

University of Prince Edward Island Policy	Policy No. govbrdgnl0009	Revision No. 2
Policy Title Fair Treatment Policy		Page 1 of 17
Creation Date August 1, 2003	Version Date November 21,2005	
Authority Board of Governors	Review Date October 15, 2007	
Responsibility Fair Treatment Advocate		Access W

1 Purpose

1.1 To replace the current Sexual Harassment Policy with an update that includes other definitions of harassment and that enables full investigations within the University.

2 Scope

2.1 Everyone who works, studies or visits the UPEI campus is covered by this policy.

3 Responsibility

3.1 This policy is established and authorized by the UPEI Board of Governors.
 3.2 Notwithstanding the existence of this policy, every person continues to have the right to seek recourse through their collective agreement, the Human Rights Act of Prince Edward Island, or through the courts.

4 Policy

4.1 The University of Prince Edward Island is committed to providing an environment that affirms and promotes the dignity of human beings of diverse backgrounds and needs. This Policy prohibits harassment and discrimination and affirms that all members of the University community – its students, faculty, staff, and visitors – have the right to participate in activities at the University without fear of discrimination or harassment.

4.2 Members of the University community are expected to uphold the integrity of the Fair Treatment Policy and to invoke its provisions in a responsible manner. All persons within the University who are affected by the policy, particularly the parties to a complaint, are expected to preserve the degree of confidentiality necessary to ensure the integrity of the Policy, the process described in the Policy, and congenial and collegial relations among members of the University community.

4.3 The purposes of this policy are:

4.3.1 To be educational, in that its existence will increase awareness of and sensitivity to the negative impact of harassment;

4.3.2 To prevent harassment by indicating the seriousness with which the University views this issue; and

- 4.3.3 To provide fair procedures for handling complaints when they do occur.
- 4.4 Allegations of harassment reported to the University shall be dealt with by the University in conformity with this policy. The Policy is to be interpreted in a way that is consistent with these goals, with the principles of fairness, and with the responsible exercise of academic freedom.

5 FUNDAMENTAL PRINCIPLES

- 5.1 In establishing a policy with procedures for dealing with allegations of harassment, the University is guided by the following principles:
 - 5.1.1 The prevention of harassment through a process of educating and informing the University community is necessary and important.
 - 5.1.2 All reasonable attempts should be made to resolve alleged cases of harassment before laying a formal complaint and that in resolving the same, principles of fairness shall apply.
 - 5.1.3 The University community is committed to academic freedom and to freedom of expression and association. There should be an environment in which students and teaching and non-teaching staff can engage in free enquiry and open discussion of all issues. Neither this policy in general, nor its definitions in particular, is to be applied in such a way as to detract from the right of employees and students to engage in the frank discussion of potentially controversial matters, such as age, race, politics, religion, sex and sexual orientation. The Fair Treatment Advocate is obliged to uphold academic freedom, and freedom of expression and association. An academic and free community must also include freedom of movement and freedom of access to facilities and resources without fear of harassment, discrimination or violence.
 - 5.1.4 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 correct employees and students in accordance with collective agreements or applicable university policies and procedures. Conversely, an obligation to manage or correct others are not an excuse for actions that may constitute harassment.
 - 5.1.5 Contractors (including employers of co-op students), their employees and agents, and visitors to the University are also expected to conduct themselves in any University-related activity in a manner consistent with this policy. Contractors will be provided access to and knowledge of the policy prior to signing a contract. Members of the University administration bear the responsibility of informing invited guests of the policy and to provide access to a copy of the policy. Allegations of discrimination, sexual harassment, or personal harassment against such persons are covered under this policy.
 - 5.1.6 Those holding positions of authority (i.e., power differential) shall not abuse the power with which they are entrusted. For example, power differential situations affecting a student may include, but are not limited to: an academic advisor, a

