

**Shepherd University**

**EQUAL OPPORTUNITY POLICY  
AND  
AFFIRMATIVE ACTION PLAN**

**REVISED 2013**

# **Shepherd University Equal Opportunity Policy and Affirmative Action Plan**

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## PREFACE

The goal of Shepherd University's *Equal Opportunity Policy and Affirmative Action Plan* is to create desired changes in the representation and status of qualified minorities, females, and disabled persons in the institution. Additionally, the *Equal Opportunity Policy and Affirmative Action Plan* is designed to incorporate an equal opportunity/affirmative action mechanism into the operational structure of Shepherd University.

Shepherd University, recognizing that equality of opportunity is a fundamental goal in a democratic society, shares the responsibility for achieving that equality. Shepherd University, therefore, commits itself, morally and legally, to take affirmative action to recruit and employ excellent candidates and to insure that all present employees receive education, training, compensation, promotion, tenure, transfer and all other benefits of employment without regard to race, color, age, religion, sex, sexual orientation, physical disability, ancestry, familial status, veteran status, or ethnicity or national origin, except where a Bona Fide Occupational Qualification (BFOQ) exists. The University neither affiliates knowingly with, nor grants recognition to, any individual, group, or organization having policies that discriminate on the basis of race, color, age, religion, sex, national origin, handicap, ethnicity, or sexual preference/orientation as defined by applicable laws and regulations.

This *Equal Opportunity Policy and Affirmative Action Plan* is a reaffirmation of Shepherd University's intention to achieve, through good faith efforts and within reasonable time periods, a representation of minorities and women in each major job classification, which reflects the current availability and merit of such individuals and the University's capability to attract them. Shepherd's Equal Opportunity Policy and Affirmative Action Plan is aimed at reducing any under-representation and under-utilization of minorities and women.

The seven race/ethnic categories as defined by the Equal Employment Opportunity Commission are defined as follows:

1. White (not Hispanic or Latino): A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
2. Black or African American (not Hispanic or Latino): A person having origins in any of the black racial groups of Africa.
3. Hispanic or Latino: A person of Cuban, Mexican, Puerto Rican, south or Central American, or other Spanish culture or origin regardless of race.
4. Asian (not Hispanic or Latino): A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
5. Native Hawaiian or Other Pacific Islander (not Hispanic or Latino): A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
6. American Indian or Alaska Native (not Hispanic or Latino): A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.
7. Two or More Races (not Hispanic or Latino): All persons who identify with more than one of the above five races.

Shepherd University strives to provide educational opportunities for minorities and women in the student body, which reflect the interests, individual merit and availability of such individuals. The University attempts to ensure equality of opportunity and treatment in all areas related to student admissions, instruction, accommodations, financial assistance, programs, employment, placement and other services without regard to race, disability, color, age, religion, sex, sexual preference/orientation, ancestry, ethnicity, blindness, familial status, veteran status, or national origin.

## **SUMMARY OF APPLICABLE NONDISCRIMINATION LAWS, GUIDELINES AND EXECUTIVE ORDERS**

In combating discrimination and the potential continuing effects of past discrimination, one of the first steps is to understand the equal opportunity laws and regulations which protect citizens. Cited below are summaries of major laws, guidelines, and executive orders on which the policies which are the basis of the *Shepherd University Equal Opportunity Policy and Affirmative Action Plan*.

**Accommodations of Special Religious Holidays** - Recognizing that some employees may observe religious holidays not included on the list of Shepherd University recognized holidays, the University, in accordance with legal guidelines, will consider such needs by granting reasonable time off to employees as long as it does not cause undue operational problems and hardships within the division or unit. Time off granted to administrators and classified employees for the observance of special days shall be charged to annual leave or to accumulated compensatory time off credits.

**Age Discrimination in Employment Act (ADEA)** makes it illegal for employers to discriminate against any person on the basis of their age exceeding 40 years. Administration of the Act originally was the responsibility of the Wage and Hour Division of the Department of Labor, but in July 1979, this responsibility was transferred to the EEOC.

**Americans With Disabilities Act, Title I**, covers employment provisions prohibiting discrimination in any terms or conditions of employment for qualified individuals with a disability.

**Equal Pay Act of 1963, as amended by Education Amendment of 1972 (Higher Education Act)**, prohibits discrimination in salaries (including almost all fringe benefits) on the basis of sex. Employees performing essentially equal work receive equal pay and other compensation. Salaries do not differ because of any difference in race, color, age, religion, sex, sexual orientation, or national religion, disability, or familial status. The Equal Pay Act is administered by the Equal Employment Opportunity Commission.

**Executive Order 11246, as amended by Executive Order 11375 in 1967**, prohibits discrimination in employment (including the hiring, upgrading, salaries, fringe benefits, training and other conditions of employment) on the basis of race, color, religion, national origin or sex by institutions with federal contracts over \$10,000 over a 12-month period. Executive Order 11246 embodies two concepts: Nondiscrimination and Affirmative Action.

