

SIMON FRASER UNIVERSITY

MEMORANDUM

TO: J.P. Blaney,
President, Pro Tem

FROM: J.M. Munro,
Chair, Harassment Policy Revision
Task Force

SUBJ: Changes in Proposed
Harassment Policy

DATE: January 12, 1998

This memorandum should be read in conjunction with my memorandum of the same date responding to Senate's discussion of the proposed revisions to the Harassment Policy at its meeting of January 5, 1998. The purpose of this memorandum is to draw your attention to all changes made in the proposed revision to the Harassment Policy between the December 9, 1997 version and the Task Force's final version dated January 12, 1998. I have not included minor changes in wording, re-ordering of sections, or grammatical corrections.

CHANGES INCLUDED IN THE SENATE MEMORANDUM

1. Section 2.12 concerning frivolous, vexatious, or malicious complaints has been changed to bring it better into line with section 10.4.
2. Appointments of Co-ordinator and Board Chair (section 5.3) are now made by the President on the recommendation of a Search Committee chaired by the Vice President, Academic.
3. The identification of responsible officer in sections 9.11, 10.1, 10.2, 10.4, and 10.5 has been clarified.
4. Section 11.3 has been extended to provide for an information letter on behalf of respondents who have been found not to have violated the Policy, at their option.
5. The reporting section (13.1) has been expanded.

OTHER CHANGES

1. In the interests of clarity, section 4.2 has been expanded to point out that later sections of the Policy may require release of information.

2. In section 12.1 the complainant and respondent now provide input to the discipline decision by exchange of written submissions. This ensures that the respondent will know the nature of the complainant's input and have an opportunity to comment before a disciplinary decision is made.

3. An addition has been made to section 12.3 to specify that disciplinary decisions for student respondents are to follow the procedures of the University Board on Student Discipline and the Senate Committee on Disciplinary Appeals.

4. The annual report (section 13.1) is now sent by the Human Rights Policy Board to the Vice President, Academic for widespread distribution. This is consistent with the general responsibilities of the Vice President, Academic concerning this Policy.



J.M. Munro

cc. J. Hansen
K. Heinrich
A. Watt

SIMON FRASER UNIVERSITY

MEMORANDUM

TO: J.P. Blaney,
President, Pro Tem

FROM: J.M. Munro,
Chair, Harassment Policy Revision
Task Force

SUBJ: Task Force Responses to
Senate Motions and Discussion,
Paper S. 98-12

DATE: January 12, 1998

This paper presents a statement of the Task Force's responses (in italics) concerning Senate's motions, comments, and suggestions concerning S. 98-12 during the meeting of January 5, 1998. We have also noted, in square brackets, the sections of the proposed Policy to which the comments appear to refer. In preparing this paper members of the Task Force have used their notes and the transcript of the Senate discussion. Some comments were combined with others and we have not discussed matters which were raised for clarification.

There have also been other changes in the proposed Policy. A copy of the proposed Policy as it has been sent to the Board of Governors is attached. Additions are in bold type and deletions are in strike-through.

A. MOTIONS

The following motions were approved by Senate as recommendations for changes to the proposed new Harassment Policy.

1. Contents of the annual report. [13.1]

It is the sense of Senate that the Harassment Policy should include a provision stating that the Human Rights Coordinator shall prepare each year a public document containing a summary (including findings and reasoning) of all completed cases which will have reached the investigative stage with names and other identifiers deleted wherever necessary so as to be consistent with the practices of the B.C. Human Rights Commission.

We have added a sentence in section 13.1 requiring summaries of important cases.

2. Terminology for administrative positions and bodies. [5]

That the term "Human Rights" be replaced by "Harassment Prevention" throughout the draft policy. (The discussion made it clear that this view applied to the names given to various administrative positions and bodies.)

