

# California State University, Long Beach

## Policy Statement

98-09

October 26, 1998

### **Discrimination, Including Sexual Harassment, Policy and Complaint Resolution Procedures**

This policy was recommended by the Academic Senate on October 8, 1998 and approved by the President on October 15, 1998.

#### I. Purpose

The purpose of this document is to articulate the California State University, Long Beach policy regarding prohibited discrimination, including sexual harassment, in accordance with federal and state, California State University, and California State University, Long Beach, laws, rules, regulations, policies, and guidelines regarding discrimination, and to set forth a uniform process for the disposition of complaints alleging prohibited discrimination.

#### II. CSULB Philosophy Regarding Diversity and Discrimination

The basic reasons for which a university exists are the discovery and transmission of knowledge, and activities that are founded upon the free and open exchange of ideas. Such activities flourish only in a climate unfettered by exploitation, coercion, harassment, intimidation and/or reprisal.

CSULB admits students of any race, religion, age, color, creed, gender, handicap, sexual orientation, or national or ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at CSULB. CSULB does not discriminate on the basis of race, religion, age, color, creed, gender, handicap, sexual orientation, or national or ethnic origin in the administration of its educational policies, admission policies, employment policies, or any other programs administered by the University.

In addition to meeting fully its obligations of nondiscrimination under federal and state law, CSULB is committed to creating a community in which a diverse population can live, and work, in an atmosphere of tolerance, civility, and respect for the rights and sensibilities of each individual, without regard to economic status, ethnic background, political views, sexual orientation, or other personal characteristics or beliefs. CSULB Statement on Ethical and Social Rights and Responsibilities. Approved April 27, 1992

The University recognizes the importance of an ongoing commitment to help all members of the campus community be aware of what forms that discrimination might take, including sexual harassment, and the avenues available to redress complaints.

#### III. Prohibited Discrimination

A. No student, employee, volunteer, member of the public, nor recipient of services and/or benefits provided by CSULB shall be subjected to any form of prohibited discrimination in any CSULB programs or activities, including but not limited to:

1. All educational, cultural, recreational, and social activities occurring on the CSULB campus and/or sponsored or assisted by CSULB;
2. Any CSULB academic program or activity;
3. Any CSULB sponsored off-campus programs;
4. Housing supplied or regulated by the University;
5. Employment practices of the University, including, but not limited to, hiring, training, promotion, demotion, transfer, recruitment, layoff or termination, rates of pay or other forms of compensation, any other employment conditions including the work environment;
6. Choice of contractors and suppliers of goods and services;
7. Provision of services and benefits to CSULB students, employees, volunteers, or the public;
8. Receipt of CSULB services and benefits provided by CSULB contractors or vendors.

#### B. Definition of Prohibited Discrimination

1. Prohibited discrimination is discrimination of an individual or class of individuals, as articulated in State of California, federal, CSU, and CSULB laws, rules, regulations, guidelines and orders.

The bases of prohibited discrimination are

- \*race, \*color,
- \*national origin, \*ancestry,
- \*ethnicity, \*gender (including sexual harassment),
- \*marital status, \*sexual orientation (actual or perceived),
- \*age, \*medical condition,
- \*pregnancy, \*military service during the Vietnam era,
- \*religion,
- \*physical or mental disability

This policy is meant to reflect all current laws and will be updated as appropriate.

2. Prohibited discrimination includes discrimination because an individual has opposed prohibited discrimination, filed a discrimination complaint, testified, assisted, or participated in any manner in any proceeding regarding prohibited discrimination, or has attempted to do so.

3. The University, as well as the law, will tolerate no form of retaliation against individuals who have exercised the rights stated in III.B.2.

#### IV. Sexual Harassment

Sexual harassment is a form of discrimination that is specifically addressed by legislatures and courts, and is one of the most prevalent forms of discrimination. Sexual harassment, whether same sex or cross sex, is discrimination. The law recognizes an obligation on the part of the University to ensure that sexual harassment does not take place and, under certain circumstances, may hold the University responsible for the acts of its employees and students.

