



## CSUEB Investigation Procedures for Equal Opportunity Complaints

### **I. Purpose**

Procedure by which complaints of Discrimination, Harassment, Retaliation, Failure to Accommodate or regarding Disability Accessibility will be reviewed and/or investigated.

### **II. Constituency Affected**

All University Employees, Employee Applicants, Students, Student Applicants and Independent Contractors.

### **III. Definitions**

- A. Accused – the person accused of Discrimination or Harassment.
- B. Complainant – the person bringing a Complaint of Discrimination, Harassment, Retaliation, Failure to Accommodate and/or regarding Disability Accessibility.
- C. Complaint – an oral or written allegation of Discrimination, Harassment, Retaliation, Failure to Accommodate and/or regarding Disability Accessibility to a supervisory employee of the University.
- D. Discrimination –adverse employment or educational actions based on a Protected Category.
- E. Employees - includes any full- or part-time CSUEB employee, whether permanent, tenured, probationary, temporary, intermittent, casual employment, or Management Personnel Plan employee, including faculty and student assistants.
- F. Employee Applicant – means individuals who have completed the application process for a specific, available position at CSUEB.
- G. Harassment – behavior, which is based on a Protected Category, that has the effect of unreasonably interfering with a reasonable person's performance or creating an offensive, hostile and intimidating work or educational environment.
- H. Independent Contractor - refers to "a person providing services pursuant to a contract." "A person providing services pursuant to a contract" is a person who meets all of the following criteria:

1. The person has the right to control the performance of the contract for services and discretion as to the manner of performance.
  2. The person is customarily engaged in an independently established business.
  3. The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.
- I. Investigator – the person tasked with reviewing and/or investigating a complaint of discrimination and/or harassment. Will either be the Director of Equal Employment Opportunity or the Executive Director of Judicial Affairs.
- J. Protected category - includes age, ancestry, citizenship, color, disability, medical condition, sex, gender, gender identification, immigration status, marital status, pregnancy, national origin, race, religion, sexual orientation, and covered veteran's status.
- K. Retaliation – adverse treatment of an individual who has or who is believed to have filed a discrimination or harassment complaint, which the individual reasonably and in good faith believes is discrimination, opposed a discriminatory act or participated in a discrimination / harassment investigation or proceeding.
- L. Students – includes undergraduate, graduate, credential, certificate, distance learning, continuing education and Summer Bridge students.
- M. Student Applicant - means individuals who have applied for admission to the University as an undergraduate, graduate, credential, certificate, distance learning, continuing education or Summer Bridge student.

#### **IV. Procedures**

##### **A. Complaint/Complainant**

1. If a Complaint is raised in writing, the Investigator will review it to determine issues, potential witness and sources of pertinent information (e.g., documents).
2. If the Complainant is known, the Investigator will:
  - a. Promptly contact the Complainant for an interview.
  - b. Schedule an interview appointment.
  - c. Based on a review of any written Complaint and an interview with the Complainant (as set forth below in

- paragraph IV.B), determine if the Complaint raises issues of Discrimination and/or Harassment.
- d. Conduct an investigation (as set forth below in paragraphs IV.B-G) if he/she determines that Discrimination and/or Harassment allegations have been raised.
  - e. If he/she determines that the Complaint does not raise Discrimination and/or Harassment issues, he/she will explain this to the Complainant and give the Complainant alternate avenues to pursue, if applicable.
3. If it is an anonymous complaint, the Investigator will:
    - a. Attempt to determine the identity of the Complainant, so that she/he can interview the Complainant.
    - b. If the identity of the Complainant is not determined, investigate (as set forth below in paragraphs IV.B-G) the complaint to the degree possible based on information available, assuming the Complaint raises Discrimination and/or Harassment allegations.
    - c. If the Complainant's identity is determined, follow steps IV.A.2.a-e above.

## **B. Complainant Interview**

The Investigator will:

1. Advise the Complainant that the Complaint is confidential to the degree it can be kept confidential. The Investigator may need to disclose the identity of the Complainant and/or the details of the Complaint to those who have a business and/or legal need to know, e.g., the Accused, administrators or a third party due to a valid subpoena.
2. Advise the Complainant to keep the allegations and investigation confidential. If discussed, it could negatively impact the investigation and/or could provide the basis for a defamation suit.
3. Advise the Complainant regarding the University's policy against retaliation and to report any alleged retaliation.
4. Advise the Complainant of the University's legal obligation to investigate allegations of Discrimination and/or Harassment.
5. Advise Complainant of CSUEB's policy on false allegations, i.e., Complainants who knowingly and willfully bring false allegations of Discrimination and/or Harassment are subject to corrective and/or disciplinary action from the University.
6. Gather facts on the allegations, e.g., who, what, where, why, when and how (e.g., Accused identity, date, specifics and witnesses).

7. Document the Complainant's visit, the time and date of the interview, and statements in writing.
8. Request and obtain documentary and other evidence supporting the allegations.
9. Based on a review of any written Complaint and an interview with the Complainant, determine if the Complaint raises issues of Discrimination and/or Harassment.
10. If the Complaint involves issues of Harassment:
  - a. Determine if the Complainant and accused need to be separated during the investigation.
  - b. Ask the Complainant what he/she would like to see done to remedy the Harassment.
11. Advise the Complainant when to expect the investigation to be completed, if investigation is deemed necessary.

