

**GUIDANCE AND PROCEDURES FOR PROCESSING COMPLAINTS OF
MISCONDUCT, INCLUDING UNLAWFUL DISCRIMINATION**
[Formerly UNIVERSITY MANAGEMENT LETTER 00-03]

1. GENERAL PROVISIONS AND INTENT OF THIS POLICY

1.1 Purpose

This policy is intended to guide members of the campus community in seeking resolution to conflicts arising from alleged acts of misconduct and/or unlawful discriminatory actions. Most situations of alleged misconduct or discrimination are covered by appropriate collective bargaining agreements, California State University (CSU) Executive Orders, or appropriate California Penal Code sections. This policy provides appropriate referral for those situations already covered by these other documents, and provides a procedure for situations not already covered (See Section 3). Any student (or student at the time of the event precipitating the complaint) or employee (or employee at the time of the event precipitating the complaint) may file a complaint following the procedures given here or cited in this policy. Members of the University community should also be aware that the University has an obligation to investigate matters of misconduct or discrimination regardless of whether individuals come forward to file formal complaints.

1.2 Matters Covered by this Policy

- (a) Unlawful discrimination: Any act in violation of Humboldt State University policy (University Policy Statements on Affirmative Action and Nondiscrimination), consistent with law, that no person shall, on the basis of race, color, religion, national origin, gender, sexual orientation, marital status, pregnancy, age, disability, or covered veteran status be subjected to discrimination under any program or activity offered by Humboldt State University;
- (b) Misconduct: actions as outlined by the standards set forth in the California Code of Education or Title 5 of the California Code of Rules and Regulations regarding employee or student conduct. A complete listing of relevant legislation and policies is available at the Office of Institutional Equity, Affirmative Action and Diversity. According to the California Code of Education Section 89535, misconduct includes, but is not limited to:
 - (1) Immoral conduct;
 - (2) Unprofessional conduct;

- (3) Dishonesty;
 - (4) Incompetence;
 - (5) Addiction to the use of a controlled substance;
 - (6) Failure or refusal to perform the normal and reasonable duties of the position;
 - (7) Conviction of a felony or conviction of any misdemeanor involving moral turpitude;
 - (8) Fraud in securing appointment;
 - (9) Drunkenness on duty; and
 - (10) According to Title 5 (Division 5, Chapter 1, Subchapter 7, Article 11 §43526), misconduct also includes any disruption or attempts to disrupt by force or violence any university activity either on or off campus.
- (c) It is not the responsibility of the complainant to determine if the alleged actions meet the standard of discrimination or misconduct; this is the responsibility of the university. Individuals with legitimate complaints should present them to appropriate university personnel who shall direct them to the appropriate procedure and forum as outlined here.

1.3 Matters NOT Covered by this Policy

The following issues are covered by other specific policies and procedures unless they include an element of misconduct or unlawful discrimination:

- (a) Instances or threats of violence should be reported immediately to the Office of Public Safety. Dial 911. Policies covering workplace violence at Humboldt State University include University Management Letter 99-03, Executive Memorandum P99-8, and Executive Memorandum P99-9. In the context of "workplace violence," a "violent act" means any act which results in bodily harm or injury to any party involved (California Business and Professional Code § 7500.1 (t)). The Office of Public Safety will then make appropriate referrals.
- (b) Issues of licensure, certification, credential and accreditation are reviewed by the applicable discipline.
- (c) Allegations of misconduct in scientific research are covered by University Management Letter 92-2.
- (d) Graduate/Undergraduate admissions and readmission eligibility are reviewed by the Office of Enrollment Management.
- (e) Financial aid eligibility is reviewed by the Office of Financial Aid.
- (f) HSU auxiliary organizations (e.g., the HSU Foundation, University Center, Associated Students) have separate grievance procedures for filing complaints against auxiliary personnel.

