

Policies and Procedures

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CHAPTER: General	ISSUED: 3/13/13	REV. A	REV. B
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PURPOSE

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. Students, faculty, and staff have the right to work and learn free of harassment and discrimination. The University will take all reasonable efforts to prevent and promptly correct instances of harassment or discrimination. Additionally, students, faculty and staff have the right to a structured process for resolving problems, complaints or grievances relating to the execution of institutional policies. The purpose of this policy is:

- a. To communicate the mechanisms for investigating complaints in a manner that reasonably protects the privacy of individuals involved in situations of alleged harassment and/or discrimination and grievances;
- b. To ensure the provision of equal employment and educational opportunities to faculty, staff, students and applicants for such opportunities without regard to race, color, religion, sex, marital status, national origin, age, disability, citizenship, sexual orientation, veteran status, and any other groups protected by federal, state or local statutes;
- c. To protect all those involved who report or provide information related to harassment, discrimination, and/or grievances from retaliation of any kind;
- d. To set forth guidance for preventing harassment and/or discrimination;
- e. To take timely corrective action when harassment and/or discrimination is alleged to have occurred;
- f. To ensure that students, faculty and staff have the opportunity to present grievances to the University regarding a certain action(s) perceived to be in violation of institutional policies by a member of the University community; and
- g. To establish a consistent process for resolving complaints of harassment and/or discrimination and grievances in a fair and just manner.

POLICY

It is the policy of the University to provide equal employment and educational opportunities to faculty, staff, students and applicants without regard to race, color, religion, sex, marital status, national origin, age, disability, citizenship, sexual orientation, veteran status, and any other groups protected by federal, state or local statutes. 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. It is also the policy of the University to address grievances that are perceived to be in violation of an institutional policy that are not governed by other specific grievance procedures. Upon notification, The Office of Equity and Inclusion will determine if an investigation is warranted, enabling the office to investigate and to take corrective action where appropriate.

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A member of the University's community who believes himself or herself to be victim of harassment and/or discrimination is encouraged to report the information to The Office of Equity and Inclusion. The University requires all faculty and exempt staff to report any information they learn about discriminatory harassment, sexual harassment, discrimination, or sexual misconduct to the Office of Equity and Inclusion (see [Mandatory Reporters Policy 2.1.26.](#)). The University encourages non-exempt staff and students to report all instances of harassment and discrimination.

The University will broadly disseminate this policy and distribute a list of resources available to respond to grievances, as well as concerns of harassment and/or discrimination. Additionally, the Violence Intervention and Prevention Center will develop and present appropriate educational programs for students, faculty, and staff. Creighton University will make every effort to stop harassment and discrimination before such incidents rise to the level of a violation of federal law.

SCOPE/ELIGIBILITY

This policy applies to all faculty, staff, and students of the University community. Non-university employees, including vendors, independent contractors, and other outside parties who conduct business with the University through affiliation and other agreements will be expected to comply with this policy as well, as specified by the terms of any contract or agreement between the University and such third party.

Additionally, 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.

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.

DEFINITIONS

- **Complainant.** An individual who is subject to alleged discrimination, harassment, retaliation, or unfair treatment regarding the interpretation or application of an existing University policy.
- **Respondent.** An individual whose alleged conduct is the subject of a complaint.
- **Discrimination.** Any distinction, preference, advantage for or detriment to an individual compared to others that is based upon an individual's actual or perceived race, color, religion, sex, marital status, national origin, age, disability, citizenship, sexual orientation, veteran status, and any other groups

protected by federal, state or local statutes. The conduct must be so objectively offensive as to alter the conditions of the individual's employment or educational experience.

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- **Discriminatory Harassment.** Detrimental action based on an individual's actual or perceived race, color, religion, sex, marital status, national origin, age, disability, citizenship, sexual orientation, veteran status, and any other groups protected by federal, state or local statutes that is so severe, persistent or pervasive that it unreasonably interferes with or limits an individual's ability to participate in or benefit from the 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.
- **Sexual Misconduct.** Include any unwanted kissing, any unwanted touching of an intimate part of another person, such as a sexual organ, breast, or buttocks as well as forced or non-consenting sexual intercourse. In this definition, sexual intercourse is defined to include sodomy, oral copulation, and rape by foreign object (penetration of genital or anal openings by a foreign object, including a finger). [Additional information and definitions.](#)
- **Retaliatory Harassment.** Intentional action taken by an accused individual or allied third party that harms a complainant, witness, reporter or any other individual for filing or participating in a University investigation.
- **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.
- **Grievance.** An issue of dispute that involves interpretation or application of an existing University policy.
- **Mandatory Reporter.** All faculty and exempt staff are required to report acts of discrimination, discriminatory harassment, sexual harassment, sexual misconduct, and crimes, and concerning and/or disruptive student behaviors. All non-exempt staff and students are strongly encouraged to report

concerning behaviors, discrimination, discriminatory harassment, sexual harassment and crimes (see [Mandatory Reporters Policy 2.1.26.](#)).

