantage the academic or professional future of the person under supervision or evaluation, the supervisory or evaluative relationship may be retained when provision is made with the next higher administrative officer for objective oversight of the performance.

4.2.3. Any person may file charges of professional misconduct with the ARRC or Grievance Committee against a person who fails to recuse him/herself or to establish an objective oversight process in accordance with these procedures.

4.2.4. When recusal occurs, the person whose work is being supervised must be informed of the recusal in writing.

4.3. Time Requirements

Throughout this policy, certain time limits are set out to encourage prompt resolution of discrimination complaints. The Director of EAD may expand any time requirement contained in this policy when he or she determines that such an expansion is necessary to meet the requirements of institutional responsibility or to serve the interests of fairness.

5. Record-Keeping

5.1. Because this document establishes procedures for informal resolution of questions or concerns about discrimination through a variety of UNL organizations, the issue of confidentiality is of major significance. It is desirable that, whenever possible, discrimination issues be resolved with minimum personal trauma or embarrassment and maximum effectiveness. Thus, extensive documentation is not necessarily desirable. However, it is equally important that a mechanism exist by which problematic situations are identified and recorded even if formal procedures are not pursued.

5.2. Informal Resolution Records

In order to achieve a balance that accommodates both sides of this question, when informal attempts to resolve discrimination issues are undertaken by any UNL body or office, a record shall be kept of each incident, as follows:

5.2.1. A brief description of the circumstances shall be made, noting the administrative unit and the principal parties involved;

5.2.2. Unless otherwise prohibited by the laws protecting client/patient confidentiality, all such descriptions shall be forwarded to the Office of EAD for review and archiving. An incident report should be forwarded to the Director of the EAD Office contemporaneous with the occurrence of the incident (or not longer than 10 working days after the occurrence.) After the informal resolution of the incident (see section 2 and 2.3 of this policy) a complete report about the resolution of the incident should be forwarded to the EAD Office within 15 working days of the resolution. Such records shall be retained in accordance with EAD's record retention procedures. Any record kept by UNL officials of informal resolution efforts shall be consistent with Regents and UNL Bylaws governing confidentiality and rights of access.

5.2.3. UNL may initiate an appropriate response against an individual or an administrative unit if a pattern of inappropriate behavior becomes apparent.

5.3. Formal Procedure Records

As soon as practicable following the completion of any formal complaint procedure, the committee (or the Chancellor in the case of an appeal to that office) possessing the records relating to the complaint shall deposit them with the EAD for keeping in accordance with EAD's record retention procedures. Any record kept by UNL officials of formal resolution efforts shall be consistent with Regents and UNL Bylaws governing confidentiality and rights of access.

6. Miscellaneous Provisions

6.1. Academic Freedom and Responsibility

The principles of academic freedom and academic responsibility are outlined in Board of Regents Bylaws 4.1. and 4.2., and establish the tenets of academic scholarship and its attendant rights and responsibilities, with which this policy is consistent. Also see Section 4.1.5. of this policy.

6.2. Confidentiality

Participation in a faculty, staff, or student advising, conciliation, or adjudication effort makes one privy to sensitive information involving the personal and professional lives of members of the UNL community. Therefore, such service carries with it special obligations to keep confidence. Sections 2.5.2, 2.5.4, and 2.5.6 of the UNL Bylaws are particularly relevant to anyone approached under these procedures for advice or informal resolution of discrimination concerns. However, this duty of confidentiality does not preclude the authority to conduct a meaningful investigation or to communicate with the principal parties' line officers or other supervisors.

6.3. Retaliation

UNL shall not retaliate against any person for alleging discrimination, or for participating in an investigation of such allegations. However, certain activities are not protected under this section. Bringing formal or informal complaints under this policy does not give any employee the right to engage in insubordinate and disruptive behavior which exceeds the limit of reasonable opposition. An attitude and atmosphere of civility shall be maintained by all parties to a complaint at all times, under all circumstances.

6.4. Severability

If any provision of this policy and procedure shall be determined to be void, invalid, unenforceable, illegal or contrary to overriding University of Nebraska or UNL policy, it shall be ineffective only to the extent of such prohibition, and the validity and enforceability of all the remaining provisions shall not be affected.

7. Definitions

7.1. ARRC (Academic Rights and Responsibilities Committee)

As described in the Academic Senate Syllabus of Committees, the Academic Rights and Responsibilities Committee consists of five elected faculty members, and was established to receive and adjudicate, through Special Hearing Committees, complaints of grievance, academic freedom and tenure, or professional conduct. Special Hearing Committees submit their reports to the Chancellor (grievance, professional conduct) or the Board of Regents (academic freedom and tenure). A Special Resource Group also exists within the committee structure, whose functions include informal, confidential conciliation efforts.