**Nondiscrimination** requires the elimination of all existing discriminatory conditions, whether purposeful or inadvertent. A contractor (University) must carefully and systematically examine all of its employment policies to be sure they do not, if implemented as stated, operate to the detriment of any person on the grounds of race, color, religion, sex, sexual orientation, or national origin. A contractor also must ensure that the practices of those responsible in matters of employment, including all supervisors, are nondiscriminatory.

**Affirmative Action** requires that a contractor do more than ensure employment neutrality with regard to race, color, religion, sex, sexual orientation and national origin. Affirmative action requires the employer to make additional efforts to recruit, employ and promote qualified members of groups formerly excluded, even if that exclusion cannot be traced to particular discriminatory actions on the part of the employer. The premise of the affirmative action concept of the Executive Order is that unless positive action is undertaken to overcome the effects of systemic institutional forms of exclusion and discrimination, benign neutrality in employment practices will tend to perpetuate the status quo indefinitely.

**Executive Order 11246, effective February 20, 1973**, requires that positive action be taken to ensure equal employment opportunities for members of various religious and ethnic groups, primarily, but not exclusively, of Eastern, Middle, and Southern European ancestry such as Italians, Greeks, Slavs, Jews, and Catholics. The guidelines are administered by the Office of Federal Contract Compliance Programs, US Department of Labor.

**Immigration Reform and Control Act of 1986** protects an alien lawfully in the United States and legally employable under Immigration and Naturalization Service regulations in the same manner as United States Citizens from discrimination in employment and equal opportunity to programs.

**Public Law 93-516, as amended and otherwise known as the Rehabilitation Act of 1973**, states that government contractors must agree to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their mental or physical impairment(s) in all employment practices, such as employment, upgrading, demotion and transfer, recruitment and advertising, layoff or termination, rates of pay and other forms of compensation, and selection for training including outreach and position recruitment programs.

The regulations define the term 'disabled individuals' as any person who: (1) has a physical or mental impairment(s) which substantially limits one or more major life activities, including communication, ambulation, self-care, socialization, education, vocational training, employment, transportation, or adapting to housing – especially those life activities that affect employability; (2) has a record of such impairment(s), even if they are completely recovered from a previous physical or mental impairment(s); or (3) is perceived by employers or supervisors as having such impairment(s), whether or not such impairment(s) exists.

The successful disabled applicant, as with all applicants, must possess sufficient work capacity to match the job duties and requirements consistent with his or her interests, capabilities, and limitations. The Rehabilitation Act is administered by the Office of Federal Contract Compliance Programs, Department of Labor.

**Title VI of the Civil Rights Act of 1964** prohibits discrimination on the basis of race, color, or national origin by educational programs receiving federal funds. This legislation provides coverage for students and others, and it relates directly to the availability of activities, services and curriculum to all persons affiliated or seeking affiliation with the institution. It is administered by the Office of Civil Rights.

**Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972**, prohibits discrimination in employment (including the hiring, upgrading, salaries, fringe benefits, training and all other conditions of employment) on the basis of race, color, religion, national origin, or sex. It is administered by the Equal Employment Opportunity Commission.

**Title IX of the Education Amendments of 1972 (Higher Education Act)** prohibits sex discrimination against students or others in educational programs or activities. Patterned after Title VI of the Civil Rights Act, Title IX states that no person shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. It is administered by the Office of Civil Rights, US Department of Education.

**Title XII (Section 799a) and Title VIII (Section 845) of the Public Health Service Act, as amended by the Comprehensive Health Manpower Training Act and the Nurse Training Amendments Acts of 1971**, prohibit sexually discriminatory admission of students to federally assisted health personnel training programs and sexually discriminatory practices affecting employees who work directly with students or prospective students in such programs. It is administered by the Office of Civil Rights, US Department of Education.

**West Virginia Human Rights Act of 1967 as amended** is the public policy of the State of West Virginia to provide all of its' citizens equal opportunity for employment and equal access to places of public accommodations without regard to race, religion, color, national origin, ancestry, sex, sexual preference, age, handicap or familial status. Non-discrimination also extends to conditions of hiring, tenure, compensation, training, etc. The West Virginia Human Rights Act is administered by the West Virginia Human Rights Commission.

**Vietnam Era Veterans Readjustment Act of 1974** requires all federal contractors, including higher education institutions, to take affirmative action to employ and advance in employment disabled veterans and veterans of the Vietnam Era. The law is administered by the Office of Federal Contract Compliance Programs, US Department of Labor.

