

St. Bonaventure University

Discrimination and Harassment Procedures

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General Statement of Procedures

Once the University becomes aware of a complaint, the University must keep a record and will be required to investigate the complaint to meet its legal obligations. Discrimination and harassment complaints, as well as related complaints of retaliation, by or involving any employee or volunteer of the University (except those complaints alleging discrimination or harassment by a student non-employee)* are investigated typically by two Advocacy Officers (usually one female and one male). The Advocacy Officers shall conduct a prompt, thorough and impartial investigation as to whether a violation of the University's Discrimination and Harassment Policy has occurred. If the Advocacy Officers conclude that a violation has occurred, the Advocacy Officers may seek an informal resolution. If an informal resolution is not achieved, the Advocacy Officers, together with the appropriate executive officer, will implement a formal resolution.

The Advocacy Officers are responsible for making an assessment and recommending corrective measures to the appropriate executive officer. Such an assessment and recommendation are the Advocacy Officers' "disposition." Only the appropriate executive officer is empowered to implement the disposition. A party who is dissatisfied with the Advocacy Officers' disposition, or Advocacy Officers who desire consultation about their disposition, may request a review by the Council on Discrimination and Harassment (CODAH) Review Board (RB). The RB will ensure that all employees at the University are treated fairly during the process. No action will be taken that violates any provision of a St. Bonaventure University employment contract.

Emergency Circumstances

There may be occasions where the complaint is so serious that the University reasonably believes that its constituents are at serious risk of harm unless it acts immediately to remove such threat. In such cases the University may take immediate action to suspend the employee or otherwise remove from campus the perceived threat and then allow the proper investigative process to take place before a final determination is made. When the removal involves the suspension of an employee it is with pay.

* Students who are alleged to have perpetrated one or more forms of discrimination or harassment will be subject to the policies and procedures set forth in the Student Handbook.

The Complaint Process

Individuals who believe they have experienced harassment or other unlawful discrimination as defined in the University's Discrimination and Harassment Policy are encouraged to come forward promptly. Bringing a complaint in a timely manner assists the University in conducting a prompt, thorough and effective investigation. Individuals who believe they have been discriminated against in violation of the University's Discrimination and Harassment Policy may discuss that issue with the Advocacy Officers, the Department Head, Chair, Dean, the Director of Human Resources, or an appropriate executive officer. Individuals employed or assigned by the University in one of these capacities shall be provided training in order to guide complainants through the following steps of these procedures.

Informal Methods of Resolution

There are a variety of informal methods available as potentially effective ways to deal with discrimination and harassment. Such methods include:

1. Consultation with one or more Advocacy Officers;
2. Direct Communication – the complainant addresses the respondent either orally or in writing.
3. Third Party Intervention – by the Advocacy Officers, by the Director of Human Resources, by University Ombuds Officer, or by an appropriate supervisor, such as: departmental Director or Chair, or executive officer.

Once the University has been made aware of a complaint, or instances where a complainant wishes to explore an informal resolution using (1), (2), or (3), above, the University will attempt to resolve the complaint, if possible, in the method the complainant desires. If the complaint is resolved informally by an Advocacy Officer, a written report of the allegations and resolution shall be submitted to the chair of the CODAH and either the Director of Human Resources or an appropriate executive officer. If the complaint is resolved informally by someone other than an Advocacy Officer, a written report of the allegations and resolution shall be submitted to the appropriate supervisor or executive officer. However, if an informal resolution is not achieved, the complainant or the University may initiate the formal complaint process through the Advocacy Officers.

Formal Methods of Resolution

If the complainant does not wish to pursue an informal resolution, if the complaint cannot be resolved informally, or under other appropriate circumstances, the complaint may be brought forward to the chair of the CODAH by the complainant or other University official. There are occasions when the Advocacy Officers or other University officials may be required to bring a formal complaint forward such as when they reasonably believe a complainant or other parties are clearly at risk of being subjected to further harassment that will create significant emotional or other harm, or when the University needs to intervene because of its own potential liability for failure to do so.

