



TOPIC: Harassment and Discrimination	
EFFECTIVE DATE: October 21, 1983	REPLACES:
RECONFIRMED DATE:	
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Original signed by Lance Carlson	President + CEO

FUNDAMENTAL PRINCIPLES

Throughout this process, the principles of natural justice, respect, and fairness shall apply to all parties involved. The college is guided by the following principles:

Educating and informing the college community regarding the prevention of harassment or discrimination is necessary and important.

Members of the college community have a responsibility to respect the principles of this procedure and to understand and facilitate the resolution of complaints in accordance with this procedure.

College employees, students and other members of the college community are expected to be responsible for their own behaviour, to advise persons exhibiting offensive behaviour that it is against college policy, and to cooperate in any investigation.

The college reserves the right, at any time, to conduct an investigation into alleged harassment or discrimination.

Members of the college community have the right to make a complaint under this procedure without interference or retaliation.

Members of the college community who exercise authority over any program, office, or area of work or study must strive to ensure that there is no harassment or discrimination in those areas.

When a power differential exists in relationships and interactions between and among faculty, staff and students, persons holding positions of authority should be aware of the power differential and of its potential effect on the relationships and interactions and should strive to ensure that the power differential is not abused or misused, whether intentionally or otherwise.

DEFINITIONS

Discrimination occurs when:

(a) an unwelcome act, omission or communication is directed towards a person or class of persons based on a prohibited ground of discrimination and that act, omission or communication has the effect of imposing burdens, obligations, disadvantages or preferences on that person or class of persons that are not imposed on others; or,



(b) when an act, omission or communication (including a policy, practice or procedure) although not apparently based on a prohibited ground of discrimination, has a discriminatory effect on a person or class of persons based on a prohibited ground.

Under this procedure, the prohibited grounds of discrimination are race, religious beliefs, colour, gender, physical or mental disability, age, ancestry, place of origin, marital status, source of income, family status, sexual orientation, political affiliation and ideology.

Discrimination may occur intentionally or unintentionally. It is the effect of the act, omission or communication that determines whether the behaviour constitutes discrimination.

Harassment is any unwelcome, unsolicited act, omission or communication, or series of behaviours that threatens, demeans, humiliates or embarrasses a person and has the effect, on reasonable grounds, of:

- interfering with a person's work or study performance;
- creating an intimidating, offensive, poisoned or hostile work or study environment;
- changing some condition of employment or study, or resulting in an economic detriment to the person; and/or,
- violating relationships of trust or taking advantage of an inequality of personal or assigned power.

Harassment may occur intentionally or unintentionally and may occur without being directed toward a specific individual.

Sexual Harassment is any unwelcome, unsolicited physical or verbal behaviours of a sexual nature that have the effect, on reasonable grounds, of creating a hostile work or study environment. Sexual harassment may include, but is not limited to:

- requests for sexual favours, unwelcome remarks, physical contact, such as patting, kissing, pinching, touching, leering or display of offensive or demeaning objects or jokes;
- implied or expressed promise of reward for complying with a sexually oriented request; and/or
- actual reprisal or expressed or implied threat of reprisal, for refusal to comply with a sexually oriented request.

Sexual harassment is discrimination based on gender. Sexual harassment may occur between males and females or between members of the same gender.

APPLICATION

The college community to whom this procedure applies includes:

- students, faculty, support and management/exempt staff and volunteers;
- employees of any agency or an individual providing services to the college on a contractual basis;
- employees of organizations or associations located on campus; and/or,
- guests and visitors at the college.

Harassment or discrimination that occurs on campus and off campus at college-related social functions, in the course of work or academic assignments, off-campus placements, and during work or college-related travel is included in this procedure.



This procedure does not reduce or replace any statutory rights or obligations; any rights or obligations arising out of an existing collective agreement or employment contract; or any rights or obligations that members of the college community have independent of this procedure.

The college reserves the right, at any time, to conduct an investigation into alleged harassment or discrimination.

ROLES AND RESPONSIBILITIES

Adjudicator: A neutral person, external to the college, who is appointed by the President + CEO under this procedure to hear a complaint, to decide whether discrimination and/or harassment has occurred and to make recommendations to the President + CEO on sanctions and remedies.

Administrator: An executive, director, or manager required to communicate this policy and procedure to employees, students and others doing work or volunteering for the college.

Administrators are required to take immediate and appropriate action to report and address incidents of harassment and discrimination. Complaints should not be dismissed or downplayed nor should complainants be advised to resolve a situation without the advice and assistance of the advisors.

Advisors: The Director of Human Resources and the Vice-President for Student Experience + Admissions are neutral facilitators for complaint resolution. Advisors ensure that all complaints are addressed efficiently and effectively and act in an advisory capacity to the college community.

Complainant: A member of the college community who believes that he or she has been subjected to, or who is aware of, any act of harassment or discrimination.

Mediator: A neutral person, external to the college, with expertise in resolving conflict. Mediators are responsible for facilitating dialogue between complainants and respondents with the objective of resolving complaints.

