SECTION: General Administration **NUMBER: 01.D.07**

AREA: Legal Affairs

SUBJECT: Discrimination and Harassment Policy

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1. PURPOSE

1.1. The University of Houston System and its component institutions ("University") are committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff and visitors are free from discrimination and harassment of any kind. Discrimination and harassment is antithetical to the standards and ideals of the University. The University will take appropriate action in an effort to eliminate discrimination and harassment from happening, prevent its recurrence and address its effects.

1.2. This Discrimination and Harassment Policy ("Policy") defines and describes prohibited discrimination and harassment and establishes a mechanism for processing complaints of unlawful discrimination and harassment against University faculty, staff, students and visitors. This Policy does not address allegations of sexual misconduct, which includes sexual harassment. (Please see the University's Sexual Misconduct Policy, SAM 01.D.08, which defines and describes prohibited sexual misconduct and establishes a mechanism for processing complaints of sexual misconduct.) Nothing in this Policy shall be construed to limit the rights of University students or employees to seek remedies available to them outside of the University's internal processes.

1.3. All members of the University community are expected to adhere to this Policy, to cooperate with the procedures for responding to complaints of unlawful discrimination and harassment and to report conduct or behavior that they believe to be in violation of this Policy to their component institution's Equal Opportunity Coordinator, who will coordinate its investigation and response as necessary with the appropriate individuals from the applicable campus. The University will take seriously allegations of unlawful discrimination and harassment by conducting an investigation, and the University will work to ensure that all persons are given appropriate support and fair treatment.

1.4. This Policy provides the exclusive mechanism for handling the investigation of any alleged unlawful discrimination or harassment, the determination of whether this Policy was violated, and the appeal of Equal Opportunity Services' (EOS') finding as to violation/no violation of this Policy.

2. GENERAL DEFINITIONS

2.1. Complainant – A party or entity (in the case of the University) who formalizes a complaint of discrimination or harassment under Section 5.3 of this Policy.

2.2. Discrimination – Treating an individual or members of a Protected Class less favorably because of their membership in that class or having a policy or practice that has a disproportionately adverse impact on Protected Class members.

2.3. Equal Opportunity Coordinator – The person who is designated to coordinate efforts to comply with and implement this Policy. The Equal Opportunity Coordinator is responsible for conducting the administrative investigation of reports of discrimination or harassment and is available to discuss options, provide support, explain University policies and procedures and provide education on relevant issues. The Equal Opportunity Coordinator may designate one or more Assistant Equal Opportunity Coordinators. The Equal Opportunity Coordinators for each component institution campus are:

- University of Houston System/University of Houston
  Assistant VC/VP for Equal Opportunity Services or
  Richard Anthony Baker, M. P. A., PhD, J.D., Equal Opportunity Services
  (713) 743-8835; rabaker4@uh.edu.

- University of Houston – Downtown
  Assistant VP for Employment, Training, Campus Relations and Affirmative Action Officer or Douglas J. teDuits, Ed D, SPHR, Employment Services and Operations
  (713) 221-8667; teduitsd@uhd.edu.

- University of Houston – Clear Lake
  Executive Director, Human Resources and Affirmative Action or
  Katherine Justice, Human Resources and Affirmative Action
  (281) 283-2164; Justice@uhcl.edu.

- University of Houston – Victoria
  Director, Human Resources/Affirmative Action or Laura Smith, Human Resources/Affirmative Action
  (361) 570-4800; SmithL@uhv.edu.

2.4. Harassment – Defined as subjecting an individual on the basis of her or his membership in a Protected Class to unlawful severe, pervasive or persistent treatment that constitutes:

- Humiliating, abusive or threatening conduct or behavior that denigrates or shows hostility or aversion toward an individual or group;

- An intimidating, hostile or abusive learning, living or working environment or an environment that alters the conditions of learning, living or working; or

- An unreasonable interference with an individual's academic or work performance.

Harassment that satisfies this legal standard includes, but is not limited to, epithets or slurs, negative stereotyping, threatening, intimidating or hostile acts, denigrating jokes and display or circulation (including through e-mail) of written or graphic material in the learning, living or working environment.

2.5. Protected Class – A class of persons who are protected under applicable federal or state laws against discrimination and harassment on the basis of race, color, sex, genetic information, religion, age, national origin, disability, veteran status or any other legally protected status. Additionally, for purposes of this Policy, the term "Protected Class" includes sexual orientation, gender identity and gender expression.

2.6. Respondent – A party who has been accused of committing an act of discrimination or harassment by a Complainant.

2.7. Student – Any person currently or previously enrolled in the University pursuing undergraduate, graduate or professional studies, whether full-time or part-time, and a person who is registered for a future semester.