7.2. Complainant

A complainant is anyone who seeks advice, conciliation, or other informal or formal resolution of an alleged incident of discrimination.

7.3. Employee Assistance Program (EAP)

The EAP consists of a staff of counselors with advanced clinical degrees and a wide range of experience, available to assist with personal or work-related concerns. Inquiries to and assistance by this office are confidential.

7.4. UNL Grievance Committee

Coordinated by the Department of Human Resources, this is a standing committee, appointed by the Chancellor, from which rotating 3-member subcommittees receive, investigate, and recommend to the Chancellor on matters affecting the Office/Service and Managerial/Professional staff.

7.5. Office of Equity, Access and Diversity Programs (EAD)

The office with the following responsibilities that pertain to this policy: fielding inquiries regarding potential discrimination situations, assisting with informal resolutions (Section 2), and assisting with preparation of formal complaints (Section 3). All contacts are handled confidentially, except to the extent that knowledge of certain types of harassment requires that this office take official action (e.g. sexual assault requires notification of police). In addition, this office responds to EEOC complaints that are beyond the scope of this document. The EAD Office conducts diversity, affirmative action, and sensitivity training workshops for campus units and search committees. It also provides diversity programming for the UNL community and beyond.

7.6. Recusal

Recusal is the voluntary relinquishment of the supervisory role when a personal relationship develops between individuals within the UNL community who are linked by supervisory relationships. This recusal may occur without explanation, but it must occur, regardless of the status of the individuals involved (i.e. administrator-faculty, administrator-staff, faculty-student, faculty-staff, staff-staff, student-student).

7.7. Resolution – Informal

Informal resolution is conciliation reached between two people, either on their own or with the assistance of a third person. Several UNL committees or offices (see Section 2) have authority to designate a third person for this purpose. By definition, informal resolutions do not include the imposition of sanctions, but they may involve mutually agreed upon consequences. Each of the committees and offices listed in Section 2.1.3 has its own procedures that include informal efforts to resolve conflict. In general, informal efforts to resolve discrimination disputes involve only a brief request for assistance; an attempt to reach agreement between the two parties involved; some consequences, as appropriate and as agreed upon by all parties; and a record which identifies parties, describes the situation and departments involved. This information is presented to EAD once

each year, at the end of the Spring semester, or at any time if circumstances appear to warrant it. Several reports of a similar nature would trigger EAD to initiate an inquiry for clarification or possible action, as appropriate.

7.8. Resolution - Formal

A formal resolution consists of a formal complaint and includes investigations of allegations, a hearing subject to the appropriate due process protections, and sanctions appropriate to findings of facts. Formal complaints may be filed prior to, during, and after, but not concurrent with an informal resolution.

7.9. Respondent

A respondent is anyone accused of discrimination against another individual (here, complainant); use of this term does not imply a judgment of guilt.

7.10. Sanctions

A sanction is the forced imposition of disciplinary action, ranging from verbal reprimand to termination of employment. Sanctions cannot be imposed as part of an informal resolution of a complaint pursuant to Section 2 of this policy. This shall not preclude the ability to reach mutually agreed upon outcomes or action through conciliation as part of an informal resolution.

7.11. Staff Ombudsperson

The Staff Ombudsperson is the person within the Department of Human Resources who provides confidential assistance to staff employees needing advice or help with informal resolution of difficulties within the context of their employment. A neutral resource rather than an advocate, the Staff Ombudsperson helps develop options and approaches to constructive problem-solving.

7.12. Student Ombudsperson

The Student Ombudsperson is the person, within the office of the Vice Chancellor for Student Affairs, who assists student members of the UNL community with concerns about their rights and the policies and procedures of UNL. Assistance may be given in the informal resolution of academic, administrative or personal problems, and may take the form of listening, mediating and/or resolving complaints or grievances, and making recommendations.

7.13. Institutional Responsibility

This policy has been approved for the purpose of providing procedures at the University of Nebraska-Lincoln whereby individuals may seek redress of grievances alleging unlawful discrimination and sexual harassment. In addition to the procedures provided in this policy, UNL, acting through the Chancellor and UNL Office of Affirmative Action and Diversity Programs, has responsibility to investigate and, if warranted, act upon matters of apparent or suspected unlawful discrimination or sexual harassment (even in the absence of a complaint under this policy) when there is reasonable cause to believe there has been a violation of UNL's policy prohibiting unlawful discrimination, including sexual and other prohibited harassment.

7.14. University Official

University official shall refer to any individual employed by the University of Nebraska-Lincoln with job authority/responsibility to supervise, hire, assign/reassign responsibilities, promote/demote, and/or recommend/take any disciplinary/corrective actions.