

## ***Policies and Procedures***

<b>SECTION:</b> <b>Administration</b>	<b>NO.</b> <b>2.2.3.</b>		
<b>CHAPTER:</b> <b>Human Resources</b>	<b>ISSUED:</b> 3/31/04	<i>REV. A</i>	<i>REV. B</i>
<b>POLICY:</b> <b>Harassment and Discrimination</b>	<i>PAGE 1 OF 7</i>		

### **PURPOSE**

The purpose of this policy is:

- a. To uphold the University's credo and mission in preserving the fundamental dignity and rights of all individuals involved in campus activities;
- b. To reaffirm, review, refine, disseminate and enforce the University's policies on non-harassment and non-discrimination in employment and academic environments;
- c. To establish effective mechanisms for investigating complaints in a manner that reasonably protects the confidentiality of individuals involved in situations of alleged harassment and/or discrimination;
- d. To ensure the provision of equal employment and educational opportunities to faculty, employees, students and applicants for such opportunities without regard to race, color, religion, sex, marital status, national origin, age, handicap or disability, citizenship, sexual orientation, maternity and lactation status, status as a Vietnam-era, special disabled or other veteran who served on active duty during a war, campaign or exhibition for which a campaign badge has been authorized in accordance with applicable federal law, and any other groups protected by federal, state or local statutes;
- e. To ensure the application of non-harassment and non-discrimination to all areas of employment, including, but not limited to, hiring, placement, promotions, benefits, terminations, layoffs, recalls, transfers, leaves of absence, compensation and training;
- f. To protect all those involved who report or provide information related to harassment and/or discrimination from retaliation of any kind;
- g. To set forth guidance for preventing harassment and/or discrimination; and
- h. To take timely corrective action when harassment and/or discrimination is alleged to have occurred.

### **POLICY**

It is the policy of the University to provide equal employment and educational opportunities to faculty, employees, students and applicants for such opportunities without regard to race, color, religion, sex, national origin, age, handicap or disability, marital status, citizenship, sexual orientation, maternity and lactation status, status as a Vietnam-era, special, disabled, or other veteran who served on active duty during a war, campaign, or exhibition for which a campaign badge has been authorized in accordance with applicable federal law. In addition, it is the policy of the University to comply with applicable state statutes and local ordinances governing nondiscrimination in employment and educational activities.

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This policy applies to all terms and conditions of employment including, but not limited to, hiring, placement, benefits, promotion, termination, layoff, recall, transfer, leaves of absence, compensation and training.

In accord with its history, mission and credo, Creighton University believes that each individual should be treated with respect and dignity and that any form of harassment and/or discrimination is a violation of human dignity. The University condemns harassment and discrimination and maintains a “zero-tolerance” for harassment and/or discrimination. The University will do its best to prevent and promptly correct instances of harassment or discrimination.

All members of the University community including, but not limited to, faculty, employees and students, are to comply with this policy. A member of the University’s community who believes himself or herself to be victim of harassment and/or discrimination, or any individual who has witnessed or has knowledge of instances of such conduct is encouraged to report the information to the University to enable it to investigate and to take corrective action where appropriate. Creighton University encourages members of the University community to report harassment before it becomes severe or pervasive. Creighton University will use its best efforts to stop harassment and discrimination before such incidents rise to the level of a violation of federal law.

Conduct between consenting persons is not considered sexual harassment under this policy, so long as the conduct does not enhance or jeopardize the job opportunities or standing of any faculty member, employee, or the academic opportunities of any students. Personal relationships may be of concern and may warrant action on the part of the University where they jeopardize co-worker or supervisory job performance, or otherwise create a conflict of interest or the appearance of favoritism. Faculty and employees should also refer to the University Policy on “Student Relationships with Employees” that strongly discourages such relationships.

### **SCOPE/ELIGIBILITY**

This policy applies to all faculty, employees, and students of the University community. When a complaint involves the actions of a student, the student discipline procedures in the *Student Handbook* will be followed. If a complaint involves the actions of a faculty member or a staff employee, the procedure outlined in this policy will be followed.

This policy also applies to all incidents of alleged harassment and/or discrimination, including those which occur off campus or outside of normal work, class or business hours, where the alleged incident involves a member of the University community and a supervisor, co-worker, faculty member student or non-University employee.

