

# INVESTIGATIVE PROCESS FOR INTERNAL COMPLAINTS UNDER THE NON-DISCRIMINATION POLICY

## **I. Who May Utilize this Procedure**

Despite anything to the contrary provided in other University policies or procedures, the grievance procedure embodied herein governs all grievances (with the exception of grievances concerning sexual misconduct, discrimination and harassment which are governed by separate policy located at <https://www.rsu.edu/campus-life/student-resources/gender-based-misconduct/policies-procedures/> filed with the Equal Opportunity Officer (EOO) and shall be available to any person who, at the time of the acts complained of was employed by Rogers State University, or is or was an applicant for employment or was enrolled as a student or an applicant for admission at the University. However, if the complainant initiates litigation or files a complaint with any state or federal agency, with respect to the issues presented to the EOO, any grievance under these procedures may be dismissed or stayed in the EOO's discretion as duplicative. The University EOO may, in their discretion, dismiss a grievance if they determine the person filing the complaint is not entitled to use this procedure.

## **II. Filing of Complaint**

Persons who have complaints alleging discrimination based upon race, color, religion, political beliefs, national origin (including actual or perceived shared ancestry or ethnic characteristics), age (40 or older), sex (see Sexual Misconduct, Discrimination and Harassment policy <https://www.rsu.edu/campus-life/student-resources/gender-based-misconduct/policies-procedures/>), sexual orientation, genetic information, gender identity, gender expression, disability, or veteran status. (together, "discrimination and harassment or retaliation"), may file their complaints in writing with the EOO. Provided, however, where claims include sexual harassment, sexual orientation or gender discrimination, the entire process shall be handled through the procedures noted in the Sexual Misconduct, Discrimination and Harassment Policy.

Complainants who exercise their right to use this procedure agree to accept its conditions as outlined. Where multiple issues exist (i.e. racial harassment and violation of due process or grade appeal), the complainant must specify all of the grounds of the grievance that the complainant should have reasonably known about at the time of filing. A grievance filed under this procedure normally may not be filed under any other University grievance procedure. Depending on the nature of the issues involved, the complainant will be advised by the EOO about the appropriate procedure(s) to follow (e.g. applicable disciplinary policies and procedures for that campus). Parties to the complaint, including the respondent and/or the complainant may obtain the advice of any advisor/attorney at their own expense; however, advisors and attorneys may not be present during any meetings or hearings during this process unless otherwise provided by the applicable policy. At the request of the EOO, the Institutional Equity Office at the University of Oklahoma may provide additional resources including but not limited to assistance with the investigation and hearing process.

The EOO may modify these procedures at any time as deemed appropriate for compliance with federal, state, local law, or applicable guidance.

### **III. Timing of Complaint**

Generally, any complaint should be filed with the EOO within 365 calendar days of the act of alleged discrimination or harassment. The EOO may reasonably extend this and all other time periods, and may, in their discretion, dismiss a grievance if the person is not entitled to use this procedure. Nothing herein should be construed to extend or restrict a person's right to file charges, lawsuits or claims with any other agency, law enforcement or court, and individuals are encouraged to ensure their rights have not expired through these other avenues. Further, to the extent the complainant's allegations involve criminal activity, the EOO may refer such matters to local law enforcement.

### **IV. Administrative Action**

- A. The University recognizes its obligation to address incidents of discrimination and harassment on campus when it becomes aware of their existence even if no complaints are filed; therefore, the University reserves the right to take appropriate action unilaterally under this procedure.
- B. With respect to students, the University Dean of Students or other appropriate persons in authority may take immediate administrative or disciplinary action deemed necessary for the welfare or safety of the University community.
- C. With respect to employees, upon a determination at any stage in the investigation or grievance procedure that the continued performance of either party's regular duties or University responsibilities would be inappropriate, the proper executive officer may suspend or reassign said duties or responsibilities or place the individual on leave of absence pending the completion of the investigation or grievance procedure.

### **V. Withdrawal of Complaint**

The complainant may withdraw the complaint at any point during the investigation; however, the EOO may determine in their discretion that the issues raised warrant further investigation despite the complainant's desire to withdraw the complaint.

### **VI. Privacy of Proceedings and Records**

Individuals wishing to make legally confidential reports have the option of reporting those matters to licensed counselors, health professionals, clergy, and attorneys.

