

To: Committee on Committees:

Claude Malary, Chair

From: Larry Nuti, General Counsel

Jim Sauerberg, FHB Coordinator

CC: Tomas Gomez-Arias, Senate Chair

Cathe Michalosky, Faculty Governance Coordinator

Date: August 14th, 2011

What: (1) Removal of Equal Employment Opportunity Compliance Committee (EEOCC) and **(2)** Removal of College Diversity Coordinator from Faculty Handbook

Background (1): The Faculty Handbook (FHB) at one time contained an “Affirmative Action Committee”. From about 1979 to 1987 grievances alleging discrimination were referred directly to the Affirmative Action Committee. In 1987 an “Affirmative Action Grievance Procedure” was included in the FHB. This committee was eliminated and replaced with the EEOCC (FHB 1.7.2.2) and its associated procedures (FHB 2.16.5) by the massive 2000 re-write of the FHB.

Since the 2000 re-write, ongoing developments in harassment and discrimination law and related best practices has led to the development by the College of a unified harassment (including sexual harassment) and nondiscrimination policy applicable to all College personnel, regardless of status as faculty or staff. This unification fosters consistency by having one department oversee all matters concerning harassment and discrimination regardless of an employee’s status as faculty or staff. For approximately the last decade, nearly all complaints of harassment and/or discrimination, whether involving faculty or staff, have been investigated under this policy. The EEOCC has rarely convened during this period, suggesting that its usefulness and relevancy have diminished in recognition of the use of the general policy.

Since the EEOCC has not been convened for many years and its processes, if invoked, would create its own set of problems, the continued use of the unified harassment and discrimination policy and its associated process is better suited to meet the College’s obligations to investigate instances of harassment and discrimination and to take prompt remedial action. First, all employees are treated similarly. This alone is significant and by itself supports the abandonment of the unused EEOCC process. Second, the law requires the College to conduct a prompt investigation. However, the timeline for the EEOCC process can be extremely long, upwards of 130 days (over 4 months) and even longer if summer is included. Though the law does not expressly state what would be considered prompt, the period contemplated under the EEOCC procedures, absent fact specific circumstances that might otherwise cause an investigation to take extra time, seems to defy the promptness standard.

Additionally, a committee structure does not represent the best approach to conducting the investigation of this type of issue. The underlying facts in cases of harassment and discrimination are often disputed and determinations of credibility may need to be made, the issues are employment related and as such an appropriate level of confidentiality needs to be maintained, and discrimination and harassment should be afforded a similar, if not the same, process used to investigate complaints of sexual harassment. Though committees can be very effective to resolve a variety of issues, the time that it takes a committee, as well as the number of individuals involved, pose significant risk to the effective carrying out of the College's legal duties. Furthermore, and in particular, from a procedural standpoint, it appears that the EEOCC has been essentially inactive, rarely ever meeting during the past several years. This failure to meet is itself inconsistent with its own stated procedures and thus poses an independent risk to the College. The continued existence of separate procedures is inadvisable and can lead to confusion and inconsistent review of similar complaints. In short, the EEOCC has become a redundancy as well as a potential liability.

Background (2): As a separate matter, the FHB identifies the Vice President for Mission as the "College Diversity Coordinator" (FHB 1.4.1.3). However, the responsibilities of the College Diversity Coordinator have since been assumed by the College Committee on Inclusive Excellence (CCIE), on which the Vice President for Mission sits. Since these responsibilities have been assumed by the CCIE, the assignment of the coordinator to a specific individual is no longer necessary.

Affected FHB sections:

Diversity Coordinator:

- 1.4.1.3 Delete, as these responsibilities are addressed by the CCIE.
- 1.4.4.3 Make reference to Director of Human Resources as Title IX Coordinator.

EEOCC:

- 1.6.1.1 Eliminate reference to EEOCC as one of the several faculty committees.
- 1.7.2.2 Eliminate section describing the role of the EEOCC.
- 2.3.1 Eliminate reference to EEOCC, and replace with a simple reference to the HR Director, to continue to oversee compliance with nondiscrimination policies.
- 2.3.3 (subparagraph 5) Delete this paragraph concerning EEOCC. Renumber remaining paragraphs for document integrity.
- 2.16.2 (Subparagraph d) Revise such that reference to EEOCC is replaced with simple reference to Director for Human Resources.
- 2.16.5 Eliminate this entire section describing EEOCC procedures.

