

BLACK HILLS STATE UNIVERSITY

Policy and Procedure Manual

SUBJECT: Human Rights Complaints

NUMBER: 4:8

Office/Contact: Office of Human Resources

Source: [SDBOR Policy 1:18](#)

1. Purpose

This policy and its procedures set forth the human rights complaint process and have been adopted to provide employees, students, and other members of the University community a means to protect their rights regarding discrimination and equal opportunity, which are guaranteed under federal, state, and local laws and regulations and implements SDBOR Policy 1:18.

2. Definitions

- a. Discrimination: includes violations of rights guaranteed under federal, state, or local antidiscrimination laws and regulations. Discrimination also includes any allegation that, because of a person's sex, race, color, creed, religion, national origin, ancestry, citizenship, gender, gender identity, transgender, sexual orientation, age, disability, genetic information, veteran status or any other status that may become protected under law against discrimination or other grounds unrelated to reasonable employment, educational, or programmatic expectations, a person has been subjected to disparate treatment in terms and conditions of employment, in the delivery of educational services, programs or activities, or with respect to the participation in the activities of officially recognized organizations at the University.
- b. Complaints: includes all allegations or reports of discrimination by a person, persons, or organization subject to this policy against a person protected under this policy.
- c. Complainants: includes persons who have allegedly been subjected to discrimination, whether they have initiated a complaint with the Title IX-EO

Coordinator or whether they were identified as victims in a report submitted by a third party to the Title IX-EO Coordinator.

- d. Respondent: An individual that has been reported to be the perpetrator of conduct that could constitute a violation of this policy.
- e. Supportive measures: Non-disciplinary, non-punitive individualized services offered to the complainant or the respondent.
- f. Title IX-EO Coordinator: the individual designated by the University President as responsible for administering 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, SDBOR Policies 1:17, 1:17:1, 1:18 and 1:19, and related federal, state, or local laws and regulations.
- g. Title IX-EO Investigator: any individual designated by the University President, which may be upon recommendation of the Title IX-EO Coordinator, to assist the Title IX-EO Coordinator. Such designated Investigators are authorized to receive complaints and have full power to conduct intake meetings, primary reviews, and investigations as directed by the University Title IX-EO Coordinator.

3. Policy

- a. This policy covers discrimination complaints of harassment based on protected class, other than sex (i.e., sexual harassment). Allegations of sexual harassment are handled pursuant to the updated (August 2020) SDBOR Policy 1:17. If the respondent is a student (as defined in SDBOR Policy 3:4 and University Policy 3:1), the application of this policy must be done in a way that is consistent with the requirements found in SDBOR Policy 3:4 and University Policy 3:1.
- b. Except as otherwise provided under federal, state, and local law, proof of discrimination under this policy will conform to the federal standards employed to prove disparate treatment. 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 upon such legitimate nondiscriminatory reasons as recognized under federal antidiscrimination law.

- c. 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 a prima facie evidence or discrimination.
- d. All officially recognized organizations at the University are subject to this policy, except insofar as the application of the policy would impermissibly invade the members' freedom of intimate association or freedom of expressive association. Challenges to the applicability of these regulations to an officially recognized organization at the University will be referred to an administrative officer designated by the University President. If an organization challenges the application of these policies to it or to its activities, resolution of the challenges must address the following issues:
 - i. Will application of the regulations serve a compelling University interest?
 - 1. The University has determined that it has a compelling interest in applying these regulations to individuals and organizations whose activities affect the ability of others to participate in and to enjoy the benefits of University employment, educational services or the activities of officially recognized organizations, so this issue may ordinarily be resolved through reference to Section 3.d. above.
 - ii. Application of the regulations is unrelated to the suppression of ideas.
 - 1. The issue requires a factual inquiry into the purpose of applying the regulations to particular organizations. The University may not apply the regulations in order to suppress a particular point of view. The mere dissemination of ideas, however offensive to good taste and common decency such ideas may be, does not afford grounds for regulation.
 - iii. Can the compelling interest be achieved through means significantly less restrictive of associational freedoms?
 - 1. This issue requires a two-step analysis. First, it must be determined whether application of the regulations would infringe associational

rights of organization members. If so, a determination must be made whether some less intrusive measures might suffice to protect University's compelling interest.