- (g) Grievances against Public Safety personnel must adhere to state mandated guidelines. These guidelines are available from the Office of Public Safety.
- (h) Student matters such as a grade appeal, the appeal of an advising decision, a complaint of unfair application of standards, or any other matter that is not discrimination or misconduct but is in violation of a written campus policy or procedure or an established practice. (These matters are covered under University Management Letter 00-01: Grievance Policy and Procedures for Students Filing Complaints other than Discrimination or Unprofessional Conduct against Faculty, Staff, or Administrators.)

1.4 Informal Resolution

In many cases, disputes arising from alleged discrimination or misconduct may be handled informally through normal academic and administrative channels where the parties discuss their concerns directly with the University Ombudsperson, the Director of the Office for Institutional Equity, Affirmative Action and Diversity, the Student Judicial Affairs Officer or the Student Grievance Coordinator, a representative from the office of the appropriate vice president, or a dean or other appropriate administrator. These persons can provide advice on possible means for resolving the problem without the need for pursuing the steps of a formal grievance procedure. Evidence of attempts to resolve the dispute informally, if any, must be provided in any subsequent formal written complaint (See Section 3.2).

1.5 Confidentiality of the Grievance Process

- (a) To protect to the maximum extent possible the privacy of individuals, who in good faith file legitimate grievances or who are respondents to complaints, grievance procedures are considered confidential. Confidentiality is generally afforded to complainants and respondents to avoid unwarranted damage to reputation. Breach of confidentiality by any party to a grievance is considered unprofessional conduct and may be subject to disciplinary action. "Confidential" means that information that is a part of the grievance process is limited in its dissemination only to those individuals who are immediately involved in the grievance process. This includes the grievant and his or her representative or consultant, the respondent and his or her representative or consultant, the hearing officers and other university officials who may be required to make, implement, or enforce a decision. Witnesses involved in any grievance process are allowed access only to the information they bring to the process themselves.
- (b) Disposition of Records:
 - (1) Unlawful Discrimination. Federal Law (29 CFR 1602) requires that a record of all complaints alleging unlawful discrimination be retained by the

university for a minimum of three (3) years. A confidential record concerning allegations against faculty, staff or administrators will be retained by the Office of Institutional Equity, Affirmative Action and Diversity; records concerning allegations against students will be retained by the Office of the Vice President for Student Affairs. Disciplinary documents shall be maintained in accordance with current applicable Collective Bargaining Agreements and/or California State University Records Disposition Schedule.

- (2) Other Misconduct. Unless specific policies dictate otherwise, grievance files regarding misconduct that is not unlawful discrimination, including materials submitted by the parties to the grievance, communications of administrators handling the grievance or committees handling the grievance, will be maintained by the appropriate administrator for three (3) years after the resolution of the grievance. At that time, the grievance file may be reduced to statistical records, including no references to the identities of the parties, for institutional research purposes. The contents of the file will be shredded unless the applicable collective bargaining agreement or system Executive Order regarding reprimands or disciplinary action specifies otherwise.
- (3) Because of the confidential nature of personnel actions, complainants may not know the entire outcome of their complaint as it regards reprimands or disciplinary action taken by the university against respondents. Complainants should understand that their rights to disclosure of this type of information is limited by the confidentiality of personnel actions in the context of the maintenance of fair employment practices.
- (4) There may be cases where disclosure of part or all of the proceedings and final outcome must be considered, for example: to provide remedy to the complainant; to correct misperceptions of the reputations of the parties to the grievance; or for the best interests of the institution. In these cases, if and only if deemed necessary by the appropriate administrator in concurrence by the President and if and only if not prohibited by other regulations, public disclosure will be directed through the President's office.

1.6 Intimidation, Threat of Retaliation, and Retaliatory Behavior

Any faculty, staff, administrator or student has the right to seek redress under these procedures and to cooperate in an investigation or otherwise participate in these procedures without intimidation, threat of retaliation or retaliatory behavior. Any such behavior, verbal or written, in response to participation in this complaint process is prohibited and may be regarded as a basis for disciplinary action.

1.7 Abuse of Process, Malicious Complaints, or Frivolous Complaints

Any faculty, staff, administrator, or student must proceed with any complaint in good faith. Abuse of process, malicious complaints, or frivolous complaints are subject to disciplinary action.