~~1.4.1.3 College Diversity Coordinator (page 6)~~

~~The President has designated the Vice President for Mission as the College Diversity Coordinator. The College Diversity Coordinator reports directly to the President and may act as the President's designated representative at diversity-related meetings, functions, and campus events. The College Diversity Coordinator, among others, helps to facilitate and monitor the goals of the College in moving towards diversity initiatives. The Coordinator assists all advisory boards, Schools, departments, programs and offices within the College in developing and implementing their respective diversity initiatives. The Coordinator also communicates regularly with the President and the campus community regarding process and procedures to address diversity concerns, diversity programming, events and goals at the College, while assisting the Office of Human Resources in providing on-going diversity training for faculty, staff, and administrators. The College Diversity Coordinator is an ex-officio member of the Equal Employment Opportunity Compliance Committee.~~

1.4.4.3 Director of Human Resources (page 18)

The Director of Human Resources is responsible for the College's human resources, compensation, benefits programs, and discrimination policies, including but not limited to the College's sexual harassment policies. The Director for Human Resources is also the College's Title IX Coordinator. The Director coordinates hiring, reviews all contracts, recommends salary, personnel, and benefit policies to the administration, monitors College compliance with laws in government regulations, e.g., Equal Employment Opportunity, Title IX and Title VII regulations, investigates reported complaints of improper conduct, and advises on other appropriate matters affecting the human resources of the College.

1.6.1.1 Faculty Elections (Senate, page 30)

Faculty membership on:

~~— Equal Employment Opportunity Compliance Committee~~

~~1.7.2.2 Equal Employment Opportunity Compliance Committee (Page 47)~~

~~*Role:* The Equal Employment Opportunity Compliance Committee is responsible for considering and deciding allegations of harassment (other than sexual) or discrimination on the basis of race, color, religion, national origin, ancestry, age, gender (including allegations regarding Title IX), sexual orientation, marital status, medical condition, or physical or mental disability according to established College policies and procedures. Complaints involving conduct that might constitute sexual harassment should be reported promptly and directly to the Director of Human Resources, who is responsible for investigating all such complaints involving employees (e.g., faculty, administrators, staff) of the College, or visitors to the College (e.g., vendors, contractors, or other guests of the College).~~

~~*Membership:*~~

~~— Director of Human Resources, chairperson~~

~~— two ranked members of the undergraduate faculty, elected at-large by the undergraduate faculty~~

~~— one ranked member of the graduate faculty, elected at-large by the graduate faculty~~

~~— two members of the College staff, appointed by the Director of Human Resources~~

~~— two alternate members of the College staff, appointed by the Director of Human Resources~~

- ~~— College Diversity Coordinator, ex-officio~~
- ~~— two alternate ranked faculty members~~

~~The first runners-up to each of the elected positions become the alternate members for that position.~~

~~After the election but before the announcement of the results, the chair will share the results of the election with the President to avoid any potential conflict of interest. The President may challenge without prejudice any of those so elected. Anyone so challenged will be replaced by the person elected as runner-up.~~

~~The chairperson shall designate one member to serve as chairperson in his/her absence.~~

~~Meetings: The Equal Employment Opportunity Compliance Committee meets at least once annually to assess equal employment opportunity policies, procedures and progress. Other meetings will be convened by the chairperson to hear any complaints submitted for its consideration.~~

~~Terms of membership shall be for two years. One undergraduate faculty member shall be elected every year, and one staff member and alternate shall be appointed every year.~~

~~A quorum of members must be present for the Equal Employment Opportunity Compliance Committee to conduct its business. A quorum shall consist of five (5) members or their alternates.~~

2.3 SELECTION AND APPOINTMENT PROCEDURES

2.3.1 SELECTION/APPOINTMENT OF RANKED FACULTY (PAGE 87-88)

3. The Committee shall consult the following documents provided by the Dean at the time of written approval:

- a) the College Mission statement;
- b) the Equal Employment Opportunity Recruitment document (available in Human Resources office);
- c) the Faculty Search Procedures statement (available in Human Resources office);

6. In order to meet the College's commitment to diversity, a good faith¹ effort should be made to include at least one candidate, in the final list of candidates, from traditionally underrepresented groups (including but not limited to racial, gender, and disabled) in the field for which the search is occurring. To enable a faculty Search Committee to conduct the strongest possible search for underrepresented candidates, the Human Resources office will send to the faculty Search Committee chairperson a copy of the Faculty Search Procedures, which includes a section on underrepresented groups.

