

# **Anti-Discrimination Policy and Grievance Procedure**

## **FOR STUDENT CLAIMS OF DISCRIMINATION BY A FACULTY MEMBER, ADMINISTRATOR, EMPLOYEE<sup>1</sup>, GUEST OR CONTRACTOR**

### **I**

#### **INTRODUCTION**

The college abides by the principle that its students, faculty, staff and administrators have a right to be free from discrimination by any member of the college community. The highest standards of professional conduct pertain to all members of the college community in their dealings with one another; the relationships between and among students, faculty, administrators, and members of the staff at all levels should be governed by these standards. No member of the college community should tolerate discrimination from a faculty member, administrator, colleague, employee, supervisor, student or other member of the college community.

### **II**

#### **ANTI-DISCRIMINATION POLICY**

Discrimination on the basis of race, national origin, color, religion, sex, age, sexual orientation, or disability is prohibited by both state and federal law. The college will not tolerate such discrimination under any circumstances. Whenever an alleged violation of this policy is brought to the college's attention, an investigation will be undertaken and, if a violation is found, prompt and effective corrective action will be taken. All members of the college community should contact the appropriate college office, as set forth below; if they believe a violation of this policy has occurred.

*Discrimination complaint of a student, visitor, faculty member, administrator or employee by a student:*

Complaints should be submitted to the Office of the Dean of Student Services for the campus at which the alleged discrimination occurred.

*Discrimination complaint of a student by a faculty member, administrator, employee, guest or contractor:*

Complaints should be submitted to the Office of the Dean of Student Services for the campus at which the alleged discrimination occurred.

*Discrimination complaint of a faculty member, administrator or employee by a contractor, guest, faculty member, administrator or employee:*

Complaints should be submitted to the Office of the Compliance Officer or Human Resources Department.

#### **A. Discrimination Prohibited**

The college abides by the principle that its students, faculty, staff and administrators have a right to be free from discrimination by any member of the college community. The highest standards of professional conduct pertain to all members of the college community in their dealings with one another; the relationships between and among students, faculty, administrators, and members of the staff at all levels should be governed by these standards. No member of the college community should tolerate discrimination from a faculty member, administrator, colleague, employee, supervisor, student or other member of the college community.

Behavior on the part of any member of the college community that inappropriately introduces any form of discrimination, as defined below, into a teaching, learning or working relationship, or into any other relationship arising from college activities will not be tolerated. The college also will not tolerate conduct by a non-employee who discriminates against any member of the college community on college premises or at any other location where the member of the college community is present because of assigned or college-sanctioned activities.

Individuals who believe they are victims of discrimination are required to seek redress through the appropriate discrimination complaint procedure. This policy and procedure applies to any student who alleges that he or she has been discriminated against by a faculty member, an administrator, an employee, a guest or a contractor of the College. Alleged discrimination of a student by another student or alleged discrimination of a college faculty member, guest, administrator or employee by a student is governed by the Student Code of Conduct. Alleged discrimination of a college employee by another college/county employee, contractor, or guest is governed by the Anti-Discrimination Policy and Grievance Procedure for Employee Claims of Discrimination by Another Employee, Guest or Contractor.

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<sup>1</sup> "Employee" includes all full-time and part-time college employees, faculty members, administrators and trustees.

Complaints about discrimination will be responded to promptly and equitably in accordance with the procedures set out under the applicable policy. The confidentiality of all members of the college community will be respected in each step of the complaint procedure, insofar as that is reasonably practicable. In addition, each policy explicitly prohibits retaliation against individuals for bringing complaints of discrimination or for participating in investigations of discrimination. Similarly, each policy prohibits retaliatory conduct against an individual simply because he or she has been accused of discrimination. An individual found to have engaged in discrimination or retaliation in violation of this policy will be subject to disciplinary action. If the individual is a bargaining unit member, such disciplinary action will be pursuant to the appropriate collective bargaining agreement. Conversely, if a complaint of discrimination is made in bad faith, then the complainant may be subject to disciplinary action.