## IMPLEMENTATION RESPONSIBILITY

The responsibility for ensuring equal opportunity within Shepherd University rests with the President as Chief Executive Officer and his/her delegates, the Vice President/Executive Officers, deans, and unit heads. The President is the Chief Equal Opportunity Officer. The President is responsible for ensuring the establishment, maintenance, coordination and implementation of a positive, continuing program to promote equal opportunities throughout the entire University organization. Persons designated by the President from time to time shall assist in discharging responsibilities as the Chief Equal Opportunity Officer.

The President and members of the Executive Staff provide leadership and support for affirmative action throughout the University community and elsewhere. They evaluate the progress of all groups, departments and units in implementing the *Equal Opportunity Policy and Affirmative Action Plan* and in meeting goals and timetables; conduct equal opportunity/affirmative action meetings with unit heads as required; review the actions, periodic reports and affirmative action recommendations prepared by the unit heads; require the documentation of recruitment and selection efforts; monitor the appointment, promotion, tenure, transfer, and termination recommendations made by employing supervisors and directors to ensure compliance with the *Equal Opportunity Policy and Affirmative Action Plan*; evaluate supervisors in part on the basis of their equal employment opportunity efforts and results; and take action to prevent harassment of employees placed through affirmative action efforts.

Each Vice President/Executive Officer, director, dean, unit head and all other individuals with supervisory authority have immediate responsibility for carrying out the *Equal Opportunity Policy and Affirmative Action Plan* in the areas in which they have responsibility. Each administrator identifies problem areas and develops goals and timetables consistent with federal requirements and with the provisions contained within the *Equal Opportunity Policy and Affirmative Action Plan*.

The Director of Human Resources serves as the University's Director of Affirmative Action. The Director of Affirmative Action is designated by the President to assist primarily in developing, implementing and maintaining the Shepherd University policy of equal opportunity and the procedures that constitute the *Equal Opportunity Policy and Affirmative Action Plan* for non-faculty employees. The Director of Affirmative Action provides direct assistance to all employing officers in implementing the *Equal Opportunity Policy and Affirmative Action Plan* and its progress; audits periodically the Shepherd University job profile and employment, promotion and training practices as they relate to equal employment opportunity; provides supervisory and managerial personnel with resource materials to assist in the development of training programs; assists employees in the development of their potential through the staff education program; assists in the distribution and communication of the *Equal Opportunity Policy and Affirmative Action Plan* and is responsible for posting required non-discrimination policy notices.

# **AFFIRMATIVE ACTION PLAN**

In cooperation with the Office of the President and the Vice President for Academic Affairs, the Director of Affirmative Action has major responsibility for monitoring the effectiveness of the equal opportunity/affirmative action policies of Shepherd University and ensuring compliance with these provisions. These policies apply to all types of employees – faculty, staff, and students.

Faculty (instructional staff) includes all full-time and part-time employees whose specific assignments customarily are made for the purpose of conducting instruction, research or public service as a principal activity, and who hold academic rank titles of professor, associate professor, assistant professor, instructor, lecturer, or the equivalent of any one of these academic ranks.

Staff (non-instructional staff) includes executive, administrative and managerial positions if their principal activity is administrative and professional non-faculty, clerical/secretarial, technical/paraprofessional, skilled crafts and service/maintenance categories.

Student employees are those whose primary role at the University is that of a student. They are employed on a part-time basis in various roles, in jobs that are mostly found on campus.

## **EMPLOYMENT PROGRAMS**

Shepherd University has implemented orientation programs for full-time and part-time faculty and staff. Every new employee is required by law to complete a Form I-9. Compliance with the provisions of this law, however, shall not be used to discriminate against any employee. Exit surveys are conducted for employees leaving the University. The survey instrument includes specific questions about whether the individual has experienced any discrimination while employed by the University and whether their departure is in any way related to discriminatory actions.

## **FACULTY RECRUITMENT AND HIRING PROCEDURES**

The following descriptions of the faculty recruitment and hiring procedures and the guidelines and criteria for promotion in rank and tenure are excerpted from the *Faculty Handbook*.

- (1) Dean receives permission from the Vice President for Academic Affairs to recruit for a position after the Vice President for Academic Affairs receives permission from the President. Rank and salary range are agreed upon.
- (2) Dean notifies the Department Chair of agreement to seek new faculty hire with rank and salary range agreed upon.



- (3) Department Chair sets up Search Committee in compliance with the University, School, Department and/or PEUC policy. The search committee chair, after consultation with the School Dean and the Vice President for Academic affairs, will ensure that the candidate(s) will be interviewed by personnel impacted by the hire.
- (4) Search Committee/Department Chair writes Position Announcement which includes tenure status, starting date, what to include in application package statement of teaching philosophy, letter of application, unofficial transcripts, reference letters, curriculum vitae.
- (5) Training on AA/EEO requirements is provided by the HR staff through Sakai. Search committee members are required to complete this training and receive a certificate of completion in order to serve on search committees.
- (6) Department Chair/Search Committee contacts Human Resources to begin a job posting through the online HR system indicating salary range and advertisement venues. Search budget is established. Search committee ensures that the Department Chair, the School Dean, and the Vice President for Academic Affairs each have a copy of the curriculum vitae for each candidate who is brought to campus for an interview.
- (7) Chair of Search Committee sends Position Announcement to such sources as may maximize racial and ethnic diversity and gender representation on the faculty.
- (8) Human Resources places the ads in publications indicated on the job posting.
- (9) Applicants apply through the online HR system. They receive confirmation that their application was received.
- (10) Applicants may provide affirmative action information when they apply.
- (11) Electronic applications go directly to the Search Committee.