3. DUTY TO ACT AND TO REPORT

A duty to act is imposed on all persons to take reasonable and necessary action to prevent unlawful discrimination and harassment and for responding promptly and thoroughly to any such claims. Upon learning directly or indirectly of conduct or behavior that might violate this Policy, all persons shall report the conduct or behavior to the Equal Opportunity Coordinator for advice and assistance on addressing the matter. A person who fails to act may be found to have violated this Policy, even if the underlying event does not constitute unlawful discrimination or harassment.

4. RETALIATION

The University takes reports of discrimination or harassment very seriously and will not tolerate retaliation against those who make reports or who participate in the investigatory or adjudicatory process. Retaliation includes, but is not limited to, any adverse employment or educational action taken for making a report of unlawful discrimination or harassment, or for otherwise participating under this Policy. Any actual or threatened retaliation or any act of intimidation to prevent or otherwise obstruct the reporting of unlawful discrimination or harassment or the participation in proceedings relating to unlawful discrimination or harassment, may be considered a separate violation of this

Policy and may result in disciplinary sanctions. Any person who believes that they have been subjected to retaliation should immediately report this concern to their Equal Opportunity Coordinator.

5. COMPLAINT PROCEDURES

5.1. **Step One: Self-Help**

5.1.1. An individual who believes that s/he is the subject of unlawful discrimination or harassment may choose to deal with the alleged offender directly through a face-to-face discussion, a personal telephone conversation, e-mail correspondence or letters. In some cases, this approach may resolve the situation; in others, it may be ineffective or place the individual in an uncomfortable, insecure or compromised position. Under no circumstances should an individual feel pressured to address the alleged offender directly or handle the matter alone, and a decision not to confront a person she or he believes to be discriminatory or harassing will not be treated negatively under this Policy.

5.1.2. Other forms of self-help include taking the issue up the supervisory chain, to Human Resources or to the University's Ombudsperson, if available. If self-help measures prove unsuccessful or if the individual determines that it is not appropriate to engage in self-help measures, the individual may choose to pursue other appropriate methods of resolution.

5.2. **Step Two: Contacting an Equal Opportunity Coordinator**

5.2.1. To request any action under this Policy, an individual should contact an Equal Opportunity Coordinator as close to the date of the incident(s) as possible. Early reporting and intervention have proven to be the most effective methods of resolving actual or perceived incidents of unlawful discrimination and harassment, and the University strongly urges the prompt reporting of concerns so that rapid and constructive action can be taken. To the extent that a concern is raised in an untimely manner, it is within the Equal Opportunity Coordinator's discretion not to pursue the matter. Individuals may discuss with the Equal Opportunity Coordinator issues relating to unlawful discrimination and harassment, with or without filing a formal complaint. An individual should be aware that by contacting the Equal Opportunity Coordinator, s/he is placing the University on notice of potential unlawful discrimination or harassment and, depending on the facts and circumstances of the case, the Equal Opportunity Coordinator may not be able to keep the information confidential and may be obligated to act.

5.2.2. After reporting allegations of unlawful discrimination or harassment to the Equal Opportunity Coordinator, an individual may ask that no further action be taken. Depending on the facts and nature of the case, the Equal Opportunity Coordinator may or may not be able to honor the individual's request. The University reserves at all times the right to file a complaint on its own. Where the University cannot take disciplinary action against an alleged discriminator or harasser because of an individual's insistence on confidentiality, the University will pursue other steps to limit the effects of the alleged discrimination or harassment and attempt to prevent its recurrence.

5.2.3. The Equal Opportunity Coordinator may conduct a preliminary fact-finding review by gathering information from all sources judged necessary for a fair resolution of a concern. In this process, confidentiality cannot be guaranteed; however, all parties and witnesses involved will be admonished to respect the integrity of the procedures and maintain confidentiality. At the conclusion of the preliminary fact-finding review, the Equal Opportunity Coordinator will inform the individual of the available options. These options may include no further action, a mediated solution to the issues raised, or a full investigation.

5.2.4. In cases of alleged unlawful discrimination or harassment under this Policy, the Equal Opportunity Coordinator will determine whether mediation is an appropriate mechanism of potential resolution based on the nature of the allegations. Mediation is an informal and confidential process where parties can participate in a search for fair and workable solutions. Mediation requires the consent of both parties and suspends the complaint procedures for up to 30 calendar days, a period that can be extended at the discretion of the Equal Opportunity Coordinator upon consent of both parties. The parties may agree upon a variety of resolutions such as modification of work assignment, training for a department, or an apology. If mediation results in a resolution, the matter will be closed. If the parties are unable to reach a resolution, a formal complaint may be filed under Step Three (Section 5.3).