The Task Force continues to recommend that various positions and bodies be styled "Human Rights xxx" rather than "Harassment Prevention xxx". Our reasons are as follows:

a. The arguments for the change which Senate has recommended are founded on concerns that the term "human rights" also refers to other aspects of domestic human rights and to more international documents and causes such as the Universal Declaration on Human Rights and the work of international human rights organizations. However, we believe that our proposed use of the term "human rights" is entirely appropriate in connection with a policy which draws its rationale from the University's responsibilities under the province's Human Rights Code (which, incidentally, is one local manifestation of the provisions of the Universal Declaration on Human Rights). Our proposed use of the term "human rights" is the one which is important for this University as an institution.

b. The proposed alternative, "Harassment Prevention", is in fact misleading. While one objective of the Harassment Policy is the prevention of harassment, the Policy's other purpose is to resolve harassment when it does occur. Much of the work associated with the Policy will be directed to dealing with the consequences of harassment.

c. The Task Force has considered many alternatives to our final recommendation. If the arguments heard at Senate for not using "Human Rights xxx" are persuasive, we would prefer that the term "Harassment Resolution xxx" be used. This would better reflect the responsibilities of those who will administer this Policy. We would also be content with the terminology from the current Policy, "Harassment Policy xxx".

B. COMMENTS AND SUGGESTIONS

The following comments or suggestions were made by one or more members of Senate.

1. Add definitions of "faculty" and "student" to clarify who is eligible to be appointed to the Board or to search committees.

University policies typically use the terms "faculty", "staff", and "students" without adding detailed definitions. "Faculty" is usually interpreted to exclude anyone

holding a senior (Dean or above) administrative position. Definitions along the lines suggested during the Senate meeting would be cumbersome.

2. It was suggested that the Policy be written to anticipate a possible change in the persons responsible for non-academic student misconduct matters under existing policy (T10.03). [Definitions, page 3]

It will be simpler to amend the Harassment Policy if changes are made in other policies altering the responsibilities of the Director of Campus Community Services and which would imply a change in the responsible officer for students in this Policy.

3. A potential conflict was noted in that the Policy appeared to authorize two responsible officers to make a decision on the investigator's report. [9 and 10]

We have made changes in sections 9.11, 10.1, 10.2, 10.4 and 10.5 in response to this concern. The old section 9.11 said that the relevant responsible officer was the responsible officer for whichever party the investigator believed had violated the Policy while section 10.1 referred to the responsible officer for the respondent. We had neglected to make the language in 9.11 match the final language in section 10. We have corrected this to make it clear that the investigator's report is always sent to the responsible officer for the respondent. If the responsible officer for the respondent decides that the complaint was frivolous, vexatious, or malicious then section 10.5 provides for a shift in responsibilities between responsible officers in section 11 and directs the responsible officer for the complainant to consider disciplinary action for the complainant. The change in section 10.5 requires a modification of section 11.3. In addition, we have extended the possibility of issuing an information letter "exonerating" the respondent to all cases where it is determined that there has been no violation of the Policy.

4. Senators recommended changing "frivolous, vexatious or malicious complaints of harassment may be grounds for discipline" to stronger language. [2.12]

We have changed section 2.12 to follow one of the changes suggested at Senate.

5. It was suggested that the Policy should specify more clearly the criteria for selection of the Human Rights Co-ordinator, the Chair and members of the Human Rights Policy Board, members of search committees, and the Vice President, Academic's choice of designate. [5]

We believe that the Policy's content in terms of the responsibilities of the various administrative positions provides the best guidance to the qualities desired in persons appointed to these positions.

6. The Policy should avoid an obvious concentration of power by either having

the search committees chaired by someone other than the Vice President, Academic, or having the Vice President, Academic make a recommendation for appointment to the President. [5.3]

We have changed section 5.3 so that these appointments are recommended by the Search Committee chaired by the Vice President, Academic for appointment by the President.

7. It was suggested that the time limit (12 months) for the initial filing of a complaint was too long. [6.2]

This is the time limit in the Human Rights Code and there are advantages to using the same limit in the Policy.

8. The investigator's lack of power to subpoena, compel participation, or take evidence under oath and the lack of opportunity for cross examination was of concern. [9]

The Policy seeks to encourage participation in its procedures. Nevertheless, it is beyond the power of the University to enforce participation in the ways raised in this comment. Cross-examination is a process suitable for a hearing-type environment, which could be used in later appeals of disciplinary decisions. However, the Policy does provide extensive opportunities for the parties to see and respond to each other's positions and statements.

9. It was suggested that information about the cost of administering the Policy, including the costs of investigations and redress, should be a part of the annual report. [12.3]

The Task Force believes this interest should be accommodated outside the language of the Policy.

