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Policy Prohibiting Discrimination, Harassment, and Sexual Violence, and Procedure for Reviewing Complaints

Chapter 3010

Revised August 31, 2011

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.010 Affirmative Action Policy

Kansas State University has a longstanding policy of non-discrimination in matters of employment. Our Affirmative Action Plan constitutes a serious commitment of the University to the continuing implementation of that policy.

The policy of Kansas State University is to assure equal opportunity to qualified individuals regardless of their race, color, ethnic or national origin, sex, sexual orientation, gender identity, religion, age, ancestry, disability, genetic information, military status, or veteran status, and to promote the full realization of equal employment opportunity for minorities and women through a comprehensive affirmative action program. In addition, the University will assure equal opportunity for persons with disabilities, disabled veterans, and Vietnam Era veterans regarding positions for which they are qualified.

The affirmative action policy covers all aspects of the employment relationship – including recruitment, hiring, assignment of duties, promotion, tenure, compensation, selection for training, and termination. The policy applies to all units and governs employment of all employees, including student employees, of Kansas State University.

Diversity has a value to be weighed in the hiring process. It is not enough for us to say that we will not discriminate. It is our legal and moral obligation to take positive action to ensure the full realization of equal opportunity for all who work or seek to work for Kansas State University. We must make special efforts to identify promising minority persons and women for positions in all areas and at all levels in which these groups are unrepresented or under represented relative to their availability. Then, we must base our selections on the candidates' qualifications to carry out the responsibilities of the positions and the University's affirmative action goals.

The administration of the University is committed to and reaffirms its support of the principle of equal employment opportunity and charges each unit within the University to conduct its recruitment and employment practices in conformity with this principle and in accordance with the Affirmative Action Plan. Responsibility for monitoring the implementation of this policy is delegated to the Office of Affirmative Action, 214 Anderson Hall.

.020 Policy Prohibiting Discrimination, Harassment, and Sexual Violence

Kansas State University will maintain academic, housing, and work environments that are free of discrimination, harassment (including sexual harassment and sexual violence), and retaliation. Discrimination based on race, color, ethnic or national origin, sex, sexual orientation, gender identity, religion, age, ancestry, disability, genetic information, military status, or veteran status is prohibited. Retaliation against a person for reporting or objecting to discrimination or harassment is a violation of this Policy, whether or not discrimination or harassment occurred. This Policy is not intended for, and will not be used to, infringe on academic freedom or to censor or punish students, faculty, employees, or staff who exercise their legitimate First Amendment rights.

This Policy covers employees, students, applicants for employment or admission, contractors, vendors, visitors, guests,

**8210 Foundation Funds –
General Information**

8500 Student Life

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and participants in University-sponsored programs or activities. The academic or work relationship sometimes extends beyond the University campus and after University work and class hours. Therefore, in some situations, this Policy may apply to allegations of discrimination, harassment or retaliation for behavior that occurs off campus or during after-hours functions sponsored by the University. Off campus occurrences that are not related to University-sponsored programs or activities are investigated under this Policy only if those occurrences relate to discrimination, harassment, or retaliation alleged on campus.

Supervisors and administrators must report complaints to the Office of Affirmative Action ("OAA"), keep complaints confidential, protect the privacy of all parties involved in a complaint, and prevent or eliminate discrimination, harassment or retaliation; failure to do so is a violation of this Policy. Complaints must be filed within 60 (180 for sexual violence) calendar days of the alleged discrimination, harassment, or retaliation. Complaints are confidential and will not be disclosed to anyone who does not have a need to know – this requirement applies to complainants, respondents, witnesses, and any others involved with a complaint. The University cannot guarantee absolute confidentiality, although the University will protect the privacy of all parties to the extent possible – consistent with preventing future acts of discrimination, harassment or retaliation, providing a remedy to persons injured, and allowing respondents to reply to a complaint if it warrants an administrative review. Complaint information may be disclosed to state or federal anti-discrimination agencies for investigations and during litigation. Where the University has knowledge of alleged behavior which, if true, may violate this policy, and the alleged victim does not file a complaint, the University may conduct an administrative review if it has reason to believe a review is necessary to resolve a report of discrimination, harassment, or retaliation.