5.3. **Step Three: Formalizing the Complaint**

5.3.1. If an individual wishes to formalize a complaint, s/he will be asked to complete a Formal Complaint Questionnaire with the Equal Opportunity Coordinator, who will forward the Complaint Questionnaire to EOS. The deadline for filing a discrimination or harassment complaint is 180 calendar days from the date of the alleged incident(s), although it is within EOS' discretion to pursue a matter that is untimely filed. It should be noted that once a complaint is filed, if the Complainant decides to withdraw the complaint, the University's investigation may still proceed.

The University has a responsibility to investigate reported allegations of unlawful discrimination and harassment in an adequate, prompt, reliable and impartial manner.

5.3.2. When an incident of discrimination or harassment is reported, the University will consider providing interim accommodations to protect the Complainant as necessary while the incident is adjudicated through this Policy. EOS and other appropriate University administrators will work together to identify alternative arrangements that will preserve the rights of both the Complainant and the Respondent, as well as provide a safe overall educational or working environment until (and perhaps after) the complaint is investigated and adjudicated. Failure to adhere to the parameters of any interim measure may be considered a separate violation of this Policy and may result in disciplinary action.

5.4. **Step Four: EOS Investigation**

EOS will begin a formal investigation upon its receipt of a complaint as defined under Section 5.3.1 of this policy. EOS will attempt to interview the Complainant, the Respondent and any witnesses, as appropriate. EOS will also gather and review any pertinent information as well as information submitted by the Complainant, the Respondent and/or any witness.

5.5. **Step Five: Response to a Complaint**

Within five business days after receiving a complaint, EOS will contact the Respondent to obtain the Respondent's response. The response is due to EOS within 10 business days from the Respondent's receipt of the complaint. The response should address and respond to the specific allegations made in the complaint and can include any other rebuttal information. Failure to respond may be considered a separate violation of this Policy and may result in disciplinary action.

5.6. **Step Six: EOS Finding**

EOS will issue a finding as soon as practicable and make every effort to issue its finding within 60 business days from its receipt of the formalized complaint. The finding will be determined by a preponderance of the evidence; that is, whether it is more likely than not that the Respondent violated this Policy. If EOS determines that this Policy was violated, EOS will recommend appropriate university action in an effort to eliminate unlawful discrimination or harassment from happening, prevent its recurrence and address its effects. Even if EOS determines that this Policy was not violated, EOS may recommend that the Respondent undertake educational initiatives and/or trainings. EOS will concurrently notify the Complainant and the Respondent in writing of the outcome of its finding and any appeal rights under this Policy, to the extent

permissible by law. EOS will notify the appropriate university administrator of any recommended university action.

5.7. **Step Seven: Sanctions**

5.7.1. If EOS finds a violation of this Policy against a faculty member, EOS will recommend appropriate university action, and any sanction imposed on the faculty member will be determined by and implemented by the appropriate administrator after consultation with EOS and consistent with the component institution's faculty handbook/manual.

5.7.2. If EOS finds a violation of this Policy against a non-faculty university employee, EOS will recommend appropriate university action, and any sanction imposed on the employee will be determined by and implemented by the appropriate administrator after consultation with EOS and consistent with the component institution's policies and procedures related to employee discipline.

5.7.3. If EOS finds a violation of this Policy against a student, EOS will recommend appropriate university action, and any sanction imposed on the student will be determined by and imposed by the Dean of Student's Office or its equivalent after consultation with EOS and consistent with the component institution's policies and procedures related to student conduct/discipline.

5.8. **Step Eight: Appeal**

5.8.1. If the Complainant or the Respondent is dissatisfied with EOS' finding, the party can appeal to the component institution's appellate board ("Board"). An appeal must be filed with the component institution's Equal Opportunity Coordinator within 10 business days of receiving EOS' finding. Absent extenuating circumstances, the Equal Opportunity Coordinator will schedule a hearing to be held within 30 business days from the filing of the appeal. Written requests for rescheduling the hearing will be considered by the Board's chairperson in consultation with the Equal Opportunity Coordinator. No later than five business days prior to the hearing, all materials that will be used at the hearing must be submitted to the Equal Opportunity Coordinator, who will forward the materials to the Board's chairperson and will simultaneously provide to the other party. The materials must include the names of any witnesses intended to be called during the hearing (along with a brief summary concerning the subject matter of the witness' expected testimony), and the name of any advisor to be in attendance at the hearing (and whether that advisor is an attorney). No witness, document/tangible evidence, or advisor will be permitted at the hearing unless such information was timely submitted.

