

DIVISION: <b>Administration/Human Resources</b>	
SUBJECT: <b>Discriminatory Harassment and Complaint Process</b>	Page 1 of 13
Policy Number:	Supersedes: <b>Discriminatory Harassment and Complaint Process</b>
Effective Date: <b>09/30/14</b>	Previously Issued: <b>08/15/14</b>

## 1. STATEMENT OF POLICY:

Loyola Marymount University is dedicated to fostering the education of the whole person and strives to provide an environment that encourages the search for truth and freedom of inquiry. The University recognizes the important contribution a diverse community of students, faculty and staff makes towards the advancement of its goals and ideals. The University is committed to providing an environment that is free of discrimination and harassment as defined by federal, state and local law, as well as under this policy. Any violations of this policy will be treated as serious misconduct and result in appropriate disciplinary action up to and including dismissal from the University.

This policy applies to all students, faculty, and staff including, but not limited to: trainees, non-supervisory staff, supervisors, managers, directors and leadership. It is also the policy of the University to protect its students, faculty and staff from unlawful harassment by vendors, guests and other visitors to the University. It is the responsibility of every student, faculty and staff member to follow this policy conscientiously.

The University seeks to ensure a positive living, learning and working environment for all LMU community members. Specifically, this policy prohibits unwelcome, harassing conduct on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, legally protected medical condition (cancer-related or genetic characteristic), marital status, sex (including gender identity or gender expression as defined by law, pregnancy, childbirth, breastfeeding or related medical condition), age 40 or over, military or veteran status, sexual orientation, genetic information or any other bases protected by federal (including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990), state or local law. Students, faculty and staff should be aware of and avoid actions that others may construe as unwelcome and/or harassing. [[click here for Student Conduct Code](#)] [[click here for Human Resources Policies & Procedures](#)] [[click here for the Faculty Handbook](#)].

The objective of this policy is to prevent an environment from developing which unreasonably interferes with a student's academic endeavors and/or a faculty/staff member's work or has the effect of creating an intimidating, hostile or offensive environment because of such prohibited conduct. It is essential that students, faculty and staff immediately report conduct that is believed to be in violation of this policy. Prompt reporting is necessary in order that timely fact-finding can be conducted about complaints, a problem can be remedied before the situation escalates, and the potential for the spread of harmful rumors can be reduced. Unless the law requires a longer period of limitation, a complaint must be filed within one calendar year of the conduct alleged to be a violation. [[click here for Complaint of Allegation of Discriminatory Harassment Form](#)]

## 2. DEFINITIONS:

**"Harassment"** is unwelcome verbal, non-verbal, physical or visual conduct based on any legally protected characteristic outlined above that has the purpose or effect of unreasonably interfering with academic or work performance or creating an intimidating, hostile or offensive, living, academic or work environment.

**"Sexual Harassment"** is unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, physical or visual conduct by a person of either the same or opposite sex where:

1. submission to or rejection of the conduct is made either an explicit or implicit condition of academic achievement and/or employment;
2. submission to or rejection of the conduct is used as the basis for an academic and/or employment decision; or
3. the conduct has the purpose or effect of unreasonably interfering with academic, or work performance or creating an intimidating, hostile, or offensive, living, academic, or work environment.

**"Hostile Environment"** is defined as any situation in which there is harassing conduct that is sufficiently severe, pervasive and objectively offensive that it limits, interferes with or denies educational or employment benefits or opportunities from both a subjective (the complainant) and objective (reasonable person's) viewpoint.

**"Consent"** is defined as the unambiguous and willing participation or cooperation in act, behavior or attitude that is commonly understood to be consistent with the exercise of free will. Consent requires participants who are lawful adults, fully conscious, equally free and legally competent to act, have clearly communicated their willingness, cooperation, or permission to participate in the specific sexual activity engaged in, are positive and clear about their desires, and are able to cease ongoing consensual activity at any time. Refusal to consent does not have to be verbal; it can be expressed with clear gestures, body language or attitude. Prior sexual history between the complainant and respondent, by itself, does not constitute consent.