- coach, a counsellor, a director, an instructor/professor, a marker, a research head, a residence staff member, a thesis advisor, a tutor, and a department head.
- 5.1.7 All members of the University community, visitors and contractors shall be treated equitably under this policy.
 - 5.1.8 Harassment that occurs on-campus, off-campus at University-related social functions, in the course of work or academic assignments/placements off-campus, during work or university-related travel, by telephone and/or electronic communication, is covered under this policy. Incidents occurring off-campus which have no or little likelihood of any impact on the work/study environment at the institution should be pursued through other external procedures.
 - 5.1.9 The Fair Treatment Advocate has the responsibility to conduct an investigation into alleged harassment. This includes matters that may be before courts or other investigative units, or that may have occurred in the past, if such occurrences are deemed, by the Advocate, to be relevant to the investigation.
 - 5.1.10 The fact that someone did not intend to harass or discriminate is no defense to a complaint. Regardless of intent, it is the effect and characteristics of the behavior that determine whether the behavior constitutes discrimination, sexual harassment or personal harassment.
 - 5.1.11 All judgments required by the policy are subject to the test of a reasonable person in roughly the same position as the complainant would judge harassment or discrimination to have occurred as a result of a behavior or pattern of behaviour.
 - 5.1.12 Malicious complaints or inappropriate breaches of confidentiality will be considered violations of the Policy. Any individual or group that makes a frivolous, vexatious, false or bad faith complaint pursuant to this Policy for the purpose of harming another individual or group, breaches the Policy and may be disciplined subject to their collective agreement.
 - 5.1.13 While the establishment of a Fair Treatment Office and effective investigative procedures are a requisite response to harassment, the Advocate cannot be expected to monitor or police the campus for harassment issues. While it is the employer's responsibility to maintain and promote an environment that is free of discrimination and harassment, the employer expects all members of the university community to cooperate in this endeavour. The employer with and through University Administrators have an obligation to be proactive and will be expected to play an integral role in the abolition of harassment on campus. Employees and students are obliged not to harass or discriminate. The University, with and through the Fair Treatment office, will take necessary steps to ensure the health safety, and security of any person under the scope of this policy.

6 DEFINITIONS

- 6.1 **Harassment:** The University defines "harassment" within any University-related context as an incident or series of vexatious or disrespectful comments, displays

or behaviours that demean, belittle, humiliate, embarrass, degrade or attempt to exclude; that is known or ought reasonably to be known to be unwelcome and/or offensive; and which adversely affects the employment or academic status of the individual.

6.2 Harassment can take many forms. The University recognizes the following three sub-types of harassment. These definitions will be interpreted and applied consistently with the accepted standards of mature behavior, academic freedom and freedom of expression.

6.2.1 **Sexual Harassment** refers to all types of unwanted sexual attention which adversely affects the working or learning environment. It may occur between males and females, or between members of the same sex. It may occur when there is a difference of status (faculty/student, supervisor/employee) or between persons of the same status (faculty/faculty, student/student), and may include but not be limited to:

6.2.1.1 Any conduct, comment, gesture or contact of a sexual nature that is likely to cause offence or humiliation to any member of the University community to whom such conduct, comment, gesture or contact is directed; or

6.2.1.2 Any conduct, comment, gesture or contact of a sexual nature that might, on reasonable grounds, be perceived by a member of the University community, to whom it is directed, as placing a condition of a sexual nature on employment, or any opportunity for training, promotion, advancement or other reward; or retaliation for refusal to comply with a request of a sexual nature; or

6.2.1.3 Behaviour and remarks of a sexual nature, when such conduct has the purpose or effect of creating an intimidating, hostile or offensive environment.

6.3 In any University related context, sexual harassment may be expressed in a number of ways including, but not be limited to:

6.3.1 crude, offensive or sexually suggestive remarks, gender based insults and taunting, sexual gestures or leering, and humour based on stereotypes, directed at a person because of his/her gender or sexual orientation; or

6.3.2 unwanted and unsolicited sexual advances (including but not limited to innuendoes and suggestive remarks inviting intimacy and sexual contact) and physical contact (including unwanted contact of a sexual nature such as patting, touching, pinching or brushing against, and sexual assault) which takes place in the context of academic, professional or work-related transactions; or

6.3.3 solicitation of sexual activity by expressed or implied promise of reward or threat of reprisal; or

6.3.4 coerced sexual relations.

