

THE CALIFORNIA STATE UNIVERSITY
Office of the Chancellor
400 Golden Shore
Long Beach, California 90802-4275
(213) 590- 5603

Code: FSR 88-13 (P)

Date: February 24, 1988 SUBJECT: Affirmative Action

To: Presidents

From: Caesar J. Naples
 Vice Chancellor
 Faculty and Staff Relations

Subject: Fact-Finding for Unit 3 Employees in Executive Order 419 Discrimination Complaints

As the result of an agreement with the California Faculty Association (CFA) effective July, 1987, the discrimination complaint process outlined in Executive Order 419: "Systemwide Grievance Procedures—Discrimination Complaints for Employees Not Covered by Existing Regulation" shall be supplemented by an optional advisory fact-finding step available to Unit 3 employees. Executive order 419 specifies procedures to "the equitable settlement of any complaint of discrimination on the basis of race, religion, color, sex, sexual preference, age, disability, marital status and/or national origin..."

A summary of the complaint process of Executive Order 419 is presented below:

Informal Level (Optional)--An individual or individuals may seek advice and counsel from the Affirmative Action Director concerning the nature of the complaint and to facilitate expeditious resolution. Or, an individual or individuals may present a potential complaint to the appropriate administrator for good faith consideration.

Level I--Formal--A formal written complaint is submitted to the appropriate administrator who holds a meeting with the complainant and the complainant's representative to reach a resolution of the complaint.

Level II--A complaint not settled at Level I may be appealed to the President at Level II. The President or designee holds a meeting with the complainant and the complainant's representative to reach a resolution of the complaint.

(over)

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Level III-A complaint not settled at Level II may be appealed to the Office of the Chancellor. At the request of the complainant. The designated individual holds a meeting with the complainant. The response of the designated individual at the Chancellor's Office is a final decision.

The option available to Unit 3 employees occurs upon appeal to Level III. If a complaint response at Level II is unsatisfactory to the complainant. and the complainant appeals the complaint to Level III. the complainant may request in writing, to the Office of the Chancellor. an advisory fact-finding investigation of the complaint. The request for the supplemental advisory fact-finding investigation must be filed no later than fourteen (14) days after the Level II response. If a request for advisory fact-finding is not made. and a Level III complaint is not filed in the fourteen (14) day period, the complaint will be considered settled. Upon receipt of an appeal. the Office of the Chancellor may also exercise the option of an advisory fact-finding investigation.

Upon receipt of the request for an advisory fact-finding investigation. a member of a panel drawn from the resources of the American Arbitration Association will be asked to review all issues and evidence presented for the Level II complaint. A written report of the outcomes of the advisory fact-finding investigation shall be sent to the Office of the Chancellor and to the complainant. The advisory fact-finding report will be considered in the determination of the Level III complaint.

The supplement of the advisory fact-finding investigation to the procedures specified in Executive Order 419 applies only to Unit 3 employees. The provisions of Executive Order 419 for other employees are not modified by the supplemental advisory fact-finding step.

Please initiate a process to notify all Unit 3 employees of this supplemental advisory fact-finding option as soon as possible. If you have questions about the fact-finding option, please call Dr. Tim T. L. Dong. State University Dean. Affirmative Action at ATSS 635-5603 or (213) 590-5603.

CJN:TD:lc

THE CALIFORNIA STATE UNIVERSITY
Office of the Chancellor
400 Golden Shore
Long Beach, California 90802
(213) 590-5512

Date: July 1, 1983
To: Presidents
From: Harry Harmon
Executive Vice Chancellor
Subject: Systemwide Grievance Procedures -Discrimination Complaints for
Employees Not Covered by Existing Regulation – Executive Order 419

I am transmitting to you five copies of Executive Order No - 419 which establishes grievance procedures for employees who allege a violation, misapplication, or misinterpretation of the CSU policy on nondiscrimination. This Executive Order applies only to those employees not covered by existing complaint or grievance procedures as specified in a negotiated MOU or applicable policy or regulation which applies to CSU.

It is your responsibility as President to implement Executive Order No.419 where applicable and to maintain the campus repository and index for all Executive Orders.