An impartial administrative review team ("ART") consisting of a representative of the Office of Affirmative Action and one or more Responsible Administrators will evaluate each complaint and, if warranted, conduct a thorough and objective administrative review. If the ART decides to conduct an administrative review, it will inform the complainant and respondent of the content of the complaint, allow each of them a full opportunity to be heard, and respond to questions concerning the progress of the review. Complainants, respondents, and witnesses are generally not permitted to have an individual accompany them to interviews with the ART. The time required for reviews will vary; however, the goal is to complete reviews within 60 calendar days. At any point during the administrative review, the ART may refer either or both parties to the ombudspersons, Employee Assistance, Employee Relations, University Counseling Services, the Office of Student Life, Human Resources, director of the Women's Center, dean or department head, Mediation Services, the human systems consultant, or other persons deemed appropriate by the ART.

Possible outcome of the review is either: (1) a finding of no violation of this Policy; or (2) a finding of violation of this Policy. The ART will provide a report of its findings and recommendations to the complainant, respondent and the Deciding Administrator. When appropriate, the ART report will include instructions to the Deciding Administrator to provide OAA with a written report concerning implementation of the recommendations.

Persons who violate this Policy are subject to sanctions, up to and including exclusion from the campus, dismissal from employment, or expulsion from the University. Remedial actions will be taken to restore any losses suffered as a result of a violation of this Policy. Examples of remedial actions include, but are not limited to, reevaluation of a grade, an evaluation completed by someone other than the respondent, reconsideration of an application for employment, placement in a position, back pay and lost benefits, withdrawal of a disciplinary action, or a change of housing.

All persons covered by this Policy are required to fully cooperate in administrative reviews and to provide information, including official personnel or student files and records, and other materials necessary to complete a thorough review of complaints. Any person who knowingly files a false complaint, who knowingly provides false or misleading information, or who violates the confidentiality provisions of this Policy, is subject to disciplinary action. No action will be taken against an individual who makes a good faith complaint, even if the allegations are not substantiated.

This Policy shall supercede any other University policies or procedures that conflict with it.

.030 Definitions

1. **Discrimination:** In this Policy, discrimination is treating an individual adversely in employment, housing, or academic decisions based on race, color, ethnic or national origin, sex, sexual orientation, gender identity, religion, age, ancestry, disability, genetic information, military status, or veteran status without a legitimate, nondiscriminatory reason for the treatment, or maintaining seemingly neutral policies, practices, or requirements that have a disparate impact on employment, on-campus housing, or academic opportunities of members of protected groups without a valid business or academic reason.
2. **Harassment:** In this Policy, the term "harassment" can have two different definitions, depending on where the alleged conduct takes place and its context. Harassment meeting either of these definitions is considered discrimination.
 - a. In the work and on-campus housing environment, "harassment" is:
Conduct toward a person or persons based on race, color, ethnic or national origin, sex, sexual orientation, gender identity, religion, age, ancestry, disability, genetic information, military status, or veteran status that:
(1) has the purpose or effect of: (a) creating an intimidating, hostile, or offensive work environment or on-campus housing environment for the person(s); or (b) unreasonably interfering with the work, or on-campus housing, of the person(s); and (2) is sufficiently severe or pervasive that it alters the terms, conditions, or privileges of a person's employment or use of on-campus housing.
 - b. In the academic environment, "harassment" is:
Conduct toward a person or persons based on race, color, ethnic or national origin, sex, sexual orientation,

gender identity, religion, age, ancestry, disability, genetic information, military status, or veteran status that: (1) has the purpose and effect of: (a) creating an intimidating, hostile, or offensive educational environment for the person(s); or (b) unreasonably interfering with the academic performance or participation in any university-sponsored activity of the person; or (c) threatening the academic opportunities of the person; and (2) is sufficiently severe or pervasive that it alters the terms, conditions, or privileges of the person's academic opportunities or participation in university-sponsored activities.

Whether conduct is sufficient to constitute "harassment" is evaluated under the totality of the circumstances, including the frequency of the conduct, its severity, whether it is physically threatening or humiliating, or merely an offensive utterance. These factors are evaluated from both subjective and objective viewpoints, considering not only effect that conduct actually had on the person, but also the impact it would likely have had on a reasonable person in the same situation. The conduct must subjectively and objectively meet the definition to be "harassment" under this Policy. Repeated incidents, even where each would not, on its own, constitute harassment, may collectively constitute harassment under these definitions.

