

UC Davis Policy and Procedure Manual

Chapter 280, Student Affairs

Section 05, Student Complaints of Prohibited Discrimination, Harassment, or Arbitrary Treatment

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Responsible Department: Student Affairs

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[Exhibit A, Student Complaint Form](#)

I. Purpose

This section provides procedures for resolving student complaints about prohibited discrimination and harassment. This section also provides an abbreviated procedure for reviewing student complaints of arbitrary treatment that do not constitute prohibited discrimination or harassment.

- A. Complaints may be filed against individual UC Davis staff, faculty, or students; against the campus or University; or against one or more departments or programs. Students may also file complaints alleging that a University policy, procedure or practice, as written or applied, constitutes discrimination, harassment, or arbitrary treatment.
- B. Grievances by student employees relating to their working conditions or employment by the University are resolved in accordance with applicable personnel policies or collective bargaining agreements. Such complaints are not subject to review under this section.
- C. Complaints of sexual harassment will be handled pursuant to the procedure set forth in [Section 380-12](#). Such complaints are not subject to review under this section.

II. Definitions

- A. Arbitrary treatment—biased treatment by the University or a University employee within the scope of his/her employment that has no rational basis, unfairly disadvantages a student, and constitutes an abuse of discretion.
- B. Discrimination—an illegal or prohibited adverse educational action or harassment based on race, color, national origin, religion, sex, gender identity, pregnancy (includes pregnancy, childbirth, and medical conditions related to pregnancy or childbirth), physical or mental disability, medical condition (cancer related or genetic characteristics), ancestry, marital status, age, sexual orientation, citizenship, or service in the uniformed services (includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services).
- C. Harassment—conduct that is so severe or pervasive and objectively offensive, and that so substantially impairs a student's access to University programs or activities, that the student is effectively denied equal access to the University's resources and opportunities on the basis of the categories identified in II.B, above.
- D. Adverse educational action—an action that unreasonably and significantly interferes with a student's admission to, access to, or treatment in educational programs or activities.

III. Policy

- A. The University is committed to creating and maintaining a community where all persons who participate in University programs and activities can learn together in an atmosphere free from prohibited discrimination, harassment, and arbitrary treatment.
- B. The University shall respond promptly and effectively to complaints of prohibited discrimination, harassment, and arbitrary treatment, and take appropriate action to prevent, correct, and if appropriate, impose discipline for behavior that violates this policy.

- C. This policy prohibits retaliation against a person who reports prohibited discrimination, harassment, or arbitrary treatment, helps someone with such a report, or takes any part in an investigation or resolution of such a report. Retaliation includes threats, intimidation, reprisals and/or adverse actions related to education. Complaints of retaliation may be filed as described in IV, below.
- D. Department heads, supervisors, and managers are responsible for maintaining a learning environment free from prohibited discrimination, harassment, and arbitrary treatment. Department heads, supervisors and managers who learn about student reports of discrimination or harassment shall immediately consult with Student Judicial Affairs (SJA) and shall implement appropriate interim actions after consultation with SJA.

IV. Filing a Complaint of Discrimination, Harassment, or Arbitrary Treatment

- A. A written complaint must be filed within 60 calendar days of the time the student could reasonably be expected to have knowledge of any injury caused by the alleged discriminatory, harassing, or arbitrary action.
- B. Student reports of discrimination, harassment, or arbitrary treatment should be submitted, in writing, to SJA.
 - 1. The complaint must contain the following information:
 - a. The complainant's name and contact information.
 - b. The identity of the respondent(s).
 - c. A description of the alleged discrimination, harassment, or arbitrary treatment.
 - d. The type of alleged discrimination or harassment (e.g., discrimination based on race, gender, disability or other illegal grounds) or arbitrary treatment.
 - e. An explanation of the evidence supporting the complainant's assertion that the respondent engaged in the alleged conduct for discriminatory or arbitrary reasons.
 - 2. Use of the Student Complaint Form (Exhibit A) is encouraged but not required.
 - 3. The complaint must state the facts on which the complaint of discriminatory, harassing, or arbitrary treatment is based, as set forth in IV.B.1.a-e.
 - a. If the complaint is timely but does not include all of the necessary facts, it will be returned to the complainant within 15 calendar days.
 - b. The complainant will have 7 calendar days to correct the deficiencies.
 - c. If the complainant fails to submit a corrected complaint that includes all of the necessary facts, the complaint may be dismissed.
- C. Students are not required to file multiple or serial complaints regarding the same incident or action.
 - 1. The University shall ensure that complaints reported through this procedure are handled appropriately so that the student obtains a full remedy for any discrimination, harassment, or arbitrary treatment found to have occurred.
 - 2. When a complaint is submitted through this procedure but is more appropriately handled through another procedure, SJA will coordinate a joint process or transfer the complaint to the appropriate procedure and inform the complainant in writing of the procedures that will be used.
- D. Within 15 calendar days of receiving a complaint of discrimination, harassment, or arbitrary treatment, SJA will inform the complainant in writing of the available resolution processes,

including conciliation and early resolution, the range of possible outcomes, the right to appeal a decision, and confidentiality policies.