##### A. Definition

Sexual harassment is distinguished from consensual or welcome sexual relationships by the introduction of the elements of coercion; threat; unwelcome sexual advances; unwelcome requests for sexual favors; other unwelcome sexually explicit or suggestive written, verbal, or visual material; or unwelcome physical conduct of a sexual nature. Sexual harassment may also occur when behavior creates a hostile, intimidating, or offensive environment of a sexual nature. Such behavior is unacceptable and may require the University to take disciplinary or corrective action. Specifically, sexual harassment may occur when a person either verbally or physically:

1. Subjects another to unwanted sexual attention;
2. Attempts to coerce another into a sexual relationship;
3. Implies that sexual favors are terms or conditions for participation in a class or work environment;
4. Implies that sexual favors may be a basis for the assigning of grades in a course or in any way enter into performance evaluation;
5. Engages in conduct of a sexual nature which has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile, or offensive working or learning environment;
6. Grants or refuses academic or employment opportunities on the basis of an individual's submission or refusal to submit to sexual advances or requests for sexual favors; or
7. Punishes or threatens to retaliate against an individual who has either refused to comply with requests for sexual favors or complained regarding such conditions.

##### B. Examples

Specific examples of what may constitute sexual harassment include, but are not limited to:

1. Subtle pressure for sexual activity, including repeated requests for outside social contacts if unwanted by the recipient;
2. Unwelcome patting, pinching or hugging;

3. Unwelcome constant brushing against another employee's or student's body;
4. Unwelcome "friendly" arms around the shoulder; repeated "accidental" brushes or touches;
5. Deliberate assaults or molestations;
6. Demanding sexual favors accompanied by implied threats concerning an individual's employment or academic status;
7. Demanding sexual favors accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or academic status; or
8. Explicit offers of money or rewards for sex.

These examples of behavior should be used to assist in identifying offensive behaviors but in no way should be construed as an exhaustive list of unacceptable acts. In determining whether the alleged conduct constitutes sexual harassment, consideration should be given to any past record of similar incidents, to the totality of the circumstances, including the context in which the alleged incidents occurred, and to the egregiousness of an individual act.

#### C. Hostile Environment

Examples of sexual harassment which may create a hostile, offensive, and intimidating environment include posters, pictures, correspondence (written or electronic), comments or actions of a sexual nature sufficiently inappropriate, severe or pervasive as to create a hostile, intimidating, or offensive academic or employment environment.

#### D. Special Situations Regarding Sexual Harassment

##### 1. Peers

Sexual harassment may also occur between peers (i.e., persons with equal power). Unwelcome sexual behavior between peers under this definition is unacceptable in the University. Recipients of such unwelcome behavior from a peer, whether students, staff, or faculty, may either confront the alleged offender directly, pursue the matter with the appropriate administrator, or pursue sexual harassment complaints against persons of equal power using the complaint resolution mechanism described herein.

##### 2. Students

Student harassment of another student is the most frequent form of student harassment. There also could be student harassment of faculty and of staff. Recipients of such unwelcome behavior from a student may either confront the alleged offender directly, pursue the matter with the appropriate administrator, or pursue sexual harassment complaints against students using the complaint resolution mechanism described herein.

##### 3. Consensual Relationships

Voluntary sexual relationships between persons in an unequal power relationship such as relationships between faculty and subordinate faculty or staff, between a supervisor and any of those employees he or she supervises, or between a faculty member or teaching assistant and a student in the person's class may give rise to legal concerns as well as ethical concerns or conflict between personal and professional interests.

Although a relationship with a subordinate may initially be consensual, it may cease to be welcomed and actions thereafter may result in a claim of sexual harassment.

There may also be some concern about the response of third party observers to such relationships. Third parties may complain that they are being adversely affected in their academic or employment opportunities. If such adverse effects can be established and are severe or pervasive, both men and women may file a grievance.

#### E. Sexual Relationships and Professional Conduct

All members of the campus community have responsibility for maintaining an open campus atmosphere conducive to the free exchange of ideas. Inappropriate sexual advances or unnecessary sexual comments undermine this atmosphere and are unprofessional even though such behavior may not technically constitute sexual harassment.

Primary responsibility for maintaining high standards of conduct resides especially with faculty, administrators and supervisors, since they exercise significant authority and power over others. If the highest standards of professional conduct are to be maintained, all responsible members of the campus community should understand that sexual advances or comments by teachers or supervisors toward one of their students or employees might constitute unprofessional conduct and/or an appearance of unequal treatment of individuals. This may be the case even if such actions may not constitute sexual harassment. Such unprofessional conduct blurs professional boundaries, interferes with a climate conducive to the open exchange of ideas between persons, subverts the normal structure of incentives that spurs work and learning, and interjects attitudes and pressures which may undercut the basic reasons for which the University exists. In such cases, objectivity may be compromised or destroyed and competent evaluation threatened.

#### V. Disabled Rights and Responsibilities

A. Federal and state law provide persons with certain types of disabilities with the right to reasonable accommodation or reasonable modification, including assistive services, to enable them to be employed by and/or receive equal benefit of services provided by the University. Disabled persons should initiate requests for modification and reasonable accommodation before taking action to initiate a complaint of discrimination. If an individual is registered with the California Department of Rehabilitation, he or she may seek assistance through that agency for an assessment of the resources available of assistive/adaptive devices and other possible modifications.