- a. A formal complaint should be filed within 180 days from the date of the alleged violation unless there are extenuating circumstances.
- b. The complainant shall specify in writing (with the assistance of the Advocacy Officers if desired) the name and position of the complainant, the time and place of the alleged violation(s), the identity of the party responsible for causing the alleged violation(s) (if known by the complainant), and a specific statement of the nature and circumstances of the conduct of concern. The Advocacy Officers will apprise the respondent of the complaint and give the respondent a copy of the formal complaint before their investigation begins. (See Advocacy Officer Protocols for further procedural details). The Advocacy Officers will inform both the complainant and respondent that during the

investigatory process the complaint shall be kept private. The respondent is entitled to meet with the Advocacy Officers during the course of their investigation prior to their reaching an initial disposition. The Advocacy Officers shall conduct a prompt, thorough and impartial investigation and prepare a written summary of the complaint, the investigation and their conclusions. If, after investigation, the complaint appears legitimate, the Advocacy Officers will reach their initial disposition. The standard of evidence that the Advocacy Officers will employ is “*more likely than not.*”

- c. Advocacy Officers who desire consultation about their initial conclusions (i.e. a second opinion) may request a review by the RB. If the RB believes that the Advocacy Officers’ investigation is incomplete in some regard, it will direct the Advocacy Officers to re-open the investigation and gather additional witness statements or other information. If the RB believes that the Advocacy Officers did not arrive at reasonable conclusions based upon the investigation, the RB will advise the Advocacy Officers of its determination and the Advocacy Officers may use this advice in making their final disposition.
- d. Attempt at satisfactory resolution may be sought at any point in the process.
- e. In order to determine the appropriate corrective action the Advocacy Officers will then consult with the chair of the CODAH and either the Director of Human Resources or appropriate executive officer to review
 - any past informal complaint where there has been a finding of discrimination and/or harassment or
 - a finding of discrimination and/or harassment by the respondent through the formal complaint process.

Neither an uninvestigated complaint nor an investigated complaint that fails to yield a determination of discrimination or harassment constitutes a past finding. After this history has been taken into consideration, the Advocacy Officers will make their final disposition and will recommend to the appropriate executive officer corrective action for implementation, if appropriate. Copies of the final disposition will be sent to the complainant, respondent, chair of the CODAH and appropriate executive officer.

- f. A party (complainant or respondent) who is dissatisfied with the Advocacy Officer’s final disposition may request a review by the RB. The request must be submitted to the Chair of the CODAH within thirty calendar days of the issuance of the final disposition by the Advocacy Officers. The Chair of the CODAH will convene a Review Board to review the request. A party requesting review should submit a brief statement to the RB explaining why she/he believes the Advocacy Officers’ investigation or final disposition merits review. After meeting with the Advocacy Officers and reviewing the investigatory record, the RB shall direct whether to further investigate and/or accept, reject, or modify the earlier disposition of the Advocacy Officers. Both the complainant and respondent have the right to appear before the RB (not necessarily at the same time) to make their case and challenge any adverse testimony. The RB may reject or modify the Advocacy Officers’ final disposition if and only if the RB finds that the Advocacy Officers (1) did not conduct an impartial or thorough investigation (e.g., had a grudge against one of the

parties, refused to meet with one of the parties, refused to interview material witnesses), or (2) that the Advocacy Officers did not arrive at reasonable conclusions based upon the investigation, or (3) that new evidence from the review changes the reasonableness of the Advocacy Officers' final disposition. If the RB believes that the Advocacy Officers' investigation is incomplete in some regard, it will direct the Advocacy Officers to re-open the investigation and gather additional witness statements or other information. When appropriate, a different Advocacy Officer may be assigned to the investigation by the RB. Where a RB is requested by the Advocacy Officers for consultation regarding their initial disposition (see c above), a different RB will be convened by the Chair of the CODAH to review a request made by a complainant or respondent in that case who is dissatisfied with the Advocacy Officers' final disposition.

- g. The RB will send its final disposition to the complainant, respondent, Advocacy Officers, chair of the CODAH and appropriate executive officer.
- h. The executive officer will fully implement the recommendations of the Advocacy Officers or RB unless she/he has good reason not to.
- i. An executive officer who chooses not to fully implement the recommendations of the Advocacy Officers or RB will explain in writing her/his reasons for this decision to the complainant and respondent, the Advocacy Officers or RB and the chair of the CODAH. The executive officer may base her/his decision only on the evidence gathered in the investigation and the respondent's history of past harassment and/or discrimination.
- j. After disposition and/or implementation of the corrective actions, the executive officer must notify the complainant, Advocacy Officers, and chair of the CODAH in writing of the disposition and/or corrective actions that have been implemented.
- k. Complaints are serious matters. Any person found to have knowingly made false charges against another is subject to potentially serious sanctions.