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Vendors, independent contractors, and other outside parties who conduct business with the University will be expected to comply with this policy as well, as specified by the terms of any contract between the University and such third party.

### **DEFINITIONS**

- Harassment or Discrimination.** Discriminatory treatment on the basis of race, color, sex, religion, sexual orientation, national origin, age, handicap or disability, marital status, citizenship, maternity or lactation status, status as a Vietnam-era, special, disabled, or other veteran who served on active duty during a war, campaign, or exhibition for which a campaign badge has been authorized in accordance with applicable federal law, or protected activity under the anti-discrimination statutes or discriminatory treatment as may be described by state statute, local ordinances or the University's policies. The conduct must be so objectively offensive as to alter the conditions of the victim's employment or educational experience. That is, the harassment must have culminated in a tangible employment or academic action or was sufficiently severe or pervasive to create a hostile work or educational environment. Examples of harassment include, but are not limited to, intimidation and humiliation as expressed by communications, threats, acts of violence, hatred, abuse of authority, or ill-will that assault an individual's self-worth. Harassment of a non-sexual nature can include slurs, comments, rumors, jokes, innuendoes, cartoons, pranks and other verbal or physical conduct, frequent, derogatory remarks about women even if the remarks are not sexual in nature and any other conduct or behavior deemed inappropriate by Creighton University.
- Sexual Harassment.** Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment where: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- Hostile Environment.** Harassment that is sufficiently pervasive as to alter the conditions of employment or the educational environment and create an abusive environment in which to work or study. The person alleging a hostile environment must show a pattern or practice of harassment against him or her; a single incident or isolated incidents generally will not be sufficient. In determining whether a reasonable person in the individual's circumstances would find the work or educational environment to be hostile, the totality of the circumstances must be considered.

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## **PROCEDURES**

### **a. Composition of the Committee:**

The Harassment and Discrimination Committee is a committee appointed by the President, as specified in the Introduction to the *Guide to Policies*. Members will be chosen by the President of the University, and may be relieved from further service on the Committee at any time, by notice from the President. The President will also appoint the Committee Chair. If a member is not dismissed sooner, members will serve three year terms at staggered intervals. Before any member of the Committee may participate in an investigation or a hearing, he or she must undergo training with the Office of the General Counsel on the legal principles of harassment and discrimination and on the proper way to conduct investigations.

### **b. General:**

- i. For the purpose of obtaining information about the process involved in harassment and/or discrimination cases, any individual may consult with the Chair of the Committee on Harassment and Discrimination.
- ii. The University encourages any member of the University community who feels he or she has been subjected to harassment or discrimination to use the complaint procedure outlined in this policy. However, this procedure does not in any way deprive an employee of the right to file a complaint with outside enforcement agencies, such as the Equal Employment Opportunity Commission (EEOC) or the Nebraska Equal Employment Opportunity Commission (NEOC). The time frame for filing charges of unlawful harassment with the EEOC or the NEOC varies depending on the law and whether a complainant is filing under state or federal laws. For claims under the Nebraska Fair Employment Practices act, the time frame for filing is 300 days. For claims under the Age Discrimination in Employment Act or Nebraska's Equal Pay act, the time frame for filing is 4 years. The deadline for filing runs from the last date of unlawful harassment or discrimination, not from the date that the complaint is resolved under the University's procedures set out in this Policy. If a complainant has additional questions, he or she may contact the Nebraska Equal opportunity Commission. The contact information is:  
 Downtown Education Center/State Office Building  
 1313 Farnam Street, 3<sup>rd</sup> Floor  
 Omaha, NE 68102-1836  
 Telephone: (402) 595-2028  
 Toll Free Number: 1-800-382-7820

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- iii. If a person pursues his or her rights to file a complaint under this procedure, such individual will not be permitted to file a complaint alleging the same incident with another grievance committee within the University system.

**c. Informal:**

In the event of an allegation of harassment and/or discrimination, the person(s) alleging such harassment and/or discrimination may approach any one of the following people to seek to effect an informal resolution to a situation:

- i. The Director of Affirmative Action
- ii. The Director of Human Resources
- iii. The Employee Relations Administrator
- iv. The person's supervisor or the supervisor's supervisor
- v. The Assistant/Associate Vice President for Student Services (when a complaint involves a student)

If the individual who was approached is unable to effect an informal resolution to the situation, he or she will so advise the person alleging harassment and/or discrimination and will refer the matter to the Chair of the Committee on Harassment and Discrimination for formal proceedings.