B. Students with disabilities who need special assistance or modification of the University's educational programs and/or activities in order to receive equal benefit of the University's programs and activities should direct the request to the person(s) responsible for the delivery of the service or benefit. If the modification or service offered is inappropriate or insufficient, the student should seek the assistance of the Director, Disabled Student Services, to resolve the issue. If the student feels that the resolution fails to provide

appropriate or sufficient reasonable modification, the student then should access the complaint process.

C. Employees with disabilities who need reasonable accommodation in order to carry out the duties of their job should inform their immediate supervisor. If the employee feels that the resolution fails to provide appropriate or sufficient reasonable accommodation, the employee should contact the Office of Equity and Diversity.

D. If the Office of Equity and Diversity does not provide a reasonable, satisfactory accommodation, the complainant may access the complaint resolution process.

E. Members of the general public or volunteers with disabilities who need modification or a reasonable accommodation in the University's programs and/or activities in order to receive equal benefit of the University's programs and activities should inform the person (s) responsible for these programs and/or activities. If the disabled individual feels that the accommodation or modification offered is inappropriate or insufficient, the individual should seek the assistance of the Director, Equity and Diversity, to resolve the issue. If the disabled person feels that the resolution fails to provide appropriate or sufficient reasonable accommodation or modification, the person should then access the complaint process.

## VI. Confidentiality

### A. Information and Advice

The University is committed to maintaining a safe environment in which individuals can be unafraid to discuss concerns and make complaints. A person may seek general information and guidance about discrimination, especially sexual harassment, in total confidentiality. A discussion will normally remain confidential, and no action normally will be taken, when an individual does not disclose any identifying information about him/herself or any other party (e.g., names, department, or unit). However, in some situations the University may be legally obligated to take some action once it is informed that discrimination may be occurring.

### B. Making a Complaint

Once an individual discloses identifying information, he or she will be considered to have filed a complaint with the University. The expressed wishes of the complainant regarding confidentiality will be considered in the context of the University's legal obligation to act upon the charge and the right of the charged party to obtain information. While the confidentiality of the information received, the privacy of the individuals involved, and the wishes of the complainant regarding action by the University will be respected to as great a degree as legally possible, they cannot be guaranteed.

## VII. Discrimination Complaint Resolution Procedures

### A. Introduction

1. Members of the CSULB community have the right to work and learn in an environment free of unlawful discrimination, including sexual harassment. An individual who feels that unlawful discrimination has occurred has a right to request resolution of the situation using

either the informal or the formal complaint resolution procedures of CSULB. These procedures are designed to resolve complaints in a timely and responsive manner.

2. The President has appointed Discrimination Contact Persons ("Contact Persons") and a Discrimination Complaint Resolution Officer\* ("DCO") to serve as a resource for any member of the campus community who has a discrimination complaint or inquiry of any sort, including sexual harassment. (See Section VIII.)

3. Resolution procedures shall be implemented with discretion and sensitivity, giving careful attention to the rights of all parties to due process and confidentiality. University officials (Contact Persons, supervisors, administrators, or the DCO) will review each claim to minimize capricious claims and to uphold the rights of all parties.

4. Complaints are most effectively addressed at the earliest possible stage.

5. Discrimination complaints must be filed no later than 180 days after the alleged offense(s) occurred. The President (or designee) may extend this deadline, and all other deadlines, upon request of the DCO and with notification to the affected parties.

6. If the informal complaint procedure fails to resolve a complaint, the complainant or the DCO may proceed to the formal complaint resolution process. In this event, the deadline will be deemed to have been met if the informal procedure was begun within 180 days.

7. The complainant should be prepared to describe the alleged offense(s) and to tell what remedy is sought.

8. If a complainant cannot complete the complaint form due to language barrier, physical barrier, or competency/capacity barriers, another person may complete the complain form. Where there is a language barrier, a translation/translator shall be provided in the dominant language of the complainant.

#### B. Informal Complaint Resolution

1. The complainant of alleged discrimination may begin the informal complaint resolution process by seeing the appropriate work supervisor, the chair of an academic department, the dean of a college, the Employee Relations Director, the Equity and Diversity Director, or a Student Services Professional.

2. The person receiving the complaint may consult with, or refer the complainant to, the DCO.

3. Should the complaint not be resolved at this initial level, or if the complainant chooses not to seek resolution with an individual in #1, the complainant may go directly to a Contact Person or the DCO.