- 6.4 Sexual Harassment **is not**:
 - 6.4.1 consensual sexual interaction; or
 - 6.4.2 physical affection between friends; or
 - 6.4.3 mutual flirtation, joking or teasing; or
 - 6.4.4 general statements of opinion or belief.
- 6.5 **Personal Harassment** is behaviour directed toward a specific person or persons that would be considered by a reasonable person, to create an intimidating, humiliating, or hostile work or learning environment.
 - 6.5.1 Personal harassment may include but not be limited to:
 - 6.5.1.1 physical assault, including pushing, slapping; or
 - 6.5.1.2 communication that is inappropriately harsh or condemning, abusive and offensive language, threatening gestures, yelling, bullying, ridiculing, using derogatory names, threatening in a manner that negatively impacts University work, studies, or participation in campus life; or
 - 6.5.1.3 inappropriate comments about personal appearance; or
 - 6.5.1.4 constant unreasonable criticism about work or academic performance, the allocation of humiliating or demeaning tasks, or the setting of impossible deadlines with unrealistic expectations of work; or
 - 6.5.1.5 hazing (such as harmful or humiliating initiation rituals); or
 - 6.5.1.6 behaviour, whether deliberate or negligent, which denies individuals their dignity and respect, is offensive, embarrassing or humiliating to the individual, isolates an individual or group and adversely affects the working or learning environment. In most cases this behaviour will have manifested itself through a number of incidents. This does not preclude consideration of a single incident as constituting harassment.
 - 6.5.2 The following table illustrates what is, what may be, and what is not personal harassment:
 - 6.5.2.1 What generally constitutes harassment:
 - 6.5.2.1.1 Serious or repeated rude, degrading, or offensive remarks, such as teasing about a person's physical characteristics or appearance, put-downs or insults.
 - 6.5.2.1.2 Displaying sexist, racist or other offensive pictures, posters, or sending e-mails related to one of the eleven grounds prohibited under the Canadian Human Rights Act.
 - 6.5.2.1.3 Repeatedly singling out an employee for meaningless or dirty jobs that are not part of her/his normal duties.

6.5.2.1.4 Threats, intimidation or retaliation against an employee, including one who has expressed concerns about perceived unethical or illegal workplace behaviours.

6.5.2.2 What may constitute harassment:

6.5.2.2.1 Criticizing an employee in public.

6.5.2.2.2 Exclusion from group activities or assignments.

6.5.2.2.3 Statements damaging to a person’s reputation.

6.5.2.3 What does not generally constitute harassment:

6.5.2.3.1 Allocating work.

6.5.2.3.2 Following-up on work absences.

6.5.2.3.3 Requiring performance to job standards.

6.5.2.3.4 Taking disciplinary measures.

6.5.2.3.5 A single or isolated incident such as an inappropriate remark or abrupt manner.

6.5.2.3.6 Exclusion of individuals for a particular job based on specific, *bona fide* occupational requirements necessary to accomplish the safe and efficient performance of the job.

6.5.2.3.7 Measures taken against someone who is careless in his or her work, such as in the handling of secret documents.

6.6 **Discrimination.** The University expressly adopts the definition of discrimination articulated by the Supreme Court of Canada, i.e. intentional or unintentional differential treatment for which there is no bona fide and reasonable justification. Such discrimination imposes burdens, obligations, or disadvantages on specific individuals or groups. Currently, “the grounds of discrimination” prohibited by the and the *Human Rights Act of Prince Edward Island* are age, race, colour, creed, ancestry, ethnic or national origin, political belief, religion, marital status, family status, physical or mental handicap, sex, sexual orientation, and, in the case of employment, unrelated criminal convictions. It is the University’s intent to include these grounds in this policy, and to add to them gender identity, which is to be understood to include transphobia and heterosexism. Any grounds of discrimination added in future to the *Human Rights Act of P.E.I.* are understood to be included in this definition.

6.7 It is not considered an infringement of this policy when a program or policy is designed to ameliorate the conditions of disadvantaged individuals or groups, including those that are disadvantaged because of age, race, colour, creed, ancestry, ethnic or national origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, sexual identity, and,

in the case of employment, unrelated criminal convictions.