10. The Policy does not appear to be congruent with the "United Nations Universal Declaration of Human Rights". [various]

The Task Force has been advised that the Policy is consistent with the Human Rights Code. It is not realistic to require that this Policy reflect all aspects of the Universal Declaration on Human Rights.

11. Preference was expressed for an arbitration process as part of the Harassment Policy, rather than the investigation and administrative decision process. [9]

The choice of an investigation rather than an arbitration-type hearing as the main fact-finding process in the Harassment Policy was based on several considerations.

- a. The recognition that serious discipline would be appealed to an arbitration-type hearing under employment or student policies and the desire to avoid two hearings.*
- b. The likelihood that participation in a pre-discipline hearing would be incomplete.*
- c. The use of the investigation process in many public- and private-sector harassment policies.*
- d. The University's previous experience with pre-discipline hearings.*

12. There was discussion on various aspects of the University's right to take the role of the complainant. [9.3]

A complainant's interest and the University's interest may not be congruent. This section is designed to provide a balance between the complainant's need for a satisfactory resolution, and the University's need to deal effectively with harassment situations. As stated, the provision for the University to assume the role of complainant is mainly intended for cases where the respondent has previously violated the Policy. It could also be used where the alleged violation was serious and where the resolution appeared to have been motivated by the complainant's desire not to become further involved, perhaps because of intimidation. Similar provisions are found in other university harassment policies.

13. The issue of whether the Human Rights Commission would recognize the University's policy and procedures was raised. [various]

Section 25(2) of the Human Rights Code gives discretion to the Human Rights Commission to defer a case on the grounds that it is being dealt with in a proceeding authorized by statute and section 27(1)(f) gives discretion to the Human Rights Commission to dismiss a case on the grounds that it has previously been dealt with under a proceeding authorized by statute. Cases dealt with under this Harassment Policy might be so treated. However, this discretionary provision has no bearing on how this Policy should be constructed and administered beyond the general need to avoid inconsistencies with the Human Rights Code.

14. A respondent's prior criminal record, if any, could be accessible and be used in determining the severity of the penalty. [12.1]

This might be used as an "aggravating circumstance" in determining the severity of discipline.

15. When the responsible officer takes the role of the complainant and has access to legal advice, the respondent may be at a disadvantage. [9.3]

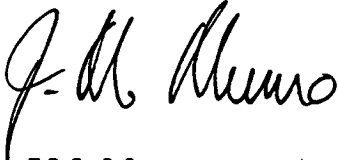
Section 2.8.b of the Policy reiterates the right to legal representation. Earlier drafts of the Policy contained language providing for limited provision of legal counsel at University expense. It was not possible to develop workable language for this.

16. The publication of the names of those found to have violated the Policy, similar to the publication of penalties by the B.C. College of Teachers, was suggested. [12.4 and 13.1]

The Task Force thinks that the detailed reporting requirements in the revised section 13.1 will serve to provide guidance and scrutiny concerning both the nature of and response to harassing behaviour at the University and the administration of this Policy.

17. It was suggested that an annual report would delay the publication of decisions and so detract from the educational goals of the Policy. [13.1]

Section 13.1 establishes the requirement for an annual report within three months of the end of each calendar year. Nothing in the Policy prevents the University from reporting on individual cases once they are concluded.



J.M. Munro

cc. J. Hansen
K. Heinrich
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Simon Fraser University

Harassment Policy

PROPOSED REVISION

January 12, 1998

PREAMBLE

Simon Fraser University promotes teaching, scholarship and research, and the free and critical discussion of ideas. The University is committed to providing a working and learning environment which allows for the full and free participation of all members of the University community. Harassment undermines these objectives and violates the fundamental rights, personal dignity and integrity of individuals or groups of individuals. Harassment is a serious offence which may be cause for disciplinary sanctions including, where appropriate, dismissal or expulsion.

This Policy responds to the University's responsibility under British Columbia's Human Rights Code to prevent harassment, and to provide procedures to handle complaints, to resolve problems, and to remedy situations when harassment occurs. The University will offer educational and training programs designed to support the administration of this Policy and to ensure that all members of the University community are aware of their responsibilities.

1. DEFINITIONS

Complainant - Any person or persons who seek(s) recourse pursuant to this Policy as someone who believes he/she has experienced harassment. The University may also be a complainant.

