

UNIVERSITY GRIEVANCE POLICY SUMMARY OF POLICY REVISIONS

8-6-2020

Policy reviewed by Deputy Director – Diversity and Workforce Services Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. Reported to SHRC on August 6, 2020.

Title IX of the Education Amendments of 1972 placed certain protections for victims of sexual assault/discrimination in educational programs or activities. On May 6, 2020, the Department of Education released revised regulations regarding Title IX sexual harassment claims, which modified procedural expectations to address Title IX sexual harassment complaints. Institutions must offer protections and more equal footing for those accused of sexual harassment in the educational setting, and the investigatory process must be applied consistently across students, faculty, and staff. The revised regulations are effective August 14, 2020.

The primary revision proposed for the University SHRA Employee Grievance Policy is to incorporate federal Title IX requirements for issues that would otherwise be grievable through the procedures of the SHRA grievance policy. The Title IX procedures include stronger provisions for investigation, cross-examination, advisors for complainants and respondents, and an appeal process. As such, we are requesting to exclude Title IX-eligible complaints from the procedures in the University SHRA Employee Grievance Policy; these would proceed through the Title IX complaint process. At the conclusion of that process, a complainant who is dissatisfied with Title IX investigation outcome would be notified of rights to appeal to the Office of Administrative Hearings if otherwise eligible. A respondent who receives sanctions due to a Title IX investigation outcome would be eligible to grieve lack of just cause for disciplinary action through the University SHRA Employee Grievance Policy if otherwise eligible.

Four other revisions are proposed:

- To better align the EEO Informal Inquiry Process with the institutions EEO/AA non-discrimination investigation process,

- To clarify that the central human resources office can establish procedures for managing the Informal Discussion process,
- To allow institutions the discretion to provide a separate dispute resolution process for issues that are not eligible for appeal to the Office of Administrative Hearings, and
- To incorporate protected status definitions, consistent with the recent U.S. Supreme Court ruling, for Title VII protections in regard to sexual orientation, gender identity and expression, and pregnancy.

Summary of Change Proposed: Significant Changes:

- Under **Section III. Definitions** o **Page 2 – *Equal Employment Opportunity Informal Inquiry***: Adds that “This process is equivalent to the institution’s internal complaint process for allegations of a violation of an institution’s non-discrimination and equal opportunity policy” and that “Complaints or reports of Title IX Sexual Harassment are investigated and resolved through the institution’s Title IX complaint process.”
- o **Page 4 –** Adds new definition for Title IX Sexual Harassment.
- Under **Section IV. Grievable Issues and Who May Grieve** o **Page 4 –** Adds footnote clarifying that “Complaints or reports of Title IX Sexual Harassment are investigated and resolved through the institution’s Title IX complaint process.”
 - o **Pages 4-6 –** Incorporates language to show grievance eligibility for harassment, discrimination and retaliation in regard to sexual orientation, gender identity and expression, and pregnancy, and also removes separate language that previously covered these issues as grievable at the University-level only.
- Under **Section V. Grievance Process for All Grievable Issues** o **Page 6 –** Adds footnote clarifying that “Complaints or reports of Title IX Sexual Harassment are investigated and resolved through the institution’s Title IX complaint process.”
 - o **Page 6 –** Adds paragraph C, which provides that institutions have the discretion to either use this grievance process or establish a separate dispute resolution process for complaints regarding annual performance appraisals or allegations of inaccurate or misleading information in the personnel or applicant file. (These issues are not grievable to the Office of Administrative Hearings).

- Under **Section VI. Unlawful Discrimination, Harassment, or Retaliation Grievance Provisions** o **Page 7** – Under paragraph A, clarifies that the EEO Informal Inquiry Process aligns with the institution's existing non-discrimination/equal opportunity investigatory process and removes process language that would be covered within the institutions EO investigatory process.
- Under **Section VII. Informal Discussion** o **Page 7** – Includes in the first paragraph that "The university institution's HR Office may develop internal procedures to administer and coordinate any Informal Discussion process."
- Under **Section IX. Formal Grievance – Step 2 – Hearing Panel/Hearing Officer:**
 - o **Page 13** – Adds paragraph F5: "For allegations of Title IX Sexual Harassment, the outcome of the Title IX complaint resolution process, rather than this Formal Grievance Procedure, shall constitute the Final University Decision for an SHRA complainant." (Employees will be notified of their appeal rights at the end of the Title IX process.)
- Under **Section XI. Responsibilities for the University SHRA Employee Grievance Policy** o **Page 14** – Removes paragraph A5 "Maintain grievance data in the grievance log provided by OSHR. Data must be entered as events occur; and" (Not required by OSHR).

12-1-2013

(Approved at the December 12 Commission Meeting) As a result of feedback received from various agencies concerning the Dec 1 policy changes approved at the Oct 17 commission meeting, additional changes were made to strengthen and provide additional clarity to the grievance policy. The commission approved a 12-1-2013 retroactive effective date to replace the previous policy they approved effective on that same date. This replaces the previous approved policy.

12-1-2013

(Approved at the October 17 Commission Meeting) Policy replaces two grievance policies (Employee Appeals and Grievances and Employee Mediation

and Grievances Process)..Policy was change to comply with the law change that resulted from ratification of HB 834.

- Creation of two informal grievances processes for alleged unlawful discrimination, harassment or retaliation and for policy violations
- Mediation is the first step of the internal grievance process.
- Step 2: Review by a Hearing Officer or Hearing Panel
- Hearing Officer/Panel drafts recommendation for Final Agency Decision
- Recommendation will be reviewed by the Director of the Officer of State Human Resources
- Final agency decision shall be issued in writing within 90 calendar days of the initial filing.

6-1-2012

Revised to reflect the changing roles of the State Personnel Commission and the Office of Administrative Hearings in rendering a Decision and Order in contested cases. The Alternative Dispute Resolution Procedures were removed from the policy. There were also other minor editorial and policy clarification changes.

2-1-2011

The 2010 General Assembly passed House Bill 961 which, among other things, made the disciplinary letter public information. This rule explains how to mesh the statutory requirement that the dismissal letter be public with the reality that the final dismissal letter might not contain the same reasons as originally used. It also provides a process that contemplates that the employee might in fact be reinstated as a result of the internal appeals process and not even be dismissed as a final agency action.

10-1-2001

Revised to include as grievable issues violation of the FLSA, Age Discrimination Act, FMLA or ADA. (Delete "Failure to follow systematic procedures in reduction in force (not alleging discrimination)."