Panel appointee: A neutral person, external to the college, who is appointed by the President + CEO under this procedure as part of a three person panel to hear a complaint to decide whether discrimination and/or harassment has occurred and to make recommendations to the President + CEO on sanctions and remedies.

President: The President + CEO of the college. If there is a potential conflict of interest in the procedure based on the President carrying out a role or responsibility, the ACAD Board of Governors, excluding the President, will determine who will act in the President's capacity.

Respondent: A member of the college community who is alleged to have committed an act of harassment or discrimination.

COMPLAINT RESOLUTION PROCESS

The process outlined below is one available to a complainant who believes that he or she has suffered discrimination or harassment within the college community. The college reserves the right, at any time, to conduct an investigation into alleged harassment or discrimination on its own initiative.



Time limits: A complainant must initiate formal complaint proceedings no later than six (6) months after the incident or most recent incident. An advisor may extend all other time periods set out in this complaint procedure.

Complaints may be withdrawn at any time.

Fairness: Throughout this process, all parties involved shall be entitled to fair treatment, which shall include:

- Reasonable notice of any meeting or hearing at which attendance is requested.
- As a respondent, reasonable notice of the filing of a formal complaint and of its nature and substance so as to be able to respond to it.
- As a party, to bring evidence to the attention the decision-maker.
- As a party, to have information and documentation pertaining to a harassment or discrimination complaint held in strictest confidence, except as otherwise required by principles of law.

Recommendations to Complainants and Respondents

Parties may use advisors at any time.

Parties are encouraged to keep their own notes regarding details of the complaint such as, the behaviours, when and where incidents occurred, responses and the names of any possible witnesses.

Both parties may have a friend or support person with them through all stages of the complaint process.

Direct interaction between complainants and the respondents during the formal complaint process is not recommended.

Initiating the Process

If the complainant is unable to take direct action to remedy the situation, or if the offensive behaviour persists in spite of it being brought to the respondent's attention, the complainant is encouraged to contact an advisor for discussion.

The advisor will discuss with the complainant potential courses of action to resolve concerns or the complaint. Such courses of action may include:

- Informal consultation with an advisor;
- Formal written complaint under this procedure, followed by investigation and/or mediation and/or hearing;
- Available alternative support measures such as counselling or employee assistance program services;
- Support through ACADFA, AUPE or ACADSA;
- Grievance under a collective agreement;
- Complaint to Alberta Human Rights and Citizenship Commission;
- Civil or criminal action.



Step One: Informal Consultation

This is an informal step that provides the individuals involved with an opportunity to resolve concerns between themselves. A complaint file will not be created at this step.

A complainant may meet with an advisor at this stage. Depending on the circumstances, a complainant may be encouraged to directly request, verbally or in writing, that the respondent cease the behaviours giving rise to the complaint.

If the complainant's request to the respondent is unsuccessful, or does not result in a positive change of sufficient magnitude, or if making the request is not feasible, a complainant may meet with an advisor to commence the formal process.

Step Two: Formal Complaint Process

If there is no resolution of a complaint through Step One, the complainant may file a formal complaint. A complaint file will be created at this step.

- 1) A complainant initiates the formal complaint process by meeting with an advisor and completing a written complainant's statement.
- 2) The advisor will provide a copy of the complainant's statement to the respondent and request that the respondent complete a respondent's statement. The respondent should submit his or her statement to the advisor within ten (10) working days of receiving the complainant's statement.
- 3) The advisor will provide the complainant with a copy of the respondent's statement or will notify the complainant that the respondent has not submitted a statement. Within ten (10) working days of receiving the respondent's statement, or having been notified that a statement was not submitted, the complainant shall notify the advisor of his or her request to withdraw the complaint or initiate an investigation.

Step Three: Initial Complaint Investigation

- 1) Within ten (10) working days of receiving a complainant's request, an advisor will commence an investigation. Witnesses or individuals with relevant information may be interviewed. The objective of the investigation is to clarify the issues and work toward a mutually acceptable resolution.
- 2) If an acceptable resolution of the complaint is reached as a result of the investigation, a resolution agreement will be written and signed by both parties to signify agreement. Copies will be given to both parties.
- 3) Upon completion of an investigation which does not result in a resolution, either party may request or suggest mediation or request that the complaint proceed directly to hearing. The advisor may direct that the matter proceed to hearing if one of the parties does not agree in writing to mediation.
- 4) Upon completion of an investigation, the advisor may recommend dismissal of the complaint if it is the advisor's opinion that the evidence indicates that no harassment or discrimination has occurred. The recommendation of the advisor will be in writing and will be provided to both the complainant and the respondent and will be placed on the complaint file. A complainant who disagrees with the advisor's recommendation of dismissal may continue with the complaint process.



Step Four: Mediation

- 1) Mediation shall commence within ten (10) working days of the parties' agreement in writing to proceed to mediation. The college will appoint an external mediator.
- 2) If a resolution is reached, a resolution agreement will be written by the mediator and signed by both parties to signify agreement. Copies will be given to both parties.
- 3) Any information provided by the parties during mediation is without prejudice and is confidential and will not be used for any other purpose.
- 4) Upon completion of mediation that does not result in a resolution, either party may request that the complaint proceed directly to a complaint hearing.