Consent is not freely given if:

1. It is obtained through the use of force, through the fear of or the threat of force, through the abuse of a power positions over another (such as employment status or position within an organization) or by kidnap; or
2. A reasonable person in the position of the alleged perpetrator at the time the alleged conduct occurred should have known that the other person was unable to give consent for any of the following reasons:
  - a. The individual is unable to make an informed decision as a result of the use of alcohol, drugs or other substances (including but not limited to predatory drugs or prescribed medications);
  - b. The individual is unable to consciously respond for whatever reason including lack of consciousness, sleep, illness or shock;
  - c. The individual is under the age of eighteen and therefore legally incapable of giving consent;or

- d. The individual is known by reason of impairment, mental condition or developmental or physical disability to be reasonably unable to consent.
3. The individual has acted or spoken in a manner which expresses a lack of consent or a refusal to consent.

**“Sexual Misconduct”** is defined as Sexual Assault, Sexual Exploitation, Interpersonal Misconduct, or the act of making sexual contact with the intimate body part of another person without that person’s consent including as the result of sexual coercion. Intimate body parts include the sexual organs, the anus, the groin or buttocks of any person, and/or the breasts.

**“Sexual Assault”** is defined as engaging in sexual intercourse or any of the sexual activities listed below with another person without that person’s consent. Sexual Assault includes, but is not limited to, rape, sexual battery, anal intercourse, oral copulation or penetration of a body cavity by a foreign object. Sexual intercourse includes the penetration, however slight, of the vagina or anus with any object or body part and of the mouth with a body part or object in a sexual manner.

**“Sexual exploitation”** is sexual misconduct that occurs when a person takes unjust or abusive sexual advantage of another for his or her benefit or for the benefit of anyone other than the exploited party; and that behavior does not otherwise constitute sexual assault. Examples of sexual exploitation include, but are not limited to, invasion of sexual privacy, videotaping or photographing of any type (webcam, camera, Internet exposure, etc.) without knowledge and consent of all persons; going beyond the boundaries of consent (such as letting another person hide and watch you have consensual sex without the knowledge of the other party), engaging in unconsented voyeurism, exposing one’s genitals or breasts in non-consensual circumstances; coercing another against their will to expose their genitals or breasts, and prostituting another person.

**“Interpersonal Misconduct”** includes Dating Violence, Domestic Violence and Stalking, as defined below.

**“Dating Violence”** is defined in accordance with the reauthorization of the Violence Against Women Act, as violence committed by a person:

1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. Where the existence of such a relationship shall be determined by the victim with consideration of the following factors:
  - a. The length of the relationship
  - b. The type of the relationship
  - c. The frequency of interaction between the persons involved in the relationship.
3. The existence of a social relationship is based on the victim’s statement with consideration of the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved. Dating violence does not include acts covered by the definition of domestic violence.

Dating violence includes sexual or physical abuse or the threat of such abuse.

**“Domestic Violence”** is defined in accordance with the reauthorization of the Violence Against Women Act as a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under California law, or by any other person against an adult or youth victim who is protected from that person’s acts under California law.

**“Stalking”** is defined in accordance with the reauthorization of the Violence Against Women Act as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

**"Hate Crimes"** are acts of physical force, threats, or intimidation that are willfully or knowingly committed because of the victim's actual or perceived disability, gender, nationality, race or ethnicity, religion or sexual orientation. Hate crimes are expressed in several ways, sometimes physical violence and sometimes violence against property. (California Penal Code, §§422.55 and 422.6).

**"Bias-Motivated Incidents"** are acts, including but not limited to disseminating racist flyers or defacing a student organization flyer, which do not violate the State Penal Code, but originate in bias against someone's actual or perceived disability, gender, nationality, race or ethnicity, religion or sexual orientation.

These policy definitions are not intended to and do not limit the University's ability to discipline or otherwise respond to conduct which does not necessarily violate the law, but which the University determines is a violation of this policy.

#### Discriminatory Harassment and Academic Freedom

Nothing in this policy should be construed to infringe on the academic freedom of members of the University community and their right to use the academic forum provided by the University either to discuss controversial subjects or to express ideas with which some or most members of the University community strongly disagree.

Students, faculty and staff who have questions regarding the University's discriminatory harassment policy should contact the University EEO Specialist, who is the designated Title IX coordinator for the University, at Human Resources, 1 LMU Drive, Suite 1900, Los Angeles, CA 90045, phone: 310.568.6105. [[click here](#) for [Complaint of Allegation of Discriminatory Harassment Form](#)].