## **B. Definition of Discrimination**

Generally, discrimination is a person's use of power or authority to deny educational or employment opportunities to another individual or class of individuals based upon their race, color, national origin, sex, sexual orientation, age, religion or disability. Discrimination can include a wide range of behaviors, such as classifying all students with dyslexia as "C" students regardless of the quality of their work, denying a student an internship opportunity because they are a member of a protected class or providing Caucasian students with extra time to complete an assignment while not doing so for minority students.

Discriminatory practices include but are not limited to the following:

1. harassment on the basis of race, color, national origin, sex, sexual orientation, age, religion or disability (discussed below);
2. retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
3. educational or employment decisions based on stereotypes or assumptions about the abilities, traits or performance of individuals of a certain race, color, national origin, sex, sexual orientation, age, religion or those with disabilities; and
4. denying educational or employment opportunities to a person because of marriage to, or association with, an individual of a particular race, color, national origin, religion or an individual with a disability.

Repeated suggestions or comments may constitute discriminatory harassment if they create an intimidating, hostile or offensive learning or working environment. In determining whether harassment based on race, color, national origin, sex, sexual orientation, age, religion or disability has created an intimidating, hostile or offensive environment or substantially interferes with an individual's academic or work performance, the college recognizes that unless the conduct is egregious, a single incident or isolated incidents of offensive comments or remarks may not create an intimidating, hostile or offensive environment. Further, if such conduct or remarks take place in the teaching context, to conclude that they create an intimidating, hostile or offensive environment, the individual who made the complaint must prove that the conduct or remarks are not, in any substantial and direct way, relevant or germane to the subject matter or discussion of the course or activity in which such conduct or remarks took place.

The college further recognizes that academic freedom protects the faculty's right to teach and the student's right to learn. The academic setting is distinct from the workplace in that academic freedom requires wide latitude for professional judgment in determining the appropriate content and presentation of academic material. Accordingly, a "hostile environment" in the classroom requires an establishment of a pattern of hostile, intimidating or offensive conduct not legitimately related to the subject matter of the course.

## **C. Confidentiality**

### **I. Generally:**

It is the policy of the college to protect the confidentiality of members of the college community who may be involved in discrimination complaint procedures, insofar as that is reasonably practicable. Specifically, the identity of the individual making the complaint (complainant), the identity of the accused (respondent) and information relating to the discrimination complaint will be disseminated only to those individuals who have a legitimate need to know, or as reasonably necessary for the purpose of investigating or resolving the complaint. Any person who is the custodian of confidential information shall maintain a log of the dissemination and review of such information.

Complainants should understand that upon their advising the Dean of Student Services of a discrimination complaint, the college is legally required to investigate that complaint. Therefore, complainants should understand that the complaint may be disclosed, as necessary, to persons on a "need to know" basis.

Although the college will endeavor to maintain the confidentiality of discrimination complaints and proceedings in accordance with this policy, it cannot absolutely guarantee against the further dissemination of information by individuals to whom such information was reasonably disclosed in the course of a discrimination investigation. All complaints will be fully investigated and the appropriate remedial action will be taken against alleged discriminators found to have violated the college's discrimination policy.

Any information acquired during the investigation will be kept in a confidential file in the office of the Compliance Officer and retained by the college for at least the statutorily required period.

## **2. Waiver of Confidentiality:**

A complainant or a respondent may be deemed to have waived, directly or indirectly, the confidentiality provisions of this policy by voluntarily disclosing information about the complaint or the complaint proceedings to parties within or outside the college community who are not directly involved in the investigation or complaint process. For instance, if a complainant or a respondent makes any public statement tending to impute negligence, misconduct, unfairness or incompetence to the college in conducting a discrimination investigation or complaint proceeding, the college shall have the right to disclose whatever information that is reasonably required to rebut or refute the allegations.

## **D. Retaliation**

No individual shall be retaliated against in any way by a member of the college community for his or her participation in this complaint procedure. No complainant or witness shall be retaliated against in any way by a member of the college community for his or her nonparticipation in this complaint procedure. Every effort should be made to protect members of the college community so that they may use or participate in the discrimination complaint procedure without fear of reprisal or retaliatory action. Threats, other forms of intimidation, and retaliation against the complainant or any other individual implementing or using the college's discrimination complaint procedure are violations of this policy and, thus, may be grounds for disciplinary action.

