

### Reason for Policy

~~This policy sets for the student discrimination complaint process.~~

~~This policy outlines standards and practices for discrimination and reports or complaints related thereto.~~

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### Entities Affected by this Policy

~~Students, Employees, Campus Community Members, the Title IX Coordinator, the Office for Affirmative Action and Equal Opportunity~~

~~All students and employees.~~

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### Web Site Address for this Policy

~~<http://policies.uoregon.edu/discrimination-0>~~

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### Responsible Office

For questions about this policy, please contact the Office of Affirmative Action and Equal Opportunity at 541-346-3123.

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### Enactment & Revision History

~~Temporary changes enacted by the University President on August 18, 2016.~~

Technical revisions enacted by the University Secretary on September 2, 2015.

Became a University of Oregon Policy by operation of law on July 1, 2014.

Former Oregon Administrative Rule Chapter 580 Division 15.

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### Policy

#### ~~A. Assistance to Organizations~~

~~The University shall not recognize, register or otherwise provide assistance to any organization that discriminates in its membership on the basis of age, disability, national origin, race, marital status, religion, sex or sexual orientation, except the University may provide assistance to~~

~~organizations exempted under Title IX of the Educational Amendments of 1972 from discriminating on the basis of sex in their membership policies.~~

### **BA. Definition of Discrimination**

~~Terms used in For the purposes of Section B to Section FF will be defined by UO Policy V.11.02 and shall be construed consistent with that policy., the terms:~~

~~(1) "Discrimination" means any act that either in form or operation, and whether intended or unintended, unreasonably differentiates among persons on the basis of age, disability, national origin, race, marital status, religion, sex or sexual orientation.~~

~~(2) "Sexual harassment" means any sexual advance, any request for sexual favors or other verbal or physical conduct of a sexual nature by an employee when:~~

~~(a) Submission to such advances, requests or conduct is made either explicitly or implicitly a term or condition of a student's employment or academic experience; or~~

~~(b) Submission to or rejection of such advances, requests or conduct by a student is used as a basis or condition for employment and/or academic decisions affecting the student; or~~

~~(c) Such conduct interferes with the work or academic performance of a student because it has created an intimidating, hostile or offensive working or academic environment for the student who is the object of the conduct and a reasonable person of that student's gender would have been affected similarly to the student.~~

~~(3) "Other prohibited harassment" means verbal or physical conduct by an employee based on a student's age, disability, national origin, race, marital status, religion or sexual orientation when such conduct interferes with the work or academic performance of the student who is the object of the conduct because it has created an intimidating, hostile or offensive working or academic environment for the student and a reasonable person of the student's age, disability, national origin, race, marital status, religion or sexual orientation would have been affected similarly to the student.~~

### **B. Assistance to Organizations**

~~The University shall not recognize, register or otherwise provide assistance to any organization that the University knows engages in Prohibited Discrimination.~~

### **C. Discrimination Prohibited in All Higher Education Programs, Services and Interschool Activities**

No person in Oregon shall be subjected to Prohibited Deiscrimination in any Department program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by monies appropriated by the Legislative Assembly of the State of Oregon. The University shall promptly adopt and publicize, and shall maintain, a procedure for redressing the grievances of persons who are subject to discrimination. Section B to Section FF do not apply to claims of discrimination in employment, promotion, tenure or termination of employment except student employment as provided in Section M(1).

#### **D. Appointment of Compliance Officer**

The Chancellor shall appoint a compliance officer who shall be responsible directly to the Chancellor for:

- (1) General oversight of Department efforts to comply with ORS 659.150 and 659.155, and for bringing to the attention of the Chancellor any needed changes in Board rules or policies relating to compliance with such statutes.
- (2) Working with presidents or division heads, or their designees, as requested, in assisting institutions and divisions in the development and maintenance of effective policies and rules relating to compliance with ORS 659.150 and 659.155, and in evaluating the effectiveness of their application.
- (3) Evaluating periodically the evidence as to compliance with ORS 659.150 and 659.155, and reporting such evaluations to the Chancellor, presidents and division heads concerned.
- (4) Carrying other responsibilities relating to assuring compliance with ORS 659.150 and 659.155 as may be assigned by the Chancellor.