Before the actual search begins, the Search Committee will return their pro-active plan on the recruitment of underrepresented groups, to the Equal Employment Opportunity Committee chair and the appropriate Dean. ~~The Equal Employment Opportunity Committee and the The~~

Dean, in consultation with the Director of Human Resources, will review the plan ~~separately~~ and then supply feedback and recommendations to the Search Committee.

7. The Search Committee shall narrow the pool of applicants to a list of candidates to be interviewed. This list, as far as possible, should reflect the College's commitment to its mission, department/program needs, equal employment opportunities, and diversity.

After choosing the final candidates, the Search Committee will submit an account of the actions taken according to their pro-active plan to the Director of Human Resources, ~~Equal Employment Opportunity Committee~~, Dean, and Provost. If the Director of Human Resources, Dean and/or Provost finds that there has not been a good faith effort, the Dean and/or Provost will ask the Search Committee to make such an effort before the interviews can proceed.

2.3.3 EQUAL EMPLOYMENT OPPORTUNITY (page 89-90)

~~5. There will be an Equal Employment Opportunity Compliance Committee reporting to the Director of Human Resources (for description see 1.7.2.2). This Committee will have as its functions (1) to advise the Director of Human Resources as requested or as needed on equal employment opportunity policies and procedures in progress; and (2) consider any unresolved grievances which may arise alleging harassment (other than sexual harassment) or discrimination on the basis of race, color, religion, national origin, ancestry, marital status, gender, sexual orientation, age, medical condition, or physical or mental disability and to make appropriate recommendations to the President of the College, whose decision in all personnel matters is final, regarding such grievances.~~

2.16.2 PROCEDURES THAT APPLY TO ALL GRIEVANCES (page 146)

1. Grievances must be initiated in writing within twenty (20) school days of the alleged offense. For a definition of "school days" see section 2.16.2.9.
 - a. Grievances where neither the Provost nor the President is a party in the grievance are initiated in the Office of the Provost.
 - b. Grievances where the Provost is a party in the grievance are initiated in the Office of the President.
 - c. Grievances where the President is a party in the grievance are initiated in the Office of the President.
 - d. Grievances involving equal employment opportunity and/or the College's non-discrimination policies are initiated with the Director of Human Resources, who also serves as the College's Title IX Coordinator, ~~who also serves as the College's Equal Employment Opportunity Compliance Committee chairperson (see section 2.16.5)~~. Complaints involving allegations of sexual harassment are also reported to and investigated by the Director of Human Resources (see section 2.9.2.1.)

2.16.5.1 Grievance In Case of Alleged Harassment (Other than Sexual) or Discrimination on the Basis of Race, Color, Ancestry, Religion, National Origin, Gender, Age (40 Years or Older), Marital Status, Sexual Orientation, Medical Condition or Physical or Mental Disability²

²When an employee or student has a complaint alleging conduct that may constitute sexual harassment involving an

See Figure 5 for a time line of this section.

- ~~1. A written petition alleging harassment (other than sexual) or discrimination on the basis of race, color, ancestry, religion, national origin, gender, age, marital status, sexual orientation, medical condition or physical or mental disability shall be sent to the chairperson of the Equal Employment Opportunity Compliance Committee within twenty (20) school days of the alleged event. See section 1.7.2.2 for a complete description of the Equal Employment Opportunity Compliance Committee.~~

~~The written notification, at this stage, can be very brief, indicating the nature of the alleged grievance and the parties involved. See section 2.16.2(4) for the requirements of written notification.~~