1.8 Conflicts with Other Policies and Procedures

Where there are conflicts between the provisions of this document and the current applicable Collective Bargaining Agreement (CBA), California State University student due process, CSU Executive Orders, or appropriate sections of the California Penal Code, the applicable CBA, CSU Executive Orders, appropriate sections of the California Penal Code, or CSU student due process procedures shall prevail.

2. TIME LIMITS

2.1 Internal Procedure Time Limits

Any faculty, staff, administrator or student may file a complaint. The complainant must be aware that strict time limits have been established for filing complaints or grievances under the documents cited in the table that follows. Where no other policies apply, complaints filed under Section 3 of this policy must be filed no later than twenty (20) instructional days after the last day of the term in which the event which precipitated the grievance occurred by submitting a written statement of the grievance in accordance with Section 3.2. Respondents must be aware that federal agencies may require waiving of filing deadlines in discrimination cases. Once a grievance is timely filed, the appropriate grievance procedure dictates the timelines that must be followed. If no other policy applies, the timelines outlined in this policy will apply.

2.2 External Procedure Time Limits

In addition, complaints may be filed through federal and state agencies including the Equal Employment Opportunity Commission (1 year), Office of Civil Rights (180 days), and the Department of Fair Employment and Housing (180 days).

3. PROCEDURES

Prior to filing a formal complaint, the complainant is encouraged to discuss the matter with appropriate campus officials for information and referral. Complaints against students should be discussed with the University Student Discipline Coordinator, located in the Office of the Vice President for Student Affairs; complaints against faculty, staff, student employees, or administrators regarding unlawful discrimination should be discussed with the Director of Institutional Equity, Affirmative Action and Diversity.

Complaints against faculty (including academic department chairs and program leaders) regarding misconduct should be discussed with the respondent's college or library dean. Complaints against staff regarding misconduct should be discussed with the Director of Human Resources for referral to the appropriate administrator. Complaints against administrators should be discussed with the appropriate Vice President, the President, or the Director of Human Resources. If the complainant does not know who the appropriate administrator is, the Executive Assistant to the President may be consulted for appropriate referral. Complaints by students or by administrators against faculty, staff or administrators should follow the procedures outlined in sections 3.2 through 3.5.

3.1 Representation

Acts of unlawful discrimination and misconduct can be potentially very harmful to individuals. To prevent or remedy additional harm, individuals who file complaints or grievances are provided certain protections, including in many cases representation. Likewise, allegations of unlawful discrimination and misconduct are serious personnel matters with potential harmful repercussions to the respondents. The appropriate collective bargaining agreements, the student discipline procedures, and the Management Personnel Plan provide mechanisms (due process) for protecting the rights of respondents (see Table).

3.2 Level 1. Filing and Appointment of Designee

All complaints of misconduct or illegal discrimination against faculty, staff, or administrators should be filed in writing at the President's office according to the timelines indicated in the Table, or in Section 2.1, whichever is applicable. Complaints of misconduct or unlawful discrimination against a student should be filed with the office of the Vice President for Student Affairs according to the same timelines. The written complaint must include:

- (a) A specific, detailed description of the events precipitating the complaint of misconduct or illegal discrimination, which typically includes names of persons involved, witnesses, dates, places, times, and supporting documents necessary for complete understanding;
- (b) A description of attempts to resolve the dispute informally, if any, including efforts by appropriate administrators (See Section 1.4);
- (c) Signature of the complainant;
- (d) Date signed by the complainant; and
- (e) A concise statement of the specific remedy being sought may also be included.

Employees in bargaining units must submit their complaints in the format specified in their CBAs. The President or his designee will review the complaint and designate an appropriate administrator to conduct a preliminary investigation.