HH:md

Attachment

Distribution: Vice President, Academic Affairs
Associate Vice Presidents/Deans, Faculty Affairs
Vice Presidents, Administration
Affirmative Action Officer
Chancellor's Office Staff

THE CALIFORNIA STATE UNIVERSITY
Office of the Chancellor
400 Golden Shore
Long Beach, California 90802

Executive Order No.: 419

Title: Systemwide Grievance Procedure - Discrimination Complaints for Employees Not Covered by Existing Regulation

Effective Date: July 1, 1983

Supersedes: No Prior Executive Order

This Executive Order is established in order to fulfill relevant state and federal regulations requiring that employees be provided the opportunity to file formal complaints which allege a violation of discrimination on the basis of any of the factors listed as part of the CSU Systemwide Policy on Nondiscrimination in Employment.

The Systemwide Affirmative Action Officer will be responsible for evaluating compliance with this order and for providing assistance in the development of nondiscrimination programs.

I. Introduction

- A. The California State University, through its Chancellor and Presidents, is committed to the equitable and prompt settlement of any complaint of discrimination on the basis of race, religion, color, sex, sexual preference, age, disability, marital status and/or national origin made by any employee as defined herein. The purpose of this grievance procedure is to provide employees not covered by existing procedures with the opportunity to settle matters involving an alleged violation, misapplication or misinterpretation of the CSU policy on nondiscrimination.
- B. The California State University pledges to encourage the equitable and prompt settlement of complaints which may be raised by any employee on a claim of discrimination based on any of the protected categories listed as part of the Board of Trustees Policy on Nondiscrimination and Affirmative Action. Should discrimination be found to exist in any employment action within The California State University, all appropriate measures will be undertaken. Furthermore, should findings be made of intentional discrimination on the part of any employee, appropriate disciplinary action shall be taken under the direction of the President.

II. Application

- A. This procedure shall apply to all CSU employees, as defined herein, who are not eligible to file a grievance pursuant to Executive Order 262 (Grievance Procedure for Non-academic and Administrative Employees of The California State University and Colleges) or Executive Order 30 1 (Grievance Procedures for Academic Personnel of The California State University and Colleges) and who have not been provided with any other grievance or complaint procedure to resolve issues of alleged discrimination.

Executive Order No.419**III. Definitions**

- A. As used herein, Employee refers to:
1. permanent employee(s);
 2. probationary employee(s);
 3. temporary employee(s) employed for more than 30 consecutive days immediately prior to the event giving rise to the complaint
- who submits a complaint within the scope (Section IV, infra.) of these procedures.
- B. Appropriate Administrator -The term "appropriate administrator" as used herein refers to the appropriate administrator serving in a position designated as management or supervisory.
- C. Representative -The term "representative" as used herein shall be an employee, representative of the Union, or other representative who at the complainant's request may be present at all levels through Level III.
- D. Respond and File -The terms "respond" and "file" as used herein refer to personal delivery or deposit in the U.S. mail. If mail delivery is used, it shall include a proof of service by mail which shall establish the date of response and filing. If personal delivery is used, the calendar date of delivery shall establish the date for response or filing. A copy of all responses shall be concurrently served on the complainant's representative.

IV. Scope

- A. This procedure may be used by an employee covered by these procedures who alleges that he or she was wronged in connection with the rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion or reassignment. The employee must also allege that he/she has been directly wronged by a violation, misapplication, or misinterpretation of a specific term(s) of a CSU policy governing nondiscrimination, Title IX of the Education Amendments of 1972, as amended (20 USC 1681 et seq.), or Section 504 of the Rehabilitation Act of 1973 (29 USC 706 et seq.). CSU policies on nondiscrimination include the Trustee Policy Statement of Nondiscrimination and Affirmative Action (amended and readopted on July 89, 1980), E.O.'s 340 and 345. These laws and policies prohibit unlawful discrimination on the basis of race, color, sex, sexual preference, age, religion, disability, marital status or national origin.
- B. In order to use this procedure, an employee:
1. Must assert a violation, misapplication or misinterpretation of a CSU policy on nondiscrimination.
 2. Must assert a wrong arising from the taking of a final action or the failure to take a final action in a timely manner.

V. Informal Level (Optional)

- A. Prior to the filing of a formal complaint, under Section VI of these procedures, an individual or individuals may seek the advice and counsel of the campus Affirmative Action Coordinator in an informal meeting in order to determine the nature of any claim of discriminatory practices and to facilitate an expeditious resolution of the complaint. The Affirmative Action Coordinator shall be obligated to investigate the matter only after the complainant has submitted a written request for such an investigation.
- B. An employee shall also have the right to present a potential complaint and to have that potential complaint considered in good faith. The employee and representative, if any, shall discuss the potential complaint with the appropriate administrator no later than thirty-five (35) days after the event giving rise to the potential complaint or no later than thirty-five (35) days after the employee knew or reasonably should have known of the event giving rise to the potential complaint.
- C. Whenever possible, the parties shall attempt to resolve the potential complaint informally
- D. A resolution of the potential complaint at the Informal Level shall not be precedent setting.

