

RACIAL HARASSMENT POLICY AND PROCEDURES
OF
THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

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VI. EFFECTIVE DATE

I. PREAMBLE

Discrimination on the basis of race is unacceptable at The University of North Carolina at Chapel Hill. Such behavior threatens to destroy the environment of tolerance and mutual respect that must prevail if the University is to fulfill its purposes.

The University through this Racial Harassment Policy and Procedures is providing an additional means for the enforcement of its nondiscrimination policy. Enforcement of this Policy shall be consistent with the freedom of speech guaranteed by the First Amendment to the United States Constitution. At the same time, it is hoped that it will deter discriminatory conduct that is not protected by the legally defined boundaries of free speech, in fulfillment of the University's duty to protect its educational environment.

Because there may be conflict among freedom of speech, the right of individuals to be free from injury caused by discrimination, and the University's duty to protect the educational process, the enforcement procedures shall recognize that it may be necessary to have varying standards depending upon the place of the conduct in question. Thus a distinction may be drawn among public forums, educational and academic centers and housing units.

II. POLICY

- A. Racial harassment is contrary to the University's policy of equal opportunity, can constitute unlawful discrimination on the basis of race, and will not be tolerated in the University community.
- B. It is the responsibility of every employee and student in the University community to strive to create an environment free of racial harassment.
- C. This Policy and these Procedures apply to University students, agents, and employees, including faculty, EPA non faculty, staff, and student employees. Unless otherwise indicated herein, the word "employee" includes members of the faculty, EPA non faculty employees, staff employees, and student employees.
- D. The definition of what constitutes racial harassment on the part of a student, other than a student employee in the course and scope of his or her employment, is contained in Section 2.D.1.n. of the Instrument of Student Judicial Governance. If a student believes he or she has been the victim of racial harassment by a fellow student, other than a student employee, the student should proceed in accordance with the terms of the Instrument. Information concerning the Instrument and this process is available from the Office of the Dean of Students.
- E. Racial harassment is defined for employees, including student employees in the course and scope of their employment, as conduct, when engaged in by one in an official University position or by a fellow University employee, that:

discriminates on the basis of race (a) in terms, conditions, working environment, or privileges of employment, (b) in enrollment, course assignment, grade, or opportunity for participation in any University benefit, service, or offering, or (c) in University-sponsored extracurricular activities.

In determining whether alleged conduct constitutes racial harassment, the record as a whole will be considered, as well as the totality of the circumstances. This means that the nature of the alleged conduct and the context in which the alleged conduct occurred will be examined and evaluated.

- F. Through this Policy students and employees are encouraged to express freely, responsibly, and in an orderly way their opinions and feelings about any problem or complaint of racial harassment. Any act by a University employee or agent of reprisal, interference, restraint, penalty, discrimination, coercion or harassment - overtly or covertly - against a student or an employee for responsibly using the Policy and its Procedures interferes with free expression and openness. Accordingly, such acts violate this Policy and demand appropriate and prompt disciplinary action.
- G. This Policy shall not be used to bring frivolous or malicious charges against students, employees, or agents.
- H. The Procedures implementing this Policy are described in Sections III, IV, and V, herein. Those Sections present three different means of addressing complaints of racial harassment. Evaluation and Education (Section III), informal administration review (Section IV.B., C., and D.), and formal grievance review (Section V).
- I. Information and assistance regarding this Policy are available from the Equal Opportunity/ADA Office, Grievance Committees chairs, the Human Resources Counseling Service, the Office of the Dean of Students, and the Vice Chancellor and General Counsel. Potential complaining parties, persons accused of violations of this Policy, and supervisors and administrators are encouraged to contact these offices.

III. EVALUATION AND EDUCATIONAL FEEDBACK

- A. A student or employee who believes he or she has been the victim of racial harassment may, but is not required to, proceed in accordance with Section III.B., or alternatively, may proceed directly as described in Section IV. If a student or employee elects to proceed under Section III.B., that person may elect to proceed thereafter in accordance with the appropriate subparts of Section IV. If an SPA employee elects to proceed under Section III.B. and also wishes to preserve his/her right of appeal to the Office of Administrative Hearings, he/she must file a grievance within 30 calendar days from the alleged harassment.

B. Evaluation and Educational Feedback

The person filing the complaint (grievant) may choose to write a complaint intended as educational feedback from the grievant to the accused person's dean, director, or department chair. This document shall not identify by name or by other descriptive comment either the grievant or the accused. A copy of the grievant's complaint shall be submitted immediately by the department chair to the Equal Opportunity/ADA Officer. The Equal Opportunity/ADA Officer will review the complaint with the supervisor or administrator most directly involved. At least twice each calendar year the Equal Opportunity/ADA Officer will review the information filed and notify the Chancellor of any department or unit where it appears from the anonymous complaints there may be a need for the Chancellor or his delegate to review the situation. Any such department or unit may be notified and encouraged to improve its performance or attitude, if the review reveals such action to be appropriate.