Complaint - A statement by a complainant seeking recourse pursuant to this Policy.

Constituency organizations - Administrative and Professional Staff Association, CUPE 3338, Polyparty, Simon Fraser Student Society, Simon Fraser University Faculty Association, Teaching Support Staff Union.

Harassment - Any behaviour which satisfies one or more of the following definitions of harassment.

Harassment based on a prohibited ground of discrimination - Behaviour directed towards another person or persons:

- a) which is abusive or demeaning; and
- b) includes a direct or indirect reference to a prohibited ground of discrimination under British Columbia's Human Rights Code; and
- c) would be viewed by a reasonable person experiencing the behaviour as an interference with her/his participation in a University-related activity.

As of this date, the grounds protected against discrimination by British Columbia's Human Rights Code (R.S.B.C. 1996 c. 210) are age, race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, and, in the case of employment, unrelated criminal convictions.

Sexual harassment - Behaviour of a sexual nature by a person:

- a) who knows or ought reasonably to know that the behaviour is unwanted or unwelcome; and
- b) which interferes with another person's participation in a University-related activity; or
- c) leads to or implies job- or academically-related consequences for the person harassed.

Personal harassment - Behaviour directed towards a specific person or persons:

- a) which serves no legitimate purpose; and
- b) would be considered by a reasonable person to create an intimidating, humiliating, or hostile work or learning environment.

Reasonable person standard - Whether or not a reasonable person in roughly the same position as the complainant would judge harassment to have occurred as a result of a behaviour or pattern of behaviour.

Respondent - A person or persons against whom an allegation of harassment has been made pursuant to this Policy.

Responsible officer - The University official who may carry out one or more of the following roles within the terms of this Policy:

- a) decide whether the Policy has been violated;
- b) make recommendations or decisions regarding remedies or discipline;
- c) assume the role of complainant to initiate an investigation;
- d) initiate interim measures.

The responsible officers in a particular case are determined by the University positions of the complainant and respondent. For members of the Faculty Association bargaining unit and other academic staff the responsible officer is the appropriate Dean or the University Librarian; for students the responsible officer is the Director of Campus Community Services; for staff the responsible officer is the appropriate Dean or Vice President or the University Librarian; for Deans and Directors the responsible officer is the appropriate Vice President; and for Vice Presidents, the President is the responsible officer. The Vice President Finance and Administration will be the responsible officer for members of units which report directly to the President.

University community - All students and employees of the University, all research grant and research contract employees, and any researcher, instructor or student spending an extended period of time at the University in an academic capacity.

University-related activity - An activity of any type operated under University auspices at any location. All activities on the University's two campuses are University-related unless they are within the exclusive control of constituency organizations.

2. PRINCIPLES

- 2.1 All members of the University community have the responsibility to respect the rights of others.
- 2.2 This Policy will not be interpreted, administered, or applied to infringe the academic freedom of any member of the University community. Academic freedom is the freedom to examine, question, teach, and learn and it involves the right to investigate, speculate, and comment without reference to prescribed doctrine as well as the right to criticize the University and society at large. The frank discussion of controversial ideas, the pursuit and publication of controversial research, and the study and teaching of material with controversial content do not constitute harassment.
- 2.3 All members of the University community will be treated equitably under this Policy. All matters arising under this Policy will be dealt with in a fair, unbiased and timely manner.
- 2.4 This Policy is not intended to interfere with ordinary social or personal relationships among members of the University community.

- 2.5 In the University community, power differences exist between or among faculty, staff, and students. Where one person has power or authority, implied or explicit, over another there is an increased potential for harassment issues to arise.
- 2.6 Members of the University community have a responsibility for ensuring that the University's working and learning environment is free from harassment. Chairs, Directors, and Deans bear the primary responsibility for maintaining a working and learning environment free from harassment. They are expected to act on this responsibility whenever necessary, whether or not they are in receipt of a complaint. The expertise of the Human Rights Office is available to all members of the University community.
- 2.7 Efforts at informal resolution will normally be made first in dealing with a complaint.
- 2.8 This Policy will be interpreted, administered, and applied in conformity with the principles of procedural fairness and natural justice. In particular:
- a) All parties will be advised of the provisions of this Policy and of the procedures available to them.
 - b) Any complainant who wishes the University to assist in the resolution of a complaint through mediation or investigation must be prepared to be identified to the respondent.
 - c) All parties must be given the opportunity to present evidence in support of their positions and to defend themselves against allegations of harassment.
 - d) All parties may be represented or accompanied by legal counsel, a support person, and/or a representative of their constituency organization throughout the procedures set out in this Policy.
 - e) All submissions, responses, comments, and decisions pursuant to this Policy will be made in writing. Where a party has the opportunity to make a submission, response or comment, it shall be provided within two weeks.
- 2.9 Those responsible for interpreting, administering, and applying this Policy will use a reasonable person standard.

