

Office of the Chancellor
Pennsylvania State System of Higher Education

Policy Number 2009-702
Anti-Harassment, Anti-Discrimination and Anti-Sexual Harassment Policy

Approved by:  Date: August 5, 2013
Chancellor

History: Policy 2009-702 replaces (by combining into a single document) the individual Policies 700, 701 and 702. **Revised:** February 27, 2012; August 5, 2013

Additional History--Original on file dated 9/29/2009.

Related Policies:

Additional References:

I. Introduction

The Office of the Chancellor is committed to creating and maintaining an environment that is free of discrimination, harassment and sexual harassment. The free and open exchange of ideas is fundamental to the Office of the Chancellor's purpose. It is not the Office of the Chancellor's intent in promulgating this policy to inhibit free speech or the free communication of ideas by members of the academic community.

The Office of the Chancellor is committed to maintaining a working environment that is free from all forms of discrimination, harassment and sexual harassment. Accordingly, acts of discrimination and harassment based on an individual's sex, race, ethnicity, national origin, age, disability, religion, or veteran status is prohibited. Each member of the Office of the Chancellor is responsible for fostering civility.

Discrimination, harassment or sexual harassment as a result of belonging to a protected class is a violation of both Federal and Commonwealth law and the Office of the Chancellor will act in accordance with those laws. The Office of the Chancellor will not knowingly tolerate substantiated incidences of harassment of this nature.

It is the Chancellor's position that acts of discrimination, harassment or sexual harassment that adversely impact employment are a sufficient basis for the

imposition of discipline and, depending on the nature of the offense, discipline could range from verbal warnings to termination. When acts of discrimination, harassment or sexual harassment are sufficiently pervasive or so severe that they unreasonably interfere with an individual's performance and/or create an intimidating or hostile working or learning environment, substantial disciplinary action is warranted.

The prohibition of discrimination, harassment and sexual harassment applies to all current Office of the Chancellor employees and applicants as well as individuals who have a contractual relationship to the Office of the Chancellor, including, but not limited to vendors and contractors.

All Office of the Chancellor employees are expected to conduct themselves in a manner consistent with this Policy.

II. Definitions

- A. **Advisor:** An individual from within the Office of the Chancellor community who may advise and assist the Complainant or Respondent in a discrimination, harassment or sexual harassment claim, throughout the informal or formal resolution process. Legal Counsel for either party may not act in the capacity of an advisor.
- B. **Complainant:** The person who is alleging the occurrence of discrimination, harassment or sexual harassment.
- C. **Harassment:** Any type of behavior based on sex, race, ethnicity, national origin, age, disability, religion, or veteran status that is so severe or pervasive that it interferes with an individual's work performance or creates an intimidating or hostile working environment. Harassment when directed at an individual because of his/her sex, race, ethnicity, national origin, age, disability, religion, or veteran status, may include, but is not limited to,: unwanted physical contact; use of epithets, inappropriate jokes, comments or innuendos; obscene or harassing telephone calls, e-mails, letters, notes or other forms of communication; and, any conduct that may create a hostile working environment.
- D. **Discrimination:** An adverse employment action or decision that is based on or motivated by an individual's race, color, religion, ethnicity, national origin, gender, age, disability, or veteran status.
- E. **Sexual harassment:** A form of sex discrimination. This also includes sexual assault. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, whether or not accompanied by promises or threats, and other sexual conduct that occurs on or off all Office of the Chancellor locations that can constitute sexual harassment when:

1. Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of enrollment, employment, or participation in other Office of the Chancellor activities; or,
2. Submission to or rejection of such conduct by an individual is used as a basis or substantial factor in assignment, advancement, or evaluation, or in making other academic or employment decisions affecting an individual; or,
3. Such conduct is sufficiently severe or pervasive so as to have the effect of creating an intimidating or hostile work or educational environment, or negatively affects an individual's employment or education opportunities.

F. **Respondent:** The person whose actions are alleged to have violated this Anti-Discrimination, Anti-Harassment and Anti-Sexual Harassment Policy.