VI. Level I –Formal

- A. An employee may file a Level I complaint with the appropriate administrator no later than forty-two (42) days after the event giving rise to the complaint or no later than forty-two (42) days after the employee knew or reasonably should have known of the event giving rise to the complaint. The complainant shall state on a complaint form agreed to by the parties and provided by the CSU:
 - 1. The term(s) of the CSU systemwide policy or applicable Federal law governing nondiscrimination alleged to have been violated.
 - 2. A detailed description of the factual events giving rise to the complaint.
 - 3. A proposed remedy.
 - 4. The name and classification of the complainant and his/her signature.
 - 5. The name of the representative, if any.
 - 6. The name and address of the Union, if the representative is acting as an agent of the Union.
 - 7. The date of submission.
- B. The appropriate administrator shall hold a meeting with the complainant and the complainant's representative, if any, at a mutually acceptable time and location. The appropriate administrator shall respond to the complainant no later than twenty-one (21) days after the Level I filing.

Executive Order No.419**VII. Level II**

- A. In the event the complaint is not settled at Level I, the complainant may file the Level II complaint with the President no later than fourteen (14) days after the Level I response. If a settlement is proposed at Level I, the complainant should include a written statement relevant to the settlement proposal. The President or designee shall hold a meeting with the complainant and the complainant's representative, if any, at a mutually acceptable time and location. The President shall respond to the complainant no later than twenty- one (21) days after the Level II filing.
- B. The complainant shall present at Level II all issues and evidence known, or which could have been reasonably known, related to the complaint. No additional issues may be presented by the complainant after Level II.
- C. Amendments and/or modifications to the complaint shall not be made by the complainant after the Level II filing date.
- D. Prior to the Level II response date, the parties may, by mutual agreement, waive all procedures at Level II and expedite the complaint to Level III. Level III time limits shall commence on the date the agreement to expedite was reached.

VIII Level III

- A. In the event the complaint is not settled at Level II, the complainant may file a Level III complaint with the Office of the Chancellor, no later than fourteen (14) days after the Level II response.
- B. Upon request of a complainant, a designated individual in the Office of the Chancellor shall hold a meeting with the complainant. The designated individual in the Office of the Chancellor shall respond to the complainant no later than twenty-one (21) days after the Level III filing. The Level III response shall be a final decision.

IX. General Provisions

- A. The California State University, through its Chancellor and Presidents, assures that no retaliatory action or reprisals shall be taken against those persons who file complaints of discrimination on the basis of race, religion, color, sex, sexual preference, age, disability, marital status or national origin.
- B. Failure of the complainant to comply with the time limitations of this procedure shall render the complaint null and void and bar subsequent riling of this complaint. Failure by the appropriate administrator or President to timely respond under this procedure shall permit the complaint to be filed at the next level.
- C. (1) Time limits set forth herein refer to calendar days. If the last day of a described time limit falls on a weekend or campus holiday, the time limit shall be extended to the next campus working day.

(2) Time limits set forth in this procedure may be extended by mutual agreement. If the complainant or appropriate administrator is on a paid leave of seven (7) days or more, the time limits shall be extended by the length of time the complainant or the appropriate administrator is on leave.

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- D. In cases where it is necessary for the complainant or his/her representative to have access to information for the purpose of investigating a complaint, the complainant or his/her representative shall make a written request for such information to the appropriate administrator. The complainant or his/her representative shall have access to information within the policies and procedures defining confidentiality which is relevant to any issue raised by the complaint. This provision does not authorize a complainant access to the personnel files of another without the written consent of that person.
- E. A complainant may withdraw a complaint at any time. The complainant shall not file any subsequent complaint on the same alleged incident.
- F. The parties, by mutual agreement, may consolidate complaints on similar issues at any level.
- G. Prior to riling a complaint, the potential complainant and representative, if any, shall each be provided with one (1) hour released time for complaint preparation and reasonable time for complaint presentation at the Informal Level.
- H. After the complaint has been filed, a representative and the complainant shall be provided reasonable released time for the purpose of preparation and presentation of the complaint.
- J. Both parties agree that all complaint files shall be confidential. Both parties agree that specific statements made and records used in complaint meetings shall be confidential.

Signed
W. Ann Reynolds, Chancellor

Date: July 1, 1983