Although University officials will maintain an individual's privacy to the best of their ability, individuals should know that University officials (outside the context of licensed counselors and health professionals) may not be able to maintain legal confidentiality of the complainant, but will maintain their privacy as noted herein. Further, the University's ability to investigate may be limited if a complainant insists their name not be disclosed to the alleged perpetrator. The University must weigh such requests for privacy against its duty to provide a safe and nondiscriminatory environment. Investigators and those involved with the investigation are individually charged to preserve privacy with respect to any matter investigated or heard. A breach

of the duty to preserve privacy is considered a serious offense and may subject the offender to appropriate disciplinary action. Parties and witnesses are also admonished to maintain privacy with regard to these proceedings, and if they are University employees, failure to maintain said privacy may result in appropriate disciplinary action. Furthermore, federal law prohibits retaliation against those who file complaints, and the University will take responsive action if such retaliation occurs, up to and including termination and/or expulsion.

Except with respect to matters referred to the Chair of the Faculty Senate or hearings under an applicable student disciplinary procedure, all records involving discrimination or harassment, upon disposition of a complaint, shall be transmitted to and maintained by the EOO as confidential records except to the extent disclosure is permitted/required by applicable law or University policy. The University shall inform complainants if it is unable to ensure privacy.

## **VII. Proceedings**

### **A. Investigation**

Upon receipt of a complaint, the EOO will notify the complainant, via email, of their receipt of the complaint and is empowered to investigate the charge, to interview the parties and others, and to gather any evidence they deem pertinent. The investigation and findings should be completed within sixty (60) calendar days of receipt of the complaint, or as soon as practical.

The EOO shall render their decision on a case-by-case basis based upon the evidence as a whole, the totality of the circumstances, and the context in which the alleged incident(s) occurred, utilizing a preponderance of the evidence standard, i.e. the facts complained of are more likely true than not.

Upon completion of the investigation, the EOO is authorized to take the following actions:

- 1. Satisfactory Resolution**—The matter is resolved to the satisfaction of the University and the complainant. If a resolution satisfactory to the University and the complainant is reached through the efforts of the EOO, they shall prepare a written statement indicating the resolution. At that time, the investigation and the record shall be closed.
- 2. Dismissal**—The EOO finds that no policy violation occurred and dismisses the complaint, giving written notice of said dismissal to each party involved. There shall be no appeal from a finding of no policy violation except in exceptional circumstances where additional evidence not otherwise available at the time of

the report is submitted by the original complainant. Any such appeal shall be in writing within fifteen (15) University business days of the report addressed to the executive officer over the area or his/her designee, who shall render a decision within ten (10) University business days of receipt of the appeal. In cases where the EOO is the executive officer over the area, the President will designate a different member of the University administration to handle the appeal. If the executive officer takes no action within ten (10) University business days of receipt of the appeal, the EOO's findings are final. Further, the decision of the executive officer shall be final.

### **3. Determination of Impropriety**

- a. The EOO makes a finding of impropriety and notifies the parties of the decision and may recommend any action to be taken. Either party may appeal said determination in writing to the EOO within fifteen (15) University business days of the date of the notice of determination, and the issue proceeds to an appellate review as described below. If no appeal is filed within the fifteen (15) University business-day period, the case is considered closed.
- b. In the case of a complaint against a faculty member, the EOO may determine that the evidence is sufficiently clear and serious, warranting the immediate commencement of formal proceedings for the abrogation of tenure or dismissal or termination before expiration of a tenure-track or term appointment. If the President concurs with the finding of the EOO and the faculty member requests an appeal, a formal hearing shall be granted before an appellate panel identified using the procedures outlined in Sections VII(B)(1), (2)(a)(i), and (4). For cases against a faculty member not warranting abrogation of tenure or dismissal or termination before expiration of a tenure-track or term appointment, the procedures outlined in Sections VII(B)(1), (2)(a)(i), (3), (4) and Sections VII(C), (D), and (E) shall apply.
- c. In the case of a complaint against an enrolled student, where impropriety is found (if not earlier referred to the Student Conduct Office for action), the matter shall be referred to the Student Conduct Office for appropriate action under the Student Code. For matters involving possible suspension or expulsion, the charged student shall be provided with the opportunity for a live hearing through the Student Conduct procedures unless the charged student accepts responsibility and any recommended sanctions, thus waiving the right to a hearing.

## **B. Hearing**

### **1. Request for an Appellate Hearing**

- a. Except as noted above, either party may request, in writing, a hearing within

fifteen (15) University business days of the issuance of the EOO's finding and the request must contain the particular facts upon which the appeal is based as well as the identity of the appropriate respondent(s). The EOO or the University's designee, where appropriate, shall immediately provide a copy of the request to the proper respondent(s).