Depending on the circumstances, some occurrences may require evaluation under both definitions.

3. **Sexual Harassment:** In this Policy, the term "sexual harassment" is a type of harassment that involves unwelcome sexual advances, requests for sexual favors, disparagement of members of one sex, or other conduct of a sexual nature when: (1) (a) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education, on-campus housing, or participation in a university-sponsored activity or program; or (b) submission to or rejection of such conduct is used as the basis for or as a factor in decisions affecting that individual's employment, education, on-campus housing, or participation in a university-sponsored activity or program; or (c) such conduct meets either "harassment" definition in B., above; and (2) the conduct is sufficiently severe or pervasive that it alters the terms, conditions, or privileges of the person's employment, use of on-campus housing, academic opportunities, or participation in university-sponsored activities or programs.

Sexual harassment may occur between persons of the same or opposite sex, and either as single or repeated incidents. Whether conduct is sufficient to constitute "sexual harassment" is evaluated under the totality of the circumstances, including the frequency of the conduct, its severity, whether it is physically threatening or humiliating, or merely an offensive utterance. These factors are evaluated from both subjective and objective viewpoints, considering not only effect that conduct actually had on the person, but also the impact it would likely have had on a reasonable person in the same situation. The conduct must subjectively and objectively meet this definition to be "sexual harassment" under this Policy.

Sexual harassment meeting this definition is considered discrimination.

4. **Sexual Violence:** In this Policy, the term "sexual violence" refers to a physical act perpetrated against a person's will, or where a person is so incapacitated that he or she is incapable of giving consent due to the use of drugs or alcohol, or where a person is incapable of giving consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including but not limited to, rape, sexual assault, sexual battery, and sexual coercion. Use of alcohol or other drugs by a perpetrator or victim does not excuse acts of sexual violence.

The determination regarding the presence or absence of consent shall be based upon the totality of circumstances in a particular case, including the context in which the alleged incident(s) occurred. Consent will not necessarily be inferred from silence or passivity alone.

Sexual violence meeting this definition is considered sexual harassment, and is therefore considered to be discrimination.

5. **Retaliation:** In this Policy, retaliation is any attempted or completed adverse action taken without a legitimate reason against an individual because he or she has filed a complaint under this Policy, opposed a policy or practice the individual believed was discrimination under this Policy, or participated in the investigation or resolution of a complaint under this Policy.
6. **Responsible Administrator:** In this Policy, the Responsible Administrator is typically the University official with authority to implement the recommendations of an ART, and is usually the direct supervisor of a respondent who is a University employee. In cases involving a student or graduate student as respondent, a representative of the Office of Student Life or the Graduate School, respectively, is the Responsible Administrator. In cases involving a student or graduate student as complainant, a representative of the Office of Student Life or the Graduate School may be on the ART as an additional Responsible Administrator, if requested by OAA.
7. **Deciding Administrator:** The Deciding Administrator is always the University official with authority to implement the recommendations of an ART, and is usually the direct supervisor of a respondent who is an unclassified University employee. For classified employees, the Deciding Administrator is the Appointing Authority, as defined by state law. In cases involving an undergraduate student as respondent, the Director of the Office of Student Life is the Deciding Administrator. In cases involving a graduate student as respondent, the Dean of the Graduate School is the Deciding Administrator. The Deciding Administrator will often serve as the Responsible Administrator for the same complaint. A Deciding Administrator does not serve as the Appeal Administrator regarding the same complaint, except in the case of classified employees as respondents.
8. **Appeal Administrator:** The Appeal Administrator is the direct supervisor of the Deciding Administrator, except in

the case of classified employees as respondents. For classified employees, the Peer Review Committee evaluates an appeal based upon the same standards required of Appeal Administrators, and shall make a written recommendation to the Appointing Authority. The Appointing Authority makes the final decision.

If the University President is the Deciding Administrator, then there is no appeal available.