Step Five: Complaint Hearing

- 1) If no resolution is reached following the investigation and/or mediation, and a complaint hearing is requested, the advisor will request in writing that the President + CEO to appoint a panel of three (3) persons or an external adjudicator. If a panel is appointed, the President + CEO will also designate one (1) member of the panel as the chair.
- 2) Within ten (10) working days of receiving the request, the President + CEO will appoint the panel or adjudicator and will forward the complaint file to the panel or adjudicator.
- 3) The chair of the panel or the adjudicator will inform the parties of the date for the commencement of the hearing.
- 4) Within ten (10) working days of having been appointed, the panel or adjudicator shall endeavour to commence the hearing. The panel or adjudicator shall determine the procedures for the hearing. All discussions and documented material will be held in confidence.
- 5) Within ten (10) working days of the conclusion of the hearing, the chair of the panel or the adjudicator will forward the decision allowing or dismissing the complaint to the President + CEO. The decision of the panel or adjudicator on whether harassment or discrimination has occurred will be final and binding, subject to an appeal on the limited grounds described below.
- 6) If the recommendation is to allow the complaint, the chair of the panel or the adjudicator will also include any recommended remedies and sanctions with the decision forwarded to the President + CEO.
- 7) The President + CEO, with consideration of the panel's or adjudicator's decision and recommendations, will determine appropriate remedies or sanctions.
- 8) The President + CEO shall communicate in writing to the complainant, respondent and advisor, and to other individuals on a need to know basis, the panel's or adjudicator's decision and any remedies and/or sanctions imposed.



Sanctions & Remedies

Where any act of harassment or discrimination is found to have been committed, the remedies the President + CEO may impose include, but are not limited to, the following:

- restoration of the complainant's previous status;
- reasonable accommodation;
- provision of a written apology from the respondent to the complainant;
- initiation of a program of education in the college community to address the areas of concern; and/or;
- any other appropriate action.

Where any act of harassment or discrimination is found to have been committed, the sanctions the President + CEO may impose include, but are not limited to, the following:

- a direction to cease and desist the behaviour(s);
- a reprimand in verbal or written form;
- a direction to participate in a program of education and/or counselling as a condition of continued employment or enrolment;
- a restriction of access to specified areas of the college;
- a suspension for a defined period (with or without pay for staff and faculty);
- dismissal or expulsion; and/or;
- any other appropriate action.

Respondents must comply with the remedies and sanctions. The college has a responsibility to ensure that respondents comply with the remedies and sanctions. Failure to comply or observe remedies and sanctions may lead to further sanctions.

Where the college is found to be engaging in a discriminatory practice as defined in procedure, it shall immediately cease and desist such practice and take reasonable measures to ensure that the practice will not occur in the future.

Where any individual or group is found to have made a frivolous, malicious, false or bad faith complaint for the purpose of harming another individual or group, appropriate sanctions may be imposed. This concept is not to be confused with a complaint made in good faith that is found to be without merit.

Documentation

Upon the initiation of a formal complaint process, there will be a complaint file relating to the complaint which may be referred to in the case of future related concerns.

The complaint file may contain the following documents: advisors' checklist, complainant(s)'s statements, respondent(s)'s statements, dates of meetings and discussions, time period extensions, requests for mediation, agreement to mediation, complainant(s)'s requests to proceed to a formal hearing, resolution statement, complainant(s)'s requests to terminate the complaint, decision of the adjudicator or panel, and correspondence to the complainant(s) and respondent(s) regarding sanctions and/or remedies. The complainant and respondent may review the file during the complaint process.

All complaint files will be stored in the Human Resources Office and will be kept in a separate location from student or personnel files. When complaints have been investigated and resolved without remedies or sanctions, no documentation will be held on complainants' or respondents' student or personnel files.



Where a complaint is dismissed as frivolous or vexatious, no record of that complaint shall be retained in any file. Only where harassment or discrimination is found, and remedies or sanctions are applied, will any documentation be placed on complainants' and respondents' student or personnel files.

Appeals

Either party may appeal a panel's or adjudicator's decision to an Appeal Committee on one (1) or more of the following grounds:

- alleged bias of the decision-maker;
- alleged breach of the principles of natural justice and/or procedural fairness; or,
- the availability of substantial new evidence previously unavailable to the decision-maker.

The decision of the Appeal Committee is final and binding.

An Appeal Committee will consist of three (3) members external to the college and appointed by the President+ CEO. Appeal committee members will not have been involved with the complaint. Appeals must be in writing, articulating one (1) or more of the grounds stated above and must be submitted to the President + CEO within ten (10) working days of receipt of the decision, and any remedies and sanctions.

ANNUAL REPORT

Advisors are responsible for producing an annual report, including relevant statistics, regarding complaints. The report will be forwarded to the President + CEO for presentation to the ACAD Board of Governors.

REVIEW OF POLICY AND PROCEDURE

Advisors will review Policy 700.6 and Procedure 700.6.1 on a bi-annual basis, in consultation with designated representatives from each of the following: ACADFA, AUPE, ACADSA and Management/Exempt employees.