### 3. **POLICIES/PROCEDURES:**

#### **Reporting Allegations of Discriminatory or Harassing Conduct**

All members of the University community, including students, faculty and staff, are encouraged, when appropriate and desirable, to try to resolve issues relating to conduct they believe to be discriminatory or harassing by directly addressing any person(s) engaged(ing) in inappropriate or unwelcome behavior and requesting that the behavior stop or be modified in some mutually satisfactory way.

However, we recognize that not everyone will feel comfortable engaging in such direct conflict resolution and/or that a direct approach will not always result in an acceptable resolution to all persons involved. In

those instances where direct resolution is either not desirable or inadequate to resolve the inappropriate or unwelcome discriminatory or harassing behavior, any member of the University community is strongly encouraged to file a complaint of discrimination or harassment with any of the persons or departments listed below.

#### *Complaints of Sexual Misconduct*

Pursuant to the University's "Reporting Sexual Misconduct" policy, all reports of sexual misconduct, as defined above, should be made to the Department of Public Safety at 310.338.2893 [x82893 on campus.]

Complaints of student-on-student sexual misconduct are handled through the Student Conduct Code.

All other complaints of sexual misconduct made by or against a student, faculty or staff member are subject to the processes described in University's "Reporting Sexual Misconduct" policy, and the processes in "Step 1: Intake" and "Step 3: Formal Resolution" set forth in this policy, below. For complaints of sexual misconduct, DPS is charged with the "Intake" procedures set forth below.

Complaints of sexual misconduct made against an individual who is not a student, faculty or staff member are subject to the University's Discriminatory Harassment and Complaint Process policy, but will not proceed through the Formal Resolution processes.

#### *Complaints of Discriminatory Harassment*

##### Students

Students may report discriminatory or harassing conduct, as defined in this policy, to any of the following:

- Student Affairs at 310.338.2885 [x82885 on campus];
- Associate Vice President Student Affairs at 310.338.7745 [x87745 on campus]; or
- University EEO Specialist at 310.568.6105 [x86105 on campus.]

Complaints of student-on-student discriminatory harassment are handled through the Student Conduct Code.

##### Faculty

Faculty may report discriminatory or harassing conduct, as defined in this policy, to any of the following:

- Academic Affairs at 310.338.2733 [x82733on campus];
- Human Resources at 310.338.2723 [x82723on campus];
- Vice President for Intercultural Affairs at 310.338.7598 [x87598 on campus]; or
- University EEO Specialist at 310.568.6105 [x86105 on campus.]

##### Staff

Staff may report discriminatory or harassing conduct, as defined in this policy, to any of the following:

- Appropriate University Senior Vice President

- Human Resources at 310.338.2723 [x82723on campus]; or
- University EEO Specialist 310.568.6105 [x86105 on campus.]

All supervisory faculty, administrators and staff are required to report inappropriate conduct against another faculty, administrator or staff member in violation of the University's policies against discrimination and harassment. Unless the law requires a longer period of limitation, a complaint must be filed within one calendar year of the conduct alleged to be a violation. Prompt reporting will enable the University to investigate the facts, determine the issues and provide an appropriate remedy for any violation of University policies.

Students, faculty and staff may also contact the U.S. Department of Education Office for Civil Rights to file a complaint of discrimination or harassment or sexual misconduct, and faculty and staff may file a complaint of discrimination or harassment or sexual misconduct with the U.S. Equal Employment Opportunity Commission or the California Department of Fair Housing and Employment. However, a complaint filed with any outside government agency will not suspend the investigation or resolution of a complaint of discrimination or harassment filed pursuant to the University's internal Discrimination and Harassment Complaint Process.

### **Interim Measures**

The University may take interim measures, including, but not limited to, academic, residential, transportation and/or employment accommodations, intended to ensure the well-being of the complainant, the respondent, the investigatory process and/or the University community while the complaint is being investigated and prior to the determination on the complaint. Any such interim measures shall not be referred to or offered as evidence at the hearing on the underlying charge. Any such interim measures shall be designed and implemented in a manner intended to achieve their purpose while at the same time limiting, to the extent practicable, any adverse effect to the complainant's and/or respondent's educational program or employment.

### **Advisors**

#### *Complaints of Sexual Misconduct*

All persons involved in a complaint of sexual misconduct may, at any time in the process, request the assistance of an advisor to be appointed by the University or select an advisor of their choice. The advisor may accompany the complainant and/or respondent during the complaint process. The advisor may assist in the presentation of the case to the EEO Hearing Panel (during any Formal Resolution.)