- 2.10 This Policy is not to be interpreted, administered, or applied in such a way as to detract from the right and obligation of those in supervisory roles to manage and discipline employees and students, subject to managerial and instructional policies and procedures.
- 2.11 Members of the University community have an obligation to participate in procedures under this Policy. It is a ground for discipline for either party to refuse to participate in an investigation without reasonable justification.
- 2.12 Frivolous, vexatious, or malicious complaints of harassment may ~~result in be grounds for~~ discipline.
- 2.13 Either party to a complaint may object to the participation of a person in the administration of this policy on grounds of conflict of interest or reasonable apprehension of bias.

3. JURISDICTION

- 3.1 Under this Policy a complaint of harassment may only be made by a member of the University community against another member of the University community. Such a complaint must pertain to University-related activities.

4. USE OF INFORMATION

- 4.1 Allegations of harassment, particularly sexual harassment, often involve the collection, use, and disclosure of sensitive personal information. Confidentiality is required so that those who have been harassed will feel free to come forward. Confidentiality is also required so that the reputations and interests of those accused of harassment are protected. However, either party may discuss the case in confidence with her/his supervisor, support person, and/or representative of her/his constituency organization.
- 4.2 Subject to any limits or disclosure requirements imposed by law **or required by this Policy**, any and all information, oral and written, created, gathered, received or compiled through the course of a complaint is to be treated as confidential by both the respondent and complainant, their representatives, witnesses, and the officials designated by this Policy.

- 4.3 All recorded personal information will be treated as "supplied in confidence" for the purposes of compliance with the Freedom of Information and Protection of Privacy Act.
- 4.4 The office of record for all records documenting cases under this Policy is the Human Rights Office.
- 4.5 Information concerning a complaint may be provided to appropriate University officials on a need-to-know basis.
- 4.6 Any person informed of an allegation of harassment under section 4.5 will be informed of its disposition.
- 4.7 Any person breaching confidentiality may be subject to disciplinary sanction or other appropriate action.

5. ADMINISTRATION

5.1 The administration of this Policy is conducted by the following persons or groups.

- a) Vice President, Academic, or designate
- b) Human Rights Co-ordinator and other members of the Human Rights Office
- c) Human Rights Policy Board
- d) Human Rights Advisors
- e) responsible officers
- f) mediators
- g) investigators

5.2 After receiving the applications of interested individuals and consulting with constituency organizations, the Vice President, Academic will appoint a Human Rights Policy Board taking into account the diversity of the University community.

5.3 After consulting with constituency organizations, the Vice President, Academic will appoint a Search Committee, consisting of one faculty member, one staff

member and one student, to advise on the appointment of the Human Rights Co-ordinator or the Chair of the Human Rights Policy Board. The Vice President, Academic will be the Chair of the Search Committee. The Committee will seek applications from interested individuals, consult with constituency organizations, and recommend a candidate for appointment by the ~~President Vice President, Academic~~.