## **PROMOTION IN RANK AND TENURE**

In order to fulfill the charge of the Shepherd University mission it is necessary to establish a procedural system of high standards to maintain and evaluate continuously the faculty of Shepherd University for the purpose of promotion and tenure.

Promotion and tenure of faculty are the prerogatives of the President, who will base his or her decision primarily upon the guidelines and the recommendation(s) of Vice President for Academic Affairs, the School Dean, and the appropriate University Promotion and Tenure Committees.

Promotion in rank and tenure will not be granted routinely nor automatically because of length of service. Neither will promotion or tenure be denied capriciously. Requests for granting of promotion or tenure will be evaluated on the basis of the following five areas of performance:

- (1) The possession of the terminal degree from a recognized regionally accredited institution of higher education and/or the requisite number of graduate hours toward the doctorate. Requests for exceptions will be entertained only for unusual circumstances;
- (2) Excellence in teaching as evidenced by recent and regular evaluation;
- (3) Professional growth as evidenced by scholarly research or creative work appropriate to the discipline or field of appointment. Such evidence may include publication; presentation of scholarly papers at professional forums; participation and recognition in juried shows, concerts, recitals; or other achievements of significant professional stature;
- (4) Evidence of excellence in professional service, manifested in activities that add to the efficiency and positive image of the discipline, the department, or school, Shepherd University, and the State of West Virginia, including involvement in professional organizations at the national, regional, and state levels;
- (5) Attainment of the minimum educational and experience requirements as established in policy defining rank. Tenure may be attained only by faculty who hold the rank of Assistant Professor or higher. Tenure evaluation by the President and Vice President for Academic Affairs may also be affected by the institution and projections for future needs.

## **HIRING PROCEDURES FOR STAFF**

To accomplish equal opportunity employment at Shepherd University, the following practices and procedures need to be followed when hiring non-classified and classified staff members.

- (1) When a vacancy occurs, the first step for the supervisor is to begin a Separation Notice using PeopleAdmin, the online Human Resources system (See HR System Administration Site link on HR website: [www.shepherd.edu/hrweb](http://www.shepherd.edu/hrweb)). Instructions for completing online personnel actions are available at that website.
- (2) Contact the Human Resources Office to begin a job posting requisition. The job must be posted for a minimum of 10 days. The extent of external advertising desired should be requested in the posting requisition.
- (3) After the posting has been approved by everyone in the approval hierarchy and reaches the HR Office, the HR Office will advertise the job as requested in the job posting requisition.
- (4) Individuals who are interested in the position will apply online and the hiring manager and search committee can view the applications online.
- (5) Please note that there are some questions that cannot be asked of candidates and topics that may not be discussed in relation to the hiring process. Search committee members must be alert to avoid discussing candidates or talking with them in a way that might be considered as discriminatory. Training on this topic is provided by the HR Office through Sakai.

- (6) Once candidates are interviewed by the hiring manager and the search committee and a selection has been made, the employment offer may be extended with authorization from the appropriate administrator, usually at the executive level.
- (7) Please note that non-exempt classified employees who have applied for non-exempt classified positions have preference over external applicants. (See BOG Policy 9 for more details at <http://www.shepherd.edu/bogweb/policies/policy9.pdf>.) When there are multiple internal non-exempt classified applicants for a non-exempt classified position, and if the candidates are equally qualified for the position, then the employee with the most seniority must be hired. If one internal candidate is deemed by the hiring manager to be better qualified for the position than other internal candidates, then that individual may be hired even if he or she does not have as much seniority as other internal candidates.
- (8) The hiring manager must notify the HR Office that a selection has been made so that the HR Office can initiate the generation of email notifications to the unsuccessful applicants telling them that the position has been filled. The hiring manager should call (as opposed to sending a letter or email message) any candidate who has been interviewed for the job, whether the interview was by phone or in person, to tell them that they have not been selected for the position.
- (9) Once the successful candidate has been identified, the next step is for the hiring manager to begin a Hiring Proposal through PeopleAdmin, the online HR system.
- (10) Employees are not permitted to work until the supervisor is notified by the HR Office that the employee has been authorized to begin.

## **EQUAL OPPORTUNITY POLICY**

### **STUDENT ENROLLMENT**

In addition to equal opportunity for employees of the University, likewise those principles are applied to the enrollment of students, as described for the following categories.