G. **Office of the Chancellor:** Includes the following locations:

1. Dixon University Center
2. Vartan Way
3. PASSHE Center City (Philadelphia multi-university center)
4. Any future locations managed by the Office of the Chancellor

III. **Prohibition of Discrimination, Harassment and Sexual Harassment**

The Office of the Chancellor does not tolerate discrimination, harassment or sexual harassment by any member of its community against any individual on the basis of race, color, religion, ethnicity, national origin, sex, age, disability, or veteran status in matters of employment.

Discrimination, harassment, and sexual harassment, whether verbal, physical, or visual, that is based on any of these characteristics is discriminatory. This includes harassing conduct affecting tangible job benefits, interfering unreasonably with an individual's work performance, or creating what a reasonable person would sense is an intimidating or hostile environment.

While the Office of the Chancellor is committed to the principles of free inquiry and free expression, discrimination, harassment and sexual harassment identified in this policy is neither a legally protected expression nor the proper exercise of academic freedom.

IV. **Confidentiality and Due Process**

During the complaint process, the Office of the Chancellor will make every effort to respect the dignity of those involved, keep the process confidential to the extent practicable, and protect the rights of the Complainant(s) and the Respondent(s). However, confidentiality shall not be guaranteed. Both parties shall

be informed of the procedural steps taken during the course of the complaint procedures by the Investigator.

V. Retaliation Prohibited

Retaliation against any person who alleges discrimination, harassment and/or sexual harassment, or who reports or assists the Office of the Chancellor in the investigation of a complaint under this policy may result in disciplinary action up to and including termination or expulsion by the Office of the Chancellor. Retaliation against any person who is the alleged victim of discrimination, harassment or sexual harassment is prohibited.

There will be no retaliation against those who report or assist the Office of the Chancellor in the investigation of a complaint. The Office of the Chancellor, however, may take disciplinary action against someone who knowingly provides false information during the investigation of a complaint of discrimination, harassment or sexual harassment

VI. The Role of Advisors

If a Complainant or Respondent desires, he/she may be accompanied to an investigation by another Office of the Chancellor employee who may advise and assist the Complainant or Respondent throughout the informal or formal resolution process. A Complainant and an advisor may consult with each other, but the advisor may not speak for or on behalf of the Complainant during the process. A Respondent and an advisor may consult with each other, but the advisor may not speak for or on behalf of the Respondent during the process. Legal Counsel for either party may not act in the capacity of an advisor.

VII. Reporting of Discrimination, Harassment and Sexual Harassment

Reporting allegations of discrimination, harassment and sexual harassment should occur as follows:

- A. **Reports from:** Staff Member/Employee of the Office of the Chancellor who believes he/she is the target of discrimination, harassment or sexual harassment.

Report to: The Director of Human Resources

- B. **Reports from:** Staff Member/Employee of the Office of the Chancellor who believes he/she is the target of discrimination, harassment or sexual harassment by the Director of Human Resources

Report to: The Executive Vice Chancellor

- C. **Reports from:** Staff Member/Employee of the Office of the Chancellor who believes he/she is the target of discrimination, harassment or sexual harassment by the Executive Vice Chancellor

Report to: The Chancellor

- D. **Reports from:** Staff Member/Employee or Vice Chancellor of the Office of the Chancellor who believes he/she is the target of discrimination, harassment or sexual harassment by the Chancellor

Report to: The Chairperson of the Board of Governors

- E. **Reports from:** Faculty Member or Student who is utilizing instructional and meeting space maintained by the Office of the Chancellor and who believes he/she is the target of discrimination, harassment or sexual harassment by individuals within their program

Report to: Their educational institution at which they are registered

- F. **Reports from:** Faculty Member or Student who is utilizing instructional and meeting space maintained by the Office of the Chancellor and who believes he/she is the target of discrimination, harassment or sexual harassment by employees or contractors of the Office of the Chancellor

Report to: The Office of the Chancellor Director of Human Resources

- G. **Reports from:** Staff Member/Employee of the Office of the Chancellor or Faculty Member or Student who is utilizing instructional and meeting space maintained by the Office of the Chancellor and who believes he/she is the target of discrimination, harassment or sexual harassment by Members of the Board of Governors

Report to: The Chief Counsel

All employees have an obligation to report any information they have pertaining to discrimination, harassment or sexual harassment so that the matter may be addressed in a timely manner.

