

**R952-1. Purpose:** To provide a guiding policy by which individuals may pursue discrimination and sexual harassment complaints at OCHE.

## R952-2. References

- 2.1. Policy and Procedures **R831**, Minimum Requirements for Non-Faculty Staff Employment Grievances Policy
- 2.2. Policy and Procedures **R910**, Equal Opportunity and Nondiscrimination
- 2.3. Policy and Procedures **R951**, Staff Employee Grievances
- 2.4. Policy and Procedures **R953**, Americans with Disabilities Act Complaint Procedures
- 2.5. Policy and Procedures **R954**, Sexual Harassment and Consensual Relationships
- 2.6. Policy and Procedures **R963**, Reduction in Force and Severance Pay
- 2.7. Policy and Procedures **R964**, Corrective Action and Termination of Staff Personnel

## R952-3. Confidentiality and Non-retaliation

- 3.1. **Privacy of Parties:** The privacy of all parties involved in a complaint investigation shall be strictly respected insofar as it does not interfere with OCHE's legal obligation to investigate allegations of misconduct, to take corrective action, or as otherwise provided by law. Failure by a participant in the process to comply with the mandates of this section may result in disciplinary action.
- 3.2. **Non-retaliation:** Individuals shall not be subjected to retaliation for initiating or participating in this process. The non-retaliation provisions of R910 are incorporated herein.

## R952-4. Duties to Notify

- 4.1. **Advise of the Availability of Procedures:** Any OCHE representative who is contacted by an individual with a sexual harassment or discrimination issue shall advise that individual of the availability of OCHE complaint procedures through the Office of Equal Opportunity and Affirmative Action at the University of Utah (OEO/AA) as contained herein.
- 4.2. **Notify Human Resources:** Once informed of an issue related to sexual harassment or discrimination, the supervisor, manager, or other representative of OCHE shall immediately inform Human Resources. Human Resources will immediately refer the matter to the OEO/AA at the University of Utah for the complaint, investigation, and appeals process.

## R952-5. Complaint, Investigation and Appeals

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<sup>1</sup> Approved July 19, 1983; replaced March 16, 1995. Replaced R951 and R952, March 18, 2005; amended October 27, 2005. New R952 approved April 21, 2006.

**5.1. Filing a Complaint:** A written, signed complaint alleging discrimination or sexual harassment may be filed with the OEO/AA:

5.1.1. by any individual who believes s/he has been subjected to discrimination or sexual harassment in violation of R910, R953, R954; or

5.1.2. by an administrator acting on behalf of OCHE alleging a violation of OCHE discrimination/sexual harassment/ADA policy.

**5.2. Relationship to Other OCHE Proceedings:** All OCHE discrimination and sexual harassment complaints must be resolved under this policy. If allegations of discrimination or sexual harassment are raised in proceedings under another established OCHE complaint or grievance procedure, the OCHE administrators involved shall immediately notify Human Resources which shall refer the sexual harassment or discrimination complaint to the OEO/AA. During an OEO/AA investigation, all other related proceedings shall be stayed, unless the referring entity obtains approval from the director of the OEO/AA to proceed with specified tasks which are clearly separate and distinguishable from those tasks or factual bases arising pursuant to the sexual harassment or discrimination complaint.

**5.3. Dismissal of a Complaint:** A complaint that fails to state a claim of discrimination or sexual harassment, or is not timely (filed within 120 calendar days of the last alleged discriminatory act), may be dismissed by the director of the OEO/AA after an initial review. A complaint that is not timely may be accepted by the director if circumstances warrant.

**5.4. Opportunity to Respond:** The responding party shall be afforded a full opportunity to respond to the allegations.

**5.5. Investigation, Response and Appeal Rights:** The OEO/AA shall endeavor to complete its investigation as expeditiously as possible.

5.5.1. Reasonable time away from regular work duties during scheduled working hours shall be provided, with pay, to the parties, their representatives, or any witnesses called to testify, for time spent participating in the complaint resolution process. Time spent outside scheduled working hours is non-compensable; non-exempt employees will be compensated for time spent in case-related meetings.

5.5.2. At the conclusion of its investigation, the OEO/AA shall provide a summary of its initial findings of fact and conclusions to the complaining party, the responding party and others as appropriate, as well as notice of right to request a hearing. Both parties to the complaint will be afforded the opportunity to respond to the investigative summary and to request a hearing.

5.5.3. If there is no request for a formal hearing, a copy of the investigative report shall be made available to the OCHE's Human Resources, and the initial findings of the OEO/AA shall become OCHE's final decision on the matter.

**5.6. Request for Hearing:** If a hearing is requested by either party and the complaint has not been previously withdrawn, dismissed, settled or otherwise resolved, the matter may proceed to a hearing committee.

5.6.1. In cases where the OEO/AA found no violation of policy or no sanction was recommended as a result of the OEO/AA investigation, the hearing committee shall make an initial determination

as to whether the matter warrants a hearing. If the committee declines to hold a hearing, either party may appeal that decision to the Commissioner.

**5.7. Hearing by Committee:** If a hearing is held, the Committee shall submit its findings, conclusions and recommendations to OCHE Human Resources. Human Resources will submit the findings, conclusions and recommendations to the cognizant Associate Commissioner for a determination.

**5.7.1.** Both parties may be accompanied and counseled by an advisor of their choice who may be an attorney, and who may participate in the hearing as described in the applicable procedure.

**5.8. Associate Commissioner Determination and Appeal:** The cognizant Associate Commissioner shall provide to the parties concerned notice of her/his final determination, as well as the right to request a review by the Commissioner.

**5.8.1.** If the Associate Commissioner is the named respondent, the Associate Commissioner determination will be made by an appropriate person designated by the Director of Human Resources in consultation with the Office of the Attorney General.

**5.9. Commissioner's Determination:** If the Commissioner's review is requested, the Commissioner shall issue a final decision to the parties.

**5.9.1.** In cases where the Commissioner is a respondent or otherwise involved in the decision being reviewed, the final decision will be made by an appropriate person designated by the Director of Human Resources in consultation with the Office of the Attorney General.