

SOUTH DAKOTA STATE UNIVERSITY
Policy and Procedure Manual

SUBJECT: Human Rights Complaints
NUMBER: 4:6

1. Purpose

This policy and its procedures implement SDBOR Policy 1:18 and set forth the human rights complaint policy and procedures to provide employees, students, and other members of the University community a means to protect their rights regarding discrimination and equal opportunity, which are guaranteed under federal, state, and local laws and regulations.

2. Definitions

- a. Complainant: an individual who has allegedly been subjected to discrimination.
- b. Complaint: includes all allegations or reports of discrimination by a person, persons, or organization subject to this policy against a person protected under this policy.
- c. Discrimination: includes violations of rights guaranteed under federal, state, or local antidiscrimination laws and regulations. Discrimination also includes any allegation that, because of a person's sex, race, color, creed, religion, national origin, ancestry, citizenship, gender, gender identity, transgender, sexual orientation, age, disability, genetic information, veteran status, or any other status that may become protected under law against discrimination, a person has been subjected to disparate treatment in terms and conditions of employment, in the delivery of educational services, programs or activities, or with respect to the participation in the activities of officially recognized organizations at the University.
- d. Harassment: a type of discrimination consisting of unwelcomed conduct that is severe, pervasive, and objectively offensive that it effectively denies a person's ability to participate in or realize the benefits of a University activity or resource.
- e. Director of Equal Opportunity ("EO"): the individual responsible for overall compliance and enforcement of this policy and related federal, state, or local laws and regulations, with an office located in Morrill Hall, room 100, (605) 688-4128, and equal.opportunity@sdstate.edu.

3. Policy

- a. This policy pertains to complaints alleging discrimination and harassment, as herein defined, other than sexual harassment which is addressed by SDBOR Policy 1:17 and

University Policy 4:4. If the accused is a student (as defined in University Policy 3:1), this policy must be applied in a way consistent with the requirements of University Policy 3:1.

- b. Proof of discrimination under this policy conforms to the federal standards employed to prove disparate treatment or disparate impact, except as otherwise provided under federal, state, and local law. This policy neither eliminates nor restricts express exceptions to antidiscrimination laws and regulations provided under federal, state, or local law, nor will it prohibit conduct, action, or policies based upon such legitimate nondiscriminatory reasons as recognized under federal antidiscrimination law.
 - i. Reasonable directions and admonitions by duly authorized University agents as to time, place and manner in which employees or volunteers perform assigned responsibilities, students carry out educational assignments or program participants engage in sponsored activities do not constitute prima facie evidence of harassment or discrimination.
- c. All officially recognized organizations at the University are subject to this policy, except to the extent this policy would impermissibly invade the members' freedom of intimate association or freedom of expressive association. An organization seeking to challenge the application of these policies to it or to its activities, resolution of the challenges must address the issues set forth in Section 5.A. of SDBOR Policy 1:18.
- d. The Director of EO is responsible for maintaining a centralized complaint filing system; for analyzing trends revealed by complaints, investigations, and enforcement activities; and for monitoring on behalf of the University overall compliance with this policy and related federal, state, or local legislation and regulations.
- e. The Director of EO will assure that persons entrusted with the investigation of complaints have undergone annual training in the conduct of investigations under this policy, in a manner that protects the safety of victims, promotes accountability and is timely. The Director of EO will also assure that persons entrusted with investigations are unbiased and disinterested.
 - i. If a complainant or accused alleges that an investigator is biased or has a conflict of interest, the Director of EO will review the evidence of bias or interest, and will reassign responsibility for the investigation when there may be an appearance of bias or conflict, even though none actually exists.
- f. The Director of EO will assure that persons entrusted with the conduct of disciplinary hearings have received annual training in the conduct of disciplinary proceedings under this policy, in a manner that protects the safety of victims and promotes accountability.
 - i. If a complainant or accused alleges that a person entrusted with the conduct of disciplinary proceedings is biased or has a conflict of interest, the Director of EO will review the evidence of bias or interest, and will submit a recommendation to the University President whether responsibility for the disciplinary proceeding should be reassigned.