3.3 Level 2. Preliminary Investigation

The object of the preliminary investigation is for the President (or designee) to make a determination as to whether a thorough investigation should be conducted pending the issuance of a reprimand or disciplinary action. The initial finding may be that no misconduct or illegal discrimination occurred and no further action is necessary (in which case the complainant will be so informed in writing with careful justification), or that additional investigation may be necessary. The initial finding shall be conveyed to the complainant within 30 days of the filing of the written complaint, or sooner if required by other procedures that are cited in the Table. If the determination is that more investigation may be necessary, the respondent shall be given a copy of the complaint and any supporting documents, and will be asked to respond to the complaint being brought. A notice of pending disciplinary action may accompany this request for a response, if required by the respondent's collective bargaining agreement. To assist in the preparation of his or her response, the respondent will have access to any and all evidence used by the President or designee in reaching the preliminary determination.

3.4 Level 3. Hearing and Determination

All hearings will be conducted under the rules of the appropriate CBA, Executive Memorandum P 94-1 for MPP employees (administrators), or the student discipline procedure.

3.5 Level 4. Appeal

All appeals will be conducted under the rules of the appropriate CBA, student discipline procedures, or for administrators, CSU Office of the Chancellor Executive Order No. 446.

DEFINITIONS AND TERMS

Appropriate Administrator

The appropriate administrator is the Management Personnel Plan (MPP) employee responsible for grievances in an employment unit. If an individual needs assistance in identifying an appropriate administrator to contact, the individual should seek assistance from the Student Grievance Coordinator, the Director for Institutional Equity, Affirmative Action and Diversity, or from the Executive Assistant to the President.

Campus Official

Any person employed by the University performing assigned administrative or professional responsibilities.

Complainant

Used interchangeably here with “grievant.” Any staff, faculty, administrator, student or former student, or former employee of Humboldt State University who formally or informally seeks remedy to harm caused or perceived to have been caused by an event.

Confidential

“Confidential” means that information that is a part of the grievance process is limited in its dissemination only to those individuals who are immediately involved in the grievance process. This may include the grievant, the respondent, witnesses, representatives or consultants, the hearing officers and other university officials who may be required to make, implement, or enforce a decision. However, in the context of this policy, confidentiality does not impart any protection for the individuals involved that information shared in the grievance process will not be used in future civil action.

Day

Calendar day. When time limits are given in “days”, all days on the calendar are counted.

Designee

The person appointed by the President to investigate a complaint or grievance. The usual designees are: The Student Discipline Coordinator for complaints against students; the Institutional Affirmative Action and Institutional Equity Officer for complaints of discrimination against faculty, staff or administrators; the Director of Human Resources for complaints of misconduct against staff or administrators; and the Director of Faculty Personnel Services for complaints of misconduct against faculty.

Event

An act of misconduct or discrimination is handled in this policy as if it occurred at a discrete point in time. It is recognized that “events” may happen over a period of time, and that complainants may not be aware of the event at the exact time that it occurs. Timelines begin ticking at the time of the event, or at the time that the grievant knew, or reasonably should have known of the event.

Grievant

Used interchangeably with “complainant.” See “complainant.”

Instructional Day

The term “instructional day” shall mean any day during which classes are in session, excluding Saturday, Sunday, or an academic holiday of a campus (see Section 42800 of Title 5 of the California Code of Regulations). Summer Session or Summer Term days are not considered instructional days for purposes of this grievance procedure.

May

In this document “may” is used in the permissive sense.

President

The campus president or his or her designee.

Respondent

The person complained against or named in a complaint and/or his or her representative.

Shall

In this document “shall” is used in the mandatory sense.

Student

A student is any person taking courses offered by Humboldt State University, either full-time or part-time, including Summer Session and Extended Education.

Violence (includes violent acts and threats of violent acts)

Crime of violence means (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that

physical force against the person or property of another may be used in the course of committing the offense (Section 1232g(6) of Title 20 of the United States Code). In the context of "workplace violence" a "violent act" means any act which results in bodily harm or injury to any party involved (California Business and Professional Code § 7500.1 (t)).

Working Day

Any day when the campus is open.