2. The following principles will be used to determine whether application of University's policies to an organization might invade the association rights or organization members:
 - a. Freedom of intimate association refers to those relationships that presuppose deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences and beliefs, but also distinctively personal aspects of one's life. Factors that suggest that freedom of intimate association is implicated include:
 - i. The relative smallness of the organization;
 - ii. A high degree of selectivity in choosing and maintaining members of the organization;
 - iii. The personal nature of the organization's purpose; and
 - iv. The exclusion of nonmembers from the central activities of the organization.
 - b. Freedom of expressive association is implicated where an organization is created for specific expressive purposes and the organization will be significantly inhibited in advocating its desired viewpoints if it cannot restrict its membership based on sex, race, color, creed, religion, national origin, ancestry, citizenship, gender, gender identity, transgender, sexual orientation, age, disability, genetic information, veteran status, or any other status that may become protected under law against discrimination.
 - e. The Title IX-EO Coordinator 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.

- f. The Title IX-EO Coordinator will assure that persons entrusted with the investigation of complaints have undergone annual training in the conduct of investigations. The Title IX-EO Coordinator will also assure that persons entrusted with investigations are unbiased and disinterested.
 - i. In the event that a complainant or respondent alleges that an investigator is biased or has a conflict of interest, the Title IX-EO Coordinator will review the evidence of bias or interest, and will reassign responsibility for the investigation when a reasonable well-informed observer of the administrative process would believe that there may be an appearance of bias or conflict, even if none actually exists. In the event that the Title IX-EO Coordinator is the subject of such alleged conflict of interest, the BHSU President will fulfill this duty.
 1. When determining whether there are reasonable, objective grounds for concluding that an appearance of bias or conflict of interest exists, the Title IX-EO Coordinator will consider, without limitation, evidence of:
 - a. personal bias or prejudice against the complainant or accused or personal knowledge of the disputed facts;
 - b. prior involvement in the incident or institutional response to the reports;
 - c. economic interests, including interests of immediate family members, that may be substantially affected by the outcome of the investigation; or
 - d. close relationships, either directly or indirectly through immediate family members, with a complainant, an accused or witnesses involved in the proceeding.

- g. The Title IX-EO Coordinator will assure that persons entrusted with the conduct of disciplinary proceedings have undergone annual training in the conduct of disciplinary proceedings.
 - i. In the event that a complainant or respondent alleges that a person entrusted with the conduct of disciplinary proceedings is biased or has a conflict of interest, the Title IX-EO Coordinator will review the evidence of bias or interest, and will submit a recommendation to the institutional chief executive officer whether responsibility for the disciplinary proceeding should be reassigned. In order to discourage abuse of the reassignment process, reassignment will not be routine, but may be proper where a reasonable well-informed observer of the administrative process would believe that there may be an appearance of bias or conflict, even if none actually exists.
 - 1. When determining whether there are reasonable, objective grounds for concluding that an appearance of bias or conflict of interest exists, the Title IX-EO Coordinator (or the reassigned person) will consider, without limitation, evidence of:
 - a. personal bias or prejudice against the complainant or accused or personal knowledge of the disputed facts;
 - b. prior involvement in the incident or institutional response to the reports;
 - c. economic interests, including interests of immediate family members, that may be substantially affected by the outcome of the investigation; or
 - d. close relationships, either directly or indirectly through immediate family members, with a complainant, an accused or witnesses involved in the proceeding.
- h. All students and employees whose assistance is needed in the investigation of a complaint or in the course of disciplinary action are encouraged to cooperate with the Title IX-EO Coordinator 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, adjustments will be made to work schedules, classroom schedules, and other academic or employment obligations.