IV. ADMINISTRATIVE REVIEW PROCEDURES

- A. The responsibility for implementing this Policy falls especially upon University administrators and supervisors. Should an employee in an administrative or supervisory position have knowledge of conduct involving racial harassment or receive a complaint of racial harassment that involves a University employee, including student employees, or agents under his or her administrative jurisdiction, immediate steps must be taken to deal with the matter appropriately. Timely mediation, education, negotiation, and appropriate corrective action if necessary, are encouraged.

For an Administrative Review, the University considers a timely response to be thirty (30) calendar days from the receipt of a complaint through the submission of a report to the Equal Opportunity/ADA Officer.

B. Employees

1. Faculty and EPA Non-Faculty Employees

A faculty or EPA non-faculty employee who believes he or she has been the victim of racial harassment must initially attempt to resolve the matter with the administrative official most directly concerned, excluding the person accused of racial harassment, within 180 calendar days of the alleged harassment.

During the period the faculty or EPA non-faculty complainant participates in informal resolution efforts, the time limit for filing a formal internal grievance shall be suspended.

2. SPA Employees

SPA employees have the option to either address their racial harassment complaint informally through the Administrative Review process or formally through the Staff Grievance Procedure.

a. Administrative Review

SPA employees may attempt to resolve the matter initially with the administrative official most directly concerned, excluding the person accused of harassment, within 180 calendar days of the alleged harassment.

During the period an SPA complainant participates in informal resolution efforts, the 30 day time limit for filing a formal grievance will not be suspended.

For SPA employees, there is generally no University of Office of Administrative Hearing appeal of Administrative Review decisions. If an SPA employee initially chooses Administrative Review procedures to attempt to resolve the matter, and should the Administrative Review fail to produce a resolution satisfactory to the employee, he or she will not be able to proceed through the formal grievance procedure unless the employee has suffered an adverse employment action as defined by State law and files a formal grievance within 30 days from being informed of the informal resolution. Additional information about what constitutes adverse employment action is available from the Human Resources Counseling Service.

b. Formal Grievance Option

An SPA employee may alternatively proceed instead as indicated in the Staff Grievance Procedure by filing a complaint in writing with the Human Resources Counseling Service within 30 calendar days of the alleged harassing incident.

Additional information about the grievance process for racial harassment complaints is available from the Human Resources Counseling Service.

C. Students

A student who believes he or she has been the victim of racial harassment by an employee, including a faculty member, EPA non faculty member, staff member, or student employee in the course of his or her University employment, is encouraged to attempt to resolve the matter with the administrative official most

directly concerned, excluding the person accused of racial harassment, within 180 calendar days of the alleged harassment. However, the student may proceed directly to the Student Grievance Committee, as specified in Section V.A. of GRIEVANCE PROCEDURES, herein. If a student believes he or she has been the victim of racial harassment by a fellow student, the student should proceed in accordance with the Instrument of Student Judicial Governance. Information concerning the Instrument is available from the Office of the Dean of Students.

During the period the student complainant participates in informal resolution efforts, the time limit for filing a formal internal grievance shall be suspended.

- D. Because of the sensitive nature of alleged harassment incidents, every reasonable effort should be made to resolve them on an informal basis if possible. Remedial actions taken through informal procedures by an administrative official, if appropriate, will depend on the totality of the circumstances. At this informal stage, efforts should be made to educate the involved parties to the nature of racial harassment and what it does and does not involve. The review should be constructively educational for all parties if the matter complained of is administratively judged not to constitute racial harassment. If racial harassment is found, any disciplinary action should have as its primary focus correction rather than punishment. In determining what disciplinary action is appropriate when there is a finding of racial harassment, the supervisor or administrator shall review relevant previous findings, involving either party, if any, arising under this Policy. An admission of guilt, a warning, a promise not to commit such abuse again, or other appropriate action directed towards the accused may be sufficient resolution.

The supervisor or administrator shall be responsible for notifying both parties, to the extent permitted by law, of the results of his or her efforts at informal resolution of the complaint. Advice regarding what may and may not be reported to either party is available from the Equal Opportunity/ADA Officer.

Whether or not there is a finding of racial harassment, the administrator or supervisor shall make a record of the incident, including the names of the parties involved, and the resolution. The administrator or supervisor shall submit this record to his or her dean or director and to the Equal Opportunity/ADA Officer, each of whom shall maintain a confidential file of such reports. The grievant and the accused may inspect the record of the incident to which they are parties and each may also submit a statement to the Equal Opportunity/ADA Officer for the confidential files of that Office, provided a copy of the statement is also submitted by the grievant and accused to the administrator or supervisor originally involved and to the appropriate dean or director.

- E. In addition to submitting a confidential record to the Equal Opportunity/ADA Officer and the dean or director, the administrator or supervisor will maintain an appropriate record in the confidential departmental personnel file and/or the appropriate student's file.