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PROCEDURES

a. General:

- i. **Inquiries.** For the purpose of obtaining information about reporting any instance of harassment and/or discrimination, any individual may consult with the Office of Equity and Inclusion.
- ii. **Education.** The University will broadly disseminate this policy and distribute a list of resources available to respond to grievances, as well as concerns of harassment and/or discrimination based on race, color, religion, sex, marital status, national origin, age, disability, citizenship, sexual orientation, veteran status, and any other groups protected by federal, state or local statutes. Additionally, The Violence Intervention and Prevention Center will develop and present appropriate educational programs for students, faculty, and staff.
- iii. **Annual Report.** The Office of Equity and Inclusion shall maintain an annual report documenting the number of complaints received pursuant to this policy, the categories of those involved in the allegations, the number of violations found, and examples of sanctions/corrective actions imposed for policy violations.
- iv. **Administrative Review:** In the absence of a formal complaint, the Office of Equity and Inclusion has the authority to initiate an administrative review at the request of a department, division, program, or area when in the requested by a manager, supervisor, director, department chair, dean, vice president, or provost or when in the judgment of the Office of Equity and Inclusion a review is necessary. As necessary the University reserves the right to serve as complainant and to initiate an investigation without a formal complaint.
- v. **Resolution Options Outside of the University.** 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. Additionally, an individual has the right to file a complaint with outside enforcement agencies:
 - a. **Filing a Complaint with an Outside Agency.** An individual also has the right to file a complaint with outside enforcement agencies including the [United States Department of Education’s Office of Civil Rights](#), the [Equal Employment Opportunity Commission \(EEOC\)](#), the [Nebraska Equal Opportunity Commission \(NEOC\)](#), [Nebraska Department of Labor](#), and [City of Omaha Office of Human Rights and Relations](#), or state or local law enforcement or prosecution authorities.
 - b. Students located in Arizona may file a complaint with the Arizona State Board of Private Postsecondary Education. The student must contact the State Board for further details. The

State Board address is 1400 W. Washington Street, Room 260, Phoenix, AZ 85007, phone 602-542-5709, website address: www.azppse.gov.

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- c. In the event a student located in any other state wishes to file a complaint with their state agency a listing of all state boards can be found [here](#).
 - d. For additional information on resolution options outside of the University an individual may contact the Violence Intervention and Prevention Center.
 - e. Additionally, individuals may file a civil law suit against the offending party.
 - vi. **Retention of Records.** All records of grievance, harassment, discrimination, and discriminatory retaliation reports and investigations will be private and confidential to the greatest extent possible and will not be publicly disclosed except to the extent required by law. However, no member of the University's staff or faculty, or any student is promised strict or absolute confidentiality. Additionally, all records will be retained for a minimum of seven years. When the respondent is a student, records will be retained according to the Retention of Disciplinary Record and Record Check Policy in [The Creighton University Student Handbook](#).
 - vii. **Anti-retaliation.** The University expressly prohibits any form of retaliatory action against any individual for filing a bona fide complaint under this Policy or for assisting in a complaint investigation.
 - viii. **False Reporting.** The University encourages anyone who believes that s/he has been the victim of harassment or discrimination to report her/his concerns but will not tolerate intentional false reporting of incidents.
 - ix. **Complaint Resolution.** The investigation of any complaint of harassment, discrimination or grievance will determine if this Policy was violated. Additionally, the investigative report may address other serious issues disclosed during the course of the investigation and make recommendations to the appropriate University department or official for resolution.
 - x. **Conflict of Interest.** In the formal resolution process, if a member of the investigative team or the appropriate University authority has an actual or perceived conflict of interest, the investigator or appropriate University authority may be asked to excuse himself/herself from the process or the investigator or appropriate University authority may ask to excuse himself/herself from the process. The excused individual shall not have access to any of the materials for the case from which the individual is excused.
- b. Informal Resolution:** An option available to students, faculty and staff is to seek resolution informally. The University does not require an individual to contact the person directly whose behavior is unwelcome. Mandatory reporters should always contact The Office of Equity and Inclusion prior to any attempt to resolve a complaint.

- i. One-on-One Communication:
 - a. If an individual is comfortable dealing with the situation without direct involvement of a third party, the individual can communicate directly with the person whose behavior is unwelcome.