- 6.8 **Systemic Discrimination** is a form of discrimination that occurs when policies, practices, or procedures which appear neutral, have a discriminatory effect on a person or class of persons who are identified by a prohibited ground. In many cases, these may appear to be fairly and equally apply to all job applicants, employees, and/or students. However, they are discriminatory if they have an adverse impact on one group and are not clearly related to ability to perform a job or actual job requirements.
- 6.9 Systemic discrimination does not exist when a policy, practice, or procedure can be demonstrated as a bona fide requirement, or when a statutory exemption has been granted.
- 6.10 **Differential Treatment** occurs when a person or class of persons who is identified by a prohibited ground, is subject to treatment that has the purpose or effect of imposing burdens, obligations, disadvantages, or preferences on that person or class of persons which are not imposed on others.
- 6.10.1 Examples of differential treatment include, but are not limited to:
- 6.10.1.1 Women not being asked to work overtime because it is assumed that they have family obligations; or
 - 6.10.1.2 Persons with disabilities not being asked to do public presentations or answer questions in class because it is assumed that this might embarrass them or cause others to feel uncomfortable.
 - 6.10.1.3 Men being preferentially offered overtime work because it is assumed that they are the primary income earners.
 - 6.10.1.4 Women faculty not being asked to consider night classes because it is assumed that they might feel unsafe after dark.

7 THE FAIR TREATMENT ADVOCATE

- 7.1 The University shall have a Fair Treatment Advocate (Officer) to deal with alleged cases of harassment and/or discrimination. Furthermore, the President shall constitute a Fair Treatment Advisory Committee (the “Committee”) composed of six persons with a mandate to offer advice to the Fair Treatment Advocate on the administration of the Fair Treatment Policy. Normally, the Fair Treatment Advocate will convene a meeting with the Committee once per semester. Each Committee member should serve for a three-year term, and membership shall be as follows:
- 7.1.1 academic staff - two;

- 7.1.2 support staff - two;
- 7.1.3 student body - two (1 graduate, 1 undergraduate);

8 TERMS OF REFERENCE FOR THE FAIR TREATMENT ADVOCATE

- 8.1 To communicate to all members of the University community, the university Fair Treatment Policy on harassment and discrimination.
- 8.2 To establish an educational program within the University to educate the University community on all aspects of harassment and discrimination.
- 8.3 To establish a liaison with the victims of harassment and/or discrimination to ensure there are no occurrences of recrimination.
- 8.4 To maintain confidential records, subject to certain powers of production, search and seizure vested in various legal authorities and the courts.
- 8.5 To report to the President of the University once each year, subject to restraints of confidentiality.
- 8.6 To co-ordinate support services for those who have experienced harassment and/or discrimination, drawing on all available resources both external to and within the University.
- 8.7 To decide, in formal investigations, if one or two investigators should conduct the investigations.
- 8.8 To make recommendations to the President for the revision of this Policy.
- 8.9 To monitor the effectiveness of this Policy.
- 8.10 To investigate and attempt to resolve cases of harassment (as described in section 10 below) or to select an alternative person in cases of conflict-of-interest or when the officer cannot expeditiously perform the tasks.
- 8.11 To maintain a list of qualified, available and willing mediators.

9 REPORTING HARASSMENT AND/OR DISCRIMINATION

- 9.1 An person who believes she or he is being harassed or discriminated against is encouraged to take personal responsibility by making a direct request to the person who is engaging in the behaviour to cease the offensive actions. If the request is unsuccessful, or does not result in a positive change of sufficient magnitude, or if making the request is not feasible, she or he may seek help under the provisions of this policy.
- 9.2 A complaint may be lodged even when there has been apparent consent by the complainant to the conduct or comment in question.
- 9.3 A person who believes he or she observes harassment or discrimination is encouraged to take responsibility and bring it to the attention of the Fair Treatment Advocate.
- 9.4 Any person alleging that an act of discrimination, sexual harassment, or personal

harassment has been committed against him/her in relation to University work, studies, or participation in campus life, may report the incident/incidents to:

- 9.4.1 his/her supervisor;
 - 9.4.2 his/her department head;
 - 9.4.3 Human Resources or Student Services;
 - 9.4.4 the Fair Treatment Advocate.
- 9.5 If a person chooses to make a complaint under section 9.4 to his/her supervisor, his/her department head, Human Resources or Student Services, those individuals shall report the incident/incidents to the Fair Treatment Advocate. This shall not preclude the supervisor or department head, in consultation with the Fair Treatment Advocate, dealing with minor complaints. Formal Complaints must be referred immediately to the Fair Treatment Advocate.
- 9.6 Where the complaint does not appear to fall within the scope of the policy, the Advocate shall direct individuals to seek recourse through their supervisor, their collective agreements, or other appropriate means.
- 9.7 A friend or advisor or colleague may accompany someone lodging a complaint.