- ii. Reassignment will not be routine, but may be proper where a reasonable, well-informed observer of the proceeding would believe that there may be an appearance of bias or conflict, even if none actually exists.
 - iii. When reviewing an allegation of bias or conflict of interest, the Director of EO will adhere to Section 7.D. of SDBOR Policy 1:18.
 - g. Persons who report complaints or participate in the investigation or disposition of such complainants will not be subject to harassment, interference, intimidation, or retaliation.
 - i. The Director of EO will inform the complainant, the accused, and all persons involved in the reporting, investigation, or disposition of a complaint, with information explaining how to report harassment, interference, intimidation, or retaliation.
 - h. All students and employees whose assistance is needed in the investigation of a complaint or in the course of disciplinary action must cooperate with the Director of EO and other parties who are duly authorized to investigate or discipline. Persons who are accused of having engaged in discriminatory conduct will be entitled to such cooperation when necessary to obtain witnesses in any formal disciplinary proceedings that may be initiated. Where necessary, the Director of EO will assist in making adjustments to work schedules, classroom schedules, and other academic or employment obligations.
 - i. Reasonable efforts will be made to maintain the confidentiality of complaints; however, it may become necessary to disclose the identities of complainants or witnesses, either directly or indirectly, in the course of investigation.
 - i. If the complainant requests confidentiality or asks that the complaint not be pursued, the University will: 1) continue to take all reasonable steps to investigate and respond to the complaint consistent with the complainants request; 2) inform the complainant that the request to not pursue a complaint may limit the University's ability to fully address the matter; and 3) report the incident to local law enforcement authorities if it appears to involve a crime or a health or safety emergency that is subjected to required reporting.
 - ii. Disciplinary hearings at the University level ordinarily are not open to the public, but, persons accused of misconduct may have appeal rights that could result in a public hearing. The Director of EO will inform complainants whether the accused has a right to a public hearing under South Dakota law and at what point that hearing may occur. In the event of a public hearing, the pleadings, motions, documents and recorded testimony assembled at or incidental to the hearing will become public records.
 - j. Where the complaint results in a formal disciplinary action, the complainant will be informed in writing whether the University procedures resulted in a finding of discrimination. Personally identifying information about third party student witnesses will be redacted to the extent feasible.

- k. Timing requirements contained in this policy fix standards for the investigation and preliminary phases of complaint management. Where an investigation results in the initiation of formal disciplinary procedures, the timelines set forth in those procedures will govern.
 - i. Deadlines stipulated for action may be relaxed where, in the judgment of the Director of EO or other administrative officer having responsibility for the complaint, this will help to achieve the purposes of the regulations. Investigation and responses related to allegations of, or conduct constituting a crime of violence may be delayed to the extent required for law enforcement to investigate the facts of the case.
 - ii. Deadlines may also be extended upon the mutual agreement of the parties.
 - iii. Deadlines will be extended if necessary to accommodate holidays and vacation periods that form part of the academic calendar or days on which the University is closed for weather or other emergency purposes.
 - iv. Deadline extensions will not exceed the bounds allowed by applicable law and regulations.
- l. All persons found to have committed acts of discrimination will be subject to the relevant disciplinary procedures according to the person's status (e.g. student, employee, recognized student organization, etc.).

4. Procedures

- a. All inquiries, allegations, reports, or complaints relating to discriminatory conduct made to a University employee must be forwarded to the Director of EO for response or investigation.
 - i. Complainants may directly contact the Director of EO or make a report online using the following link: <https://www.sdstate.edu/office-title-ix-equal-opportunity/report-it>.
 - ii. This provision will not be interpreted to require individuals to refer to the Director of EO accusations addressed to them directly by complainants.
 - iii. Third party reports of discrimination and conduct observed directly that may be discriminatory should be reported and investigated in the same manner as provided herein.
- b. Upon receipt of inquiries, allegations, reports, or complaints the Director of EO will respond and assign an investigator to the matter.
 - i. The Director of EO will advise the individual or group of the procedures for investigating and taking action upon the complaint.
 - 1. The Director of EO will advise the complainant of any counseling or support groups that are available and their options to avoid contact with

the alleged perpetrator pending the results of the investigation and any related proceedings.

2. The complainant will also be informed of the right to file other applicable administrative or criminal complaints .
 - ii. The Director of EO will record statements of the factual basis of the complaint.
 1. If the complaint is referred to the Director of EO by another administrator, faculty member, or other third party, the Director of EO will contact the complainant within five (5) working days to provide information about procedures and resources and to record an initial statement of the factual basis for complaint.
- c. Upon recording the statement of the factual basis of the complaint, the Director of EO will initiate an investigation of the complaint to determine whether there is a reasonable basis to believe that the complainant was subjected to discrimination or sexual violence.
- d. Within three (3) working days of meeting with the complainant, the Director of EO will determine what interim measures are available to protect the complainant or accused during the investigation. If the accused is a student (as defined in University Policy 3:1), any interim measures must be done consistent with the requirements found in University Policy 3:1.
- e. No Reasonable Basis to Proceed
 - i. If the Director of EO determines there is no reasonable basis to proceed, the Director of EO will, either by email or in person, inform the complainant of the decision and will inform the complainant of the resources available at the University to help the complainant resolve concerns with the individual whose conduct prompted the complaint.
 - ii. If the complainant believes that the Director of EO erred in determining there is no reasonable basis to proceed, the complainant may petition the University President for a review of that determination. The petition must be received within fifteen (15) working days of the complainant receiving notice of the determination. The accused will be notified of such petition.
 - iii. The University President, either personally or through a delegatee, will review the investigation file to determine whether the conclusions of the Director of EO are based upon substantial evidence. The University President will respond in writing to the complainant and the accused at the conclusion of this review. If the University President concludes that the evidence supports the conclusions of the Director of EO, the response will summarize the findings that lead to that conclusion to the extent that this may be done without compromising the privacy of third parties, persons accused of misconduct, or the complainant.