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- b. It is appropriate to use face-to-face communication only when the individual does not feel threatened, there is no risk of physical harm and you believe the other person will be receptive.
- c. Email/written correspondence is the preferred method of communication. If the individual chooses to communicate face-to-face, s/he should also send an email summarizing the face-to-face interaction. Keep copies of any written communication.
- d. One-on-One Communication should include:
 1. A factual description of the incident(s) including a description of the unwelcome behavior, date, time, place, and the names of any witnesses.
 2. A description of any consequences that the individual has experienced due to the unwelcome behavior.
 3. A request for the unwelcome behavior to cease.
 4. If the individual does not feel comfortable with the one-on-one communication or if the individual believes that the communication was not successful, the individual should consider other informal or formal procedures.
- ii. Third Party Assistance. If an individual desires the assistance of a third party to attempt to resolve the situation informally, the individual may approach any one of the following resources:
 - a. The Office of Equity and Inclusion
 - b. The Center for Student Integrity (student)
 - c. Human Resources (faculty and staff)
 - d. The individual’s supervisor or the supervisor’s supervisor (faculty, staff & student employees)

All faculty, staff and students are strongly encouraged to report any actions or behaviors believed to be in violation of this policy. Allegations of harassment and discrimination that come to the attention of faculty and exempt staff must be reported. See [Mandatory Reporter Policy 2.1.26](#) for additional information.

If the situation is not able to be resolved informally or if the individual chooses not to engage in an informal resolution, the individual may initiate a formal complaint using the procedures below.

c. Formal Resolution:

In all cases of an allegation of harassment, discrimination, and/or grievance, the individual(s) making such allegation may choose to bypass the informal resolution options and to proceed to a formal resolution. In the event that an informal resolution of the allegation of harassment, discrimination, and/or grievance is

not resolved to the satisfaction of the individual(s) making the allegation, the person(s) alleging such harassment, discrimination, and/or grievance may submit a formal written complaint to The Office of Equity and Inclusion.

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- i. The written complaint shall set forth in reasonably sufficient detail the nature of the alleged harassment and/or discrimination, the individual(s) against whom the complaint is made, the name(s) of any witnesses, and any available evidence or sources of evidence. See [Harassment, Discrimination and Grievance Complaint Form](#).
- ii. Upon receipt of a written complaint, The Office of Equity and Inclusion shall first determine whether or not the written complaint states a potential violation of the Harassment, Discrimination and Grievance Policy or federal and state laws. The Office of Equity and Inclusion will notify the complainant in writing of its decision within five working days.
- iii. If there is the potential of a violation of the Harassment, Discrimination and Grievance Policy or federal and state laws, The Office of Equity and Inclusion will assign an investigation team from its pool of trained investigators to conduct a prompt, thorough, and impartial investigation.
- iv. The investigation team will objectively gather and consider relevant facts. The investigation team will ensure that statements of the complainant, the respondent, and all witnesses are documented 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.
- v. Upon assignment to an investigation team, the investigation will normally be concluded within 30 working days. The complainant and respondent will be notified in writing of any delays.
- vi. The investigation will 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 investigation team will submit a written investigative report, including the findings of the investigation and a recommendation for action, based on a preponderance of evidence, to the Associate Vice President for Equity and Inclusion. In consultation with the appropriate University authority, the Associate Vice President for Equity and Inclusion will make a decision on the action, if any, to be taken.
 - a. The appropriate University authority in matters involving complaints where the respondent is a student is the Vice Provost for Student Life.
 - b. The appropriate University authority in matters involving complaints where the respondent is a member of the faculty reporting to him/her is the Dean of the College or School of the respondent.
 - c. The appropriate University authority in matters involving complaints where the respondent is a member of the staff is the Associate Vice President for Human Resources.
 - d. Additionally, the Associate Vice President for Equity and Inclusion may also consult other University officials in order to make a determination.

- viii. In all cases of formal allegations of harassment, discrimination and/or grievance, a summary of the findings and recommendations shall be available for review by the complainant, the respondent, and to the appropriate University authority.

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- ix. The Associate Vice President for Equity and Inclusion will accept or reject the findings and/or recommendations of the investigative report using a preponderance of evidence standard.
- x. The Associate Vice President for Equity and Inclusion will communicate the decision to the complainant, to the respondent, and to the appropriate University authority within five working days. The University will take immediate and corrective action if appropriate.

d. Appeal

- i. The complainant or respondent may appeal the decision made by the Associate Vice President for Equity and Inclusion for one or more of the following grounds:
- The decision made is arbitrary or capricious,
 - If the decision is clearly unsubstantiated by the evidence, or
 - If new information is presented that was not available during the course of the investigation.
- ii. The written appeal must be filed within five working days after receiving the written decision with one of the following University authorities:
- The Provost will review all appeals involving complaints where the respondent is a student or a faculty member.
 - The Senior Vice President will review all appeals involving complaints where the respondent is a staff member.
- iii. The final determination will be made by the Provost or the Senior Vice President, using a preponderance of evidence standard within five working days upon receiving the written appeal.
- iv. The decision will be communicated to the complainant, respondent, and the Associate Vice President for Equity and Inclusion and shall be considered final.

AMENDMENTS OR TERMINATION OF THIS POLICY

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