5.8.2. Appeals/Grievances relating to sanctions assessed by the appropriate administrators are not considered under this Policy. Therefore, if the Complainant or the Respondent is dissatisfied with any sanction determined by the appropriate administrator under Sections 5.7.1 through 5.7.3 above, he/she may appeal the sanction as follows: any challenge to the sanction against a faculty member must be addressed through the component institution's faculty handbook/manual; any challenge to the sanction against an employee must be addressed through the component institution's policies and procedures related to employee grievances; any challenge to the sanction against a student must be addressed through the appeal process in the component institution's student code of conduct or its equivalent.

5.9. **Step Nine: Designation of Hearing Panel**

The hearing will be conducted by a hearing panel ("Panel"), which is charged with upholding or rejecting EOS' finding based on the preponderance of the evidence. The Board's chairperson is responsible for selecting the Panel members from available Board members. The Panel will be comprised of three Board members. The Board's chairperson will select the Panel's chairperson. The appellant and the appellee shall be notified of the Panel's composition. Within five business days of such notification, the appellant and the appellee shall have an opportunity to challenge in writing any Panel member for cause. The Board's chairperson, in consultation with the Equal Opportunity Coordinator, will consider any challenge and replace the Panel member if appropriate.

5.10. **Step Ten: Hearing**

5.10.1. The general course of the hearing procedure will be as follows, subject to the discretion of the Panel chairperson:

a) The Panel chairperson will convene the hearing, introduce the individuals, give a brief description of the process and invite questions about the process;

b) The appellant shall present his or her evidence (including calling and questioning his or her own witnesses) to the Panel;

c) The appellee shall present his or her evidence (including calling and questioning his or her own witnesses) to the Panel; and

d) An investigative summary will be presented to the Panel by EOS.

5.10.2. The Panel chairperson and/or Panel may question any individual at any time during the hearing.

5.10.3. The Panel chairperson may impose reasonable time limits on any stage of the hearing. The Panel chairperson may also determine the relevance of, and place restrictions on, any witness or information presented.

5.10.4. The appellant and the appellee may question their own witness and the EOS representative, but not the opposing party's witnesses. However, both parties may request that the Panel chairperson ask questions of the other witnesses by submitting proposed questions to the Panel chairperson in writing either prior to, or during, the hearing. The Panel chairperson may determine which questions are relevant and the Panel chairperson has the discretion to revise a question or to decline asking the question.

5.10.5. An audio recording of the hearing will be kept for the use of the Panel and for any appeal.

5.10.6. In cases where an appellant or an appellee refuses to participate in the hearing, the Panel will convene and make a decision based on the evidence and testimony available to the Panel. Any party who declines to participate in a hearing waives any additional right to appeal.

5.10.7. Because the hearing process is an internal University process and not a formal courtroom process in which rules of evidence and courtroom procedures apply, this procedure is intended to reduce the adversarial nature of the hearing and will be conducted accordingly. As such, the appellant and the appellee may bring an advisor. Advisors may attend the hearing and sit with their respective advisee during the hearing, communicate quietly orally and/or in writing with their respective advisee during the hearing, and may respond to a direct question from the Panel. However, an advisor will not be permitted to speak on behalf of the advisee, make an oral presentation, including an opening statement or closing argument, or to question witnesses, the EOS representative or the Panel during the hearing.

5.10.8. Alternative testimony options will be available such as allowing a witness to appear via other virtual means (e.g., via telephone) if determined by the Panel to be necessary.

5.11. **Step Eleven: Panel Decision**

After the hearing has concluded, the Panel will deliberate in private. The Panel will uphold or reject EOS' finding based on the preponderance of the evidence. The Panel's decision will be by majority vote. The Panel will communicate its decision in writing to the Equal Opportunity Coordinator within three business days of the hearing. The Equal Opportunity Coordinator will then provide a copy of the decision to the appellant, the appellee and EOS.

5.12. **Step Twelve: Final Appeal to Appropriate Administrator**

If the Panel upholds EOS' finding, the appellant may appeal the Panel's decision to the appropriate administrator. Conversely, if the Panel rejects EOS' finding, the appellee and/or EOS may appeal the Panel's decision to the appropriate administrator. Any appeal must be filed in writing within 10 business days of the Panel's decision. The administrator will render a decision within 10 business days from the date that the appeal is filed.

6. REVIEW AND RESPONSIBILITY

Responsible Party: Vice Chancellor for Legal Affairs and General Counsel

Review: Every three years on or before August 31

7. APPROVAL

Approved: Dona Cornell
Vice Chancellor for Legal Affairs and General Counsel

Renu Khator
Chancellor

Date: May 22, 2013

REVISION LOG

Revision Number	Approval Date	Description of Changes
Interim	11/29/2012	Initial version (submitted as Interim)
1	05/22/2013	This SAM is being submitted for review and approval to remove the Interim designation. Retitled Section 5.5 from "EOS Investigation" to "Response to a Complaint"