

## **10.6 UNLAWFUL DISCRIMINATION POLICY AND COMPLAINT PROCEDURE**

### **I. STATEMENT OF AUTHORITY AND PURPOSE**

This policy is promulgated by the Board of Trustees pursuant to the authority conferred upon it by §23-41-104(1), C.R.S. (1999) in order to set forth a policy concerning unlawful discrimination at CSM. This policy shall supersede any previously promulgated CSM policy that is in conflict herewith.

### **II. UNLAWFUL DISCRIMINATION POLICY**

Attendance and employment at CSM are based solely on merit and fairness. Discrimination on the basis of age, gender, race, ethnicity, religion, national origin, disability, sexual orientation, and military veteran status is prohibited. No discrimination in admission, application of academic standards, financial aid, scholastic awards, promotion, compensation, transfers, reductions in force, terminations, re-employment, professional development, or conditions of employment shall be permitted. The remainder of this policy shall contain a complaint procedure outlining a method for reporting alleged violations of this policy and a review mechanism for the impartial determination of the merits of complaints alleging unlawful discrimination.

### **III. PERSONS WHO MAY FILE AN UNLAWFUL DISCRIMINATION COMPLAINT**

An unlawful discrimination complaint may be filed by any individual described in one of the categories below:

- A. Any member of the CSM community, including classified staff, exempt employees, and students as well as any applicant for employment or admission, who believes that he or she has been discriminated against by CSM, a branch of CSM, or another member of the CSM community on account of age, gender, race, ethnicity, religion, national origin, disability, or military veteran status;
- B. Any person who believes that he or she has been threatened with or subjected to duress or retaliation by CSM, a branch of CSM, or a member of the CSM community as a result of (1) opposing any unlawful discriminatory practice; (2) filing a complaint hereunder; (3) representing a Complainant hereunder; or (4) testifying, assisting, or participating in any manner in an investigation, proceeding, hearing, or lawsuit involving unlawful discrimination; or
- C. The Associate Vice President for Human Resources or an attorney from the Office of Legal Services, if any of these individuals deem it to be in the best interest of CSM to do so.

### **IV. INFORMAL COMPLAINT RESOLUTION PROCESS**

At the written request of an individual who has come forward with a complaint alleging unlawful discrimination, hereinafter the "Complainant," the Associate Vice President for Human Resources shall assist in an attempt to resolve the complaint in an informal manner. The informal unlawful discrimination complaint resolution process shall consist of an informal discussion between the Complainant and the individual or a representative of the entity accused of unlawful discrimination, hereinafter the "Respondent." The Associate Vice President for Human Resources shall act as a mediator during this process, which shall be calculated to bring the complaint to the attention of the Respondent and elicit the voluntary cooperation of the Respondent in settling the matter. By attempting to resolve the unlawful discrimination complaint in an informal manner pursuant to the terms of this section, the Complainant shall not waive any rights to subsequently pursue the complaint through the formal complaint procedure set forth below.

### **V. FORMAL COMPLAINT PROCEDURE**

#### **A. Purpose**

The purpose of the formal unlawful discrimination complaint procedure is to provide a formal mechanism for the prompt and fair internal resolution of complaints alleging unlawful discrimination. The procedure outlined below shall be the exclusive forum for the internal resolution of such complaints at CSM.

## **B. Where to file a Complaint**

All complaints by non-students alleging unlawful discrimination or retaliation shall be filed in writing at the Office of Human Resources located on the second floor of Guggenheim Hall. Complaints by students alleging unlawful discrimination or retaliation may be submitted to the Human Resources Office, the Student Development Center, the Dean of Students, any faculty member, or any Resident Assistant. Any recipient of such a student complaint shall promptly forward the complaint to the Associate Vice President for Human Resources for handling in accordance with the provisions set forth below.

## **C. Time Limits**

All complaints alleging unlawful discrimination or retaliation must be filed within ninety days from the date upon which the incident, occurrence, or other action alleged to constitute unlawful discrimination or retaliation occurred. However, if the alleged discrimination or retaliation is of a continuing nature, a complaint may be filed at any time.