TABLE: Complaints of Unlawful Discrimination or Misconduct

	Respondent:				
Complainant:	Faculty	Staff	Student	Administrator	Others
Faculty	1. Unit 3 CBA - Grievances 2. 42 days 3. Unit 3 CBA Reprimands or Disciplinary Procedure 4. California Faculty Association	1. Unit 3 CBA Grievances 2. 42 days 3. Respondent's CBA: Reprimands or Disciplinary Procedure 4. Varies – See Note B	1. Complaints Against Students 2. (ASAP) 3. Student Disciplinary Procedure 4. Consultant, not an attorney	1. Unit 3 CBA Grievances 2. 42 days 3. MPPP 4. Representative may be an attorney	1. Unit 3 CBA Grievances 2. 42 days
Staff	1. Complainant's CBA 2. Varies – See Note A 3. Unit 3 CBA Reprimands or Disciplinary Procedure 4. California Faculty Association	1. Complainant's CBA 2. Varies – See Note A 3. Respondent's CBA: Reprimands or Disciplinary Procedure 4. Varies – See Note B	1. Complaints Against Students 2. (ASAP) 3. Student Disciplinary Procedure 4. Consultant, not an attorney	1. Complainant's CBA 2. Varies – See Note A 3. MPPP 4. Representative may be an attorney)	1. Complainant's CBA 2. Varies – See Note A
Student	1. UML 00-03 2. 20+ instructional days 3. Unit 3 CBA Reprimands or Disciplinary Procedure 4. California Faculty Association	1. UML 00-03 2. 20+ instructional days 3. Respondent's CBA: Reprimands or Disciplinary Procedure 4. Varies – See Note B	1. Complaints Against Students 2. (ASAP) 3. Student Disciplinary Procedure 4. Consultant, not an attorney	1. UML 00-03 2. 20+ instructional days 3. MPPP 4. Representative may be an attorney	1. UML 00-03 2. 20+ instructional days
Administrator	1. UML 00-03 2. 20+ instructional days 3. Unit 3 CBA Reprimands or Disciplinary Procedure 4. California Faculty Association	1. UML 00-03 2. 20+ instructional days 3. Respondent's CBA: Reprimands or Disciplinary Procedure 4. Varies – See Note	1. Complaints Against Students 2. ASAP 3. Student Disciplinary Procedure 4. Consultant, not an attorney	1. UML 00-03 2. 20+ instructional days 3. MPPP 4. Representative may be an attorney	1. UML 00-03 2. 20+ instructional days
Others	1. UML 00-03 2. 20+ instructional days 3. Unit 3 CBA Reprimands or Disciplinary Procedure 4. California Faculty Association	1. UML 00-03 2. 20+ instructional days 3. Respondent's CBA: Reprimands or Disciplinary Procedure 4. Varies – See Note B	1. Complaints Against Students 2. (ASAP) 3. Student Disciplinary Procedure 4. Consultant, not an attorney	1. UML 00-03 2. 20+ instructional days 3. MPPP 4. Representative may be an attorney	1. UML 00-03 2. 20+ instructional days

Key:

1. Policy to be followed by the complainant to file a complaint against the category of respondents indicated.
2. Time limit to file a complaint
3. Policy protecting the due process rights of the respondent.
4. Representation rights

Note A:

Grievance and/or complaint procedures of your respective Collective Bargaining Agreements. Deadline for filing: Unit 1(Physicians and Dentists) 14 days; Units 2, 5, 7, and 9 (CSEA) 30 days; Unit 4 (Academic Professionals) 21 days; Unit 6 (State Employees Trades Council) 14 days; Unit 8 (Statewide University Police Association) 21 days

Note B:

Disciplinary Procedure Representation: Unit 1(Physicians and Dentists) Representation by Union of American Physicians and Dentists; Units 2, 5, 7, and 9 (CSEA) Representation by California State Employee Association; Unit 4 (Academic Professionals) Representation by Academic Professionals of California; Unit 6 (State Employees Trades Council) Representation by State Employees Trades Council; Unit 8 (Statewide University Police Association) Representation by Statewide University Police Association