- 5.4 The Human Rights Co-ordinator facilitates the implementation of the Policy by selecting and training Human Rights Advisors, educating the University community with respect to the Policy, and supervising the Human Rights Office and its activities. The Human Rights Co-ordinator is not an advocate for either party to a complaint. The Human Rights Co-ordinator is supervised by the Vice President, Academic.
- 5.5 The Human Rights Policy Board provides policy advice to the Vice President, Academic concerning the implementation of the Harassment Policy and carries out other functions as provided for in the Policy. The Human Rights Policy Board will consist of two faculty members, two staff members, two students, and a Chair. Appointments of staff and faculty will normally be for a three year term and student appointments will be for one year terms. The length of terms may be modified to establish a rotation of membership. The quorum for the Human Rights Policy Board is four members. To provide for possible absence of its Chair, the Board will elect a Vice Chair.
- 5.6 Human Rights Advisors are responsible for ensuring that persons who bring matters addressed by this Policy to their attention receive appropriate information and support. In particular, Human Rights Advisors provide information on the Policy and its procedures and on University services including the Human Rights Office, Counselling, the Employee Assistance Program, Health Services, Campus Security, and the Ombuds Office. A Human Rights Advisor may be asked by the Human Rights Co-ordinator to serve as a support person.
- 5.7 Human Rights Advisors may be nominated by any member of the University community for consideration by the Human Rights Co-ordinator. The Human Rights Co-ordinator will appoint approximately 50 Human Rights Advisors across the University taking into account the diversity of the University

community, constituency representation, and location. Appointments will be for one or two years. Human Rights Advisors will be trained through the Human Rights Office.

- 5.8 A party to a complaint who objects to the participation of a person in the administration of this policy on grounds of conflict of interest or reasonable apprehension of bias may inform the Vice President, Academic. A person involved in the administration of this Policy may, on similar grounds, direct a request to the Vice President, Academic that he/she be replaced. The Vice President, Academic will make decisions concerning replacements required under this section.
- 5.9 If a responsible officer assumes the role of complainant under section 9.3, the Vice President, Academic will appoint another responsible officer.

6. INFORMAL PROCEDURES

- 6.1 Any member of the University community who believes that harassment has occurred should discuss the matter with a Human Rights Advisor, a member of the Human Rights Office, or the person holding an administrative position as head of a unit in which the concern has arisen.
- 6.2 A complainant or respondent may bring a complaint to the Human Rights Office within twelve months of the last alleged incident of harassment. A member of the Human Rights Office will discuss the complaint fully with the party, who will be informed of the procedures of this Policy.
- 6.3 The Human Rights Co-ordinator may reject a complaint on the grounds that it is frivolous, vexatious, malicious, lies outside the jurisdiction of this Policy, or is beyond the time limits for laying a complaint. This decision must include the reasons for the decision and may be appealed to the Chair of the Human Rights Policy Board. The Chair's decision will be final.
- 6.4 A complainant will be informed of internal avenues for redress or resolution. Complainants who decide to pursue redress or resolution under other internal University procedures (e.g., grievance procedures under a collective agreement) may not use this Policy.

- 6.5 If a complaint proceeds, the Human Rights Co-ordinator or another member of the Human Rights Office will begin an informal inquiry. After receiving the consent of the complainant, the person responsible for the inquiry may discuss the complaint with the respondent in order to seek a mutually acceptable resolution. The complainant will not necessarily be identified to the respondent at this stage.
- 6.6 If no resolution is reached, the Human Rights Co-ordinator or another member of the Human Rights Office will explain the options for proceeding further to both parties. The complainant may be identified to the respondent during this explanation and will be identified if the complaint proceeds further.
- 6.7 Complaints involving alleged personal harassment may be dealt with using the informal procedures of section 6 of this Policy but will not use the procedures set out in sections 8 and 9. If informal procedures have not been successful, the complaint should be directed to the supervisor of the person whose behaviour is the subject of the complaint. The Human Rights Co-ordinator may be asked to provide further assistance in resolving the complaint.

7. INTERIM MEASURES

- 7.1 It may be necessary that interim measures be taken while a complaint is being resolved, investigated or decided. Such measures will be precautionary, not disciplinary. Interim measures will be initiated by the responsible officer for either the complainant or the respondent on the recommendation of the Human Rights Co-ordinator.

8. MEDIATION

- 8.1 In mediation, the parties attempt to resolve the issue(s) which led to the complaint. Either party may make a written request for resolution through mediation to the Human Rights Co-ordinator who will convey the request to the other party. Mediation requires the agreement of both parties.

- 8.2 The Human Rights Co-ordinator will select an experienced mediator. The mediator will inform the parties of the procedures to be followed. Both the mediator chosen and the format of the mediation procedure must be acceptable to both parties. Normally, mediation will begin within three weeks of the selection of the mediator.
- 8.3 Mediation proceedings are confidential. All communications made by each party during mediation are made without prejudice.
- 8.4 A mediated resolution of the complaint results in a written agreement setting out the terms of the resolution. If a proposed resolution involves the University, the University must also agree to the resolution.
- 8.5 Once a case goes beyond mediation, the Human Rights Co-ordinator has no active involvement.