## **D. Contents of Complaint**

A complaint alleging unlawful discrimination or retaliation must be signed by the Complainant and set forth specific factual matters believed to constitute unlawful discrimination or retaliation. The complaint shall name as Respondent the individual or entity whom the Complainant believes to have committed, participated in, or encouraged the discrimination or retaliation. The complaint shall also include a brief statement describing the relief requested by the Complainant.

## **E. Fulfillment of Complaint Prerequisites**

As soon as practicable after receipt of a complaint, the Associate Vice President for Human Resources shall submit the complaint to an attorney from the Office of Legal Services, who shall examine it and determine if the prerequisites outlined above have been fulfilled. If the prerequisites have not been fulfilled, the attorney shall inform the Complainant of the specifics of such determination in writing. Unless the time limitations set forth above have lapsed prior to the initial filing of the complaint, the Complainant shall have the opportunity to correct any deficiencies and re-file the complaint. If the prerequisites have been fulfilled, the complaint will be handled as set forth below.

## **F. Choice of Remedies**

No Complainant shall be permitted to simultaneously file an unlawful discrimination claim under the CSM Unlawful Discrimination Policy and Complaint Procedure and a sexual harassment claim under the CSM Sexual Harassment Policy and Complaint Procedure against the same individual arising out of an identical set of facts. In such a situation, a Complainant shall be entitled to file his or her claim under either, but not both, of the above-mentioned policies.

# **VI. PRE-HEARING PROCEDURES**

## **A. Notification to Proceed**

As soon as practicable after a determination has been made that the complaint is sufficient pursuant to subsection V.E above, the reviewing attorney shall inform the Associate Vice President for Human Resources of that fact and the Associate Vice President for Human Resources shall proceed with the notifications specified in subsection B below.

## **B. Acknowledgment of Complaint and Notification of Respondent**

As soon as practicable, the Associate Vice President for Human Resources shall send a letter to the Complainant acknowledging receipt of the complaint. At the same time, the Associate Vice President for

Human Resources shall provide the Respondent with a copy of the complaint and notify the Respondent in writing of the requirements set forth in subsection C below.

### **C. Response to Complaint**

Within ten days from the date of receipt of a copy of the complaint, the Respondent shall file with the Associate Vice President for Human Resources a response in which the allegations contained in the complaint are admitted or denied. The Associate Vice President for Human Resources shall provide the Complainant with a copy of the response as soon as practicable. If the response contains a denial of one or more of the allegations contained in the complaint, the process shall proceed with the selection of a hearing panel as set forth in subsection D below. If no timely response is received, or if the response admits the allegations in their entirety, the matter shall be submitted to the President, who shall then issue a decision in accordance with subsection IX.D below.

### **D. Selection of Hearing Panel**

An initial hearing panel consisting of six individuals shall be selected in a random manner from a list of full-time CSM employees. The Complainant and the Respondent shall each disqualify one of the initial panel members. The disqualifications to be exercised by the parties shall commence with the Complainant. Of the remaining initial panel members, the one chosen last shall serve as an alternate hearing panel member. The other three initial panel members shall constitute the hearing panel for the appeal. Prospective panel members may be excused on account of conflict of interest, health, or unavoidable absence from campus. An excused initial panel member shall be replaced by another initial panel member chosen in a random drawing prior to the exercise of disqualifications by either party.

### **E. Selection of Chief Panel Member**

After a hearing panel has been chosen, the panel members shall elect a chief panel member from their number who shall preside throughout the remainder of the case.

#### **1. Authority of Chief Panel Member**

The chief panel member shall have the authority to (a) issue orders to compel discovery; (b) make rulings on evidentiary objections; and (c) issue any other orders necessary to control the conduct of the hearing and prohibit abusive treatment of witnesses, including removal of disruptive individuals from the hearing room.

#### **2. Role of Alternate Hearing Panel Member**

The alternate hearing panel member shall observe, but not actively participate in, all of the proceedings in the case and be prepared to substitute for a panel member who becomes unavailable during any stage of the case due to death, illness, or emergency.

### **F. Setting of Hearing Date**

After a chief panel member has been chosen, a hearing date shall be set with reasonable consideration given to the schedules of the participants. The chief panel member shall set a date for the hearing, which shall occur no more than ninety days after the date upon which the formal complaint was filed with the Associate Vice President for Human Resources. Once set, the hearing date may be rescheduled only with the concurrence of the Complainant, the Respondent, and the hearing panel.