#### *Complaints of Discriminatory Harassment*

All persons involved in a complaint of discriminatory harassment may, at any time during the process, request the assistance of an advisor selected from the University community. An advisor is defined as any current student, faculty or staff or religious community member, but not the Law School students, faculty or staff. Off-campus individuals, parents, family members, attorneys, alumni/ae, and those persons who have no affiliation with the University are expressly excluded from the definition of "Advisor" and cannot serve as Advisors. Current faculty or staff cannot act as an Advisor to their own family members.

The advisor may accompany either the complainant and/or respondent during the complaint process. The use of an advisor is not intended as legal representation, and no attorney will be present during the grievance procedures, except as may be permitted pursuant to the Faculty Grievance Process on appeal. The advisor may assist in the presentation of the case to the EEO Specialist (during any Informal Resolution) or to the EEO Hearing Panel (during any Formal Resolution).

### **Confidentiality & Non-Retaliation**

All persons who make a complaint of discrimination or harassment, or who are involved in an investigation of such a complaint, pursuant to this policy are bound by rules of confidentiality. Confidentiality will be maintained to the greatest extent possible in view of the method of complaint resolution chosen.

All persons are prohibited from taking any retaliatory action against any other member of the University Community, including the complainant, respondent, or witnesses involved in the complaint. Any such retaliatory actions taken by or against any complainant, respondent, or witnesses may be subject to a separate complaint under this policy and/or appropriate disciplinary action up to and including dismissal from the University. Any person who believes that she/he has been retaliated against for having filed or participated in the investigation of a complaint of discrimination or harassment should immediately notify the EEO Specialist of the retaliatory conduct.

### **False or Harassing Complaints Prohibited**

It is a violation of this policy to file a false complaint against anyone for the purpose of injuring the reputation of or harassing another. Any person found to have filed a false complaint against another in bad faith or for the purpose of injuring the reputation of or harassing another will be subject to appropriate discipline. This proscription is in no way intended to discourage the filing of good faith complaints of discrimination or harassment, even if those complaints do not result in a finding of misconduct or sanction under the University's policies.

### **Discrimination and Harassment Complaint Process**

For those persons who believe they have been the victim of, or have witnessed, discrimination, harassment, or sexual misconduct by or against any member of the University community, including sexual harassment, this Complaint Process is the exclusive means by which complaints of discrimination and harassment may be investigated and resolved, unless the complaint involves student-on-student discrimination, harassment, or sexual misconduct conduct. This Complaint Process is not intended to, and does not, preclude any member of the University community from addressing and resolving issues of inappropriate or unwelcome conduct directly with any other member of the University community.

#### **Step 1: Intake**

All complaints of discrimination or harassment, regardless of how reported, if not resolved directly, will be referred by the person receiving the complaint to the EEO Specialist for Intake and Resolution pursuant to this Complaint Process.

All complaints of sexual misconduct will be made or referred to the Department of Public Safety. In such cases, the Department of Public Safety will perform all "Intake" processes, as set forth below.

The EEO Specialist/Department of Public Safety will first meet with the complainant (*i.e.* the person making the complaint) to either make a complaint, if not already made, or, if a written complaint has been made, to verify the accuracy of the allegations contained in the written complaint. The complaint will include, but not be limited to:

1. The name of the complainant;
2. the name(s) of the respondent(s) (*i.e.* the person(s) accused of violating the University's policies against discrimination or harassment or sexual misconduct);
3. the date(s) and nature of all alleged discriminatory or harassing conduct or sexual misconduct;
4. the name(s) of any witness(es) to the alleged discriminatory or harassing conduct or sexual misconduct or person(s) that might otherwise have information relevant to the alleged discriminatory or harassing conduct or sexual misconduct by the respondent; and
5. if appropriate, whether the complainant is amenable to informal resolution of the complaint.

The EEO Specialist/Department of Public Safety will then meet with the respondent to notify the respondent of the complaint and the allegations against her/him. During this meeting, the EEO Specialist/Department of Public Safety will also document the response to the allegations of the complaint, including but not limited to:

1. the respondent's version of each of the event(s) of alleged discriminatory or harassing conduct or sexual misconduct identified by the complainant;
2. the name(s) of any witness(es) to the alleged discriminatory or harassing conduct or sexual misconduct or person(s) that might otherwise have information relevant to the alleged discriminatory or harassing conduct or sexual misconduct by the respondent;
3. any additional information that the respondent believes is relevant to a determination of the complaint; and
4. if appropriate, whether the respondent is amenable to informal resolution of the complaint.