VIII. Informal Complaints

The purpose of informal complaint resolution is to encourage the reporting of complaints concerning discrimination, harassment and sexual harassment and to facilitate a resolution of the complaint without the need of a formal investigation as outlined below under Formal Complaints. Complaints about sexual violence **shall not** be resolved through the informal resolution process.

The informal complaint procedure is as follows:

- A. Determination is made that a violation of the policy may have occurred. This is not a substantiated determination but an assumption that if the allegations were assumed to be true, it would give rise to a violation of the policy.
- B. A meeting is arranged to inform the Respondent of the formal and informal complaint procedures. The Respondent is provided a copy of the Anti-Discrimination, Anti-Harassment and Anti-Sexual Harassment Policy, as well as advised of the alleged behaviors. The Respondent can elect whether to participate in resolving the matter informally through mediation or to elect a formal investigation.
- C. With the approval of the parties, the Director of Human Resources shall act as the mediator in an effort to resolve the matter. In the event that the parties do not desire to utilize the Director of Human Resources or if the complaint includes an allegation made pursuant to Section VII (B), (C) or (D) or a potential conflict or an appearance of conflict exists with the Director of Human Resources, a mediator shall be selected through the mediation program of the Office of General Counsel (OGC).
- D. The mediator's role in the mediation is to facilitate communication between the parties regarding their perceptions and allegations in an attempt to arrive at an action plan to address the issue. Mediation can occur with the parties jointly present in the room or they can be separate in a caucus style arrangement. At any stage in the mediation process, either party has the right to withdraw from the mediation process and proceed to a formal investigation.
- E. At the successful conclusion of mediation, the Mediator shall send a written report of the outcome and the understanding between the parties. In the event that an OGC mediator is utilized, the OGC mediator shall send the report with a copy to the Director of Human Resources or appropriate executive.
- F. If the Complainant is not satisfied with the resolution under the informal procedure, the Complainant may file a formal complaint as outlined below.
- G. In the event that the allegations are severe or pervasive and the Office of the Chancellor determines that mediation is not in the best interest of the Office of the Chancellor, the Chancellor or his/her designee, may choose to pursue formal resolution of an alleged violation.
- H. All written records associated with the resolution of a problem during informal proceedings will be maintained in accordance with the Office of the Chancellor's Record Retention Policy. No written records associated with informal resolution will be placed in any official personnel file.

IX. Formal Complaints

Unsigned written or anonymous complaints will be addressed and investigated as warranted. However, complaints of this nature may have limited merit because of

the inability to adequately investigate them. Therefore, individuals who have complaints of discrimination, harassment or sexual harassment are encouraged to come forward.

Complaints shall be reported as outlined in Section VII above.

- A. **Investigatory Review:** Investigatory reviews into allegations of discrimination, harassment or sexual harassment against employees will be conducted by the Director of Human Resources and/or a Special Investigator in most instances.
- B. **Time Frames of Investigation:** The time frames in which to commence and conduct an investigatory review should be adhered to unless a reasonable delay occurs.

Upon receiving a complaint from the Complainant(s) or an anonymous complaint, the Investigator shall commence an investigatory review of the allegations within five (5) working days of receiving the complaint. A full report shall be provided to the Chancellor or his/her designee within thirty (30) days of a filed complaint absent extenuating circumstances.