### **G. Participation of Attorneys**

Either party may engage the services of an attorney to assist in document preparation or case preparation. However, an attorney may not *enter an appearance* or formally participate in the case on behalf of either party.

## **H. Legal Advice for Hearing Panel**

If the hearing panel desires legal advice at any time during the case, the chief panel member shall request such advice from the Office of Legal Services. An attorney from the Office of Legal Services shall provide the requested advice unless all such attorneys are actively involved in the case on behalf of one of the parties. In such event, the chief panel member shall request the desired legal advice from the Assistant Attorney General assigned to CSM, whose name and telephone number shall be provided to the chief panel member by the legal office.

## **I. Pre-Hearing Discovery**

Informal discovery, or the exchange between the parties of information relevant to the case, is encouraged. If the parties cannot resolve such issues informally, either party may request the chief panel member up to ten days prior to the hearing date to enter an order compelling discovery upon a showing of the relevance of the requested information and the necessity of such information to case preparation. The other party may oppose such request by showing that the requested information is irrelevant, unnecessary to the requesting party's case preparation, or privileged according to law.

## **VII. PRE-HEARING STATEMENTS**

### **A. Contents of Pre-Hearing Statements**

Each party shall file a pre-hearing statement containing the following components:

- 1. Summary of the Argument:** A concise statement summarizing the case from the position of the submitting party;
- 2. List of Issues:** A list of the issues which the submitting party wishes the hearing panel to resolve;
- 3. List of Witnesses:** A list of witnesses to be presented at the hearing along with a summary of the anticipated testimony of each witness; and
- 4. Photocopies of Exhibits:** Photocopies of each exhibit to be presented at the hearing.

### **B. Deadlines for Pre-Hearing Statements**

The Complainant shall file a pre-hearing statement with the hearing panel and provide a copy to the opposing party no later than ten days prior to the hearing date. The Respondent shall file a pre-hearing statement with the hearing panel and provide a copy to the opposing party no later than five days prior to the hearing date. If the hearing date is rescheduled, these time limits shall apply to the rescheduled hearing date.

### **C. Limitations Imposed by Pre-Hearing Statements**

Neither party shall make an argument during the hearing which is inconsistent with the arguments set forth in the summary of the argument section of his or her pre-hearing statement. Neither party shall introduce any witnesses or exhibits at the hearing which are not listed in his or her pre-hearing statement. All exhibits listed in the pre-hearing statements shall be deemed genuine and admissible unless successfully challenged prior to the hearing.

#### **D. List of Hearing Issues**

After examining the pre-hearing statements of both parties, the hearing panel shall prepare a list of issues to be resolved through the hearing and distribute such list to the parties no later than two days prior to the hearing date. The panel may list issues contained in the pre-hearing statement of either party or relevant issues not contained in the pre-hearing statement of either party. However, since the jurisdiction of the hearing panel is limited to hearing claims of unlawful discrimination, only issues directly related to the Complainant's claim of unlawful discrimination may be placed on the list of issues. The list of issues generated pursuant to this subparagraph shall be binding upon the subsequent hearing and shall form the standard against which all relevancy arguments shall be weighed.

#### **E. Amendments to Pre-Hearing Statements**

Up to two days prior to the hearing date, either party may request the chief panel member to permit amendments to his or her pre-hearing statement upon a showing of good cause and lack of prejudice to the opposing party. Any party filing an amended pre-hearing statement shall provide a copy thereof to the opposing party no later than the filing deadline imposed by the order granting leave to amend.

### **VIII. HEARING PROCEDURES**

#### **A. Burden and Standard of Proof**

The Complainant shall bear the burden of proof throughout the case. The standard of proof which the Complainant must meet to sustain the burden of proof shall be the preponderance of the evidence standard. The *preponderance of the evidence* standard shall be deemed met if the panel believes that it is more likely than not that the facts at issue occurred. The *facts at issue* shall include all facts which are required to be proven by the party bearing the burden of proof in order for such party to prevail.