10 COMPLAINT RESOLUTION PROCEDURES

- 10.1 Five resolution procedures are available:
- 10.1.1 assume personal responsibility and talk to the person
 - 10.1.2 consultation with your supervisor
 - 10.1.3 informal consultation with the Fair Treatment Advocate
 - 10.1.4 mediation
 - 10.1.5 formal complaint procedures
- 10.2 Informal resolutions and mediation, by their very nature, require agreement of both parties; hence, no appeal mechanism is described.
- 10.3 To resolve more serious, and often confrontational cases, a formal complaint procedure is described in Section 11.
- 10.4 The Fair Treatment Advocate, complainant or respondent may elect to bypass the informal and/or mediation procedures.
- 10.5 **General Provisions**
- 10.5.1 Anyone may seek, anonymously, the advice and assistance of the Fair Treatment Advocate. However, anything beyond what you deal with yourself, must involve the disclosure of the complainant's identity and the details of the complaint to the respondent.
 - 10.5.2 Complainants are encouraged to report their concerns as soon as possible after the alleged conduct. Only those complaints lodged by non-students within six (6) months of an event, or in the case of a series of events, the last event in a series will be processed. Students have up to six (6) months after leaving the University to lodge a complaint regarding any alleged

conduct that occurred during their time as a student at the University. The Advocate in exceptional circumstances can extend procedural time limits imposed by this policy.

- 10.5.3 When a Senior Administrative Officer, Department Head, or Supervisor becomes a complainant or respondent, she or he surrenders any rights or responsibilities assigned to administrators which effect the implementation of this policy.
- 10.5.4 Either party to a complaint may object to the participation of a person in the investigation or mediation of this policy on grounds of conflict of interest or reasonable apprehension of bias. Such objection should be submitted in writing to the Fair Treatment Advocate whose decision will be final. Objections over who conducts an investigation or mediation must be legitimate and not used as a tactic to slow or stall an investigative process. If three proposed investigators or mediators are rejected or objected to by any single participant, the appropriate Senior Administrative Officer will appoint the investigator or mediator. Where the objection relates to the participation of the Fair Treatment Advocate, the Fair Treatment Advocate will abstain from involvement in the complaint procedure and provide a list of qualified investigators to the appropriate Senior Administrative Officer (Vice President or Dean), who will coordinate the process.
- 10.5.5 A third party can initiate the procedures in this policy if the conduct of others in the learning or work environment has the effect of substantially interfering with the third party's welfare, academic, or work performance.
- 10.5.6 Complaints of discrimination, sexual harassment, or personal harassment can be resolved by employing any or all of the following procedures: (1) informal resolution, (2) mediation, and (3) formal investigative procedures. The Advocate will make reasonable effort to resolve complaints at the informal level, while reserving the right to bypass informal procedures and proceed to a formal investigation, if, in the judgement of the Fair Treatment Advocate, a case is of sufficient severity.
- 10.5.7 Employees who participate in the procedures outlined in this policy shall be given release time to consult with the Advocate and attend formal hearings pertaining to cases. Students will be assisted in adjusting schedules as necessary to attend their formal hearings.

- 10.6 **Informal Resolution** Informal resolutions are optional. The purpose of dealing with a complaint informally is to stop the offending behavior and to resolve the matter as quickly as possible. Every reasonable effort will be made to seek informal resolution within twenty (20) working days of the initiation of the complaint, or in the case of students, before the end of the term if less than one

month away.

10.6.1 The complainant has two options to pursue. If the complainant prefers to deal with the problem personally, the Advocate can provide options for resolution. Secondly, the Advocate and/or the Department Head can act as a liaison in resolving the issue. Examples of informal resolutions may include a letter to the respondent, clarification of university policy, or an information meeting between the Advocate, the complainant, and the respondent.

10.6.2 Informal resolution of a complaint that adversely affects the academic, employment, professional, or other interests of the respondent shall proceed only with the written consent of the respondent. No record of the informal resolution will be entered into an employee or student file. A record of the informal resolution will be kept in the Fair Treatment Office for seven years and then destroyed.

10.7 **Mediation**

10.7.1 Any time after a complaint has been received, the parties can attempt to resolve the complaint through a process of mediation, provided that both parties consent to such a process.