- i. Reasonable efforts will be made to maintain the confidentiality of complaints; however, it may become necessary to disclose the identities of complainants, respondents, or witnesses, either directly or indirectly, in the course of investigation.
 - i. Even if the complainant requests confidentiality or asks that the complaint not be pursued, the University will take all reasonable steps to respond to the complaint to the extent possible consistent with university policy, and whenever possible the complainant's wishes. The university must report the incident to local law enforcement authorities if it appears to involve a crime that is required to be reported or a health or safety emergency as defined by state or federal law that requires reporting.
 - ii. Where formal disciplinary proceedings are instituted, the respondent will be given the name(s) of the complainant(s) and the witness(es) whose testimony will be used to support the complaint, together with the substance of their allegations.
 1. Where the complaint involved conduct proscribed under SDBOR Policies 1:17 and/or 1:17.1 (thus University Policy 4:7), both complainant and respondent will be provided access to any information that will be used during informal and formal disciplinary meetings and hearings.
 2. Disciplinary hearings ordinarily are not open to the public, but, in some instances, persons accused of misconduct may have appeal rights. The Title IX-EO Coordinator will inform complainants and respondents that SDBOR Policy 1:17 mandates all related disciplinary hearings to a public hearing under South Dakota Public Hearing and at what point that hearing may occur. In the event of a public hearing, the pleadings, motions, documents and

recorded testimony assembled at or incidental to the hearing will become public record.

- j. The Title IX-EO Coordinator, in consultation with appropriate University officials, is responsible for contacting law enforcement if a report presents a health or safety emergency. In keeping with the requirements of SDCL § 22-11-12, once the Title IX-EO Coordinator acquires knowledge, that is not privileged, of the commission of a felony, the Coordinator will immediately disclose the felony, including the name of the perpetrator, if known, and all the other relevant known facts to appropriate law enforcement authorities.
 - i. The Title IX-EO Coordinator, in consultation with appropriate University officials, will analyze each report to determine if the circumstances require a report under SDCL § 22-11-12 or present health or safety emergency. In such cases, information relating to the complaint may be disclosed to appropriate persons including law enforcement personnel.
 - ii. Reports of crimes may be filed with law enforcement with or without the assistance of the University.
- 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 Title IX-EO Coordinator or other administrative officer having responsibility for the complaint, this will help to achieve the purposes of the regulations. Investigation and responses 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. Working days are those on which the offices of the University or SDBOR are open for business.

- iv. Extensions will not exceed the bounds allowed by applicable law and regulations.
- l. Discipline of persons found to have committed acts of discrimination will be determined and carried out in accordance with the relevant disciplinary procedures. Students who are disciplined under this policy are also subject to the sanctions as set forth in University Policy 3:1, Student Conduct Code.
- m. Persons who bring complaints of discrimination at the University and persons who participate in the investigation and disposition of such complaints will not be subject to harassment, interference, intimidation, or retaliation.
 - i. The right to be free from harassment, interference, intimidation or retaliation is ongoing, and the Title IX-EO Coordinator will inform the complainant, the accused and all persons involved in the investigation or disposition of complaints of the right and provide them with information detailing how they may report violations.

4. Procedures

- a. All inquiries, allegations, reports, or complaints relating to discriminatory conduct will be forwarded to the Title IX-EO Coordinator for response.
 - i. A person who believes that they have been the victim of such misconduct may contact the Title IX-EO Coordinator or submit an online report.
 - ii. Complaints may also be made with any administrator or, in the case of students, also with any faculty member. Complaints made with such individuals will be referred to the Title IX-EO Coordinator. This provision will not be interpreted to require individuals to refer to the Title IX-EO Coordinator accusations addressed to them directly by aggrieved persons.
 - iii. Third party reports of discrimination and conduct observed directly that may be discriminatory should be reported and managed in the same manner as provided herein.
 - iv. Any University employee informed of an allegation of dating violence, domestic violence, sexual assault, or stalking with a clear connection to University programs, personnel or students must promptly notify the Title IX-EO Coordinator. Employees serving in certain professional roles which

enjoy a statutory privilege are required to disclose information only in accordance with applicable statutory authority.