4. The Contact Person or DCO will review all complaints received and will explore alternatives for resolution with the complainant. The Contact Person or DCO may attempt informal resolution in consultation with the complainant.

5. Individuals mentioned in B.1. or the Contact Person shall inform the DCO of the complaint within five (5) working days of initially receiving the complaint, and consult with

the DCO every ten (10) working days until the complaint is resolved or is forwarded to the DCO.

6. The Contact Person, after consultation with the DCO, may contact the alleged offender as a part of seeking informal resolution.

7. If the complaint is being handled by the DCO, he or she may contact all persons necessary to formulate a meaningful opinion as to whether the alleged discrimination did or did not occur.

8. A complainant may ask the DCO to begin a formal complaint resolution process at any time.

9. All parties attempting informal complaint resolution shall forward to the DCO for review and consideration any complaint which cannot be informally resolved in a timely manner.

\* The President has designated the Director of the Office of Equity and Diversity as the DCO.

10. Information on the reporting and resolution of alleged discrimination complaints, whether resolved informally or not, will be reported to the DCO.

### C. Formal Complaint Resolution

1. An allegation of discrimination becomes a formal complaint only when it is filed in writing with, and using a complaint form furnished by, the DCO or when the complaint is filed by the DCO.

2. Within five (5) working days of receipt or initiation of a formal written complaint, the DCO shall furnish to the alleged offender a copy of the complaint.

3. Within ten (10) working days after receipt of the complaint, the alleged offender is required to file a response in writing with the DCO. This response may include identification of witnesses and other evidence for consideration in connection with any investigation. A copy of this reply shall be sent to the complainant. The failure of the alleged offender to respond within the time limit prescribed shall not preclude the DCO from proceeding with the investigation.

4. If resolution is reached as a result of this exchange of complaint and response, the DCO shall commit the resolution to writing with a copy provided to the complainant, the alleged offender, and the DCO's confidential file.

5. If resolution is not reached as a result of this exchange of complaint and response, the DCO will formulate an investigation plan for review by an advisory committee (see VIII.C. "Advisory Committee").

6. Within ten (10) working days after receipt of the alleged offender's response, the advisory committee shall be convened.

7. Upon approval of the investigation plan by the advisory committee, the DCO may investigate the circumstances of the alleged offense to the extent necessary to determine

whether the allegations contained in the complaint might constitute a violation of the discrimination policy. The DCO may interview anyone deemed necessary to fully investigate the complaint.

8. Although the DCO may seek the advice and assistance of the CSU Office of General Counsel in conducting the investigation, the investigation will normally be conducted by the DCO.

9. The investigation shall be completed within thirty (30) working days after the advisory committee approves the investigation plan.

10. Upon demonstration of good cause, the DCO may request waiver of the time limits of this section, subject to the approval of the President and notification of the affected parties.

#### D. Report of Findings

1. Within five (5) working days after the end of the investigation, the DCO will prepare a written report which includes a determination that the complaint should be dismissed or that a prima facie violation of the discrimination policy exists.

2. If the case is dismissed, written notice of that decision is sent to the complainant, the alleged offender, and the DCO's confidential investigation file.

3. If a prima facie violation is found, the DCO's report will be forwarded to the appropriate division executive, with a copy to the DCO's confidential investigation file.

a. If the alleged offender is a member of the faculty, staff, or administration, the DCO shall refer the case for further review by the appropriate division executive. The division executive, in consultation with the President, shall review the DCO's report and determine what disciplinary action, if any, will be taken.

b. If the alleged offender is a student, the DCO shall refer the case to the Vice President for Student Services who shall determine appropriate student disciplinary action in accordance with the procedures established for student discipline.

c. In any of the above instances, the division executive shall accept the findings of the DCO to be the findings of fact regarding the alleged violation being reviewed.

4. Within five (5) working days of the end of the investigation, the DCO will inform the complainant and alleged offender of the finding and that the report has been forwarded.

#### E. Report of Action Taken

1. Within twenty (20) working days after receipt of the report of the investigation, the division executive will report to the DCO the resulting action taken, or to be taken.

2. Within five (5) working days after receiving notification of the resulting action, the DCO shall notify the complainant of the relevant portions of the action that can be legally disclosed.

### VIII. Responsibilities for Policy Implementation

## A. Discrimination Contact Persons

1. The President shall designate several members of the faculty and staff as Discrimination Contact Persons (hereafter, "Contact Persons").

A list of Contact Persons will be made available to the campus community through various publications, including the Schedule of Classes.

2. Contact Persons are available to serve as a resource to any member of the campus community who has a discrimination complaint or inquiry.