10.7.2 The Fair Treatment Advocate, in consultation with the respondent and the complainant selects a mediator. Mediation will begin within two (2) weeks of the selection of the mediator(s). Appointed mediators and the format of the mediation process must be acceptable to both the complainant and the respondent. The mediated settlement must take into consideration and be implemented within the parameters of the policies of the university and/or the provisions of the collective agreements.

10.7.3 A copy of any agreement reached during mediation is provided to each of the parties and to the Fair Treatment Advocate, and remains confidential. No record of the mediation will be entered into an employee or student file. A record of the mediation agreement will be kept in the Fair Treatment Office for seven years and then destroyed.

10.7.4 If mediation fails to arrive at a mutually acceptable solution, either party may decide to pursue a formal complaint procedure.

11 **GENERAL PROCEDURES FOR A FORMAL COMPLAINT**

11.1 **Process**

11.1.1 If at any time after the complaint has been made the complainant wishes to have the complaint investigated and decided, the complainant has the right to file a written request with the Fair Treatment Advocate. Requests include detailed accounts of the alleged conduct on the part of the

respondent that forms the basis of the complaint. If the respondent makes the request for an investigation and decision, the request will explain why the respondent seeks an investigation.

- 11.1.2 Once a formal complaint procedure has begun, each successive step should begin within ten (10) working days of the conclusion of the previous step until the complaint is resolved.
- 11.1.3 Upon receiving a written request under the formal complaint procedures, the Fair Treatment Advocate will determine whether the alleged conduct on which the complaint is based would fall within the definition of personal harassment, sexual harassment, and/or discrimination as defined in this policy. If, in the opinion of the Fair Treatment Advocate, the alleged conduct would not constitute a violation of this policy, the Fair Treatment Advocate may decide not to proceed and will inform the complainant of this decision in writing.
- 11.1.4 If the Fair Treatment Advocate finds sufficient grounds to proceed under the policy, the Fair Treatment Advocate will deliver a copy of the complainant's account of the alleged conduct to the respondent.
- 11.1.5 The respondent has the right to respond to the complaint in writing to the Fair Treatment Advocate, within a reasonable amount of time but no later than ten (10) working days from the date of the receipt of the written complaint. The respondent may (1) acknowledge or deny the validity of the complaint in whole or in part, (2) provide new information, (3) propose a resolution of the complaint, or (4) choose not to respond to the complaint. If the respondent does not submit a response, the investigation and decision process will still proceed. The Fair Treatment Advocate shall deliver a copy of that reply to the complainant. On receipt of the respondent's written reply, the complainant may (1) accept the reply as full resolution of the complaint, (2) propose a counter-resolution to be presented back to the respondent, or (3) choose to proceed with investigation and decision. The Fair Treatment Advocate will put into effect the appropriate procedures.
- 11.1.6 At any time, complainants may choose to withdraw from these complaint proceedings. However, the Fair Treatment Advocate may decide to proceed, taking into account the need for protection of the complainant and witnesses against retaliation, the need for due process on the part of respondent, and the best interest of the university community.
- 11.1.7 The Fair Treatment Advocate will notify, only to the extent required. The appropriate Department Head and Senior Administrative Officer for the complainant and the respondent of the request for a formal complaint resolution.

11.2 Investigation Procedures

- 11.2.1 The Fair Treatment Advocate will conduct the investigation of complaints unless there is a conflict of interest, or the Fair Treatment Advocate elects to utilize another investigator. The Fair Treatment Advocate may also decide that two investigators would be preferable.
- 11.2.2 The Investigator(s) will conduct the necessary investigation within the framework of “procedural fairness”. This includes each party’s right to know, understand, and respond to all allegations.
- 11.2.3 The Investigator(s) will provide an opportunity to both the complainant and the respondent to provide verbal and/or written information related to the alleged conduct. Interviewing of witnesses may be requested by complainant and respondent.
- 11.2.4 The Investigator will interview all potential witnesses. The complainant and the respondent will be provided an opportunity to respond to all relevant information provided by the witnesses.
- 11.2.5 The investigator will be submit a final report to the President, the complainant and the respondent within forty (40) working days of the start of the investigation.
- 11.2.6 The Investigator’s final report of the investigation will contain the following:
 - 11.2.6.1 A summary statement about the background of the case;
 - 11.2.6.2 A summary description of the complainant’s allegations and respondent’s response;
 - 11.2.6.3 A summary of the process followed in the investigation;
 - 11.2.6.4 A summary of the statements provided by the witnesses and the respondent;
 - 11.2.6.5 Any pertinent documentation;
 - 11.2.6.6 An opinion as to whether or not the allegations have been proven based on the balance of probabilities;
 - 11.2.6.7 If the allegations are supported, an opinion as to whether there were mitigating or aggravating circumstances affecting either party and;
 - 11.2.6.8 Recommendations for remedial action or sanctions.