9. INVESTIGATION

- 9.1 Investigation is intended to be used in cases where the alleged harassment may have had a serious impact on the complainant or respondent, where the case is important to the goals of the University, or where the respondent has refused to participate in earlier efforts to deal with the complaint.
- 9.2 If mediation has not been attempted or has failed, a written request for an investigation may be made to the Chair of the Human Rights Policy Board by either party. Such a request must be submitted within three weeks after the end of mediation or within twelve months of the last incident of alleged harassment. This time limit may be waived by the Chair of the Human Rights Policy Board in exceptional circumstances based on a submission made by either party and an opportunity for the other party to comment on the submission. If the request for an investigation is made by the complainant, the request will contain a full account of the alleged harassment. If the request for an investigation is made by the respondent, it will contain an explanation of why the respondent seeks an investigation.
- 9.3 Even if the complainant and respondent have reached a resolution through informal procedures or mediation, a responsible officer may decide to assume

the role of complainant in a case in order to initiate an investigation. This provision will be subject to the criteria set out in section 9.1 of this Policy and is normally intended for cases involving a respondent who has previously been the subject of substantiated complaints of harassment.

- 9.4 If more than one complaint has been made about a respondent, the Chair of the Human Rights Policy Board may decide that the complaints will be investigated together. Each party will have the opportunity to make submissions on this matter and to comment on the other's submission.
- 9.5 The Chair of the Human Rights Policy Board has power to authorize or refuse to authorize an investigation; this decision will be guided by the criteria stated in section 9.1. If the Chair of the Human Rights Policy Board refuses to authorize an investigation, he/she will give reasons for this decision.
- 9.6 When a request for an investigation has been refused by the Chair of the Human Rights Policy Board, a direct appeal to the Human Rights Policy Board, meeting without the Chair, may be made. The appeal must be made within three weeks of the refusal to authorize an investigation. Each party will have the opportunity to present submissions on this matter and to comment on each other's submission. After consideration of the reasons for the request for an investigation, the decision of the Chair of the Human Rights Policy Board, and any submissions and comments from the parties, the Human Rights Policy Board may authorize an investigation.
- 9.7 When an investigation is authorized, the Chair of the Human Rights Policy Board will appoint an experienced investigator with expertise in administrative law who is external to the University.
- 9.8 The investigation will normally commence within three weeks of its authorization. The investigator will examine the complainant, respondent, and such other persons and/or documents that he/she considers may have or contain relevant information pertaining to the complaint.
- 9.9 If the complainant or the respondent refuses to cooperate with the investigator, the investigator may either proceed with the investigation or recommend to whoever authorized the investigation that the complaint be dismissed. The

person who authorized the investigation will make a decision concerning this recommendation and may direct that the investigation continue.

9.10 The investigator will prepare a draft report and send it to each party, first to the complainant, and then to the respondent together with the comments of the complainant. A copy of the respondent's response will be sent to the complainant for comment. The investigator will then prepare a final report that includes an opinion on the facts of the case, disputed and undisputed, and whether there has been a violation of the Policy. The final report will normally be completed within four weeks of the receipt of the last response to the draft report.

9.11 The report of the investigator will be sent to the Chair of the Human Rights Policy Board who will send it to the parties and to the responsible officer **for the respondent.** ~~for the party whom the investigator believes has violated the Policy.~~

9.12 The investigator may recommend that the investigation be adjourned, stayed, or terminated. The decision on this recommendation will be made by whoever authorized the investigation after considering submissions, if any, from each party.

10. DECISION

10.1 When the responsible officer for the respondent receives the investigator's report he/she will give each party an opportunity to respond. Each party may comment on the other's response. Following this, the responsible officer **for the respondent** will determine whether or not a violation of the Policy has occurred.

10.2 In reaching a decision on whether the Policy has been violated, the responsible officer **for the respondent** will use a standard of proof corresponding to the civil burden of proof on a balance of probabilities. Allegations which could result in suspension, dismissal or expulsion require clear and convincing evidence of misconduct.