3. The Contact Persons' functions include the following:

a. Provide information about discrimination, applicable laws, and confidentiality requirements;

b. Inform the complainant regarding applicable University policies and procedures and outline various options, both informal and formal, available for resolving the complaint. This information will include various strategies which the complainant may use if she or he wishes to attempt resolution individually (confronting the alleged offender, writing a letter to the alleged offender, third party intervention, etc).

c. Provide information regarding resolution mechanisms available outside the University.

d. If the complainant desires University assistance with the complaint, seek informal resolution of the issue.

e. The Contact Person, after consultation with the DCO, may contact the alleged offender as a part of seeking informal resolution.

f. Inform the DCO of the complaint within five (5) working days of initially receiving the complaint, and consult with the DCO every ten (10) working days until the complaint is resolved or is forwarded to the DCO.

g. Forward to the DCO for review and consideration any complaint which cannot be informally resolved in a timely manner.

h. Maintain notes necessary for handling active complaints.

i. Log for statistical purposes information of the number, location, nature, and the resolution of complaints, whether resolved informally or not, and forward each semester to the DCO.

## B. Discrimination Complaint Resolution Officer

1. The Discrimination Complaint Resolution Officer (DCO) will be appointed by the President to receive discrimination complaints.

2. The DCO will review the verbal or written complaint and will explore alternatives for resolution with the complainant.

3. The DCO may attempt either, or both, informal and formal resolution, and in the course of that attempt, may contact all persons necessary to formulate a meaningful opinion as to whether the alleged discrimination did or did not occur.

4. The DCO will follow the procedures and timelines identified in VII.C. for a formal complaint resolution.

5. The University recognizes that it must balance the right of privacy of a complainant and the right of the alleged offender to be notified of any allegation. As a rule, the DCO will not contact an alleged offender without the permission of the complainant. However, the DCO has the discretion to determine when the situation warrants notification of an alleged offender.

6. The DCO has the authority to file a formal complaint whenever the circumstances warrant further action on the part of the University. This would include cases where several complainants allege offensive conduct by the same individual, or where there is sufficient basis to determine that repeated actions, while informally resolved, might constitute a pattern of discrimination, including sexual harassment.

#### C. Advisory Committee

1. An advisory committee for the DCO shall be established at the outset of each formal investigation.

2. Membership:

a. The advisory committee will normally consist of three persons drawn from a pool of individuals named annually.

b. The pool will be composed of three students appointed by Associated Students, Inc. (at least one of whom will be a graduate student), three staff members nominated by the Staff Council and appointed by the President, and seven faculty members (at least one of whom shall be a lecturer) appointed by the Academic Senate.

c. Whenever possible, the advisory committee for each case will be constituted by the DCO to reflect the constituency of the complainant(s) and alleged offender. The maximum number representing any constituency will normally be two.

d. No one may serve on an advisory committee if there is an apparent conflict of interest.

3. The panel will be trained by the DCO.

4. The function of the advisory committee will be to hear the broad outlines of the alleged offense and to advise the DCO on the conduct of the investigation.

5. In presenting the proposed investigation plan, the DCO shall not provide any information that might reasonably provide the basis for identifying the complainant or the alleged offender.

6. All work of the committee shall be confidential.

## IX. Reprisals or Retaliation

Reprisals or retaliation against an individual for making a complaint of prohibited discrimination, for using or participating in the informal complaint resolution process or formal complaint resolution process, is a violation of the law and of University policy. Anyone found to have engaged in retaliatory acts will be subject to, but not limited to, disciplinary action up to and including dismissal.

## X. Record-Keeping and Reporting

A. The DCO will maintain records and notes necessary for handling active complaints.

B. Information on the number, location, nature, and the resolution of complaints, whether resolved informally or not, will be logged for statistical purposes. Based upon this information, the DCO will provide an annual report to the campus community.

C. With the exception of records of disciplinary actions, which shall become a part of the offender's personnel and/or student file, all investigative records for complaints that have been resolved shall be maintained only within the DCO's confidential investigation file.

## XI. External Resources

A. Individuals always retain the right to seek resolution of discrimination complaints outside the University. External complaints are those which are filed with a court or state or federal agency.

B. The DCO can assist in identifying appropriate agencies available to provide information regarding procedures for external resolution. External agency resources include the federal Equal Employment Opportunity Commission and the Office for Civil Rights, and the state Department of Fair Employment and Housing.

EFFECTIVE: Immediately

If any provision of this policy is in conflict with a provision of a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supercede the provision of the policy in conflict with regard to those bargaining unit members covered by the Collective Bargaining Agreement.