

Suggested Changes to the Discrimination and Harassment Policy perhaps change the title
WR 3'LVFULPLQDWLRQ DQG +DUDVVP HQW 3ROLF\`

Response: 7LWOH KDVEHHQDIEKIDICADH @ WRI +3D B D V V P H Q W 3 R O L F \`

The following c

sections including Shared Governance, Legal Considerations, Objectives, Policy Language, and Procedures.

Committee Comments

- x How much can the committee change the policy? The thought was that the policy originated with the Office of the President and the Office of Social Equity suggestions should be sent to Dr. Driscoll and Pablo Mendoza for consideration

Response: As is true on any such matter before it the committee, through the University Senate can recommend changes to the policy for the president's consideration. In this particular case, the Office of Civil Rights (OCR) must also approve the final version.

- x Since the policy impacts students as much as it does employees, perhaps the policy should be vetted through the Student Affairs Committee as well.

Response: Should the University Senate wish to refer the policy to the Student Affairs Committee, it could do so.

Shared Governance

- x Concerns were raised about the involvement of the campus unions and HR in the development of the policy

Comment 1: general process concerns about the development of the policy. RI WKH SROLF\ , P FRQFHUQH G WKDW WKH FROOHFWL
employees were not involved in this policy and also the appa3005 role of s pe T BT 1 0 0 1 43

Unions (including AFSCME and APSCUF) said they would like policies such as this to be vetted by each union on campus and HR before being sent to the Senate for approval:

Comment 1 3 W K L V L V D Q R W K H U H [D P S O H R I D G P L Q L V W U D W L

ZLWKRXW SURSHU YHWWITC. proposal. Policy was reviewed and SRQVH

particular concern. How can one defend oneself by arguing against the credibility of the accuser if the accuser remains anonymous? Arguing credibility, or lack thereof, is not just some obscure legal theory. That argument is impossible if the accuser is unknown to the accused.

Response: The policy does not welcome or encourage anonymous complaints. Additional language has been inserted indicating complainants are encouraged to make written complaints. The University has an obligation to investigate all allegations of discrimination and harassment to the extent possible.

- x As an employer, IUP has an obligation to its employees as well as potential victims of Discrimination and Harassment. This policy seems to almost ignore the legitimate reputational concerns of its employees. In fact, because professionals are viewed legally as having different interests than students, terms of potential discipline (professional reputation, maintaining longstanding employment, etc.) would probably be advisable to have two completely different policies. There are also nuances in the application of harassment law depending on whether the accused is a high ranking official, a direct supervisor, a coworker, a non-direct supervisor, or a vendor or customer. In fact, it is questionable whether the AVP for HR is a legally sufficient alternative for reporting in that they are, or may be perceived to be, closely aligned with the Office of Social Equity.

Response: Student respondents are referred to the Office of student Conduct. The policy has an explicit conflict of interest provision for allegations of complaints against individuals in the Office of Social Equity or the designee appointed by the Office of Social Equity. Mirror language has been added to the Formal Complaint process. Actual or the perception of alignment of interests does not constitute a conflict of interest. The policy allows the Office of Social Equity (or the AVP for HR, as appropriate), to designate an investigator. In certain cases, that may involve an external party.

Objective

- x 3DJH \$V XVHG KHUHLQ 3FRPSODLQW' LV V\QRQ\PRXV

Policy Language

- x Who is this policy for ~~employees or students~~ it seems less concerned about student conduct and more concerned about the conduct of employees. Students should be the primary concern of this policy, especially in light of recent events.

Response: This comment does not contain sufficient detailed information to respond in any meaningful manner.

- x ~~+ DUDVVP HQW³ & RQVWLWXWLRQDOO\ SURWHFWHG H[SU~~
~~XQGHU W~~ Comment 1 ~~KLFW LV³ FRQVWLWXWLSRQDOOR SURWRIZ~~
academic freedom and freedom of expression enter into this policy
instructional material may lead to difficult conversations in courses. The goal of most of this instruction is to teach students, when conduct breaches. The problem is, we engage in these conversations, by doing so in an instructional classroom, do we as faculty and potentially other students who engage in a discussion bring rise to a potential complaint.

Response: Freedom of expression in the context of academic freedom may be considered constitutionally protected expression.

- x ~~³ « YHQGRU RU~~ Comment 2 ~~How will these~~ be handled if the person is not a member of the University? (guest speaker ~~class~~)

Response: Guest speakers would likely be considered volunteers under the policy as an individual working in or with the University.

- x ~~³ \$QRQ\PRXV FRPSODLQWV ZLOO EH LQGLYLGXDQO\ DVV~~
~~the extent they can be investigated~~ Comment 3 ~~Does that mean they will be investigated~~ and carried forward even if the complainant remains anonymous? If so, how will credibility be assessed?

Response: Anonymous complaints will be individually assessed for credibility and with regard to the extent they can be investigated, even if the complainant chooses to remain anonymous. Credibility will be assessed based on the availability of any corroborating information.

- x ~~\$,QIRUPDO 5HVROXWLRQ³, QIRUPDO~~ Comment 4 ~~if the nature of~~ conduct involved is not of a serious or repetitive nature, and disciplinary action is not required to remedy the situation. No formal investigation is involved in the informal UHVROXWL Comment 5 ~~How do we~~ know if a formal investigation is required without some form of investigation Comment 2 Very vague, has the potential to involve actions taken by management in which bargaining unit employees should be

flexibility in how they investigate charges with limited rules and procedures or even what constitutes harassment. I wonder if our First Amendment Rights will be ~~affected~~ by what we do with this policy?

Response: This comment does not contain sufficient detailed information to respond in any meaningful manner.

x A. Informal Resolution

Response: See comment above about constitutionally protected speech. The University compliHV ZLWK 3HQQV\OYDQLD¶V 3HUVRQQHO)LOH ,QVSHF

Response: Offensive speech that does not rise to the level of being discrimination or harassment under the policy would be considered constitutionally protected speech. Both the complainant and the respondent must agree to use the informal resolution process.

And the professor may have a file generated outside of the official personnel file that they will never know exists for an accusation of permitting offensive behavior. While the exploration of the principles of physics, chemistry or biology are unlikely to get into discussions of potentially offensive topics, others such as a course in employment discrimination may deal directly with the most controversial issues that are not yet completely decided and tend to have reasonable opinions on opposing sides. Of particular concern is the point in a course where the Title VII protection of religion comes up against emerging views on sex/gender/transgender, etc. By not excluding activity within the confines of an academic course, this policy exposes the professor to unreasonable risk that a classroom discussion of the inherent tensions in this field degenerates into something that threatens the reputation of a student or the career of the professor. An unintended consequence will be for such courses to give wide berth to such tensions when, ironically, they are the most important issues to be explored so that the student is prepared. Will disgruntled student prefer to allege racism, national origin or sex discrimination sufficient to trigger the informal investigation process and its conciliation process, as opposed to the formality and perceived uphill battle of the formal grades appeal process?

Response: See comments above re: constitutionally protected speech. Please also refer to the policy statement on false complaints.

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the extent it is possible) comes much more quickly for the student than for the employee.

Procedure

- x Where does the policy fit into Student Conduct (uld be vetted by the Student Affairs Committee).
- x What records, if any, will be created during the information resolution process, and how long will these records be retained? According to the records retention periods would be kept for seven years, records should be kept by HR what about students?
Response: See comment above re: maintenance of records by the Office of Social Equity.
- x A record of the issue and its resolution would likely be created and kept per the records