- (1) Admissions – Special efforts are made to recruit minority students. All persons involved in reviewing admissions applications are kept aware of the University’s equal opportunity policies. The equal opportunity policies are stated on the admissions application and in the University catalog. All students are advised that the full range of opportunities at Shepherd University are open to them without regard to race, color, age, religion, ethnicity, sex, sexual preference or orientation, national origin, handicap or familial status. The *Student Handbook* carries this notification.

- (2) Special Services – Counseling and tutoring services are open on a non-discriminatory basis, and special effort is made to encourage use of the services by eligible minority race students.
- (3) Student Financial Aid and Student Employment – All employment opportunities and student financial aid are administered on a non-discriminatory basis.
- (4) Student Housing – All Shepherd University owned housing is available to all students without regard to race, color, age, religion, ethnicity, sex, sexual preference/orientation, national origin, or blindness. On-campus housing is available to persons with disabilities.
- (5) Students with Disabilities – Class scheduling takes into account the need to periodically schedule all required courses in buildings that are accessible to the disabled.
- (6) Title IX (Nondiscrimination on Basis of Sex) – The University fully met the Title IX self-report requirements in the Spring of 1976. The review included an examination of both facilities and University procedures. Student members made up about half of the committee that wrote the self-evaluation of Title IX in athletics. Board publicity was given to the University policy and procedures for presenting student grievances.
- (7) In accordance with Section 86.8(b), Title 45, Subtitle A Part 86, of the Code of Federal Regulations, the University gives notice of the procedure of bringing grievance under Title IX, Education Amendments of 1992.

A student grievance in relation to student programs and services is to be directed to the Dean of Students. A student grievance in relation to the instructional program is to be directed to the Vice President for Academic Affairs Office (extension 5176).

A student request for a waiver of a specific component of the instructional program should be directed to the Admissions and Credits Committee (c/o Office of the Registrar, extension 5463).

## **DISABLED AND VIETNAM ERA VETERANS**

This plan implements the amendments of the Vietnam Era Veterans Readjustment Act of 1974 requiring Shepherd University or federal contractors to take Affirmative Action to employ and advance in employment disabled veterans and veterans of the Vietnam Era. The law is administered by the Office of Federal Contract Compliance Programs, US Department of Labor.

### **Disabilities**

In the screening of all applicants and promotional candidates, all job qualification requirements must be job related and all information obtained from medical examinations and pre-employment inquiries be used in accordance with only job-related standards.

Each employing officer will document job-related reasons for the elimination of any qualified person with disabilities for employment or advancement consistent with reasons of business necessity and the safe performance of the job. Employing supervisors must forward the non-faculty rejection documentation memorandum to the Director of Affirmative Action. Copies of documentation memoranda pertaining to faculty should be forwarded to the responsible dean or director.

## **Accommodations**

In considering business necessity and financial cost and expenses, to the extent possible, Shepherd University will eliminate any physical or other barriers that prevent or impede the employment or advancement of disabled individuals.

## **Compensation**

In offering employment or promotions to individuals with disabilities, the amount of compensation offered will not be reduced because of any disability income, pension or other benefit the applicant or employee receives from other sources.

## **Professional Consultations**

Shepherd University will seek professional guidance as needed from local, state or area rehabilitation agencies and from any of the institution's faculty experienced in the evaluation and/ or placement of individuals with disabilities.

## **Determination of Disability**

Shepherd University, in requiring a determination of employee's disability, may require the employee to provide medical documentation of the impairment(s) or, in the alternative, may require the employee to undergo a medical examination at the institution's expense. Requests for accommodations pursuant to the Americans with Disabilities Act (ADA) must be made through the Human Resources Office. The ADA request form can be found on the HR website at <http://www.shepherd.edu/hrweb/ADA.pdf>.

## **SEXUAL HARASSMENT POLICY**

Sexual harassment is prohibited sex discrimination under Section 703, Title VII, Civil Rights Act of 1964. It is contrary to the policies of Shepherd University for any employee to sexually harass another employee or student of the University by: (a) making unwelcome sexual advances, or request for sexual favors, or other verbal or physical conduct of a sexual nature as a condition of the employees continued employment, or a student's progress toward completing course requirements; or (b) making submission to or rejections of such conduct the basis for employment decisions or academic process decisions; or (c) through such conduct creating an intimidating, hostile or offensive working environment for an employee or unreasonably interfering with a student's educational process.

Any University employee who has been found by the University, after appropriate investigation, to have sexually harassed another employee or student of the University will be subject to appropriate sanctions depending on the circumstances, up to and including termination. Any student who is found guilty of sexual harassment will be subject to the established student disciplinary process as outlined in the *Student Handbook*.