Where the EOO's decision is favorable to the initial complainant, and the alleged perpetrator appeals the finding, the EOO shall defend their report and findings, and the initial complainant shall be a witness in the appellate proceedings, rather than a "respondent." In this type of appeal, all references to "respondent" in the appellate procedures shall refer to the EOO and/or relevant members of the University administration. In such cases, an appropriate University official/employee shall be identified by the administration to manage the appeals process and the Equal Opportunity Officer shall only be involved as the respondent.

- b. Typically, only unresolved complaints following an investigation may result in a hearing before a panel selected as described below. Faculty-versus-faculty grievances with multiple issues are referred to the Chair of the Faculty Senate. Grievances against students may, in the EOO's discretion, be heard by the appropriate hearing body as set forth in the disciplinary policies and procedures applicable to each campus. The request for a hearing is to be addressed to the Equal Opportunity Officer.
- c. If a hearing is requested, the respondent's written response to the request for a hearing must be sent to the Equal Opportunity Officer or the University's designee within ten (10) University business days of receiving notice that a hearing has been requested. The Equal Opportunity Officer or University designee shall provide as soon as practicable a copy of the response to the party requesting the hearing.

## **2. Selection of a Hearing Panel**

Within ten (10) University business days following receipt of the written request for a hearing, the Equal Opportunity Officer or the University's designee shall initiate the process to determine the members of the hearing panel.

- a. Panel Selection – A hearing panel will be chosen as follows:
  - i. For faculty, the Vice President for Academic Affairs (VPAA) shall request the Chair of the Faculty Senate appoint a three-person appellate panel.
  - ii. For staff, the Director of Human Resources shall appoint a three-person panel from administrative offices unaffiliated with the parties.

- iii. For any other unaffiliated party, the EOO or University designee shall designate an independent, external decisionmaker.

Notwithstanding the foregoing methods of empanelment, to expedite resolution of unresolved complaints or to promote fairness, the University may engage independent, external decisionmakers identified by the University to constitute the hearing panel for staff or student matters.

Either party to the complaint may ask the Equal Opportunity Officer or the University's designee to disqualify any member of the hearing panel. Such requests will be in writing and show sufficient grounds for removal. Furthermore, no panelist shall be expected to serve if they feel that a conflict of interest exists. Replacements shall be selected in the same manner as the original panel.

- b. Hearing Panel Chair – Within five (5) calendar days of the hearing panel being chosen, the panel shall identify a member to serve as the hearing panel chair. The hearing panel chair will work with the EOO to coordinate the hearing process.

### **3. Orientation Conference/Pre-Hearing**

Except in cases involving potential abrogation of tenure or dismissal or termination prior to the end of the tenure-track or term appointment, which shall proceed directly to Section VII(B)(4) below, within ten (10) University business days of receiving notice of service on the appellate panel, or sooner if feasible, the chair shall convene the hearing panel for an orientation and discussion of the grievance, and determine whether a formal hearing is warranted. The Equal Opportunity Officer and/or the University's designee shall be present during the orientation conference, where they will provide each panel member with a copy of the hearing guidelines, the written complaint, the request for a hearing, the written response, and the EOO's report.

Only panel members shall be present during the discussion of whether a hearing is warranted. The appellant must show through the written appeal, that the EOO's report is erroneous and a hearing would substantially alter the findings because (a) there is additional evidence to be presented that was not available at the time of the investigation that may substantially alter the EOO's findings, or (b) the investigation's findings are not supported by any evidence (i.e. the EOO must have evaluated the evidence using a preponderance of the evidence standard, i.e. more likely than not a policy violation occurred).

Based on this review and analysis, the hearing panel, within its reasonable discretion and by majority vote, shall determine whether a formal hearing is warranted. The finding that a formal hearing is warranted does not necessarily imply the EOO's findings are erroneous. The hearing panel shall notify the parties and the EOO of its decision within five (5) University business days of the prehearing.

If the panel agrees by a majority vote that adequate grounds for a hearing do not exist in its reasonable discretion, then the chair shall notify the Equal Opportunity Officer or University designee immediately, who in turn, shall immediately notify the parties and the appropriate executive officer. The panel's services shall be concluded and the EOO's findings shall be final.

The appropriate executive officer shall render their decision and notify the parties and the EOO in writing within ten (10) University business days of receipt of the panel's decision. Either party may appeal the executive officer's decision in writing to the President within ten (10) University business days of the notification of the decision. If the President does not act within ten (10) University business days of the request, the executive officer's decision is final. Any decision by the President is likewise final.

For cases involving potential abrogation of tenure or dismissal or termination prior to the end of the tenure-track or term appointment, the chair may call pre-hearing conferences as needed to address procedural matters before the formal hearing.