- ~~2. See section 2.16.2 for procedures that apply to all grievances.~~

~~Maximum time line since grievance occurred: 20 school days~~

~~Step I — Informal Process~~

- ~~1. Following receipt of the written grievance the chairperson of the Equal Employment Opportunity Compliance Committee shall call for a meeting between the chairperson and the grievant to take place not later than ten (10) school days after the written notice is received.~~
- ~~2. Resolution of the grievance through informal dialogue and mediation is encouraged. The formal grievance procedure is time consuming, costly, and often divisive and should only be used if informal channels of resolution have been exhausted.~~
- ~~3. At the initial meeting with the grievant, the chairperson of the Equal Employment Opportunity Compliance Committee will determine if preliminary means of resolution have been attempted. If appropriate, the chairperson will attempt further preliminary means of resolution.~~
- ~~4. No further action on the complaint will be taken unless such preliminary means of resolution have been attempted.~~
- ~~5. If the matter is settled at this point, a written memorandum of the complaint and resolution of the parties involved will be prepared by the chairperson of the Equal Employment Opportunity Compliance Committee. Copies of the memorandum will be sent to the parties involved. The original will be retained in a separate file in the Human Resources office.~~
- ~~6. The informal process may continue until the grievance is settled or until the passage of ten (10) school days from the date of the first informal discussion with the chairperson of the Equal Employment Opportunity Compliance Committee, whichever occurs first unless otherwise provided by all parties in writing. See section 2.16.2.6.~~

~~Maximum time line since grievance occurred: 40 school days~~

~~employee, that complaint should be referred directly and promptly to the Director of Human Resources, who serves as the chair of the Equal Employment Opportunity Compliance Committee.~~

~~Step II — Written Complaint of Grievance~~

~~If no resolution occurs at Step I, the grievant may within fifteen (15) school days of the terminal date of the informal discussion appeal to the Equal Employment Opportunity Compliance Committee by submitting a written complaint which specifies the alleged offense and the individual(s) against whom the complaint is lodged. The complaint is submitted to the chairperson of the Equal Employment Opportunity Compliance Committee. See section 2.16.2(4) for the requirements of written notification.~~

~~Maximum time line since grievance occurred: 55 school days~~

~~Step III — Equal Employment Opportunity Compliance Committee Procedure~~

~~1. The chairperson of the Equal Employment Opportunity Compliance Committee will insure that the Equal Employment Opportunity Compliance Committee is operational within ten (10) school days from the receipt of the written complaint. Further, the decision of the committee must be rendered within thirty (30) school days from the constitution of the committee.~~

~~If the complaint is received fewer than thirty (30) school days before the end of the academic year, the chairperson of the Equal Employment Opportunity Compliance Committee shall assign it to the Equal Employment Opportunity Compliance Committee within twenty (20) school days after the commencement of the next academic year.~~

~~Maximum time line since grievance occurred: 65 school days~~

~~2. The Equal Employment Opportunity Compliance Committee:~~

~~a. Shall ascertain that Step I was unsuccessful in bringing about a settlement.~~

~~b. Must undertake a thorough and prompt investigation of the grievance by conducting interviews, reviewing written materials provided by or requested from the parties or other persons having personal knowledge regarding the allegations of the complaint, by meeting witnesses, or, at its discretion, by other means of investigation that help to inform the Committee. It is not required that the Committee conduct a hearing. However, if the Committee decides to conduct a hearing, then the parties involved shall be consulted regarding a suitable time and place for any hearing. The complainant(s) and the person(s) accused shall have the right to be heard. The Committee shall have the right to request witnesses to appear and to hear their testimony. Lawyers are not permitted to appear at or participate in the hearing.~~

~~c. Shall render a decision in the case by means of a majority vote even if the individual(s) against whom the complaint is made refuses to appear or present a defense. The decision may include:~~

~~i. dismissal of the grievance;~~

~~ii. a declaration which states the rights of each party;~~

~~iii. a call upon appropriate authority to impose sanctions;~~

~~iv. other appropriate action based on the circumstances presented.~~

- ~~d. Shall preserve the confidentiality of the proceedings. Meetings are not public.~~
- ~~e. The record of the Committee hearings and all related documentation will be kept in a confidential file in the Human Resources office. These records will be kept separate from any personnel files.~~
- ~~f. The chairperson of the Equal Employment Opportunity Compliance Committee must notify the grievant, the individual(s) against whom the complaint was brought, and the President of the College of the Committee's resolution within thirty (30) school days from the first operation of the Committee. See section 2.16.2(4) for the requirements of written notification.~~