The University recognizes that the question of whether a particular action or incident is a purely personal, social relationship without a discriminatory effect requires a factual determination based on a thorough investigation of the alleged action or incident. The University recognizes the delicate situation of faculty whose presentations of subject matter may unavoidably broach topics with implied or explicit sexual overtones. Given the nature of this issue, the University recognizes also that false accusations of sexual harassment can have serious effects on innocent women and men.

## **Procedures for Sexual Harassment Complaints**

Response to sexual harassment complainant and the complaints are to be speedy and confidential. However, the University recognizes the right of the accused to a fair review. The steps in the procedure of processing sexual harassment complaints vary depending on whether the resolution is formal or informal.

### **Informal Process**

A victim or third party submits a complaint to the Campus Ombudsperson. An initial meeting between the Ombudsperson and complainant takes place. All options are explained by the Ombudsperson.

If the Informal Resolution option is chosen, the complainant has two options: (1) Opt for a meeting with the alleged harasser and the Ombudsperson. All parties are permitted to bring support persons (friend, family member, colleague, etc). The Ombudsperson can limit the number of support persons present to a reasonable sum. The Ombudsperson will serve as mediator, listening to all views and establishing a resolution document or mediation agreement as appropriate. (2) Opt for the Ombudsperson to meet with all parties separately. The Ombudsperson listens to all views, presents views of opposing parties to each other, and establishes a resolution document or mediation agreement as appropriate. The resolution document or mediation agreement may include a “no-contact arrangement” and/or other provisions. The outcome of the informal resolution should meet the satisfaction of all parties to the fullest extent possible. If the complainant is not satisfied, then the Ombudsperson will review other options available. Records, including the resolution document, are submitted to the office of Ombudsperson for filing.

The Ombudsperson will follow-up with parties within two weeks of the resolution if one was reached. Additional follow-up contacts will be made as needed. Proceedings and records will be confidential to the fullest extent possible. If additional complaints arise subsequently as to the same employee, the earlier records may be evidence of continuing practice of misconduct. Complainants should act in a timely fashion. The Ombudsperson will, in all cases, attempt to resolve informal complaints within two weeks of notification of the complaint.

## **Formal Process**

Any employee or student who feels that informal resolution of a complaint will not be or has not been satisfactory should file a formal written complaint with the Ombudsperson. Since the passage of time makes the resolution of complaints more difficult, it is recommended that the written complaint be filed as soon as possible from the date of the incident(s). A complaint filed against a professor by a student currently enrolled in the professor's class should be made as soon as possible. The student may choose to have the complaint held confidentially until the end of the semester, at which time the complaint will be resolved. But some situations may require immediate action on the part of the University. A complaint against another student will be referred to the Dean of Students for management as a student disciplinary matter.

The President shall annually designate an eight-member body made up of four faculty and four staff. The Ombudsperson will randomly select two panelists from the same group as the person accused and one panelist from the other group to investigate each formal complaint. Immediate supervisors of the accused or the accuser, or any person with a specific, known bias, will be excluded from serving on the three member panel. The formation of the panel will be completed within two weeks of the submission of the written complaint, except where extenuating circumstances require additional time.

When a formal written complaint against an employee is received by the Campus Ombudsperson, a three-member panel will be selected and copies of the complaint will be given to panel members. Panel members will conduct such investigation into the facts and circumstances of the complaints as may be deemed appropriate by any of the panel members. The panel may meet with the accuser, accused, and any witnesses relevant to its investigation, but shall at all times act collectively as a group and not individually. The investigation will be completed within four weeks of the formation of the panel, except where extenuating circumstances require additional time.

The panel shall prepare a written report of its factual findings and conclusions regarding the merits of the complaint. This report may, if applicable, include dissenting conclusions. If the report finds any part of the complaint to be meritorious, then the report will designate appropriate action with respect to the perpetrator. The panel will complete the written report within one week of the close of the investigation, except where extenuating circumstances require additional time.

The panel shall direct its written report to the Ombudsperson and to the Executive Officer who supervises the accused. The Ombudsperson shall then provide a copy of the report to the accused and the accuser and notice of whether the Executive Officer implemented some form of adverse action as to the employee-perpetrator.

Appeals on the part of the accuser may be directed to the President. The accused may appeal any adverse action by following the established grievance procedures of the University.

## GENERAL HARASSMENT POLICY

Shepherd University does not tolerate harassment in the work place or of members of the University community. Shepherd University wants to provide an environment free of any form of harassment. For purposes of this policy, harassment is defined as any form of conduct that would be offensive, intimidating, or threatening to the average person and is done on the basis of race, religion, color, ethnicity, national origin, ancestry, gender, age, blindness, sexual preference/orientation, handicap, or familial status of the recipient, or on account of the recipient's relationship with person(s) of protected-class status.

If an employee or student believes he/she has been harassed in violation of this policy, he/she should take the following steps immediately:

If practical, confront your harasser with your complaint and explain why the action or comment is offensive or improper. Say it firmly, without smiling, and without apologizing.

