

University Policy 4:4. If the accused is a student (as defined in University Policy 3:1), this policy must be applied in a way consistent with the requirements of University Policy 3:1.

- b. Proof of discrimination under this policy conforms to the federal standards employed to prove disparate treatment or disparate impact except as otherwise provided under federal, state, and local law. This policy neither eliminates nor restricts express exceptions to antidiscrimination laws and regulations provided under federal, state, or local law, nor will it prohibit conduct, action, or policies based on such legitimate nondiscriminatory reasons as recognized under federal antidiscrimination law.
 - i. Reasonable directions and admonitions by duly authorized University agents as to time, place and manner in which employees or volunteers perform assigned responsibilities, students carry out educational assignments or program participants engage in sponsored activities do not constitute prima facie evidence of harassment or discrimination.
- c. All officially recognized organizations at the University subject to this policy, except to the extent this policy would impermissibly invade the members' freedom of intimate association or freedom of expressive association. An organization seeking to challenge the application of these policies to it or to its activities, resolution of the challenges must address the issues set forth in SDBOR Policy 14.3.
- d. The Director of EO is responsible for maintaining a centralized complaint filing system; for analyzing trends revealed by complaints, investigations, and enforcement activities; and for monitoring on behalf of the University overall compliance with this policy and related federal, state, or local legislation and regulation.
- e. The Director of EO will assure that persons entrusted with the investigation of complaints have undergone annual training in the conduct of investigations under this policy, in a manner that protects the safety of victims, promotes accountability and is timely. The Director of EO will also assure that persons entrusted with investigations are unbiased and disinterested.
 - i. If a complainant or accused alleges that an investigator is biased, the complainant or accused must file a complaint with the Director of EO within 30 days of the alleged bias.

- ii. Reassignment will not be routine, but may be proper where a reasonable, well-informed observer of the proceeding would believe that there may be an appearance of bias or conflict, even if none actually exists.
 - iii. When reviewing an allegation of bias or conflict of interest, the Director of EO will adhere to SDBOR Policy 14.3.
- g. Persons who report complaints or participate in the investigation or disposition of such complainants will not be subject to harassment, interference, intimidation, or retaliation.
 - i. The Director of EO will inform the complainant, the accused, and all persons involved in the reporting, investigation, or disposition of a complaint, with information explaining how to report harassment, interference, intimidation, or retaliation.
- h. All students and employees whose assistance is needed in the investigation of a complaint or in the course of disciplinary action must cooperate with the Director of EO and other parties who are duly authorized to investigate or discipline. Persons who are accused of having engaged in discriminatory conduct will be entitled to such cooperation when necessary to obtain witnesses in any formal disciplinary proceedings that may be initiated. Where necessary, the Director of EO will assist in making arrangements for the complainant's safety.

- k. Timing requirements contained in this policy fix standards for the investigation and preliminary phases of complaint management. Where an investigation results in the initiation of formal disciplinary procedures, the timelines set forth in those procedures will govern.
 - i. Deadlines stipulated for action may be relaxed where, in the judgment of the Director of EO or other administrative officer having responsibility for the complaint, this will help to achieve the purposes of the regulations. Investigation and responses related to allegations of, or conduct constituting a crime of violence may be delayed to the extent required for law enforcement to investigate the facts of the case.
 - ii. Deadlines may also be extended upon the mutual agreement of the parties.
 - iii. Deadlines will be extended if necessary to accommodate holidays and vacation periods that form part of the academic calendar or days on which the University is closed for weather or other emergency purposes.
 - iv. Deadline extensions will not exceed the bounds allowed by applicable law and regulations.
- l. All persons found to have committed acts of discrimination will be subject to the relevant disciplinary procedures according to the person's status (e.g. student, employee, recognized student organization).

4. Procedures

- a. All inquiries, allegations, reports, or complaints relating to discriminatory conduct made to a University employee must be forwarded to the Director of EO for response or investigation.
 - i. Complainants may directly contact the Director of EO or make a report online using the following link: <https://www.sdstate.edu/offices/eo/eo-ixequal-opportunity/report>.
 - ii. This provision will not be interpreted to require individuals to refer to the Director of EO accusations addressed to them directly by complainants.
 - iii. Third party reports of discrimination and conduct observed directly that may be discriminatory should be reported and investigated in the same manner as provided herein.
- b. Upon receipt of inquiries, allegations, reports, or complaints the Director of EO will respond and assign an investigator.

the alleged perpetrator pending the results of the investigation and any related proceedings.

2. The complainant will also be informed of the right to file other applicable administrative or criminal complaints .
- ii. The Director of EO will record statements of the actual basis of the complaint.
 1. If the complaint is referred to the Director of EO by another administrator, faculty member or other third party, the Director of EO will contact the complainant within five (5) working days to provide information about procedures and resources and to record an 2 >>BDC 0.9 (r)98

iv. The University President's decision is not subject to an appeal as a matter of right. However, if the complainant remains dissatisfied with the determination, the complainant may request that the SDBOR Executive Director review the conclusions of the University President and advise the SDBOR pursuant to SDBOR Policy 1.1.5. The request for such a review must identify with specificity the factual findings that the complainant believes to be erroneous or the conclusions that the complainant believes mistake or misapply the requirements of policy or governing law.

f. Reasonable Basis to Proceed

i. If the Director of EO determines there is a reasonable basis for the complaint, the Director of EO will notify the administrative officer having supervisory responsibility over the person or persons alleged to have engaged in discriminatory conduct. The Director of EO will provide copies of all investigatory materials to that administrative officer, and the administrative officer will participate in resolution of the matter if the complaint was made against an officially recognized organization at the University or against members of such organizations who are not otherwise affiliated with the University, the administrative officer will designate a person to carry out the responsibilities established hereunder.

ii. If deemed appropriate, the Director of EO and the administrative officer may first attempt an informal resolution of the dispute

1. If the matter appears to them to lend itself to informal resolution, they will meet with the complainant to discuss the matter and attempt to resolve the dispute.

ad(s)-2.3 (he)9.2 cunde here9.3 (on i)-47 (t)-4.6 (i)6.3 (h t)-4.6 (he)9.2 (r)no no (n

- v. The disciplinary procedures followed will be those designated for persons in the classification to which the accused belong.
- vi. Discipline of persons found to have committed acts of discrimination will be determined and carried out in accordance with the relevant disciplinary procedures.
 - 1. If the discriminatory conduct is admitted or, as a result of the disciplinary proceedings, proven, the administrative officer who initiated the disciplinary procedures will determine what disciplinary action, if any, will be taken to remedy the effects of the discriminatory conduct. In selecting a discipline or action, the administrative officer will consider (1) the extent to which the party charged exercised undue influence over the complainant by virtue of the office and authority entrusted to the party charged or otherwise, (2) the gravity of the offense established, and (3) the likelihood that the discipline or action selected will be effective to avoid a recurrence of the conduct.
 - 2. Once the administrative officer has selected a proposed discipline or action, the party charged will be notified of the proposed discipline or action at such time and in such a manner as provided under the applicable grievance procedures. The complainant will be notified of the proposed discipline at the same time.
 - 3. If the complainant is dissatisfied with the discipline or action selected, the complainant may petition the University President for a review of that determination. The petition must be received within (5) days.