If an employee is found to have made a malicious or false statement, he or she may be subject to disciplinary action under the applicable collective bargaining agreement. If a student is found to have made a malicious or false statement, he or she may be referred to the Student Disciplinary Committee Board for appropriate action. Individuals who believe they have been retaliated against in violation of this policy must follow the complaint procedures outlined herein and such complaints will be processed in accordance with these procedures.

### III

## DISCRIMINATION COMPLAINT PROCEDURE

### A. Informal Stage: Reasonable Cause Determination

#### 1. Whom to Contact

Students who believe that they have been subjected to discrimination should contact the Office of the Dean of Student Services<sup>2</sup> for the campus at which the alleged discrimination occurred. The Deans of Student Services are the designated officials responsible for the investigation of discrimination complaints made by students and for determining if an informal resolution is possible, and if it is not possible determining if there is sufficient cause for an investigatory hearing to be held to determine whether discrimination has taken place.

The Dean of Student Services shall notify the Compliance Officer, Office of Legal Affairs, and the Administrative Director of Human Resources that a complaint has been made. In addition, as documents are received or created by the Dean of Student Services during the course of the investigation, copies shall be forwarded to the office of the Compliance Officer, where they shall be maintained in a confidential file.

#### 2. Timing of Complaint

A complaint of discrimination must be made within one year of the most recent occurrence of alleged discrimination. The Dean of Student Services is authorized to waive this timeliness requirement in extenuating circumstances including but not limited to circumstances wherein the complainant was subject to duress, or otherwise coerced or threatened by the respondent from filing the complaint.

#### 3. Initial Discussion; Preparation of Written Complaint; Respondent's Answer

The initial discussion between the complainant and the Dean of Student Services should be kept confidential to the extent possible. The Dean of Student Services shall attempt to informally resolve the matter through discussion with the complainant and the respondent within five (5) days<sup>3</sup> of receiving the complaint. The complainant will prepare and sign a written complaint when he or she first meets with the Dean of Student Services. Within his or her discretion, the Dean of Student Services shall deliver to the respondent by hand delivery or by certified mail, return receipt requested, either a copy of the written complaint or a summary prepared by him or her of the allegations contained in the complaint. The respondent shall also be given a copy of this Anti-Discrimination Policy and Grievance Procedure.

The respondent shall have the right to submit a written response to the allegations, accompanied by any relevant documents or other materials he or she may wish to include (including a witness list) within five (5) days of receiving a copy of the allegations. The answer shall be either hand delivered to the Dean of Student Services or sent certified mail, return receipt requested. Within the discretion of the Dean of Student Services, the complainant will receive a copy of the respondent's answer or a summary prepared by the Dean of Student Services of the contents of the answer.

If the complainant fails or refuses to submit a written complaint or otherwise cooperate with the investigation, or if the Dean of Student Services learns of alleged discrimination from a person other than the alleged victim, the Dean of Student Services shall create a written statement or summary noting the complainant's refusal to sign. The Dean of Student Services shall then conduct an investigation based on the information available to him or her. Despite the absence of a signed complaint, the respondent is still expected to cooperate in the investigation.

If the respondent refuses to participate in an investigation, the Dean of Student Services will have to come to a determination based on available information. In such a case, absent any contradictory evidence, the Dean of Students will assume that the complaint is truthful.

#### 4. Investigation and Sufficient Cause Determination

If the complaint is not informally resolved, the Dean of Student Services will have fourteen (14) days after the conclusion of the five day informal resolution period to complete an investigation of the allegations. If not previously provided, the complainant and the respondent shall receive copies of the written answer and written

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<sup>2</sup> In the event that Complainant believes that the Dean of Student Services may have a conflict of interest, or for other compelling reasons, he or she may report the complaint to the Executive Dean of his or her campus, who shall appoint a designee to conduct the informal stage of the complaint procedure.