Keep records. Write a journal on this issue, record the facts on a tape recorder, or tell a friend in confidence. Keep track of dates, places, times, witnesses, and the nature of the harassment.

Save any letters, cards, or notes in a secure place, preferably at home. Bear in mind that this document may be used in litigation.

Tell the harasser, in writing, that you object to this behavior. Describe the specific things that offend or upset you. Treat this letter as a confidential piece of communication and keep a copy of it.

If harassment does not stop after taking these steps or if initial harassment is so serious as to require immediate action then a complaint should be initiated. A complainant should always feel encouraged to consult with the Affirmative Action Officer, members of the Diversity and Equity Committee, or members of the Harassment Policy Team for guidance and assistance if they feel that they are a victim of harassment. However, generally, neither the Affirmative Action Officer, nor Committee or Team members can serve as a representative of the victim.

Informal resolution of complaints, when possible, is the preferred and the most effective way of correcting misconduct. An employee who feels he or she is being or has been harassed should contact his or her immediate supervisor who should report to the Affirmative Action Officer any complaints that cannot be resolved immediately. A student can contact the Dean of Students, the Judicial Affairs Officer in Student Affairs, or other members of the Harassment Policy Team for assistance.

Any employee or student who feels that informal resolution of a complaint against an employee will not be or has not been satisfactory may file a formal written complaint with the Affirmative Action Officer. Formal complaints against students are filed with the Campus Judicial Affairs Officer, and they are handled under student conduct procedures. Since the passage of time makes the resolution of complaints more difficult, it is recommended that the written complaint be filed within 60 days.

The Affirmative Action Officer, with the assistance of the Office of the President, will investigate all formal written complaints against employees and forward a recommendation to the appropriate Vice President within 30 days of receipt of the complaint. If the complainant



feels that the Affirmative Action Officer has a conflict of interest of any sort, the complainant may petition the President to appoint an alternative investigator.

Appeals on the part of the accuser may be directed to the President. The accused may appeal any adverse action by following the established grievance procedures of the University.

## **RACIAL HARASSMENT POLICY**

Shepherd University does not tolerate harassment in the work place or of members of the University community. Shepherd University wants to provide an environment free of any form of harassment. For purposes of this policy, racial harassment is defined as any form of conduct that would be offensive, intimidating, or threatening to the average person and is done on the basis of race, color, ethnicity, national origin, or ancestry of the recipient, or on account of the recipient's relationship with person(s) of protected-class status.

If an employee or student believes he/she has been racially harassed in violation of this policy, he/she should take the following steps immediately:

If practical, confront your harasser with your complaint and explain why the action or comment is offensive or improper. Say it firmly, without smiling, and without apologizing.

Keep records. Write a journal on this issue, record the facts on a tape recorder, or tell a friend in confidence. Keep track of dates, places, times, witnesses, and the nature of the harassment. Save any letters, cards, or notes in a secure place, preferably at home. Bear in mind that this document may be used in litigation.

Tell the harasser, in writing, that you object to this behavior. Describe the specific things that offend or upset you. Treat this letter as a confidential piece of communication and keep a copy of it.

If harassment does not stop after taking these steps or if initial harassment is so serious as to require immediate action then a complaint should be initiated. A complainant should always feel encouraged to consult with the Affirmative Action Officer, members of the Affirmative Action Committee, or members of the Harassment Policy Team for guidance and assistance if they feel that they are a victim of harassment. However, generally, neither the Affirmative Action Officer, nor Committee or Team members can serve as a representative of the victim.

Informal resolution of complaints, when possible, is the preferred and most effective way of correcting misconduct. An employee who feels he or she is being or has been harassed should contact his or her immediate supervisor who should report to the Affirmative Action Officer any complaints that cannot be resolved immediately. A student can contact the Dean of Students, the Judicial Affairs Officer in Student Affairs, or other members of the Harassment Policy Team for assistance.

Any employee or student who feels that informal resolution of a complaint against an employee will not be or has not been satisfactory may file a formal written complaint with the Affirmative Action Officer. Formal complaints against students are filed with the Campus Judicial Affairs Officer, and they are handled under student conduct procedures. Since the passage of time

makes the resolution of complaints more difficult, it is recommended that the written complaint be filed within 60 days.

The Office of Human Resources has the responsibility for monitoring and addressing allegations of racial harassment brought by an employee, applicant, or student. For current employees, complaints of harassment may be made either to the immediate supervisor, the next level supervisor, the Harassment Team, or the Office of Human Resources. Students should contact the appropriate Chairperson, the Dean of Students, or the Office of Human Resources. Job applicants and others should contact the Office of Human Resources.