10.3 The decision, with reasons, on whether the Policy has been violated will be communicated to both parties within four weeks of receipt of the last response.

10.4 If the responsible officer for the respondent does not accept the opinion of the investigator about whether or not the Policy has been violated, either party may request that a Vice President review the decision. The Chair of the Human Rights Policy Board will select the Vice President to carry out this review.

10.5 If the responsible officer for the respondent finds that the allegation was frivolous, vexatious or malicious **he/she will carry out the procedures specified in section 11 for the respondent** and the responsible officer for the complainant will consider disciplinary action for the complainant.

11. REMEDIES

11.1 If the Policy has been violated by the respondent, the responsible officer for the complainant will receive the decision and the investigator's report and will meet with the complainant.

11.2 The complainant may request that measures be taken to correct damage done to her/his career development, academic progress, physical or emotional health, reputation or finances. The range of remedies may include, but is not limited to: an apology, compensation for professional or academic losses, or reinstatement. A recommendation for remedy will be sent by the responsible officer to the appropriate Vice President for decision. The complainant will be given an opportunity to comment on the proposed remedy before a final decision is made. Academic remedies must follow normal academic appeal processes; requests under these processes will be accompanied by information from the responsible officer.

11.3 In cases where it is determined that **there has not been a violation of the Policy** ~~it is the original respondent who has experienced a violation of this Policy, the provisions in section 11.2 shall be applied for the respondent.~~ In addition, the University will, if requested to do so by the respondent, issue a statement that there was no violation of the Policy by the respondent.

12. DISCIPLINE

12.1 If the Policy has been violated by the respondent, the responsible officer for the respondent will, ~~after meeting with the complainant and respondent together,~~ decide on appropriate discipline. **Before making her/his disciplinary decision, the responsible officer for the respondent will provide the complainant and respondent with an opportunity to make submissions concerning the appropriate discipline. Such submissions will be made in writing within time limits specified by the responsible officer for the respondent. Each party will be provided with a copy of the other party's submission and will have an opportunity to reply to that submission. After receiving and considering each party's submission and reply, the responsible officer for the respondent will make a ~~In making disciplinary decisions or recommendation.s,~~ the responsible officer This will follow the concept of progressive discipline and will take the following ~~these~~ matters into consideration:**

- a) The severity of the offence;
- b) Whether the offence was intentional or unintentional;
- c) Whether the offence was an isolated incident or involved repeated acts;
- d) Mitigating or aggravating circumstances affecting either party;
- e) Whether there was an imbalance in power between the parties;
- f) The respondent's record at the University;
- g) Sanctions applied in similar cases.

12.2 The range of disciplinary sanctions may include, but is not limited to: a letter of reprimand, suspension, expulsion and dismissal. In addition, the respondent may be required to participate in a human rights awareness program. It may also be ordered that one party cease to have any contact with the other party. This decision will normally be made within six weeks of the final decision that the policy was violated.

12.3 The application of disciplinary sanctions and any appeals therefrom will utilize the disciplinary procedures appropriate for the person according to University policies and/or collective or framework agreements. **For student respondents the procedures contained in Policy T10.03 concerning the University Board on Student Discipline and Policy T10.04 concerning the Senate Committee on Student Discipline Appeals will be used.**

Where there are no established procedures, the Vice

President, Academic will create procedures that are analogous to those available for employees.

12.4 Each party will be informed of the final decision. The final decision and the report of the investigator will be placed in the appropriate personnel file or student file of the party found to have violated the Policy.

13. REPORTING

13.1 The Human Rights Co-ordinator is responsible for preparing and distributing an annual report which will cover a calendar year and be available no later than March 31st of the following year. This responsibility requires that information on activity under this Policy be collected by the Human Rights Co-ordinator. The annual report will summarize the activities of the Human Rights Office in administering this Policy and will provide information on the nature of complaints, problem-solving, mediation activities, investigations, and decisions involving remedies or discipline. **Summaries of important cases will be included.** The report will also contain an assessment of progress towards achieving the objectives of the Policy as described in the Preamble. This annual report will be reviewed and approved by the Human Rights Policy Board and **forwarded to the Vice President, Academic who will distribute it distributed widely.**

14. REVIEW

14.1 This Policy will be formally reviewed every three years.