11.3 Decision, Remedial Actions and Sanctions

- 11.3.1 The final disposition of the complaint will be determined by the President.
- 11.3.2 If a person is a member of a bargaining unit, any formal recommendation for remedial or disciplinary action shall be made in accordance with the relevant provisions of the collective agreement.
- 11.3.3 Where there is no collective agreement, the President shall send the recommendation for remedial or disciplinary action to the appropriate

Dean, Director, or Department Head.

11.3.4 Discipline will be appropriate to the offense and relevant circumstances of the case.

11.4 Appeal of a Formal Investigation and Decision

11.4.1 Any complainant or respondent who disagrees with the disposition or the investigative process has the right to an appeal. In the case of unionized faculty and staff, the right to grievance and arbitration will serve as the appeal process.

11.4.2 Those individuals not covered by a collective agreement may appeal through the appeal process defined below. Only one submission of appeal per case will be accepted from each party.

11.4.2.1 All appeals must be submitted in writing within ten (10) working days of receiving the original decision.

11.4.2.2 An appeal process begins with a letter written by the appellant to the University President specifying the grounds and nature of the appeal.

11.4.2.3 In the case of students and non-unionized staff, the University President shall select two (2) Senior Administrative Officers (SAOs), not involved in the original decision, to determine if there are grounds for an appeal. The SAOs shall conduct any investigations necessary to determine if there appear to be legitimate concerns with the original finding. If grounds for an appeal are found, the SAOs will select an Appeals Committee, to be composed of two administrative officers, and one non-administrative employee or student. The Appeals Committee shall be charged with hearing the appeal and issuing a binding decision.

11.4.2.4 In the case of unionized faculty and staff, the right to grievance and arbitration will serve as the appeal process.

12 GENERAL POLICY PROVISIONS

12.1 Obstructing the Process

12.1.1 Any willful action or inaction that obstructs the application of this procedure, or breaks an undertaking or agreement entered into as a result of a complaint resolution, may result in an investigation and decision.

12.2 Right of Parties to Support and Assistance

12.2.1 At all times during any stage of the procedures, the complainant and the

respondent are entitled to have a support person present. The Advocate will not act as a support person for either party but will remain a neutral third party.

12.2.2 Members of unions and employee associations have all rights to representation that their collective agreements confer.

12.3 **Retaliation**

12.3.1 Retaliation against anyone reporting or thought to have reported personal harassment, sexual harassment, and/or discrimination or who witnessed or otherwise is involved in informal, mediation or formal complaint proceedings is prohibited. Retaliation itself may result in a harassment investigation and decision process. An investigation may occur whether the complaint was substantiated or unsubstantiated. Encouraging others to retaliate also violates this policy.

12.3.2 All persons involved in these procedures shall report threats and other safety concerns immediately to the Fair Treatment Advocate and/or relevant Department Heads.

12.3.3 Examples of retaliation are listed below but are not limited to the following:

- 12.3.3.1 Unfair grading
- 12.3.3.2 Unfair evaluation
- 12.3.3.3 Unfair assignments
- 12.3.3.4 Having information withheld or made difficult to obtain in a timely manner such as class information, recommendations, or grades
- 12.3.3.5 Not being informed about important events such as meetings or changes in policies
- 12.3.3.6 Ridicule both private and public
- 12.3.3.7 Oral or written threats or bribes
- 12.3.3.8 Refusal to meet with the complainant or respondent even though she or he has a right to a meeting
- 12.3.3.9 Name calling
- 12.3.3.10 Further harassment of any nature

12.4 **Confidentiality**

12.4.1 All members of the University community involved in a case are expected to maintain confidentiality. A breach of confidentiality is a disservice to both the complainant and the respondent.