- b. The Title IX-EO Coordinator will respond upon receipt of inquiries, allegations, reports, or complaints relating to discriminatory conduct including harassment based on a protected class (as defined in section 2a of this policy) and/or sexual harassment as defined in SDBOR Policy 1:17 section B.9.
 - i. Complaints involving sexual harassment as defined in SDBOR Policy 1:17 section B.9. are processed according to the process described in SDBOR Policy 1:17 and University Policy 4-7.
 - ii. Complaints involving harassment based on a protected class (as defined in section 2a of this policy) are processed according to the process described in section 5 of this policy.
 - iii. Alternative remedies exist for inquiries, allegations, reports, or complaints relating to harassment not based on a protected class.
 - 1. If the respondent is a student, such complaints are directed to the Student Conduct Officer for processing as described in SDBOR Policy 3:4 and University Policy 3:1.
 - 2. If the respondent is an employee, such complaints are directed to the respondent's Vice President for departmental resolution.
- c. The Title IX-EO Coordinator will use the following procedures to process complaints of harassment based on protected class, other than sex (i.e., sexual harassment). Allegations of sexual harassment are handled pursuant to the updated (August 2020) SDBOR Policy 1:17. If the respondent is a student (as defined in SDBOR Policy 3:4 and University Policy 3:1), the application of this policy must be done in a way that is consistent with the requirements found in SDBOR Policy 3:4 and University Policy 3:1.
- d. Upon obtaining a statement of the factual basis of the complaint, the Title IX-EO Coordinator will respond to offer appropriate supportive measures and to determine whether there is a basis to proceed with a formal investigation.
 - i. The Title IX-EO Coordinator will meet with the complainant within three working days after receipt of the complaint to provide information about

procedures and resources, to record an initial statement of the factual basis for complaint, and to discuss supportive measures. Any supportive measures will be put into place in a timely manner.

- ii. If the complaint is referred to the Title IX-EO Coordinator by another administrator, faculty member, or other third party, the Title IX-EO Coordinator will contact the complainant within five working days to provide information about procedures and resources, to record an initial statement of the factual basis for complaint, and to discuss supportive measures.
- e. In concert with the senior University officer whose administrative responsibilities include supervision of the respondent, the Title IX-EO Coordinator will determine what supportive measures are available to protect the complainant and respondent.
 - i. the Title IX-EO Coordinator will take action to assure that (a) the complainant is protected from retaliation for having made a complaint or responded to inquiries initiated in response to a complaint; (b) necessary or appropriate supportive measures are taken to guard against a recurrence of the conduct that gave rise to the complaint; (c) requests for accommodations involving the complainant's academic, living, transportation, and working situation are reviewed case by case through an interactive process and granted if they are reasonably available; and (d) the complainant is informed of the options to request protection or accommodation and how to request such assistance.
 - ii. When selecting supportive measures, the Title IX-EO Coordinator and senior University officer will consider nature and circumstances of the alleged misconduct, together with the strength of prima facie evidence and any indications relative to the risk of recurrence and will prefer measures that minimize the relative inconvenience to the complainant.
 - iii. The Title IX-EO Coordinator will meet separately with the complainant and the respondent within three working days after receipt of the complaint or after meeting with the complainant to discuss the proposed

supportive measures. Any supportive measures will be put into place in a timely manner.

f. Formal Investigation Findings

i. Cases finding *No Reasonable Basis to Proceed*

1. If the Title IX-EO Coordinator determines there is not a reasonable basis for believing that complainant has been subjected to discrimination, the Title IX-EO Coordinator will inform the complainant of the decision and will inform the complainant of the resources available at the University to help the complainant resolve concerns with the individual whose conduct prompted the complaint in conformity with SDBOR Policy 1:17 and University Policy 4:7.
2. If the complainant believes that the Title IX-EO Coordinator erred in concluding that the complaint did not have a reasonable basis, the complainant may petition the University President for a review of that determination. The petition must be received within fifteen working days after the complainant has been notified that the Title IX-EO Coordinator has determined that there is no reasonable basis to believe that the complainant was subjected to discrimination. The University President, either personally or through a delegate, will review the investigation file to determine whether the conclusions of the Title IX-EO Coordinator are based upon substantial evidence. The University President will respond in writing to the complainant and the accused at the conclusion of this review. If the University President concludes that the evidence supports the conclusions of the Title IX-EO Coordinator, the response will summarize the findings that lead to that conclusion to the extent that this may be done without compromising the privacy of third parties, persons accused of misconduct, or the complainant.