**C. Notification**

The Investigator will advise the appropriate administrators of the impending investigation, e.g., Director of Human Resources, Provost /VP for Academic Affairs, VP Student Affairs, and/or the head of department, Dean and/or Chair.

**D. Preparation**

The Investigator will:

1. Gather and review documentary evidence, e.g., previous allegations by Complainant, previous Complaints against the Accused, personnel files of the Accused and/or Complainant, performance evaluations of the Accused and/or Complainant, etc.
2. Prepare preliminary interview questions for the Accused and any witnesses based on any written Complaint, the interview with the Complainant and a review of documents.

**E. Accused Interview<sup>1</sup>**

The Investigator will:

1. Advise the Accused that his/her statements are confidential to the degree they can be kept confidential. The Investigator may need to disclose the identity of the Accused and/or the details of the Complaint to those who have a business and/or legal need to know,

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<sup>1</sup> Depending on the situation, the Investigator could inter-change steps IV.E and F.

- e.g., the witnesses, administrators or a third party due to a valid subpoena.
2. Advise the Accused that he/she should keep the allegations and investigation confidential. If discussed, it could negatively impact the investigation and could provide the basis for retaliation accusations and/or occurrences.
  3. Advise the Accused of the University policy against retaliation.
  4. Only identify the Complainant as necessary.
  5. Advise the accused to avoid contact with the Complainant and to ***NOT*** discuss the allegations with Complainant.
  6. Advise the Accused of CSUEB's legal obligation to investigate allegations of Harassment and/or Discrimination.
  7. Advise the Accused that no determination regarding the allegations has yet been made.
  8. If the Accused requests to have a representative present during the interview, they are entitled to such representation (Weingarten Rights).
  9. Gather facts on the allegations, e.g., who, what, where, why, when and how (dates, specifics and witnesses). The Investigator will:
    - i. Advise the accused of the allegations in a neutral manner.
    - ii. Get a response in Accused's own words.
    - iii. Follow with questions to clarify or gain additional information.
  10. Request and obtain documentary evidence from the Accused contradicting the Complainant's allegations and/or supporting the Accused counter-allegations.
  11. Advise the Accused when he/she expects to complete the investigation.

## **F. Witness Interviews**

The Investigator will:

1. Advise the witnesses that he/she is conducting an investigation of Discrimination and/or Harassment.
2. Advise the witnesses that their statements are confidential to the degree they can be kept confidential. The Investigator may need to disclose the identity of the witnesses and/or the details of the Complaint to those who have a business and/or legal need to know, e.g., the Complainant and/or Accused, administrators or a third party due to a valid subpoena.
3. Advise the witnesses that they should keep the allegations and investigation confidential. If discussed, it could negatively impact

the investigation and could provide the basis for retaliation and/or could provide the basis for a defamation suit.

4. Advise the witnesses on the University's policy against retaliation and to report any alleged retaliation.
5. Only identify the Complainant and/or Accused as necessary.
6. Gather facts on the allegations, e.g., who, what, where, why, when and how (dates, specifics and witnesses). The Investigator will:
  - a. Start with broad questions.
  - b. Follow with more specific questions to clarify or gain additional information.
7. Request and obtain documentary evidence from witnesses supporting or refuting Complainant's allegations and/or the Accused's counter-allegations.

#### **G. Investigation Wrap-Up**

The Investigator will:

1. Re-interview the Complainant, Accused and/or witnesses as necessary.
2. Advise Complainant and Accused that the investigation has been concluded and that notices of the Investigation Findings will soon be issued.
3. Prepare a report of the Investigation Findings, and separately recommend disciplinary and/or remedial action, if allegations founded or it is determined that Complainant fabricated his/her allegations.
4. Have report reviewed by Counsel and/or appropriate administrators.
5. Prepare notify the Complainant and the Accused in writing of the Investigation Findings and repercussions.
  - a. If the Complainant's allegations are not founded, the Investigator will explain the reasons why to the Complainant.
  - b. If the Complainant's allegations are founded, the Investigator will explain why founded to the Accused and advise the Accused of the corrective and/or disciplinary action to be taken by the appropriate administrator.

6. CSUEB will take prompt disciplinary and/or remedial action as appropriate.<sup>2</sup>

## V. Recordkeeping

In accordance with CSU's policies on confidentiality:

- A. The Investigator will maintain a written record of all witness interviews, evidence gathered, the outcome of the investigation, written notices, and any other appropriate documents in locked file drawers in his/her office.
- B. Investigation records will not be maintained in personnel files or student files unless they are part of a formal corrective and/or disciplinary action.
- C. There are exceptions to the Investigator's ability to afford confidentiality of the records:
  1. The Investigator is required to disclose information to the appropriate officials in situations which: a) involve imminent danger; b) involve suspected child abuse; c) are required by law (e.g. where in receipt of a valid subpoena); d) the allegations are of such a grievous nature that it is reasonable to believe the University would be deemed negligent or liable for failing to take timely and effective action.
  2. When a complaint is filed outside the University, information gathered in the course of the internal investigation may be disclosed to the investigating agency.
  3. When the subject of litigation where the University is a party.

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<sup>2</sup>Disciplinary and/r remedial action will be subject to the Education Code and/or collective bargaining agreements as appropriate.