#### **B. Order of Presentation**

Since the Complainant bears the burden of proof, that party shall present his or her case first. After the Complainant has finished, the Respondent shall present his or her case.

#### **C. Outline of Hearing**

The hearing shall proceed according to the following general outline:

1. Complainant's Opening Statement
2. Respondent's Opening Statement (unless reserved)
3. Complainant's Case
4. Respondent's Opening Statement (if reserved)
5. Respondent's Case
6. Complainant's Rebuttal Case (unless waived)
7. Respondent's Rebuttal Case (only if Complainant presents a rebuttal case and unless waived)
8. Complainant's Closing Argument
9. Respondent's Closing Argument
10. Complainant's Rebuttal Argument (unless waived)

#### **D. Inapplicability of Strict Evidentiary Rules**

Strict legal evidentiary rules shall not apply during the hearing. The chief panel member shall rule on the admissibility of disputed evidence with primary consideration given to the relevance, reliability, and probative value of proffered evidence.

## **E. Witness Examination Procedure**

Each witness shall be directly examined by the party on whose behalf the witness has appeared to testify. Upon the conclusion of the direct examination of each witness, the opposing party shall be permitted the right of cross-examination. The chief panel member may permit re-direct and re-cross examination. However, an identical examination procedure shall be utilized for all witnesses testifying in a given hearing. Hearing panel members may interject questions at any time during the direct, cross, re-direct, or re-cross examinations.

## **IX. POST-HEARING PROCEDURES**

### **A. Recommendation of the Hearing Panel**

Within a reasonable time after the conclusion of the hearing, the hearing panel shall confer among themselves and vote upon a recommended course of action. The panel members holding a majority point of view shall designate one of their number to write a recommendation reflecting their opinion. The panel members holding a minority point of view, if any, may issue a dissenting recommendation in a similar fashion.

### **B. Contents of Recommendation**

The recommendation of the hearing panel shall include the following components:

- 1. Statement Regarding Burden of Proof:** A statement regarding whether or not the hearing panel believes that the burden of proof borne by the Complainant has been sustained;
- 2. Findings of Fact:** A list of the relevant facts found by the hearing panel upon which the recommendation is based;
- 3. Legal Conclusions:** A list of the legal conclusions of the hearing panel upon which the determination of the issue of unlawful discrimination is based; and
- 4. Recommended Action:** A statement regarding the relief for the Complainant, if any, that is being recommended by the hearing panel.

### **C. Issuance of Recommendation**

The recommendation of the hearing panel shall be issued to the parties and delivered to the President along with the case file within fifteen days after the conclusion of the hearing.

### **D. Decision of President**

The President shall examine the case file, consider the recommendation of the hearing panel, and issue a final written decision in the matter. The President shall possess the authority to affirm, reverse, or modify the recommendation of the hearing panel or to remand the matter to the panel for further proceedings or consideration. In the decision, the President may provide appropriate relief to the Complainant and may impose appropriate disciplinary action upon the Respondent. The decision of the President shall be delivered to the parties and the hearing panel within fifteen days from the date of the President's receipt of the recommendation and case file from the hearing panel, unless the President is unavailable for a significant amount of time during this period.

#### **E. Presidential Unavailability**

The term "unavailable," as utilized in this subsection and subsection IX.D above, shall be defined to mean out of town, medically incapacitated, or engaged in important CSM business to the extent that sufficient time cannot be devoted to decision making hereunder. If the President is unavailable for a significant period of time during the decision making period, a letter shall be sent to the parties advising them of that fact as well as the anticipated date of presidential availability. In such event, the decision shall be due fifteen days from the date upon which the President becomes available. The President shall be the sole judge of presidential unavailability hereunder.

#### **F. Appeal of Presidential Decision**

There shall be no internal appeal from the final decision of the President. A party aggrieved by the decision of the President may file a complaint with the appropriate equal opportunity enforcement agency or pursue other available legal remedies.

Promulgated by the CSM Board of Trustees on March 13, 1992.  
Amended by the CSM Board of Trustees on June 10, 1999.  
Amended by the CSM Board of Trustees on June 22, 2000.  
Amended by the CSM Board of Trustees on June 7, 2003