3. 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 reached by the University President and to advise the SDBOR pursuant to SDBOR Policy No. 1:6(4). The request for such a review should 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 SDBOR Policy or governing law.

ii. Cases Finding *Reasonable Basis to Proceed*

1. If the Title IX-EO Coordinator concludes that there is a reasonable basis for the complaint, the Title IX-EO Coordinator will notify the administrative officer having supervisory responsibility over the respondent alleged to have engaged in discriminatory conduct. The Title IX/EO Coordinator 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.
2. If deemed appropriate, the Title IX-EO Coordinator and the administrative officer may first attempt an informal resolution of the dispute.
 - a. If the matter appears to them to lend itself to informal resolution, they will meet with the complainant to determine whether the complainant is willing to pursue an informal resolution and how the necessary discussion with the person accused of misconduct may be structured.

- b. If an informal resolution is created, the terms of the resolution will be reduced to writing and signed by the complainant. The University will document the administration of any agreed upon discipline or remedial action through such means as are appropriate and customary under the relevant disciplinary procedures or are in keeping with other relevant administrative practices. Copies of the signed document will be preserved in the complaint file and as otherwise necessary to give effect to the terms of the resolution.
- 3. If the Title IX-EO Coordinator and administrative officer elect not to attempt an informal resolution, an informal resolution is not effected, the administrative officer will initiate formal disciplinary proceedings against the respondent alleged to have engaged in discriminatory conduct within fifteen working days from the time that the file has been submitted to the officer unless the complainant and the respondent have agreed in writing to extend the time allowed to attempt an informal resolution (or an informal resolution has been effected).
- 4. The disciplinary procedures followed will be those designated for persons in the classification to which the respondent belongs.
 - a. Faculty members will be subject to discipline consistent with SDBOR Policy.
 - b. CSA employees will be subject to discipline under CSA regulations.
 - c. Exempt staff will be subject to discipline under exempt regulations.
 - d. Students will be subject to discipline under University Policy 3:1, Student Conduct Code.
 - e. If no disciplinary procedures otherwise exist, the University President will appoint a hearing examiner to conduct a

hearing to determine the facts and to recommend to the University President what disposition should be made of the matter.

5. 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.
6. Depending upon the specific facts and circumstances of an incident, discipline may include:
 - a. separation of the parties;
 - b. limitations on contact between the parties;
 - c. alternative academic, working or housing arrangements, warnings or reprimands;
 - d. required training or current substance abuse treatment;
 - e. suspension from classes or suspension from duties without pay;
 - f. reassignment, demotion or discharge from employment or expulsion from the University; or
 - g. suspension or termination of the right to enter institutional grounds or facilities or to attend or to participate in institutional activities.
7. 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. The discipline or action will not become finalized if the complainant timely petitions the University President for a review.

8. 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 five working days after the complainant has been notified of the proposed discipline. The University President, either personally or through a delegate, will review the investigation files, hearing records and findings, and other documents relating to the matter to determine whether a discipline provided is commensurate with the gravity of the offense established, considering the relation to the parties, and whether it may reasonably be thought to assure that the conduct will not recur. The determination of the University President will not be subject to further review.
9. All records and writings developed in the course of the formal disciplinary hearings will be preserved in the complaint file and in other records as required under related grievance policies.

5. Responsible Administrator

The Title IX-EO Coordinator, successor, or designee is responsible for annual and ad hoc review of this policy and its procedures. Title IX-EO Coordinator contact information shall be maintained and made available, and disseminated to the University community and general public, by the University Title IX-EO Coordinator Office located in University Office 129 of Woodburn Hall, or successor unit. The University President is responsible for approval of modifications to this policy and its procedures.

SOURCE: Approved by President on 11/9/2020.