V. GRIEVANCE PROCEDURES

- A. Not every act that might be offensive to an individual or a group necessarily will be considered a violation of this Policy. Whether a specific act violates the Policy will be determined on a case-by-case basis with proper regard for all of the circumstances. Due consideration must be given to the protection of individual rights, freedom of speech, academic freedom and advocacy. The Vice Chancellor and General Counsel will rule on any claim that conduct which is the subject of a formal hearing is constitutionally protected by the First Amendment.
- B. A complaint shall be handled as expeditiously as possible by the appropriate grievance mechanism. The phrase "administrative official most directly concerned," as used in the procedures of each grievance mechanism, shall be interpreted not to include the person accused. A University student may proceed directly to the Student Grievance Committee, as noted in Section IV, ADMINISTRATIVE REVIEW PROCEDURES, herein.

C. SPA Employees

Staff employees proceed as described in the "Dispute Resolution and Staff Grievance Procedure." This information is available from the Human Resources Counseling Service.

The Staff Grievance Committee shall proceed according to its established rules as set forth in Section XIII of the Human Resources Manual for SPA employees.

D. Students, Faculty and EPA Non Faculty

Should any student or faculty or EPA non-faculty employee believe that he or she has been the victim of racial harassment and should the informal procedure (if appropriate) have failed to produce a resolution satisfactory to that person, then he or she may proceed to the appropriate grievance procedure. If a complaint is resolved informally to the satisfaction of the grievant but not the accused, the accused may proceed to the grievance procedure to which he or she has access.

Either party has thirty calendar days from being informed of the informal resolution to file a formal grievance.

1. Filing a Complaint

A complaint must be filed by a written, signed statement submitted to that committee to which, by virtue of his or her position or circumstance in the University, the complainant has access (for a student, the Student Grievance Committee; for an EPA non faculty employee, except a librarian holding general faculty membership, the EPA Non Faculty

Grievance Committee; and for a faculty member and a librarian holding general faculty membership, the Faculty Grievance Committee). However, a faculty member who alleges racial harassment as evidence of an allegation that a decision not to reappoint him or her was based upon one or more of the existing impermissible grounds as stated in the Trustee Tenure Regulations shall complain to the Faculty Hearings Committee in accordance with Section 4. of the Trustee Tenure Regulations).

The relevant grievance committee in each case has 30 calendar days to complete its review and submit its report with recommendations to the appropriate administrator.

2. Grievance Committees

Faculty, EPA non faculty, and student grievance committees should observe the following procedures for matters arising under this Policy:

- a. The grievant and the accused shall have the right to counsel, to present the testimony of witnesses and other evidence, to confront and cross-examine witnesses, and to examine all submitted documents and other evidence. Counsel may not examine witnesses or parties, but may advise their clients during the course of the hearing.
- b. The scope of the investigation shall be determined by the committee chair in his or her discretion according to the charge and the facts.
- c. The committee shall consider only such evidence as is presented at the hearing. The committee shall use its judgment in deciding what evidence presented is fair and reliable and in doing so is not bound by the rules of evidence. A recording or other record shall be kept of all proceedings in which evidence is presented.
- d. Except as herein provided, the conduct of the hearing is under the charge of the chair of the hearing.
- e. If the majority of the committee finds that the accused has violated this Policy, it shall recommend, in writing, an appropriate course of action -- which may include the recommendation of appropriate sanctions -- to the supervisor of the accused party, with a copy to his or her dean or director. Any recommendation for suspension from employment, for diminishment in rank, or for dismissal shall proceed in accordance with the established University policies and procedures on dismissal for cause.

- f. The supervisor shall consider the committee's recommendations, and produce a written decision within 15 calendar days which shall accept or reject the committee report, conclusions, and recommendations as a whole or point by point, and file this decision with his or her dean or director, and the Equal Opportunity/ADA Officer.
 - g. It shall be the responsibility of the dean or director to provide oversight in the implementation of this decision, including implementation of any disciplinary action.
- E. For all committees, if the majority of the committee finds that the accused has violated this Policy, the committee shall then be entitled to receive from the Equal Opportunity/ADA Officer the confidential records of prior incidents of racial harassment involving that individual, if any, and shall be entitled to consider such records in reaching its recommendations. A summary of such records shall be included in the committee's recommendations to the supervisor.
- F. Following the completion of the appropriate grievance committee's review of the complaint, the person who filed the complaint or the person accused of racial harassment may appeal the disposition of the matter by the appropriate grievance mechanism within five calendar days according to existing University procedures. Information concerning such procedures is available from the Office of the Vice Chancellor and General Counsel.
- G. Records
- The Equal Opportunity/ADA Officer shall report annually to the Chancellor the findings resulting from incidents that have been reported to him or her under this Policy.

VI. EFFECTIVE DATE

This revised Policy shall be effective as of July 1, 1999.