#### **E. Admissions**

- (1) No person shall, on a prohibited basis, be denied admission or be subject to discrimination in admission.
- (2) Each school, department or college in the University, that has an independent admissions process, or one supplementary to the University admissions process, is considered an administratively separate unit for admission purposes and may not discriminate unreasonably on any of the prohibited bases (i.e., age, sex, sexual orientation, marital status, disability, national origin, race, religion).
- (3) No test or other criterion for admission that unreasonably differentiates among individuals on a prohibited basis shall be used, unless the use of the test or criterion is shown to be a valid means of predicting success in the educational program, and other suitable tests or criteria not having such an adverse effect are shown to be unavailable.

(4) No preference in admission shall be given one person over another on a prohibited basis, such as by ranking individuals on a prohibited basis.

(5) Numerical limitations on the number or proportion of persons to be admitted may not be established on a prohibited basis.

(6) In making admissions decisions, the University:

(a) Shall not apply any rule concerning marital, parental or family status of an applicant or student that treats individuals differently on a prohibited basis;

(b) Shall not consider pregnancy, childbirth, termination of pregnancy or recovery therefrom to determine eligibility for admission, unless on a case-by-case basis the health of an individual relates directly to the capacity to participate effectively in activities necessary to the program. Such determinations shall be treated no differently than other health conditions;

(c) Shall not make pre-admission inquiry as to marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs."

#### **F. Recruitment**

(1) In recruiting students, the University shall not unreasonably differentiate among individuals on a prohibited basis.

(2) The University shall not recruit primarily or exclusively from schools or other educational institutions that admit students predominantly on a prohibited basis, if such actions result in discriminatory enrollment.

#### **G. Educational Programs and Activities**

(1) No individual shall, on a prohibited basis, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other educational program or activity operated by the University, or, although not operated by the University, is required of students by the University.

(2) In providing aid, benefit, or service to students, the University shall not discriminate on a prohibited basis, except where differential treatment is not unreasonable within the meaning of ORS 659.150 and 659.155.

#### **H. Access to Course Offerings**

There shall be no unreasonable differentiation among individuals on a prohibited basis in access to classes, courses of study or other educational programs or activities offered by the University, provided, however, that:

(1) Students may be grouped within physical education classes and activities by objectively measured ability. They may also be separated by sex within classes during participation in bodily contact sports. Curricula serving the particular activity needs of males or those of females may be offered, but enrollment may not be restricted on a prohibited basis.

(2) Physical education classes may use different standards for measuring skills and progress if use of a single standard would, on a prohibited basis, have an adverse effect on persons, or on the likelihood of their participation.

(3) Theater, dance, choral music and other artistic activities may differentiate participants in roles on the basis of sex if necessary to achieve specific artistic objectives.

#### **I. Counseling and Use of Appraisal and Counseling Materials**

(1) The University shall neither discriminate among students on a prohibited basis in assistance rendered in making educational or career choices, or in the counseling and guidance services offered, nor among applicants for admission if such services are offered.

(2) Students or applicants for admission involved in the appraisal or counseling process shall not be differentiated on a prohibited basis by the nature of tests and materials used, except or unless differentiated materials covering the same occupations and interest areas are shown to be essential to the elimination of bias with respect to age, sex, sexual orientation, marital status, disability, national origin, race and religion.

#### **J. Housing**

The University shall not, on a prohibited basis, unreasonably differentiate among applicants or students in housing fees charged or services or benefits offered in housing, except as provided below:

(1) Separate housing may be provided for the separate sexes.

(2) Available housing may be divided between men and women on the basis of the number of applicants for housing of each sex, provided the housing is comparable in quality and cost.

(3) Qualifications for occupancy of family housing shall be the same for married women students as for married men students, and shall be the same for single parents of either sex.

#### **K. Comparable Facilities**

(1) Separate rest rooms, change and locker rooms, showers, baths and toilet facilities, provided on the basis of sex, must be reasonably comparable in convenience and quality.

(2) The University and divisions should ensure reasonable access by persons with disabilities to facilities including classrooms, locker rooms, showers and rest rooms.