#### *Complaints of Discrimination or Harassment*

The EEO Specialist will evaluate the allegations of the complaint and the response to determine the following:

1. whether the allegations constitute a claim of discrimination or harassment subject to the University's Complaint Process;
2. whether the claim and the parties are amenable to informal resolution. [Note: Claims that may not be suitable for informal resolution include but are not limited to those that may involve the interests of persons other than the claimant, claims of physical assault or violence or claims that involve other potentially criminal conduct]; and

3. whether there are any immediate actions that should be taken to redress the alleged inappropriate conduct pending further resolution of the complaint.

If the EEO Specialist determines that the complaint does not constitute a claim of discrimination or harassment subject to the Complaint Process, the matter will be referred to the appropriate University personnel or University department for resolution.

If the EEO Specialist determines that the complaint does constitute a claim of discrimination or harassment subject to the Complaint Process, then:

1. If the claims and parties are amenable to informal resolution, the matter will proceed as set forth below in Step 2: Informal Resolution. [Note: Both parties must consent to informal resolution, otherwise the matter must proceed to Step 3: Formal Resolution.]
2. If the claims and/or parties are not amenable to informal resolution, the matter will proceed as set forth below in Step 3: Formal Resolution.

#### Complaints of Sexual Misconduct

In complaints of sexual misconduct, the Department of Public Safety will evaluate the allegations of the complaint and the response to determine whether there are any immediate actions that should be taken to redress the alleged inappropriate conduct pending further resolution of the complaint.

The Department of Public Safety will provide its reports to Judicial Affairs, in cases involving complaints of student-on-student sexual misconduct, or will provide its report to the EEO Specialist, for all other claims of sexual misconduct.

1. If the claims involve student-on-student sexual misconduct, the matter will proceed as set forth in the University's Student-on-Student Sexual Misconduct Policy and Protocol.
2. All other claims of sexual misconduct will proceed as set forth below in Step 3: Formal Resolution.

#### Step 2: Informal Resolution

Informal Resolution is a process whereby the University attempts to resolve complaints quickly and effectively to the satisfaction of all parties without engaging in a formal fact-finding process or issuing any formal findings, while also providing the greatest protection of confidentiality possible to the parties. At any time during the informal resolution process, either party may elect to terminate the process and proceed with a formal resolution pursuant to Step 3 below.

Informal Resolution may take the form of an interactive resolution by the EEO Specialist. The EEO Specialist will meet with both the complainant and respondent, and any other persons or witnesses determined to be necessary to a full resolution of the complaint, to review the allegations and any response, and assist the parties in reaching a mutually satisfactory resolution.

If resolution is reached by these informal means, the resolution will be documented by the EEO Specialist and the matter will be closed. If resolution is not reached by these informal means, and the EEO Specialist determines that the complaint remains subject and amenable to resolution under the Complaint Process, the complaint will be referred to Step 3 below for Formal Resolution. The University reserves

the right to terminate the informal resolution process and to deny formal processing of a complaint if at any time during the informal resolution it is determined that the allegations of the complaint are not subject or amenable to resolution under the Complaint Process.

### Step 3: Formal Resolution

If a complaint is not suitable for informal resolution (the complainant, respondent or both do not agree to resolution of the complaint by informal means, or if informal resolution is not successful in resolving the matter, or if the complaint involves allegations of sexual misconduct) an EEO Hearing Panel will be constituted to hear and resolve the complaint.

Each EEO Hearing Panel will consist of 4 EEO Hearing Panel members and one EEO Hearing Panel Chair who will preside over the hearing and – on the Panel's behalf – issue findings and a recommended remedy, if any, on each EEO complaint. The EEO Hearing Panel shall be constituted as follows:

The complaining party and responding party will each nominate four panelists from an approved list. Faculty and staff members may nominate other faculty and/or staff members for the EEO Hearing Panel. Students may nominate students, faculty and/or staff members for the EEO Hearing Panel.

Each individual nominated by the complaining and responding parties must:

- Have satisfactorily completed University required training,
- Not be an attorney,
- Not have a personal interest in the EEO complaint or its resolution, and
- If a staff member, have completed his/her introductory period.