#### **4. Formal Hearing**

If the hearing panel determines a formal hearing is warranted, the chair will schedule the formal hearing to be held within thirty (30) calendar days of the decision of the need for a formal hearing. The chair shall notify the parties and the Equal Opportunity Officer within five (5) days of the prehearing conference.

The hearing panel procedures shall be established with reference to the Hearing Guidelines provided by the Equal Opportunity Officer or the University's designee at the orientation conference, and as determined by the chair in consultation with the Equal Opportunity Officer and/or University of Oklahoma Office of Legal Counsel, and shall provide that the parties may present relevant evidence. Hearings may be held virtually or in person as determined by the chair in consultation with the Office of Legal Counsel.

The chair shall notify the parties of the date, time, and location of the hearing, along with other relevant information concerning the hearing process. Parties are responsible for giving such notice to their witnesses. The hearing shall be scheduled to reasonably ensure that the complainant, respondent, and essential witnesses are able to participate. However, the chair shall ultimately determine all relevant scheduling requirements. The parties shall present their own cases. No advisors or counsel may be present in the hearing.

The hearing panel shall determine whether the report, or its result (a) is unsupported by any evidence, or (b) is arbitrary and capricious, or (c) would be altered substantially by new evidence not previously available. The EOO must have evaluated the evidence using a preponderance of the evidence standard, i.e. more likely than not a policy violation occurred. The hearing panel shall

evaluate the evidence in light of this standard of review.

The parties may call relevant witnesses to testify and may cross-examine witnesses called by the other party as determined by the chair. The hearing shall be closed unless all parties agree to an open hearing. Audio recordings of the proceedings shall be arranged by the chair and paid for by the University. Copies of the recording will not be provided. Transcripts may be charged to the requesting party; the original version of the recording shall remain the property of the University.

If the matter is resolved to the satisfaction of all parties prior to completion of the hearing, a written statement shall indicate the agreement recommended by the parties and the statement shall be signed and dated by each party and by the chair. The recommendation will be referred to the EOO, who in turn, shall immediately notify the appropriate executive officer for final determination. The executive officer shall notify the parties of their final determination within five (5) University business days of notification of the agreed resolution. Assuming the executive officer agrees with the resolution, the matter shall be closed. To the extent the executive officer disagrees with the resolution, they may render their decision and notify the parties. Any party may appeal the decision in writing to the President with a copy to the EOO and all other parties. The President shall render a decision within five (5) University business days of notice of the appeal.

### **C. Findings and Recommendations**

In the event that no solution satisfactory to the parties is reached prior to the completion of the hearing, the hearing panel shall determine by majority vote whether the relevant decisions should be upheld or modified or remanded for further reconsideration, and shall render its findings and recommendations within ten (10) University business days of the hearing (unless the hearing panel determines that because of unforeseen circumstances additional time is needed) and notify the Equal Opportunity Officer or University designee, who in turn, shall notify immediately the proper executive officer with copies to the President.

### **D. Executive Officer's Decision**

Except in cases of abrogation of tenure or termination prior to the end of a tenure-track or term appointment, within fifteen (15) University business days of receipt of the hearing panel's findings and recommendations, the proper executive officer shall inform the complainant and the respondent of the findings of the hearing panel and the executive officer's decision. A copy of the executive officer's decision shall be immediately transmitted to the chair of the hearing panel, with copies to the President and the EOO.

For cases involving the abrogation of tenure or dismissal or termination prior to the end of the tenure-track or term appointment, the hearing panel's decision shall be transmitted to the parties and to the President. The President shall review the record and any additional written statement sent by the faculty member to the President within ten (10)



University business days of notice of hearing panel findings. If the President does not act to change the decision of the hearing panel within ten (10) University business days of receiving the appeal, the decision of the hearing panel shall stand. The President shall transmit the record to the Board of Regents for their review and final decision.

#### **E. Appeal to the President**

Except in cases of abrogation of tenure or dismissal or termination prior to the end of a tenure-track or term appointment, the executive officer's decision may be appealed to the President within ten (10) University business days of the executive officer's decision. If the President does not act to change the decision of the executive officer within ten (10) University business days of receiving the appeal, the decision of the executive officer shall become final under the executive authority of the President. Any decision of the President shall likewise be final. The University Equal Opportunity Officer can be contacted for more information:

- Campus Address: 1701 W. Will Rogers Blvd., Dr. Carolyn Taylor Center, Room 201, Claremore, OK 74017
- Email: [EqualOpportunity@rsu.edu](mailto:EqualOpportunity@rsu.edu)
- Phone: 918-343-7569