~~Maximum time line since grievance occurred: 95 school days~~

- ~~g. In the case of recommended sanctions, a copy of the Committee's decision will be delivered to the person or authority who is to impose the sanctions and a copy will be placed in the personnel files in the Human Resources office of the individual(s) against whom the complaint was lodged. The person or authority who is to impose the sanctions shall within thirty (30) school days of receiving the recommendation make a written report to the chairperson of the Equal Employment Opportunity Compliance Committee.~~

~~Step IV — Appeal to the President~~

- ~~1. A grievant or the individual(s) against whom the complaint was lodged is dissatisfied with the decision rendered by the Equal Employment Opportunity Compliance Committee may appeal to the President of the College. The party must submit a written complaint, specifying why the decision by the Equal Employment Opportunity Compliance Committee is believed to be erroneous and the redress sought. The complaint must be received within fifteen (15) school days of the decision by the Equal Employment Opportunity Compliance Committee. See section 2.16.2(4) for the requirements of written notification.~~
- ~~2. The President will have twenty (20) school days to render a final decision on the case. A copy of the decision shall be distributed to both parties and to the chairperson of the Equal Employment Opportunity Compliance Committee. The President's decision shall be final.~~

~~Maximum time line since grievance occurred, in event of sanctions: 125 school days.~~

~~Maximum time line since grievance occurred, in event of Appeal to President: 130 school days.~~

Delete the following figure:

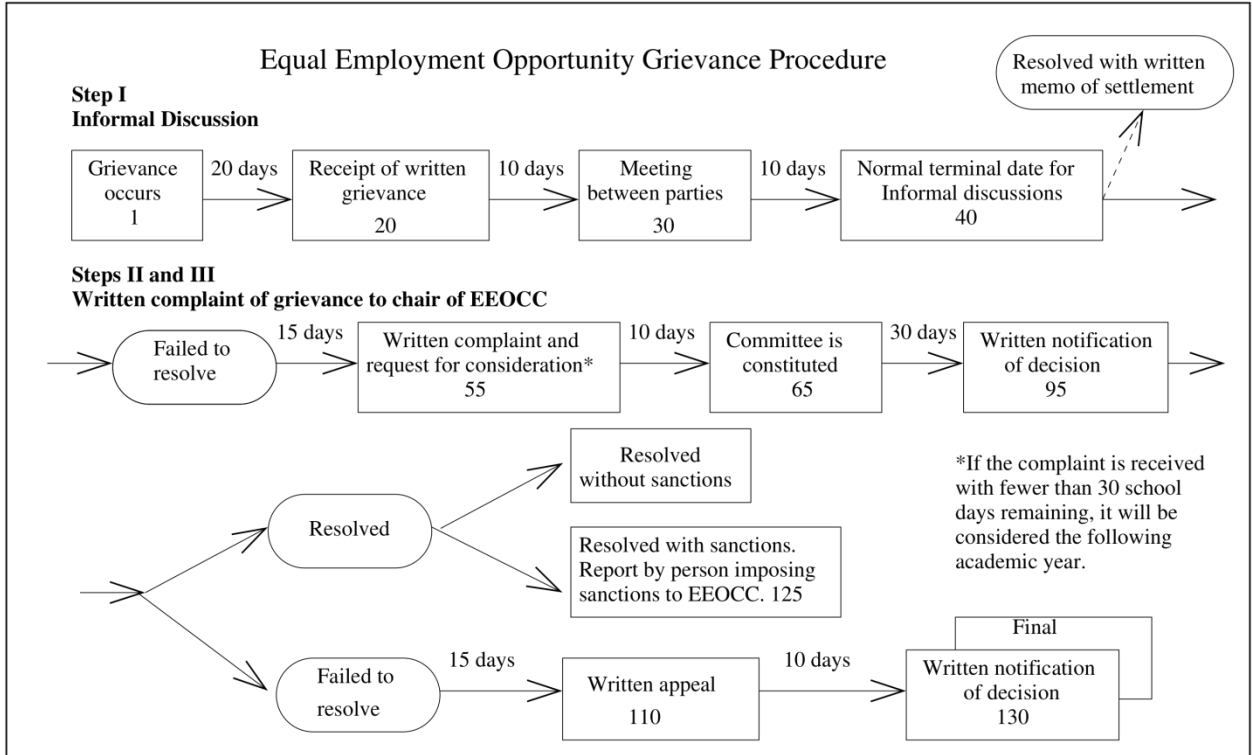


FIGURE 5. Section 2.16.5.1