#### **L. Financial Assistance**

(1) In providing financial assistance to applicants or students, the University shall not unreasonably differentiate on a prohibited basis, except as provided below:

(a) In determining the amount or types of assistance to be granted;

(b) In limiting eligibility for assistance that is of any particular type or source;

(c) In the application of criteria.

(2) The University may not assist any person, organization or group in the administration of financial aid on a prohibited basis.

(3) The University shall comply with implementing regulations of Title IX, Educational Amendments of 1972, with respect to administration of sex-restricted scholarships and fellowships.

(4) Institutions that award athletic scholarships or grants-in-aid must ensure that reasonable opportunity exists for members of each sex to participate in intercollegiate athletics. Athletic scholarships, unlike nonathletic scholarships, may be awarded on the basis of sex, inasmuch as separate teams are permitted.

#### **M. Employment Assistance to Students**

(1) The University and divisions shall assure that nondiscriminatory policies are followed in student employment. Discrimination grievances arising out of student employment shall be addressed using the procedures required by or described in Section C and Section R through Section EE.

(2) The University and divisions shall not assist prospective employers or agencies known by them to discriminate on a prohibited basis in their recruitment, hiring or employment practices. Placement officers and other Department personnel who assist in the recruiting and hiring of students shall take steps to inform prospective employers of the requirements of nondiscrimination under the law.

#### **N. Health and Insurance Benefits and Services**

(1) The University or any constituents, including student groups, may not offer to students a medical, hospital or accident policy, plan, benefit or service that unreasonably discriminates on a prohibited basis.

(2) The University may offer a benefit or service even though it is not used by the same proportion of students of one group as of another. When full-coverage health services are provided, basic gynecological care shall be provided.

(3) Whatever limits a health service establishes as to services offered shall not differentiate unreasonably among individuals on a prohibited basis.

#### **O. Marital or Parental Status**

(1) Any rule dealing with marital, parental or family status must be applied equally to men and women students.

(2)(a) The University and divisions shall not discriminate against any student, or exclude any student from an educational program or activity, including any class or extracurricular activity on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity;

(b) The University and divisions may require the student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal educational program or activity so long as certification is required of all students for other physical or emotional conditions requiring the attention of a physician. In such cases, the University may require reasonable efforts by the affected individual to secure appropriate health insurance coverage or to hold the University harmless from consequences flowing from error or misdiagnosis on the part of the student's physician.

(3) Pregnancy, termination of pregnancy or related conditions must be treated the same as other temporary disabilities. Whatever benefits and services are available to students who are temporarily disabled, including medical services and leaves of absence, shall apply equally to pregnancy-related disabilities.

(4) The University and divisions may maintain, on an elective basis only, educational programs or activities specifically for pregnant students. When such programs and activities are maintained, the University and divisions shall assure that they are comparable in quality to those offered nonpregnant students.

(5) The University and divisions shall consider pregnancy and pregnancy-related conditions a justification for a leave of absence for so long a period of time as is deemed medically necessary

by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

**P. Athletics**

(1) No person shall, on a prohibited basis, be excluded from participation in or be treated differently from another person, or otherwise be discriminated against in any intercollegiate, club, recreational or intramural athletics offered by the University, except as provided below:

- (a) Intercollegiate and club sports, where team selection is based on competitive skills, may have separate teams based on sex or physical disability;
- (b) If only one team is offered in a noncontact sport, students may not, on a prohibited basis, be excluded from trying out;
- (c) If only one team is offered in a bodily contact sport, members of the excluded sex need not be allowed to try out;
- (d) Noncontact intramural and recreational sports, where team selection is not competitive, must be offered on a coeducational basis. Separate teams may be offered for contact intramural and recreational sports.

(2) The University shall not, in the provision of athletic opportunities, unreasonably differentiate among individuals on a prohibited basis.

(3) In assessing the total athletic opportunity provided, the University shall be guided by regulations implementing Title IX of the Educational Amendments of 1972 and shall assess at least the following:

- (a) Appropriateness of equipment and supplies;
- (b) Games and practice schedules;
- (c) Travel and per diem allowances;
- (d) Opportunity for coaching and academic tutoring;
- (e) Coaches and tutors;
- (f) Locker rooms, practice and competitive facilities;
- (g) Medical and training services;

(h) Housing and dining facilities and services;

(i) Publicity.