<sup>3</sup> Unless otherwise noted, "days" means calendar days. Any deadline falling on a Saturday, Sunday or holiday shall be due on the next business day.

complaint, respectively. The investigation shall include but not be limited to, review of the complaint and the answer, interviews of witnesses, examination of all pertinent personnel files and employment records and review of any other written statements, documents or other evidence. The complainant, the respondent and all potential witnesses are encouraged to cooperate with the discrimination investigation. If the complainant or the respondent refuses to submit an answer or cooperate with the Dean of Student Services, the Dean of Student Services will have to come to a determination on the basis of available information.

Once the Dean of Student Services has completed the investigation, he or she will determine whether, based on a preponderance of the evidence, there is sufficient cause for an investigatory hearing to be held to determine whether discrimination has taken place. Complainant and respondent shall be promptly notified in writing (either personally delivered or sent certified mail, return receipt requested) of the determination of the Dean of Student Services. If some other form of misconduct is uncovered, the Dean of Student Services will notify complainant that the complaint has been forwarded to the proper forum.

If sufficient cause is found, then the Dean of Student Services will forward the file to the Anti-Discrimination Committee for an investigatory hearing. If respondent admits to the allegations made against him or her, no investigatory hearing shall be held. Instead, the Dean of Student Services will forward the file to the Anti-Discrimination Committee, which will make a recommendation to the Executive Dean as to appropriate sanctions. If no sufficient cause is found, then complainant shall have five (5) days from receipt of such notice in which to submit a written appeal of the finding to the Vice President for Student Affairs.

## **5. Appeal of a No Sufficient Cause Determination**

Upon receipt of a written appeal of a determination of no sufficient cause, the Vice President for Student Affairs shall review the file and, within five (5) days, render a decision on the appeal. If the Vice President for Student Affairs affirms the no sufficient cause determination, the complaint is dismissed. If the Vice President for Student Affairs overturns the no sufficient cause determination, then he or she will forward the file to the Anti-Discrimination Committee for an investigatory hearing.

## **B. Formal Stage: Investigatory Hearing**

### **I. Anti-Discrimination Committee Membership**

The Anti-Discrimination Committee is comprised of seven members, one (1) member each of the tenured faculty elected for three (3) years by governing bodies of the Eastern, Grant and Ammerman campuses; one (1) student member selected by the Vice-President for Student Affairs for one (1) year; two (2) members selected by the A.M.E. unit at the College for three (3) years, one (1) from the white collar unit and one (1) from the blue collar unit; and either the Compliance Officer, or the Administrative Director of Human Resources, whoever was not the investigator and will act as Chair of the committee. The Legal Affairs Officer shall be a non-voting advisory member of the Committee.

#### **a. Recusal**

Any Anti-Discrimination Committee member shall be recused if he or she is a party in the complaint, an immediate supervisor of complainant or respondent or a witness to the allegations in the complaint. Committee members may also be recused for other reasons, including but not limited to, personal, business or financial conflicts of interest between the Committee member and either complainant or respondent. The Compliance Officer will determine whether a conflict of interest exists. If the Compliance Officer is directly involved in the complaint, the Administrative Director of Human Resources will determine whether a conflict exists.

#### **b. Quorum and Voting**

A quorum of the Anti-Discrimination Committee shall consist of four (4) or more voting members. Any member not present at the investigatory hearing may not vote at that hearing. All best efforts will be made to convene a quorum. However, if a quorum cannot be convened within the time limits allowed in this policy, then the Compliance Officer and the available Committee members will proceed with the investigatory hearing. In the event of a tie vote, the case will proceed.

## **2. Investigatory Hearing**

Within fourteen (14) days of receipt of the file from the Dean of Student Services, the Anti-Discrimination Committee shall review the file, conduct a hearing and make a written finding as to whether the Committee believes that discrimination has occurred or, if applicable, whether it believes some other type of misconduct has

occurred. Under extenuating circumstances, the Committee may extend this time period for up to an additional fourteen (14) days.

The hearing serves both an investigatory and an adjudicative function. Both parties shall be notified of their right to seek advice from counsel or a union representative and of their right to have an advisor present at the hearing. The power of examination and cross-examination is reserved exclusively to the Committee. However, before the hearing, the parties or their advisor may submit suggested questions or propose that particular witnesses be called. The Committee will make every effort to ask questions so submitted that go to the issue and to call proposed witnesses that have testimony relevant to the issue. The hearing shall be recorded by stenographic or other means and a transcript of the proceedings shall be held in the Office of the Compliance Officer. Complainant and respondent may review the transcript in that department.