- E. Interim protections or remedies may be provided for the complainant, respondent, or witnesses at any time during the process.

V. University Response

A. Conciliation and early resolution

1. Conciliation and early resolution may be used when parties want to resolve the situation cooperatively and/or when a formal administrative review is unlikely to lead to a satisfactory outcome. The complainant and respondent are encouraged to participate in conciliation and early resolution.
2. The conciliation and early resolution process shall be coordinated by SJA. After receipt of a complaint that meets the requirements of IV.B.1.a-e, SJA shall provide the parties with written information about conciliation and early resolution. Steps taken to encourage early resolution and agreements reached shall be documented by SJA.
3. Conciliation and early resolution may include but is not limited to the following:
 - a. Mediating agreement between the parties.
 - b. Separating the parties.
 - c. Preliminary inquiry including fact-finding.
 - d. No-fault conversation with written confirmation, or negotiating an agreement for disciplinary action.
 - e. Conducting targeted educational and training programs.
 - f. Referring parties to a counseling program.
 - g. Providing remedies and/or referral to support services for the individual harmed by the discrimination.
4. The early resolution process may last up to 45 calendar days, unless extended by mutual agreement of the parties or by SJA with written notice to the parties.
5. SJA will notify both parties, in writing, when the early resolution process is completed and provide a summary of the outcome.

B. Formal administrative review

1. If a complaint of discrimination, harassment, or arbitrary treatment is not resolved by conciliation and early resolution, within 10 calendar days the Director of SJA shall review the complaint to determine if the complaint is eligible for formal administrative review.
 - a. If the Director of SJA determines, based on information developed through the early resolution process, that there is insufficient evidence to warrant an administrative review, the Director shall issue a written decision to the complainant explaining the determination.
 - 1) For a period of 7 calendar days after receipt of the Director's decision, the complainant may submit a request for reconsideration.
 - 2) If the Director denies the request for reconsideration, the decision is final.
 - b. If the Director of SJA determines that the complaint alleges facts that may establish a violation of University policy, the Director shall refer the complaint for formal administrative review.

2. The Director of SJA will initiate a formal administrative review by appointing a SJA staff member or other neutral reviewer or team of reviewers to serve as fact-finder(s).
 3. Within 15 calendar days of initiating the formal administrative review, SJA shall notify the parties, in writing, of the name of the reviewer(s), a statement of the allegations under review, and a date for completion of the review.
 4. Parties and witnesses shall be instructed that maintaining confidentiality is important to protect the integrity of the review. The reviewer's disclosure of facts or allegations to parties and witnesses shall be limited to what is reasonably necessary to conduct a full and fair review.
 5. The reviewer will prepare and submit a written report to SJA within 60 calendar days. The report shall contain the following components:
 - a. A statement of the allegations and issues.
 - b. The positions of the parties.
 - c. A summary of the evidence.
 - d. Findings of fact.
 - e. The reviewer's determination as to whether University policy has been violated.
 - f. If directed to do so, a recommendation of remedies to resolve the complaint.
 6. The time limit for conclusion of the administrative review may be extended when deemed necessary by SJA. Written notice of the extension will be provided to the complainant and respondent.
 7. Within 15 calendar days of submission of the report, SJA will notify the parties, in writing, of the following:
 - a. Whether or not there was a finding that University policy was violated and the reasons for the finding.
 - b. The investigative steps that led to the decision, including a summary of the facts gathered.
 - c. Any actions that will be taken that are directly related to the party receiving the notice (e.g., an order that the respondent not contact the complainant), including any remedies the SJA determines are appropriate and within the scope of its authority.
 8. The outcome of the formal administrative review can be appealed as set forth in VI, below.
- C. Actions following a finding of discrimination, harassment, or arbitrary treatment
1. Within 15 calendar days of notifying parties of the review outcome, SJA shall authorize appropriate remedies within the scope of its authority.
 2. If the discrimination, harassment, or arbitrary treatment relates to matters where another campus official holds authority to take remedial, non-disciplinary action or implement a reviewer recommendation, SJA shall forward the report to that official within 7 calendar days of notifying parties of the review outcome. The official shall not reexamine the determination that discrimination, harassment, or arbitrary treatment occurred.
 3. If the complaint relates to grades, the Academic Senate Committee on Grade Changes shall determine whether the complainant received an unfair grade because of the discrimination, harassment, or arbitrary treatment, and if so, the appropriate grade to

award or the action to be taken (e.g., granting a retroactive withdrawal).

- a. The committee shall not reexamine the determination that discrimination, harassment, or arbitrary treatment occurred.
 - b. Nothing in this policy otherwise changes the guidelines and procedures under which the committee operates see [Grade Change Committee Guidelines](#)).
4. If any member of the UC Davis community is found to have engaged in discrimination, harassment, or arbitrary treatment in violation of this policy, the investigative report shall be referred to the appropriate campus official for further handling under the applicable disciplinary policies and procedures.
 - a. Administrative review reports prepared under this policy may be used as evidence in disciplinary actions if permitted by applicable rules.
 - b. Students are not subject to discipline for a violation of this policy unless the violation also constitutes a violation of the Standards of Conduct for Students.