(4) Athletic expenditures need not be equal but the pattern of expenditures must not result in a disparate effect on opportunity. The University may not discriminate in the provision of necessary equipment, supplies, facilities, and publicity for sports programs.

#### **Q. Textbooks and Curricular Materials**

Nothing herein either prohibits or requires the use of any particular textbook or curricular materials. If, however, materials are found upon investigation to exert a discriminatory impact on the basis of age, sex, sexual orientation, marital status, disability, national origin, race or religion, the University and divisions shall make a reasonable effort to make available supplemental alternative nondiscriminatory materials.

#### **R. Procedure for Reporting Discrimination**

(1) The University shall make available a person to serve as a grievance counselor to assist students and others in formulating and following up complaints of alleged prohibited discrimination.

(2) The University shall designate a compliance officer to receive complaints of alleged noncompliance with Section C. Reasonable efforts shall be made to give notice of the name, office address and telephone number of the grievance counselor and compliance officer to all applicants for and recipients of the services of the University.

(3) All complaints shall be made to the compliance officer at the University and shall be put into writing by the compliance officer if not submitted in writing, and signed by the complainant. The complaint shall set forth the factual basis of the alleged Prohibited Discrimination noncompliance within ~~180 days, or~~ 365 days ~~if the complaint alleges sexual harassment or other prohibited harassment as defined by Sections B(2) and B(3),~~ from the date of the alleged noncompliance.

(4) Upon receipt of the complaint, the compliance officer shall promptly deliver copies of the complaint to the President or head of the division involved and to any individual respondents. The compliance officer shall retain a copy of the complaint in files established at the University for that purpose.

#### **S. Exemption from Reprimand or Retaliatory Action**

No individual filing a complaint or otherwise participating in any of the actions authorized under Sections B through FF shall be subject to reprimand or retaliatory action by the

University, division or employee of the University for having participated in activities provided for under the Administrative Rules.

#### **T. Investigation of Complaints**

(1) Within 30 days after receipt of the complaint, the University shall complete such investigation of the matter as it deems necessary, order the correction of any noncompliance found to exist or to have occurred and transmit a report of the findings of its investigation and corrective action to the President, to the complainant and to the compliance officer with whom the complaint was filed.

(2) The 30-day period allowed under section (1) of this rule may be extended for not more than 30 days upon application by the University or division and approval of the President.

#### **U. Appeal to the Chancellor**

(1) In the judgment of the Chancellor, whenever an institution or division fails to conduct a satisfactory investigation, fails to take appropriate corrective action or fails to make reports on complaints within the 30-day period where no extension has been granted or within the period allowed under the extension, the Chancellor shall initiate an investigation of the complaint.

(2) Whenever the complainant is not satisfied with the report, or if no report is made within the time allotted, the complainant may request in writing that a hearing be held on the complaint. The request shall state the reasons for dissatisfaction. The request shall be filed with the compliance officer who shall forward a copy promptly to the Chancellor. On receipt of the request, the Chancellor may order the hearing; provided, however, that the Chancellor may review the report and other information presented and then may order that no hearing be held and declare that the action of the institution is satisfactory. The Chancellor's order shall be final.

#### **V. Appointment of Hearing Officer**

The hearing shall be conducted by a hearing officer appointed by the Chancellor.

#### **W. Notice of Hearing: Time and Place**

The hearing officer conducting the hearing shall set a hearing date not more than ten days after receipt of the request for a hearing. The hearing shall be conducted at the University at which the complaint was made. Written notice of the time and place of the hearing shall be given to the complainant and the respondent University or division at least ten days prior to the date set for the hearing. The hearing officer may postpone the hearing for valid and sufficient cause, with notice to all parties. The hearing officer shall not permit unnecessary delay.

## **X. Written Statement of Case**

Not less than five days before the date set for the hearing, the University may file with the hearing officer such written statement of its case as it elects to file and shall file a copy of the report of its investigation and action. A copy of any written statement and report of the investigation and action shall be provided the complainant at the same time they are provided to the hearing officer.

## **Y. Open Hearings**

The hearing shall be open to the public, except when materials are considered that are not public records.