.040 Procedure for Reviewing Complaints

Step 1–The Initial Report: Any person covered by this Policy may either (a) report the complaint to the head of the department or unit in which the conduct occurred, but if that person's conduct is the reason for the complaint, then report the conduct to the next higher level of supervision; or (b) report the complaint to the Office of Affirmative Action. Students and graduate students respectively may also report their complaint to the Office of Student Life or to the Graduate School. Persons may submit complaints regarding sexual violence to the director of the Women's Center.

The initial report may be oral or written. The initial report should include as much information as possible regarding the alleged conduct or incidents, including but not limited to: the dates and locations of the conduct; the effect the conduct has had on employment, learning or living environment or the complainant's ability to participate in university programs or activities; and the name and title of the person alleged to have engaged in the conduct.

In the event of a sexual violence complaint, the director of the Women's Center should interview the complainant, with the understanding that the University is obligated to investigate if it has enough information to do so. The director of the Women's Center should explain to the complainant that the University may not be able to ensure confidentiality. If the director of the Women's Center determines that there is enough information to investigate, then the director immediately notifies the Office of Student Life or the Associate Vice–President of Human Resources, so that the Critical Incident Response Team or Threat Management Team process can begin. Additionally, the director immediately notifies OAA, so that the ART process can begin. The director should also encourage the complainant to file a complaint with the police.

If the director of the Women's Center determines there is not sufficient information for an investigation, the director submits a written report to OAA explaining why the information was insufficient, and should document whether the complainant refused to provide information that would be necessary for a University investigation.

Step 2–Formation of the Administrative Review Team: The administrator who receives the report will inform the Office of Affirmative Action of the report. Likewise, the Office of Affirmative Action staff member who receives the report will inform the head of the department or unit, unless that person's conduct is the reason for the complaint. The Office of Affirmative Action will then ask the president, provost and senior vice president, a vice president, an associate vice president or a dean to designate the Responsible Administrator to serve on the ART. The OAA staff member and the Responsible Administrator(s) become the ART for the complaint.

Step 3–Administrative Review Team's Initial Evaluation of the Complaint: The ART will interview the complainant as soon as possible after the report so that the ART members hear the complaint and get sufficient information to decide how to process the complaint. If the ART determines that the alleged conduct, even if true, would not constitute a violation of this Policy, then the ART will notify the complainant that the complaint does not warrant further review under this Policy. That notice will explain the ART's decision and refer the complainant to the appropriate University office.

A complainant's failure or refusal to participate in the ART process may prevent the ART from investigating the alleged conduct. To the extent possible, the ART will proceed with an investigation if a report alleges conduct that would constitute a violation of this Policy.

Step 4–Written Complaint: If the complaint warrants further review, the ART will accept a written complaint, or will draft a complaint based on information obtained during the interview. In the latter case, the ART will ask the complainant to read and, if necessary, to make corrections for accuracy and sign the complaint.

Step 5–Investigation: With or without a signed complaint, the ART will:

1. Meet with the respondent to provide a copy of the complaint, explain procedures, caution against retaliation, ask the respondent to provide an oral or written response within ten (10) calendar days, and inform the respondent that the review will proceed with or without the response;
2. Receive, clarify and evaluate the respondent's response to the complaint, if a response is made; and
3. Interview any persons with specific knowledge of the alleged incident(s) and review relevant policies, procedures, files, documents, and records.

Step 6–Determination and Written Report: The ART will consider all of the information it gathered and decide whether or not the respondent violated this Policy, based on the preponderance of the evidence. If the ART determines that the respondent did not violate this Policy, it will provide the complainant, the respondent, and the Deciding Administrator a written report that describes the review, makes findings of fact and any recommendations, and describes what the complainant must do to file an appeal. If the ART determines that the respondent violated this Policy, it will prepare a written report to the Deciding Administrator that describes the review, makes findings of fact, and provides recommendations for sanctions (and, if appropriate, remedial actions, referrals, and follow-up). The complainant and the respondent shall be provided a copy of the written report at the same time as the Deciding Administrator.

Step 7–Appeals if No Violation Found: If the ART determines that there was no violation of this Policy, then the

complainant may submit an appeal to the Deciding Administrator. That appeal must be submitted in writing to the Deciding Administrator within ten (10) calendar days from the date the ART's determination letter was issued. The appeal must state every ground on which the appeal is based.