The Vice President of Human Resources will make the final selection of the panel members from the nominees by selecting two of the complaining party's nominees and two of the responding party's nominees.

The fifth panel member will be an HR Representative who will preside over the hearing as the EEO Hearing Panel Chair. The Vice President of Human Resources will designate the HR Representative who will act as the EEO Hearing Panel Chair. The HR Representative will only act as a voting panelist if there is a split decision between the EEO Hearing Panel members.

Once selected, the EEO Hearing Panel Chair will provide at least ten (10) calendar days notice to the complaining and responding parties of the date of the hearing. All EEO Hearing Panel members will receive training on the University's anti-discrimination/harassment and sexual misconduct policies and on the administration of this Complaint Process prior to the hearing.

The function of the EEO Hearing Panel shall be to: (1) determine whether any University policy against discrimination, harassment or sexual misconduct has been violated, including any lesser offense than that charged in the complaint; and (2) if so, recommend an appropriate remedy to redress the violation. At the EEO Hearing Panel proceedings, each party shall have the right to present testimony and evidence in support of his/her claims or defenses. The EEO Hearing Panel shall be empowered to hear and receive evidence and testimony relating to the complaint, including compelling either party to produce a witness or evidence deemed relevant to the determination of the complaint, and question any witnesses, including the complainant or respondent.

The EEO Hearing Panel Chair shall be responsible for presiding over the EEO Hearing Panel proceedings and ensuring the orderly presentation of the evidence and testimony, as well as ensuring that the parties are accorded a fair and full opportunity to present their claims and defenses. The EEO Hearing Panel proceedings will not be governed in accordance with any rules of evidence or procedure, but will be administered in the sole discretion of the EEO Hearing Panel, under the direction of the EEO Hearing Panel Chair. All EEO Hearing Panel proceedings will be closed to general members of the University community. Attendance at EEO Hearing Panel proceedings will be limited to the complainant, respondent, an advisor to either party, witnesses called to testify by either party, and the designated EEO Hearing Panel members.

After the presentation of all testimony and evidence by both parties, the EEO Hearing Panel will convene privately to deliberate on the facts and evidence. Within fifteen (15) calendar days from the adjournment of the hearing, the EEO Hearing Panel will issue a written decision reflecting the panel's finding of whether any of the University's policies against discrimination, harassment or sexual misconduct have been violated, the factual basis for such finding, and the recommended remedy for any violation. The written decision will be made using the preponderance of evidence standard. The findings and recommendation will be based solely on the presentation of evidence and testimony during the hearing and will include sufficient detail in support of the decision to allow adequate review on appeal.

If the decision contains a recommended remedy, the EEO Hearing Panel will forward its written decision to the EEO Specialist and the appropriate University Senior Vice President responsible for enforcing any remedy for review and approval. If the recommended remedy is not approved, the written decision must be supplemented to reflect the reasons for any modification. [Note: A recommended remedy may be modified, for example, on the basis of prior disciplinary action against the respondent to which the EEO Hearing Panel is not privy.] Within five (5) calendar days from the date of the written decision the EEO Specialist will issue written notice to both the complainant and respondent of the findings of the EEO Hearing Panel, including the determination of whether any University policy against discrimination or harassment has been violated, the factual basis for the finding, and any remedy. In the case where the remedy involves discipline against the respondent, the complainant will be notified only that the respondent will be appropriately disciplined for the violation, but will not receive notice of the specific nature of any discipline, unless required by law. Notice to the respondent will include specific reference to the discipline to be enforced against her/him. The decision of the EEO Hearing Panel is final unless appealed, pursuant to Step 4 below, within ten (10) calendar days from the date of the written notice to the parties.

#### Step 4: Appeal

Either party may appeal within ten (10) calendar days of the date of the written notice of the decision of the EEO Hearing Panel by providing written notice of appeal as follows:

##### *Appeal by Complainant*

The complainant may appeal the decision of the EEO Hearing Panel to the University Executive Vice President and Provost. A formal notice of appeal must be filed in writing with the Office of the University Executive Vice President and Provost. Upon receipt of the written notice of appeal, the Office of the University Executive Vice President and Provost will provide notice of the appeal in writing to the EEO Specialist, the appropriate University Senior Vice President, if any, and the respondent. The University Executive Vice President and Provost will review the record of the case, including but not limited to the

written decision of the EEO Hearing Panel and any evidence or other documentation contained in the case file, to determine whether the decision, including the findings and recommended remedy, if any, of the EEO Hearing Panel should be affirmed, reversed, or modified. Within ten (10) calendar days from the date of the written notice of appeal, the University Executive Vice President and Provost will notify the parties in writing of the decision on appeal. In the event the decision of the EEO Hearing Panel is reversed or modified, the notice by the University Executive Vice President and Provost will include an explanation of the grounds on which the decision has been reversed or modified. The decision of the University Executive Vice President and Provost shall be final.