In no case may a person or group of persons exercise more than one informal option. After an attempt at informal resolution, the case may either be dropped by the person or persons bringing the complaint, be considered resolved by the person or persons bringing the complaint, or move to the formal stage.

**d. Formal:**

In all cases of an allegation of harassment and/or discrimination, the person(s) making such allegation shall have the right to bypass the informal process and to proceed to a formal process conducted by the Committee on Harassment and Discrimination. In the event that an informal resolution of the allegation of harassment and/or discrimination is not resolved to the satisfaction of the person(s) making the allegation, the person(s) alleging such harassment and/or discrimination may submit to the Chair of the Committee on Harassment and Discrimination a written petition for a formal hearing.

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- i. The written petition shall set forth in reasonably sufficient detail the nature of the complaint and the available evidence or sources of evidence.
- ii. The Committee shall have the right to decline to hold a formal hearing in those cases which the Committee believes to be *prima facie* without merit but only after reviewing sufficient facts to support its decision. However, in all other instances, the Committee will conduct a detailed fact-finding investigation as necessary for the particular case and it will begin its investigation promptly, using the procedure outlined below.
- iii. The Committee shall provide general information about the allegations to the person(s) accused.
- iv. The Committee shall call upon witnesses as it deems appropriate for conducting its investigation as outlined below.
- v. Upon receipt of a complaint, the Committee shall first determine whether a detailed fact-finding investigation is necessary, and if it is, it will undertake a prompt, thorough, and impartial investigation at the direction of the Office of the General Counsel to protect the investigatory file to the maximum extent possible under the attorney-client privilege.
- vi. The investigator will ensure that statements of the complainant, alleged offender, and all witnesses are documented thoroughly and that the investigation is conducted in a thorough, objective manner and is considerate of the rights and emotions of all of the parties involved. The investigator will objectively gather and consider relevant facts.
- vii. The investigation should be private and confidential to the greatest extent possible. However, no member of the University's staff or faculty, or any student is promised strict or absolute confidentiality. The investigator will submit a written, confidential summary of findings, including a recommendation for action to the Office of the General Counsel, and to the appropriate University authority who will make a decision on the action, if any, to be taken.
- viii. The appropriate authority in matters involving complaints made against students is the Vice President of Student Services. The appropriate authority in matters involving complaints made against members of faculty or staff will be the Vice President of the division in which the alleged harasser is employed.

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- ix. The appropriate authority, in conjunction with the Office of the General Counsel should decide on an appropriate course of conduct with respect to the alleged offender, if the investigation reveals that an individual has engaged in harassing or discriminatory behavior with respect to another individual or individuals. The University will take immediate and appropriate corrective action when it determines that harassment or discrimination has occurred. In all cases of formal allegations of harassment and/or discrimination, the decisions and recommendations of the Committee shall be provided to the person(s) making the allegations, to the person(s) accused in the allegations, to the appropriate Vice President within the University and to the Director of Affirmative Action.
- x. The alleged victim or the accused may appeal the decision made by the appropriate authority listed above in instances where he or she is dissatisfied with the decision. An appeal must be filed by the person who wishes to appeal, within 10 working days after receiving the written decision. The appeal should be filed with the Office of the President, and shall set forth the grounds for the appeal. The President shall only recommend a change in the decision made by the appropriate authority if the decision is arbitrary or capricious, or if the decision is clearly unsubstantiated by the evidence. The President shall issue a final determination within 30 working days of receipt of the appeal. The President’s decision shall be considered final.

## **PROHIBITION AGAINST RETALIATION**

The University expressly prohibits any form of retaliatory action against any employee for filing a bona fide complaint under this Policy or for assisting in a complaint investigation. However, if after investigating any complaint of harassment or unlawful discrimination, the University determines that the complaint is frivolous, or was not made in good faith or that an employee has provided false information regarding the complaint, disciplinary action may be taken against the individual who filed the complaint or who gave the false information.

## **AMENDMENTS OR TERMINATION OF THIS POLICY**

Creighton University reserves the right to modify, amend, or terminate this policy at any time.