On appeal, the Deciding Administrator does not conduct a new investigation. The Deciding Administrator may only decide, based upon the information presented, whether the ART's determination was "clearly erroneous" (i.e., plainly in error). The Deciding Administrator will defer to the ART for all credibility decisions (e.g., who is telling the truth). If an error(s) was made that would not have changed the determination (i.e., "harmless error"), then that error must be disregarded. In the event that a Deciding Administrator decides that an ART finding is clearly erroneous, the Deciding Administrator shall refer the matter back to the ART for further investigation and shall provide the ART with a specific written basis for the "clearly erroneous" determination.

If the Deciding Administrator determines that the ART's findings are not clearly erroneous, then the Deciding Administrator's determination is final and not subject to further review within the University.

The Deciding Administrator should rule on an appeal in a timely fashion, preferably within thirty (30) calendar days after receipt of the appeal. Rulings should be made in writing, with copies to the complainant, respondent, OAA, and the Office of General Counsel.

Step 8–Decision on Sanction if Violation Found: If the ART determines that this Policy was violated, then the ART will make a recommendation regarding sanctions. The Deciding Administrator decides the sanctions. Within ten (10) calendar days from the date the ART's determination letter was issued, the complainant and respondent may submit written comments to the Deciding Administrator regarding the ART report. Decisions on sanctions should be made in a timely fashion after the expiration of the ten (10) day comment period, and preferably within thirty (30) calendar days after receipt of the ART's report. Once sanctions are decided, they shall be implemented immediately, regardless of whether the complainant or respondent intends to appeal.

If the Deciding Administrator determines that the ART's violation determination was clearly erroneous, as described in Step 7, then the Deciding Administrator shall remand the matter back to the ART for further investigation and shall provide the ART with a specific written basis for the "clearly erroneous" determination. The process then returns to Step 5. A decision to remand to the ART is not subject to appeal.

Decisions should be made in writing, with copies to the complainant, respondent, OAA, and the Office of General Counsel. Decisions that impose sanctions should identify the appropriate Appeal Administrator and the ten-day period in which an appeal must be submitted.

Step 9–Appeal of a Sanction: If the Deciding Administrator imposes a sanction, then a written appeal may be submitted to the Appeal Administrator within ten (10) calendar days from the date of the Deciding Administrator's written decision.

A respondent's appeal must be in writing and the appeal must state every ground on which the appeal is based. A complainant's appeal must be in writing, must state every ground on which the appeal is based, and may appeal only the severity of the sanction.

The appeal does not involve a new investigation. The appeal may only decide, based upon the written information presented, whether the Deciding Administrator's basis for imposing sanctions, and/or the sanctions themselves, were "arbitrary and capricious." This means that there must be no reasonable basis, under circumstances presented, to uphold the sanctions imposed by the Deciding Administrator. The appeal must defer to the ART for all credibility decisions (e.g., who is telling the truth). A Deciding Administrator who follows the ART's recommended sanction will be presumed not to have acted arbitrarily or capriciously, unless conclusively demonstrated otherwise.

If the Appeal Administrator determines that the ART's violation determination was arbitrary and capricious, then the Appeal Administrator shall remand the matter back to the ART for further investigation and shall provide the ART with a specific written basis for the "arbitrary and capricious" determination. The process then returns to Step 5. A decision to remand to the ART is not subject to appeal.

If the Appeal Administrator determines that the Deciding Administrator's sanctions are arbitrary and capricious, then the Appeal Administrator shall refer the matter back to the Deciding Administrator for further review and shall provide the Deciding Administrator with a specific written basis for the "arbitrary and capricious" determination. The process then returns to Step 8. A decision to remand to the Deciding Administrator is not subject to appeal.

The Appeal Administrator should rule on an appeal in a timely fashion, preferably within thirty (30) calendar days after receipt of the appeal. Rulings should be made in writing, with copies to the complainant, respondent, OAA, and the Office of General Counsel. A ruling by the Appeal Administrator that affirms the Deciding Administrator's decision is not subject to further review within the University.

.050 Questions

Please refer questions regarding this Policy to the Office of Affirmative Action, telephone 532–6220.