12.4.2 Confidentiality is not the same as anonymity. For a complaint to go forward to mediation or investigation and decision, the identity of the complainant and the details of the complaint must be released to the Fair

Treatment Advocate, the respondent, and those involved in the application of these procedures.

- 12.4.3 Terms of confidentiality, including the need to disclose information that restores a unit or classroom to effective functioning, may be agreed on in informal or mediation agreements between the complainant and respondent.

12.5 Record Keeping

- 12.5.1 Records are used only for the purpose for which they were created and are retained by the Advocate as the property of U.P.E.I. Case files will be kept for seven years and then destroyed.
- 12.5.2 In the case where the decision has involved an employment action or sanction, documentation of those actions will be placed on the student, employee or appropriate department file.

12.6 Consensual Relationships

- 12.6.1 Anyone who enters into a romantic or sexual relationship with a person where a power differential exists must realize that, if a charge of sexual harassment, personal harassment, and/or discrimination is subsequently lodged, it will be extremely difficult to defend the conduct on grounds of mutual consent.
- 12.6.2 This type of relationship may create a negative work or study environment for others and give rise to a complaint under this policy.
- 12.6.3 In complaints of sexual harassment that involve an alleged romantic or sexual relationship, where the respondent has control over the employment or educational status of the complainant, the burden of proof that the relationship was consensual rests with the respondent.

12.7 Policy Review

- 12.7.1 The President will constitute a committee composed of interested parties to review this policy every three years. The parties may include a broad cross section of the university community such as: the Board of Governors, administration, students, and employees. The Policy review committee may receive recommendations from the appropriate interest groups. The President may elect to involve health professionals, community representatives or other interested groups in the review process as resource persons. The Fair Treatment Advocate would also be a resource to the committee
- 12.7.2 Approval and implementation of any changes recommended by the Policy Review Committee are to be carried out in accordance with the provisions of the collective agreements.

13 Appendix I - Glossary Terms

- 13.1 **Complaint** - A formal allegation of harassment submitted to the Fair Treatment Advocate, and which is based on actions defined as harassment.
- 13.2 **Complainant** - Any person who seeks recourse pursuant to this policy as someone who has been subjected to harassment or discrimination, or who is aware of situations or incidents which may be having a discriminatory and adverse impact upon another member(s) of the University community.
- 13.3 **Confidentiality** - Confidentiality is not the same as anonymity. Terms of confidentiality, include the need to disclose information that restores a unit or classroom to effective functioning or to enable an effective investigation.
- 13.4 **Days** - Refers to business days. Weekend and statutory holidays are not included in calculating the number of days referred to in this policy.
- 13.5 **Discrimination** - Intentional or unintentional differential treatment for which there is no bona fide and reasonable justification. Currently, “the grounds of discrimination” prohibited by the Human Rights Act of Prince Edward Island are age, race, colour, creed, ancestry, ethnic or national origin, political belief, religion, marital status, family status, physical or mental handicap, sex, sexual orientation, and, in the case of employment, unrelated criminal convictions.
- 13.6 **Harrassment** - An incident or series of vexatious or disrespectful comments, displays or behaviours that demean, belittle, humiliate, embarrass, degrade or attempt to exclude; that is know or ought reasonably to be known to be unwelcome and/or offensive; and which adversely affects the employment or academic status of the individual.
- 13.7 **Mediation** - A process used to resolve conflict by having a neutral person help the disputing parties arrive at a mutually acceptable solution.
- 13.8 **Mediator** - A person trained in mediating disputes.
- 13.9 **Personal Harrassment** - A behaviour directed towards a specific person or persons that would be considered by a reasonable person to create an intimidating, humiliating, or hostile work or learning environment.
- 13.10 **Reasonable Person Test** - Refers to an assessment of responsibility that takes into account not only what the complainant and respondent experienced, knew, or understood about one another, but also what a reasonable person in each of their circumstances would or ought to have experienced, known, or understood.
- 13.11 **Respondent** - Any person against whom an allegation or a complaint of harassment or discrimination has been made pursuant to this policy.
- 13.12 **Sexual Harrassment** - All types of unwanted sexual attention which adversely affect the working or learning environment. It may occur between males and females, or between members of the same sex.