#### Appeal by Respondent

The respondent may appeal the decision of the EEO Hearing Panel as follows:

1. A student respondent may appeal the decision of the EEO Hearing Panel by sending written notice of appeal to Judicial Affairs within ten (10) calendar days from the date of the notice of the decision. The appeal of the decision of the EEO Hearing Panel will proceed in accordance with the procedures for appeal found in the Student Conduct Code.
2. A faculty respondent may appeal the decision of the EEO Hearing Panel by sending written notice of appeal to the Faculty Grievance Committee within ten (10) calendar days from the date of the notice of the decision. The appeal of the decision of the EEO Hearing Panel will proceed in accordance with the procedures for review of a faculty grievance of "dismissal or other severe sanction" found in the Faculty Handbook.
3. A staff member may appeal the decision of the EEO Hearing Panel by sending written notice of appeal to the University Executive Vice President and Provost within ten (10) calendar days from the date of the notice of the decision. The appeal of the decision of the EEO Hearing Panel will proceed in accordance with the procedure set forth above for appeals by complainants.

#### Scope of Review on Appeal

All appeals shall be based on a review of the record of the case, including but not limited to the written decision of the EEO Hearing Panel and any evidence or other documentation contained in the case file. The scope of review on appeal shall be solely to determine if the findings and recommended remedy, if any, are supported by a preponderance of the evidence in the record of the case. No appealing party shall be permitted to offer new evidence for consideration on appeal unless the party can demonstrate that the evidence did not exist or the party was reasonably unaware of the evidence at the time of the EEO Hearing. If new evidence is permitted for consideration on appeal, the reviewer will only be permitted to determine whether the additional evidence might reasonably have resulted in a different finding or remedy. If the reviewer determines that the additional evidence might reasonably have resulted in a different finding or remedy, the case shall be remanded to the EEO Hearing Panel for reconsideration of the case in light of the new evidence.

#### Decision on Appeal

Within ten (10) calendar days from the date of the written notice of appeal, the reviewer will issue a written decision on appeal to both the complainant and respondent, which shall state whether the decision of the EEO Hearing Panel, including the findings and remedy, if any, are affirmed, reversed,

modified, or in the case of new evidence remanded. In the event the decision or remedy of the EEO Hearing Panel is reversed or modified, the notice shall include an explanation of the grounds for reversal or modification. Notice to the complainant will not include reference to the specific nature of any discipline to be enforced against the respondent, unless required by law. Copy of the written notice will also be forwarded to the EEO Specialist and the appropriate University Senior Vice President, if any. All appeal decisions are final.

### **Record Keeping**

The University will maintain records of all complaints of discrimination, harassment and sexual misconduct filed pursuant to the Discrimination and Harassment Complaint Process for a period of not less than four (4) years. All records will be maintained by the EEO Specialist. Complaint records will not be maintained with the academic or employment records of any student, faculty, or staff, except that some notation of disciplinary action taken against any student, faculty, or staff pursuant to the Complaint Process may be made in the academic or employment record(s) of that individual if required as a condition of the discipline itself or pursuant to administrative record-keeping requirements.

Annually, the University will publish a record of the number of complaints filed pursuant to the Discrimination and Harassment Complaint Process and the basis of each complaint. No information will be published about the identity of persons involved in or the specific nature of any discriminatory harassment complaint.

### **Training**

Pursuant to California law, all supervisory faculty and staff personnel shall receive two (2) hours of training on sexual harassment, including specifically the University's policy against discriminatory harassment, once every two years. This training will be coordinated and administered by the University EEO Specialist/Title IX Coordinator in conjunction with the Department of Human Resources. Any individual who has a question regarding this training should contact the EEO Specialist/Title IX Coordinator at the Human Resources Office, x86105.