## **Z. Conduct of Hearing**

(1) A tape recording or other verbatim record of the hearing shall be taken and maintained.

(2) The testimony of witnesses, on oath or affirmation, and other evidence concerning any disputed facts shall be received by the hearing officer. The hearing officer shall exclude irrelevant, immaterial or unduly repetitious evidence, but shall accept all other evidence of a type commonly relied on by reasonably prudent persons in conduct of their serious affairs.

(3) The hearing officer shall encourage stipulations of undisputed facts, and may seek to conciliate the dispute either before or after the hearing.

(4) The hearing officer shall make findings of fact according to the preponderance of evidence.

## **AA. Presentation of Evidence**

The complainant shall have the responsibility of producing satisfactory evidence of respondent's noncompliance with Section C. Both the complainant and the respondent shall have the right to appear and to participate in the hearing, to present relevant evidence to the hearing officer, to cross-examine witnesses and to submit rebuttal evidence.

## **BB. Position Summaries**

At the conclusion of the testimony, the hearing officer may permit each party to make a summation; if this privilege is extended to one side, it must be extended to the other side. The hearing officer may request the timely submission of written summations.

## **CC. Findings and Recommendations**

(1) The hearing officer shall make explicit findings of fact respecting the alleged noncompliance of the respondent University. The findings shall be based on the hearing record.

(2) If the hearing officer finds that noncompliance has occurred, the hearing officer shall formulate a curative recommendation for compliance.

(3) In formulating the curative recommendation, the hearing officer shall consider the willingness and ability of the respondent to eliminate the noncompliance and any other factors relevant to the particular case.

(4) The hearing officer shall submit findings of fact, conclusions and curative recommendation to the President, the complainant, the respondent University and the Director of Affirmative Action for the State of Oregon.

#### **DD. Order by Chancellor**

(1) The Chancellor may accept, modify or reject the findings of the hearing officer, and shall issue an order containing any findings of fact based on the hearing or on investigation by the Chancellor under Section U and the action necessary for compliance, if the institution or division is found in noncompliance. The order shall be issued no more than 15 days after completion of the hearing and copies shall be given promptly to the respondent, to the complainant, and to the compliance officer of the affected institution or division.

(2) If the Chancellor believes sanctions should be imposed against any individual in addition to action necessary for compliance, the Chancellor shall notify the head of the institution or division, stating the reasons. Any proceedings thereafter taken against any individual pursuant to this paragraph shall be according to *Administrative Rules* of the Board or rules of the institution or division, as appropriate.

(3) If requested, the hearing record shall be put into writing and shall be made available to the complainant and the respondent institution or division for copying, or copies thereof shall be made for them. The cost of reducing the record to writing, and of the making of copies thereof, shall be borne by the party so requesting.

#### **EE. Sanctions Against University**

(1) If, based on the Chancellor's own investigation of alleged noncompliance or as a result of the Chancellor's examination of the findings of fact of the hearing officer, the Chancellor concludes that any institution or division has violated Section A, that the institution or division has a record of noncompliance, that the magnitude and effect of the institution or division's noncompliance is sufficient to warrant monetary sanctions or that there is an unwillingness of the institution or division to comply with Section C, or any combination of these conclusions, the Chancellor may impose a monetary sanction against the institution or division.

(2) A monetary sanction imposed under this rule shall not exceed the amount of legislatively appropriated funds received by the institution or division against which it is assessed. No monetary sanction in excess of \$10,000 shall be assessed without approval of the Board.

**FF. Requirement of Prompt Attention to Complaints**

It is the desire and direction of the Board that, in carrying out the duties imposed on them by Section B to Section EE, the Chancellor, presidents, division heads, compliance officers, hearing officers and other personnel shall give high priority to the performance of such duties and shall proceed as expeditiously as possible to ascertain whether discrimination exists and to take curative measures.

**GG. Students Unable Because of Religious Beliefs to Attend Classes on Certain Days**

Any student who, because of religious beliefs, is unable to attend classes on a particular day shall be excused from attendance requirements and from any examination or other assignment on that day. The student shall make up the examination or other assignment missed because of the absence.

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**Related Resources**

N/A