CORRECTIVE ACTIONS

Ultimately, the severity of the corrective action imposed will depend on the totality of the circumstances surrounding the conduct. Corrective action for student offenders can be found in the Student Handbook. No corrective action will be implemented that violates any provision of a St. Bonaventure University employment contract. Appropriate corrective actions for University employees may include, but are not limited to, the following:

1. Warning: The appropriate executive officer may notify the individual that the conduct is unacceptable and further incidents may be cause for future corrective action.
2. Formal Apology: In writing and/or in person.
3. Written Reprimand: To be placed in the permanent file of the employee.

4. Counseling: Encouraged.
5. Educational Programming.
6. Transfer or reassignment.
7. Disciplinary Probation: Further negligent or willful violations will normally result in suspension or dismissal.
8. Suspension: Either with or without pay.
9. Non-renewal of the employment contract.
10. Dismissal: An individual who has been dismissed is no longer eligible to be employed by the University.
 - a. In cases where dismissal of a tenured or non-tenured faculty member is deemed appropriate, the final disposition shall be forwarded to the President along with the appropriate executive officer's written recommendation. Dismissal of a tenured or non-tenured faculty member for reasons of discrimination or harassment can only be made in cases where the discrimination or harassment satisfies the FSWH definition of "serious cause." The President or the President's assignee shall issue a decision in a timely manner that accepts, modifies or rejects the final disposition and/or appropriate executive officer's recommendation, stating the reasons for any modification or rejection. The President or the President's assignee will notify affected parties of the amount of time the President's office will use to render a decision. Copies of the President's decision will be sent to the complainant and respondent, the Advocacy Officers, the chair of the CODAH who will notify members of the RB, the Director of Human Resources, and the Provost who will notify the appropriate supervisor(s). Should the President decide to dismiss a faculty member, a separate hearing is available pursuant to the Faculty Status and Welfare Handbook.
 - b. In cases where dismissal of an administrator is deemed appropriate, the dismissal must be approved by the Divisional Executive Officer (except where she/he is the accused) and the President. The final disposition shall be forwarded to the President along with the appropriate executive officer's written recommendation. The President or the President's assignee shall in a timely manner issue a decision that accepts, modifies or rejects the final disposition and/or appropriate executive officer's recommendation, stating the reasons for any modification or rejection. The President or the President's assignee will notify affected parties of the amount of time the President's office will use to render a decision. Copies of the President's decision will be sent to the complainant and respondent, the Advocacy Officers, the chair of the CODAH who will notify members of the RB, the Director of Human Resources, and the appropriate executive officer who

will notify the appropriate supervisor. An administrator so dismissed has the right to an appeal pursuant to the Administrator's Handbook.

- c. In cases where dismissal of an hourly employee is deemed appropriate, the final disposition shall be forwarded to the appropriate executive officer who will make the final decision. Copies of the disposition will be sent to the complainant and respondent, the members of the RB, the Director of Human Resources, and appropriate executive officer. The affected employee may request that the President review the Advocacy Officers', RB's final disposition and/or the appropriate executive officer's final decision. Should such a request be made, the President or the President's assignee shall in a timely manner issue a decision that accepts, modifies or rejects the Advocacy Officers', RB's or executive officer's dismissal recommendation, stating the reasons for any modification or rejection. The President or the President's assignee will notify affected parties of the amount of time the President's office will use to render a decision. Copies of the President's decision will be sent to the complainant and respondent, the Advocacy Officers, the chair of the CODAH who will notify members of the RB, the Director of Human Resources, and the appropriate executive officer who will notify the appropriate supervisor.

Corrective Actions Protocol

Following a disposition for a corrective action the respondent will receive a "Corrective Action Letter" from the appropriate executive officer. The letter lists the determination and corrective action. Copies of the letter are filed with the Chair of the CODAH and the Director of Human Resources. The appropriate executive officer will be responsible for monitoring the implementation of the corrective action.

When the corrective action involves community service or educational programming the respondent will also receive a "Verification Form". The respondent is responsible for returning the completed form to the appropriate executive officer who will send a file copy to the Chair of the CODAH and the Director of Human Resources.

