



ANTI-DISCRIMINATION POLICY AND PROCEDURES

1. PREAMBLE

The University is grateful for the various contributions made by members of staff during the consultative sessions and the advice provided by various experts in the development of this policy. These consultative sessions highlighted issues and areas of belief and conscience; bullying, disability, gender identity, racism, sexual orientation, and xenophobia as the key relevant sites of potential unfair discrimination within the University.

The University reiterates its commitment to create an inclusive, diverse and cosmopolitan community in which all staff and students are free to pursue excellence and satisfaction in their academic and occupational endeavours without fear of bullying, harassment, victimisation or vilification. To this end, the University undertakes to:

- 1.1 promote all the fundamental rights and freedoms of every person on campus, as enshrined in the Constitution¹, and as required by the Employment Equity Act² (EEA) and the Promotion of Equality and Prevention of Unfair Discrimination Act³; and
- 1.2 protect all persons on campus from direct and indirect unfair discrimination by taking appropriate action against those who unfairly discriminate, in accordance with the provisions of all other social justice policies, including but not limited to:

HIV & AIDS Policy [C2014/22C]

Policy on the Employment and Advancement of Persons with Disabilities [C2013/232]

Sexual Harassment Policy and Procedures [HRG10]

Policy on Students with Disabilities [C2013/392]

Employment Equity Policy [HRG/06 C2006/462]

Language Policy

¹ The Constitution of the Republic of South Africa, Act 108 of 1996

² Employment Equity Act 55 of 1998, as amended

³ Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

2. OBJECTIVES OF THE POLICY

The objectives of this policy and the procedures detailed herein, are:

- 2.1. To prohibit the different manifestations of unfair discrimination, based on, but not limited to, race, gender identity, sexual orientation, nationality, conscience and beliefs.
- 2.2. To prevent and eliminate any conduct of unfair discrimination by any member of the University community against another, which may undermine her or his human dignity. Such conduct of unfair discrimination may include, but is not limited, to bullying and / or harassment.
- 2.3 To clarify the procedure, the responsibilities and the obligations of all to promote equality in the university.
- 2.4. To establish appropriate and accessible interventions for staff and students to address allegations of unfair discrimination.

3. DEFINITIONS

- 3.1 **Alternative dispute resolution procedures** refer to procedures for settling disputes by means other than formal processes, which usually includes conciliation, mediation, and arbitration.
- 3.2 **Bullying** is a form of unfair discrimination. In its simpler manifestation, it involves the chronic abuse of an individual staff member or student by another person. This abuse can take the form of insults, interference, intimidation, undermining, withholding resources, social exclusion, harassment, abuse of power or any other behaviour intended to make the victim feel unwelcome. In its more complex manifestations, bullying may include mobbing, which involves more than one perpetrator acting against a member of the institution or may be systemic, in which the culture of an institution may ignore or minimise bullying or even inadvertently promote it in its structures.
- 3.2 For the purpose of this policy, unfair **discrimination** means “any distinction, exclusion, restriction or preference, which has the purpose or effect of nullifying

or impairing the recognition, enjoyment or exercise, on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life”.⁴ Unfair discrimination may occur on a number of grounds as defined in Chapter 2, Section 9 of the Constitution of the Republic of South Africa.

- 3.3 **Direct unfair discrimination** is an overt act of discrimination, which occurs when a person is treated less favourably than another person on the basis of any of the grounds listed in Clause 3.2 or any other legally recognised grounds.
- 3.4 **Indirect unfair discrimination** occurs when an unreasonable requirement, condition or practice, which appears neutral on the surface, is imposed in order to exclude person/s upon one or more grounds stipulated in Clause 3.2 or any other legally recognised grounds. Such a distinction, exclusion, restriction or preference unfairly discriminates against individuals or groups of individuals.
- 3.5 **Harassment** refers to derogatory or unwarranted remarks, ridicule, unwanted physical contact, physical assault or demands for undue favours for personal gratification.
- 3.6 **Victimisation** occurs when one person subjects another to detriment (or threatens to do so) because she or he has laid, intends to lay, or has helped someone else to lay, a complaint of unfair discrimination on any of the grounds listed in Clause 3.2, or any other legally recognised grounds, or she or he has refused to perform an act which is in contravention of any policy or legislation, or she or he has provided information about a complaint, i.e. whistle-blowing. It also includes acting to another person’s detriment by agreeing to be a witness in cases related to the contravention of policy or legislation.
- 3.7 **Vilification** occurs when a person incites hatred towards, contempt for, or severe ridicule of a person or group of persons on any of the grounds listed in Clause 3.2 or any other legally recognised grounds.