VI. Appeals

- A. Complaints involving only allegations of arbitrary treatment may not be appealed.
- B. Complaints involving allegations of discrimination or harassment may be appealed by the complainant to the Vice Chancellor—Student Affairs on any of the following grounds:
 1. There is no substantial evidence to support the decision made by reviewer.
 2. There is newly discovered evidence that is material to the findings of fact and that was not available to the complainant prior to the conclusion of the review.
 3. The remedies or actions are inadequate to redress the harm.
 4. There was a procedural error that materially affected the fairness of the proceedings and prejudiced the appellant.
- C. The appeal must be submitted, in writing, within 10 calendar days following notice of the decision.
- D. The Vice Chancellor—Student Affairs (or designee) shall review and issue a determination on the appeal.
 1. If the appeal is based on a claim that there is no substantial evidence to support the decision, that there was procedural error, or that the remedy is inadequate, the Vice Chancellor shall review the record as a whole to determine if the appeal is supported by the record, and if so, shall take appropriate action (e.g. initiate a new review, correct an error, or provide a different remedy).
 2. If the appeal is based on newly discovered evidence, the Vice Chancellor may forward the evidence to the original reviewer to evaluate.
 - a. The original reviewer shall then advise the Vice Chancellor if it affects the findings of fact.
 - b. If the evidence provided by the appellant is not newly discovered, or was already considered in the original review, the Vice Chancellor shall deny the appeal.
- E. The Vice Chancellor—Student Affairs shall issue a written decision on the appeal within 45 calendar days following the notice of appeal. This time limit may be extended by SJA where deemed necessary.

VII. Privacy and Confidentiality

- A. The University shall protect the privacy of individuals involved in a report of discrimination to the extent permitted or required by law and University policy.
 - 1. The University will comply with requests for confidentiality whenever possible, but may need to make disclosures to complete a fair investigation and ensure a learning environment free from discrimination, harassment, and arbitrary treatment.
 - 2. If disclosure is required by law or University policy, the records shall be redacted to protect the privacy of all persons other than the person requesting the report (see [Sections 320-20](#) and [320-21](#)).
 - 3. An individual who has made a report of discrimination, harassment, or arbitrary treatment may be advised of the specific sanctions imposed against the respondent when the individual needs to be aware of the sanction for it to be fully effective (e.g., restrictions on communication or contact).
 - 4. Information on disciplinary actions taken against the respondent will not be disclosed without the respondent's consent unless it is necessary to ensure compliance with the action, the safety of individuals, or is required by law.
- B. Confidential resources
 - 1. The following confidential resources can be consulted for advice or information by a member of the UC Davis community:
 - a. Counseling and Psychological Services (752-0817).
 - b. Mediation Services (752-4480).
 - c. Legal, medical, or other advisers whose communication is protected by statutory privilege.
 - 2. Consultation with these resources will not lead to a report of discrimination, harassment, or arbitrary treatment unless additional action is taken by the individual seeking advice.

VIII. Further Information

The U.S. Department of Education Office of Civil Rights investigates complaints of unlawful discrimination or harassment against students in educational programs or activities. This agency may serve as a neutral fact finder to facilitate the voluntary resolution of disputes with the parties. Contact information for the nearest office is available in local telephone books or on the agency's Web site.

IX. References and Related Policies

- A. [U.S. Code](#):
 - 1. 20 USC, Section 1681-1687.
 - 2. 29 USC, Section 794.
 - 3. 42 USC, Section 2000d et seq.
 - 4. 42 USC, Section 6101.
 - 5. 42 USC, Section 12132.
- B. [U.S. Code of Federal Regulations](#):
 - 1. 29 CFR, Section 1604.11.
 - 2. 34 CFR, Part 100.
 - 3. 34 CFR, Part 104.
 - 4. 34 CFR, Part 106.

5. 34 CFR, Part 110
- C. [California Fair Employment and Housing Act, Government Code 12955 et seq.](#)
- D. [University of California Policies Applying to Campus Activities, Organizations, and Students:](#)
 1. Section 100.00, Student Conduct and Discipline.
 2. Section 110.00, Policy on Student Grievance Procedures.
 3. Section 130.00, Privacy and Disclosure of Information from Student Records.
- E. [UCD Policy and Procedure Manual:](#)
 1. Section 320-21, Disclosure of Information from Student Records.
 2. Section 380-12, Sexual Harassment.
 3. Section 380-17, Improper Governmental Activities.
- F. [Academic Personnel Manual Section 10, Academic Freedom.](#)
- G. [Academic Senate Bylaw 335](#) and [Davis Division Bylaw 87.](#)
- H. [Academic Senate Grade Change Committee Guidelines.](#)