



Office of the President

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PD 2007-07

MEMO TO: Administrative Heads, Chairs, Deans, Directors and
Vice Presidents

FROM: Don W. Kassing
President

SUBJECT: Presidential Directive 2007-07 (Supersedes PD 96-04)
**San José State University Discrimination Complaint
Procedure for Students and Applicants for Admission**

The purpose of this Presidential Directive is to assure that San José State University continues to comply with all Federal and State legislation and California State University policies regarding unlawful discrimination. San José State University is committed to creating an atmosphere in which all persons and groups can work and study free of unlawful discrimination.

This directive supersedes Presidential Directive 96-04 and all prior discrimination complaint procedures for SJSU students, including procedures for complaints of sexual harassment.

PERSONS AND GROUPS HAVING RIGHT TO FILE GRIEVANCES

In accordance with the San José State University SJSU equal opportunity policies, these procedures provide students and applicants for admission the right to request and receive a fair and impartial investigation of any on-campus perceived discriminatory act by an SJSU employee, fellow student, or student organization, or any on-campus incident that is believed to be harassment or discriminatory on the basis of race, color, national origin, disability, sex, age, sexual orientation, gender identification, religion, marital status, or pregnancy.

These procedures were adopted to encourage students and applicants for admission to seek redress of perceived discrimination through an SJSU internal process that is readily available, prompt, and meets high standards of fairness. However, no student or applicant for admission is precluded by these procedures from filing a complaint, at any time, with the U.S. Department of Education Office for Civil Rights.

COMPLAINT FILING DEADLINE

A student or applicant for admission may fill out and submit a complaint form within 180 days after he or she knows, or could reasonably be expected to have known that an action of discrimination has taken place. The complaint form is available at http://www.sjsu.edu/hr/forms/equitydivers/Complaint_Form.pdf

FILING A COMPLAINT

All student complaints of discrimination, harassment, or retaliation shall be directed to the Human Resources Office for Equal Opportunity (OEO), UPD Building, 3rd Floor for investigation and resolution. This includes allegations of discrimination, harassment, or retaliation by employees or other students against a student. A student or applicant for admission may file a complaint by submitting a completed Discrimination Complaint Form to the Office for Equal Opportunity, San José State University, One Washington Square, San José, CA 95192-0046. Student complaints of discrimination against a member of the University Police Department (UPD) shall be brought to the attention of the Office for Equal Opportunity. The OEO will work with the UPD to ensure the complaint is fully investigated and resolved in accordance with this Directive.

ACKNOWLEDGEMENT OF COMPLAINT

The OEO shall notify in writing the student or applicant for admission who has filed a complaint within ten (10) days of receipt of the complaint, whether or not the complaint is being processed or has been found to be deficient in some manner. The letter of notification will include a copy of PD 2007-07, identify the complaint issue(s) to be investigated and state the time frame for Informal Resolution, Formal Investigation and Appeal to the SJSU President's Office.

INFORMAL RESOLUTION PERIOD

Upon acknowledgement by OEO that a complaint is being processed, the OEO shall have thirty (30) working days to attempt to resolve the complaint informally in a manner that addresses any harm that may have been suffered as a result of the possible discrimination and step to take to prevent a similar discrimination from recurring.

When participating in the Informal Resolution Period regarding an allegation of sexual harassment, the complainant will not be required to speak directly to, or be in the same vicinity, as the alleged sexual harasser.

FORMAL INVESTIGATION

If the complaint is not resolved during the Informal Resolution Period, the OEO will conduct a thorough, impartial investigation that meets basic procedural standards of fairness and justice. This investigation shall take a maximum of sixty (60) working days and shall conclude with issuance by the OEO of a report delineating: 1) the allegations investigated; 2) the evidence gathered and findings based on a preponderance of the evidence standard of proof; and 3) the determination as to whether or not reasonable cause exists to believe that discrimination occurred.

The OEO shall promptly present the investigative report to the appropriate Vice President or Dean with authority to act on the report by providing the student or applicant for admission with an appropriate remedy for any possible discrimination suffered. The appropriate Vice President or Dean shall have ten (10) working days, from the date of receipt, to act on the report of the OEO. The OEO shall promptly

notify the complainant in writing that the complaint has been investigated, the finding, and how to appeal. Where there has been a finding of discrimination, the complainant shall be notified in writing of the action that has been taken by the University.

APPEAL TO THE PRESIDENT'S OFFICE

If the complainant remains dissatisfied with the Formal Investigation resolution of his or her complaint of discrimination, the complainant has the right to appeal the matter in writing to the SJSU Office of the President within (10) working days of receipt of notice from the OEO that the complaint has been investigated and a description of remedial steps taken, if appropriate.

The President's Office shall have twenty-one (21) working days, from the date of receipt, to act on the appeal. The OEO ultimately shall be responsible for promptly notifying in writing the student or applicant for admission that the President's Office appeal process has been concluded and that the President's Office any finding of possible discrimination has been appropriately remedied.

TASK FORCE

The University's Human Resources Office shall create and maintain a task force to ensure a coordinated response to complaints of discrimination. The task force will meet periodically, but no less than three times annually and shall be comprised of personnel from the University's Division of Student Affairs, the Faculty Affairs Office, the University Police Department and the Human Resources Office of Equal Opportunity.

RIGHT TO REPRESENTATION

Any complainant who has filed a complaint with the OEO may be represented by another person at any stage of the complaint process, provided that he or she gives the OEO written notice of the designated representative.

EXTENSIONS IN PROCEDURAL DEADLINES

Reasonable extension of any time limit in these procedures shall be granted by the Associate Vice President of Human Resources for just cause, provided all concerned parties are given adequate notice of extension. Time limits set forth herein refer to working days, which are Monday through Friday, excluding all officially recognized University holidays or campus closures.

If the complainant, the respondent, the witnesses, campus administrator, or the investigator is on an approved vacation of three days or more and such person is required for the investigation to proceed, the time limits shall be extended by the length of time the individual is absent. Such extension should not exceed 15 working days. If the OEO requires additional time to respond appropriately to allegations of discrimination, harassment, or retaliation, an extension shall be requested from the Associate Vice President of Human Resources. Some justifications for such extensions might include emergency situations that require the investigator to be away from campus; additional time required for investigating more complex cases requiring access to numerous documents or witnesses; or other situations deemed appropriate by the Associate Vice President for Human Resources. Such extensions should not usually exceed 30 working days. The OEO will inform the complainant in writing of any extension.

RETALIATION PROHIBITED

Retaliation, intimidation, or harassment of any kind by an employee or agent of SJSU against a person or group seeking redress under these grievance procedures in an investigation or otherwise participating in any proceeding under this Presidential Directive is prohibited and shall be regarded as separate and distinct discrimination that may be grieved.

CONFIDENTIALITY

Every effort shall be made by SJSU to protect the confidentiality of all participants in the processing of a grievance. Disclosure of information will be limited to the persons necessary to the investigation, mediation and resolution of a grievance.

MAINTENANCE OF DOCUMENTATION

Documentation gathered and produced in final form by SJSU officials as part of the processing of a complaint shall be maintained by the OEO for three (3) years from the date of resolution of the complaint. Such documentation shall be maintained on a confidential basis.