⁴ The International Convention on the Elimination of All forms of Racial Discrimination : Geneva, Switzerland : 4 January 1969

4. GUIDING PRINCIPLES

- 4.1 The University commits to eradicate all forms of unfair discrimination, including bullying, harassment, victimisation and vilification from its environment, in order to build a socially inclusive and cosmopolitan institution.
- 4.2. The University recognises that processes of recruitment, selection and placement of staff and students must be managed to redress the wrongs of the past and to achieve equity. The University will take every step necessary to ensure that these processes are implemented in a fair and equitable manner.
- 4.3 Allegations of unfair discrimination will be viewed extremely seriously and investigated rigorously and promptly. If such allegations are substantiated, the alleged perpetrator may face disciplinary action. Unsubstantiated, frivolous or malicious allegations will be viewed in an extremely serious light, and the person making such allegations may also face disciplinary action.
- 4.4. Any behaviour which the perpetrator knew or ought to have known, is offensive to Wits staff or to students or to other persons who come into contact with Wits staff or students and / or which causes them to feel threatened, or humiliated, is considered to be harassment and shall be subjected to the relevant university policies.
- 4.5. The University commits to provide appropriate support to victims and witnesses of unfair discrimination, including making the necessary resources available to eliminate all forms of unfair discrimination.
- 4.6 The University shall ensure that complaints reported under the policy and procedures set out herein are handled in a manner that ensures that the identities of the persons involved are kept confidential. It will also ensure the confidentiality of any disciplinary enquiry processes.
- 4.7 The University recognises the importance of ensuring the equitable provision of training and development based on the individual needs of staff and students. Therefore, staff and students orientation platforms shall include education on fundamental constitutional rights, unfair discrimination and the relevant policies on unfair discrimination (e.g. disability, employment equity and sexual harassment). The University also undertakes to promote and support inclusiveness and diversity on campus through different media platforms.

- 4.8 All members of the academic staff are encouraged in their academic work to promote equality and sensitivity to diversity among students. All line managers shall promote inclusiveness and diversity in their respective units/departments.

5. RESPONSIBILITIES

- 5.1. This section of the policy and procedures is predicated on the University community taking collective and individual responsibility to ensure adherence to the principles, procedures and measures set out herein.

- 5.2 All employees are required, within a year of commencing employment, to undergo race, diversity, transformation and social justice training as part of their induction to the University; and at other times during their employment to enhance their understanding of and compliance with this policy.

- 5.3 **Managers** have the following responsibilities:

- within 6 months of employment, managers are required by this Policy to undertake race, diversity, transformation and social justice training facilitated by the Human Resources Development Unit as part of their induction process;
- to monitor the working environment to ensure that acceptable standards of conduct are observed at all times; when managers observe a risk of unfair discrimination in the workplace, they should take the necessary steps to ensure that it is appropriately dealt with; failure to do so may lead to disciplinary action being taken against them;
- to demonstrate and project appropriate behaviour themselves, including ensuring that they do not engage in conduct that may breach the policy and procedures set out herein;
- to ensure employees, students and other relevant persons understand the policy and procedures set out herein.

- 5.4 **All employees and students** of Wits have a responsibility to:

- ensure that they do not engage in any unfair discriminatory behaviour, practices and/or vilification or breach of this policy;

- report any incidences of unfair discrimination;
- offer support to anyone who is being unfairly discriminated against and direct them to sources of help and advice; and
- maintain complete confidentiality of information and cooperate during the investigation of a complaint.

6. APPLICATION OF THE POLICY

This policy and these procedures apply to all staff and students of the University, including:

- i) academic staff; whether they are fixed-term, full-time or part-time;
- ii) contractors and visitors while on any of the campuses of the University;
- iii) professional and administrative staff at all levels;
- iv) sites where Wits students and staff of the University spend time (e.g. hospitals, schools) are strongly encouraged to abide by the principles and values of this policy; and
- v) students, both undergraduate and postgraduate.

7. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR STAFF AND STUDENTS AT WITS⁵

7.1 Mediation will be used as a preferred alternative resolution procedure to deal with unfair discrimination cases. Notwithstanding the preferred role of mediation, the University may undertake a formal hearing in the event that the aggrieved party prefers it, and such a preference is justified.

7.2 Mediation shall be used by the University to deal with the following circumstances:

⁵ This procedure does not apply to settlement agreements and resolution of disputes handled by the Employee Relations Office of the University.