## **APPEAL PROCEDURES**

### **Employees**

If employees, including students, have a question, problem, charge, or complaint regarding Equal Opportunity rights, they are urged to begin the appeal at the place of origin, which is usually at the department level. The appeal will be presented to the department chairperson or unit supervisor immediately upon the occurrence of the complaint.

1. If the decision of the department chairperson or head is unsatisfactory, then an appeal can be made directly to the dean or director.
2. If the employee or student is dissatisfied with the decision of the dean or director, the matter can be appealed to the President by writing a summary of the case and requesting an appointment, with a copy to the Director of Affirmative Action.
3. The President may hold an informal hearing or may arrange for the appeal to be reviewed by a special committee that will present its findings and recommendations to the President, who will render a decision on the appeal.

### **Applicants**

Any job applicant or candidate who has a complaint about equal employment rights should write to the Director of Affirmative Action.

1. If the complaint is directed to the Director of Affirmative Action, he/she shall make an investigation into the matter and respond to the complainant within a period of two weeks.
2. Complainants who are dissatisfied with the response received from the Director of Affirmative Action may appeal the matter to the President within one week after the date the response is mailed.
3. In the case of a complaint made directly to the President, or in the case of an appeal to the President from the response of the Director of Affirmative Action, the President shall investigate the matter, or have it investigated, and respond to the complainant within a period of two weeks from the date of the complaint or appeal.

## GRIEVANCE TIMELINES

The following chart outlines the statutory deadlines for both grievant and grievance evaluators in processing grievances under the West Virginia Public Employees Grievance Act (West Virginia Code § 6C-2-1 et. Seq.). When calculating the number of days, Saturdays, Sundays, official holidays and any day the employee's work place is legally closed by authority of the Chief Administrator due to weather or like cause are not counted. Also, the day a grievance or appeal is filed, or the day a hearing ends or decision is rendered, is not counted as a day for computing the days left until the next action must take place. The intent of the law is that all parties receive complete workdays to accomplish the actions required by them under the statute. Failure to comply with these time limits may mean that a grievance is dismissed or a default judgment is rendered against the employer.

### LEVEL ONE – Chief Administrator

- |   |   |
|---|---|
| Filing of written grievance and request for conference or hearing with the Chief Administrator. | Within 15 days of grievable act occurring or date when grievant became aware of the grievable act.                                      |
| 2. Chief Administrator holds conference or hearing and issues written decision.                 | Conference or hearing is within 10 days of grievance being filed. Written decision is rendered within 15 days of conference or hearing. |

[An employee must start their grievance at Level 1 unless the Chief Administrator agrees to skip Level 1 and go to either Level 2 or 3 directly, OR employee may file directly at Level 3 if the grievance involves discharge from employment, a suspension without pay, or a demotion or reclassification which results in a loss of compensation or benefits.]

### LEVEL TWO – Alternative Dispute Resolution

- |  |   |
|--|---|
| 1. Continuance by grievant of level one decision with three choices: a) mediation; b) private mediation; c) private arbitration  | Within 10 days of grievant receiving the written decision from Level 1.   |
| 2. Board acknowledges request and assigns an Administrative Law Judge for choices (a) and (c) to schedule mediation.<br>(b) Parties must agree to mediator in writing. | a. Within 20 days of the request.<br>b. Private mediator to schedule with 20 days of written request.<br>c. Within 20 days of the written request |
| 3. Level two decision issued. Agreements are binding and enforceable in this state by a writ of mandamus.  | a. and b. In writing within 15 days of mediation agreement.<br>c. In writing within 30 days following arbitration.                                |

### **LEVEL THREE - Adjudication**

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|--|---|
| 1. If alternative dispute resolution was unsuccessful at level two, grievant may file a written appeal with employer and the Board requesting a hearing and adjudication on the grievance. | Within 10 days of grievant receiving level two report of unsuccessful alternative dispute resolution. |
| Level three hearing scheduled by Administrative Law Judge.   | Within a reasonable time in consultation with the parties.  |
| 3. Decision in writing by Administrative Law Judge.  | Within 30 days of end of hearing.   |

## **DIVERSITY AND EQUITY COMMITTEE**

### **Structure**

The Diversity and Equity Committee is appointed by the President and consists of members drawn from the administrative staff, faculty, classified employees, community and student body. The chair is elected.

### **Charge**

The Diversity and Equity Committee will report to the Administrative Council and is charged with the following responsibilities.

1. Review the current hiring practices of the University and recruitment and retention of minority faculty, staff and students.
2. Recommend policies and strategies to increase and keep the number of minority administrators, faculty, staff and students on campus.
3. Recommend measures to facilitate a supportive environment on campus.
4. Identify off-campus outreach efforts which will significantly impact the lives and opportunities of minorities in the University's service area.
5. Serve as a body which will periodically review progress in reaching these objectives and make recommendations for prompt, remedial action.

# Shepherd University Equal Opportunity Policy and Affirmative Action Plan

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