C. **Formal Investigation Process**

1. The Investigator will inform the Respondent of the allegation(s). Copies of the Anti-Discrimination, Anti-Harassment and Anti-Sexual Harassment Policy and written confirmation of the complaint are provided to the Respondent. If appropriate, the Respondent is entitled to seek advice from a union representative.
2. The Respondent is provided an opportunity to meet with the Investigator to review the formal complaint and the anti-discrimination, anti-harassment and anti-sexual harassment policy and investigative procedures. At this meeting, the Respondent may be accompanied by a union representative.
3. The Investigator will inform the appropriate person of the complaint who will then inform the appropriate manager, supervisor, Vice Chancellor or Chancellor.
4. The scope of the investigation includes, but is not limited to, reviewing records and interviewing the Complainant, Respondent, and others who may have relevant information.
5. The Investigator's report is submitted to the appropriate person for consideration of appropriate disciplinary action if warranted. The role of the Investigator is not to impose discipline but to provide a complete investigation upon which the need for discipline is considered.
6. The Respondent's supervisor, if deemed appropriate upon receipt of the report from the Executive Vice Chancellor, will arrange a pre-disciplinary

conference following Office of the Chancellor pre-disciplinary procedures, ensuring that the Respondent has the opportunity for representation by a union representative or advisor.

7. The Executive Vice Chancellor, in consultation with the Respondent's supervisor and the Vice Chancellor for Human Resources and Labor Relations, determines the appropriate level of discipline. If a violation of this policy has occurred, timely disciplinary action will occur that may range up to and include termination of employment.
8. Disciplined employees have the right to appeal a determination of a policy violation directly to the Chancellor within five (5) days of receipt of a determination. Any appeal is for the purpose of reviewing the record to determine the appropriateness of the decision and not for purposes of representing evidence previously provided. An appeal decision will be issued within ten (10) days of filing with the Chancellor.
9. Employees may elect to grieve the disciplinary decision pursuant to applicable Board of Governors' policies or the appropriate collective bargaining agreement.

D. **Notification of Report Completion:** At the conclusion of the investigatory review, the parties in a complaint shall receive notification that a report has been completed and filed with the Chancellor or his/her designee.

All written records associated with the resolution of a complaint pertaining to the formal investigation will be maintained in accordance with the Office of the Chancellor's Record Retention Policy. When discipline occurs, written records will be placed in the employee's official personnel file in accordance with the relevant Board of Governors' policies and applicable collective bargaining agreements.

X. **Counseling**

Counseling is available to any employee or student who believes that he/she has been subjected to any form of discrimination, harassment or sexual harassment. Counseling services for employees may be obtained through the State Employees Assistance Program (SEAP). SEAP may be contacted at 800-692-7459.

XI. **Training**

Employee training as to the contents of this policy shall occur annually. Additionally, Office of the Chancellor employees are required to participate in this training within thirty (30) days of hiring and at least every year thereafter.

A current copy of this policy will be posted on the Office of the Chancellor webpage.

XII. Additional Rights

Individuals are encouraged to use these complaint procedures, but are not required to do so and may choose to pursue other civil and legal options. Individuals may choose to pursue the complaint through their appropriate collective bargaining agreement grievance procedures. Furthermore, Complainants may choose to make use of the procedures of external agencies (*i.e.*, Pennsylvania Human Relations Commission, Equal Employment Opportunity Commission, and the Office of Civil Rights.) Managers are encouraged to pursue matters through the Office of the Chancellor procedures before proceeding to an external agency.

The procedures set forth in this policy are not intended to interfere with any legal rights provided under the statutes of the Commonwealth of Pennsylvania or the United States of America. In addition, the procedures set forth in this policy are not intended to interfere with any rights an employee may have under their appropriate collective bargaining agreement.

CONTACT INFORMATION

Director of Human Resources:	Office of the Chancellor Dixon University Center 2986 N. 2 nd Street, Harrisburg, PA 17110 717-720-4097
Executive Vice Chancellor:	Office of the Chancellor Dixon University Center 2986 N. 2 nd Street, Harrisburg, PA 17110 717-720-4010
Chancellor:	Office of the Chancellor Dixon University Center 2986 N. 2 nd Street, Harrisburg, PA 17110 717-720-4010
Chief Counsel:	Office of the Chancellor Dixon University Center 2986 N. 2 nd Street, Harrisburg, PA 17110 717-720-4030
Board of Governors Chair:	Office of the Chancellor Dixon University Center 2986 N. 2 nd Street, Harrisburg, PA 17110 717-720-4010