Failure to Comply with Corrective Action

A person who fails to comply with the corrective action(s) imposed by the appropriate executive officer (for example, if an alleged harasser is directed to attend an educational program and fails to do so) will be subject to further discipline.

Retaliation

Retaliatory behavior against a complainant or any individual involved in a complaint process, such as Advocacy Officers, RB Members, witnesses, the chair of the CODAH, the Ombuds Officer or an executive officer, is in direct violation of the University Discrimination and Harassment Policy and state and federal law. The University will take prompt, appropriate action against anyone who retaliates against a complainant or against any individual involved in

a complaint process. An individual accused of such reprisals will be subject to the same process of review and investigation as governs complaints of harassment and discrimination.

Privacy

Advocacy Officers can assure a complainant that information shared will be kept private except where appropriate to investigate and in compliance with these procedures or legal process. Note: At the outset of the formal complaint process, a copy of the complaint is given to the person against whom the complaint is made. Examples include:

- a. In an independent investigation or lawsuit in a matter a complainant has raised or an incident wholly unrelated to such a complaint, a complainant or others may be required by law to provide documents or testimony.
- b. Situations when the Advocacy Officers or other University officials reasonably believe a complainant or other parties are clearly at risk of being subjected to further harassment that will create significant emotional or other harm.
- c. When the University needs to intervene because of its own potential liability for failure to do so.
- d. When sharing some information is necessary to conduct a proper discrimination or harassment investigation.

Contempt

The RB shall also have the power to hold in contempt any participant in the complaint process. Contempt is subject to corrective action. The guidelines for contempt are:

- a. Knowingly, recklessly or negligently providing false information to an Advocacy Officer or the RB.
- b. Failing to disclose requested information to an Advocacy Officer or the RB, except in cases where information is protected by a legally recognized privilege.
- c. Failing to appear upon request of the Advocacy Officers or the RB.
- d. Deliberately disrupting the investigatory process.
- e. Knowingly, recklessly or negligently releasing information about a formal complaint during its investigation. (see Formal Methods of Resolution, sect. b)

Depending upon the seriousness of a contempt violation, the RB may recommend corrective actions up to and including dismissal.

Records

In addition to the distribution of complaint-related records outlined in these procedures, records of the complaint, investigation and disposition shall be stored in the locked files of the chair of the CODAH. Only the Advocacy Officer(s) and the chair of the CODAH shall have keys to the files. All records of complaints to Advocacy Officers that do not result in a corrective action will be destroyed after seven years. When an investigation results in any corrective action, a record of the complaint and disposition will be placed in the alleged harasser's personnel file maintained by the Office of Human Resources.

Institutional Memory

The University shall assign an identification number to all informal and formal complaints made to an Advocacy Officer or other University official. Records of institutional history shall be kept by the chair of the CODAH.

Advocacy Officer Issues

In the event an Advocacy Officer is accused of harassment, other Advocacy Officers shall handle the complaint. At least four Advocacy Officers, with balanced numbers of male and female, should be available at all times. Advocacy Officers should recuse themselves if they have a bias or conflict of interest in an investigation or if there is a perceived bias or conflict of interest. Parties involved in an investigation may request that an Advocacy Officer recuse her/himself if they perceive a bias or conflict of interest.

CODAH Purposes

The CODAH has the following additional purposes:

To monitor the implementation of the Discrimination and Harassment Policy, including:

- a. assessing the effectiveness of the policy for controlling discrimination and harassment
- b. receiving and maintaining annual reports from the Advocacy Officers and student judiciary on the number and disposition of cases of discrimination and harassment
- c. producing a University Policy Brochure suitable for distribution to every member of the University community
- d. making annual recommendations to the President for changes in the Discrimination and Harassment Policy and Procedures
- e. producing and maintaining data tracking the number of formal and informal complaints
- f. considering other measures relative to the effective implementation of the policy

Changes in Discrimination and Harassment Policy or Procedures

- a. The CODAH will submit recommendations to the President regarding revisions to the Discrimination and Harassment Policy and Procedures. If the President rejects the CODAH's recommendation, the President shall explain the reasons to the CODAH in writing. All recommendations for changes in the Discrimination and Harassment Policy or Procedures will be submitted to the Faculty Senate for review.
- b. Upon adoption of the recommended policy and procedures, all previous policies and procedures concerning these matters shall be superseded.

Approved by Board of Trustees 06-08