iv. The University President's decision is not subject to an appeal as a matter of right. However, if the complainant remains dissatisfied with the determination, the complainant may request that the SDBOR Executive Director review the conclusions of the University President and advise the SDBOR pursuant to SDBOR Policy No. 1:6, Section C.5. The request for such a review must identify with specificity the factual findings that the complainant believes to be erroneous or the conclusions that the complainant believes mistake or misapply the requirements of policy or governing law.

f. Reasonable Basis to Proceed

- i. If the Director of EO determines there is a reasonable basis for the complaint, the Director of EO will notify the administrative officer having supervisory responsibility over the person or persons alleged to have engaged in discriminatory conduct. The Director of EO will provide copies of all investigatory materials to that administrative officer, and the administrative officer will participate in resolution of the matter. If the complaint was made against an officially recognized organization at the University or against members of such organizations who are not otherwise affiliated with the University, the administrative officer will designate a person to carry out the responsibilities established hereunder.
- ii. If deemed appropriate, the Director of EO and the administrative officer may first attempt an informal resolution of the dispute.
 1. If the matter appears to them to lend itself to informal resolution, they will meet with the complainant to determine whether the complainant is willing to pursue an informal resolution and how the necessary discussion with the person accused of misconduct may be structured.
 2. If an informal resolution is effected, the terms of the resolution will be reduced to writing and signed by the complainant. The University will document the administration of any agreed upon discipline or remedial action through such means as are appropriate and customary under the relevant disciplinary procedures or are in keeping with other relevant administrative practices. Copies of the signed document will be preserved in the complaint file and as otherwise necessary to give effect to the terms of the resolution.
- iii. If the Director of EO and administrative officer elect not to attempt an informal resolution or an informal resolution is not effected, the administrative officer will initiate disciplinary proceedings against the person alleged to have engaged in discriminatory conduct.
- iv. The administrative officer will institute formal disciplinary proceedings within fifteen (15) working days from the time that the file has been submitted to the officer, unless an informal resolution has been effected or the complainant and the accused have agreed in writing to extend the time allowed to attempt an informal resolution.

- v. The disciplinary procedures followed will be those designated for persons in the classification to which the accused belong.
- vi. Discipline of persons found to have committed acts of discrimination will be determined and carried out in accordance with the relevant disciplinary procedures.
 1. If the discriminatory conduct is admitted or, as a result of the disciplinary proceedings, proven, the administrative officer who initiated the disciplinary procedures will determine what disciplinary action, if any, will be taken to remedy the effects of the discriminatory conduct. In selecting a discipline or action, the administrative officer will consider (1) the extent to which the party charged exercised undue influence over the complainant by virtue of the office and authority entrusted to the party charged or otherwise, (2) the gravity of the offense established, and (3) the likelihood that the discipline or action selected will be effective to avoid a recurrence of the conduct.
 2. Once the administrative officer has selected a proposed discipline or action, the party charged will be notified of the proposed discipline or action at such time and in such a manner as provided under the applicable grievance procedures. The complainant will be notified of the proposed discipline at the same time.
 3. If the complainant is dissatisfied with the discipline or action selected, the complainant may petition the University President for a review of that determination. The petition must be received within five (5) working days after the complainant has been notified of the proposed discipline or it will become final.
 4. The University President, either personally or through a delegate, will review the investigation files, hearing records and findings, and other documents relating to the matter to determine whether the action was appropriately decided under the factors in section 4.f.vi.1, above. The determination of the University President will not be subject to further review.
- vii. All records and writings developed in the course of the formal disciplinary hearings will be preserved in the complaint file and in other records as required under related grievance policies.

5. Responsible Administrator

The Director of EO, successor, or designee is responsible for annual and ad hoc review of this policy and its procedures. The University President is responsible for approval of modifications to this policy and its procedures.

SOURCE: Approved by President on 08/01/2014. Revised in accordance with SDBOR revisions; Approved by President on 09/30/2015. Revised in accordance with SDBOR revisions; Approved by President on 02/12/2018. Revised; Approved by President on 9/19/2022.