The hearing shall include, to the extent possible, the following:

- Examination of complainant, respondent and any witnesses who may be of assistance in resolving the complaint; and
- Review of any documents and other information submitted by the parties or witnesses; and
- Review of any other documents or information the Committee deems relevant.

The hearing shall be closed and may only be attended by complainant (and his or her advisor), respondent (and his or her advisor), the Committee members, the alternate Compliance Officer, College legal counsel, testifying witnesses, and personnel necessary for the administration of the hearing. The parties and their advisors have the right to be present throughout the hearing. Testifying witnesses may only be present for their own testimony. A testifying witness may have one advisor present during their testimony. This advisor must follow the same policies as the advisors for the complainant and the respondent noted above.

The Committee shall not be bound by technical rules of evidence, but may consider any relevant material and reliable evidence that it finds probative. The Committee shall determine the admissibility, relevance and weight of the evidence before it.

The Committee is to investigate discrimination complaints and is expressly authorized to investigate, consider and report findings regarding other misconduct related to the alleged discrimination that may be revealed during the course of the discrimination investigation. If the Committee finds misconduct that does not constitute discrimination, the Committee shall notify complainant that the Committee has forwarded the complaint to the proper forum.

### **3. Review by the Executive Dean**

Within five (5) days after the conclusion of the investigatory hearing, the Committee will forward a copy of its written findings to the Executive Dean of the campus where the alleged discrimination occurred and to the Office of the Compliance Officer, where it shall be maintained in a confidential file. If applicable, the findings should include any recommended remedial action (which could include disciplinary action up to and including termination) to be taken. If the Executive Dean is a party to the complaint, then a designee or neutral party, appointed by the Committee, shall conduct the review. The Executive Dean or the designee shall review the record as a whole and make a decision based on the totality of the circumstances. The review shall be completed within seven (7) days of receipt of the Committee's findings.

Where the charge is sustained, the Executive Dean or designee shall make a final determination as to the action to be taken and give to complainant, respondent and the Committee written notice of it. If the charge is not sustained, the Executive Dean or designee shall render a written decision detailing the compelling reasons for the determination and send it to complainant, respondent and the Committee. If the Executive Dean or designee decides that there is need for further investigation, then the Committee shall be so notified, in writing, that it must continue its investigation, in a timely manner, until a final decision can be rendered by the Executive Dean or designee. A copy of the Executive Dean's determination shall be forwarded to the Office of the Compliance Officer, where it shall be maintained in a confidential file.

If either complainant or respondent chooses to appeal the Executive Dean's determination, he or she shall have five (5) days from receipt of the determination in which to submit a written appeal of the determination to the President. A copy of the written appeal shall be forwarded to the Office of the Compliance Officer, where it shall be maintained in a confidential file.

#### **4. Appeal to the President**

Upon receipt of a written appeal of the Executive Dean's determination, the President shall review the investigatory file, the written findings of the Anti-Discrimination Committee and the written decision of the Executive Dean and, within ten (10) days, render a written decision on appeal. A copy of the written decision shall be forwarded to the Office of the Compliance Officer, where it shall be maintained in a confidential file. If the President agrees with the Executive Dean's decision, then the Executive Dean's determination as to the action to be taken shall be followed. If the President disagrees with the Executive Dean's decision, then the President shall determine the appropriate action to be taken. Such determination shall be based solely on the President's review of the investigatory file, the written findings of the Anti-Discrimination Committee and the written decision of the Executive Dean; the President shall make no independent findings of fact. The President's decision is final. If the final decision is to discipline the respondent, the applicable contractual provisions shall be followed. In all cases where the respondent has been found in violation of the College's policy, by the Anti-Discrimination Committee, and appeals have upheld that decision, written notification of such determination shall be placed in his or her personnel file.

Upon completion of all stages of the Discrimination Complaint Procedure, the original file and all copies will be maintained in the office of the Compliance Officer for at least the statutorily required time. No copies of the file will be maintained in any other office or department.

**Board of Trustees**

April 10, 2003