- 7.2.1 when the “victim” of unfair discrimination is hesitant and/or reluctant to come forward for assistance for fear of participating in the institution of formal disciplinary proceedings against the offender;
- 7.2.2 where the institution of formal disciplinary procedures is not an appropriate institutional response; and
- 7.2.3 where conflict situations arise between individuals and/or groups of individuals, where no infraction of the Code of Conduct or staff/student rules has occurred, but an intervention is required to resolve the conflict; provision is, therefore, made here for mediation by trained mediators.
- 7.3 Mediation is always voluntary; both parties/groups of parties must agree. Agreement to mediation neither commits the complainant to press disciplinary or criminal charges, nor deprives the complainant of the right to do so. When mediation breaks down, the formal complaint/grievance procedure may be instituted, which may or may not lead to a disciplinary procedure.
- 7.4 The University recognises that certain kinds of offences ought not to be mediated. Therefore, when a serious act of unfair discrimination has allegedly been committed, care must be taken to ensure that mediated settlements, even when agreed to by both parties, are always appropriate and fair.
- 7.5 Pre-mediation and mediation are internal processes which are limited to internal stakeholders only. Legal representation is not permissible. However, depending on the complexity or the sensitivity of the case, the services of the external mediator may be used.
- 7.6 A request for mediation may come from a variety of sources, including, for example, directly from a complainant, or from an individual whom the complainant has approached for advice or assistance, or from a manager who is aware of a real or potential conflict situation between staff and/or students.
- 7.7 Requests for mediation must be submitted to the line manager (for staff) for transmission to the Employee Relations Office and/or to the Transformation and Employment Equity Office. For students, mediation requests must be submitted to the Dean of Students for transmission to the Legal Office or to the Transformation and Employment Equity Office.

- 7.8 In the event that requests for mediation involve line managers then staff may submit such requests directly to the Employee Relations Office and/or to the Transformation and Employment Equity Office.

7.5.1 Pre-mediation

- 7.5.1.1 Pre-mediation is part of the mediation process, which is intended to ascertain the nature of the complaint and to determine an appropriate manner in which it could be resolved. In this part of the process, a member of a Faculty Transformation Committee or Senior Manager: Transformation and Employment Equity Office (T&EEO), or Manager: Diversity, Ethics & Social Justice will provide assistance or advice to the complainant.
- 7.5.1.2 In the event that, following advice, the complainant is agreeable to mediation, the Manager: Diversity, Ethics & Social Justice will meet privately with the respondent. At this meeting the nature of the complaint will be outlined, the identity of the complainant will not be disclosed to the respondent, and the attitude of the respondent towards mediation will be ascertained. For support, the respondent may be accompanied by another staff member or student, as a support person, at this meeting.
- 7.5.1.3 If the respondent does not agree to mediation, the complainant will be advised that mediation cannot take place but that he/she has the option to initiate a formal complaint procedure, which may result in a disciplinary process.
- 7.5.1.4 If the Manager: Diversity, Ethics & Social Justice is satisfied that both the parties agree, freely and voluntarily, to mediation, where necessary he/she will send written authority to either the internal or external mediator to continue with mediation. Choice of either internal or external mediator will be made based on the complexity and/or the sensitivity of the case. Both parties must agree on who is to be appointed as the mediator.

7.5.2 Mediation

7.5.2.1 Where the conflict has arisen between two individuals or groups of individuals as a result of which an anonymous complaint has been submitted, the mediation principle of consultation with all parties referred to in such a complaint shall apply.

7.5.2.2 No formal enquiry or disciplinary proceedings may be commenced or pursued while mediation is taking place.

7.5.2.3 Prior to or at any stage during the mediation, the mediator may, for the following reasons, declare mediation terminated and report the reason or reasons for this decision, in writing to the Manager: Diversity, Ethics & Social Justice:

- if either party withdraws consent to mediation; or
- if the mediator decides that the dispute is not one for which mediation is appropriate; or
- if the mediator decides that it will not be possible to reach a fair and appropriate settlement within a reasonable period.

The matter will then be referred to the Employment Relations Office (for staff) or the Legal Office (for students and contractors) or to the Registrar (for visitors) for the formal grievance procedure to be initiated if the complainant so desires.

7.5.2.4 Until the termination of the mediation process in one of the ways envisaged in this procedure (whether by settlement or otherwise), both parties are obliged to attend all meetings called by the mediator and sincerely attempt to reach a settlement. The mediator may treat the failure of either party to attend a meeting or failure in any other way to co-operate with the mediator, as sufficient grounds to claim that it will be impossible to reach a fair and appropriate settlement within a reasonable period.

7.5.2.5 Nothing stated by the either party or the mediator during and for the purposes of mediation under this Procedure is admissible in disciplinary proceedings of the University. Mediation does not, however, affect the right of the complainant to press criminal charges.

- 7.5.2.6 If, after mediation, the parties agree to settle the complaint, and the mediator is satisfied that the nature and terms of the proposed settlement are appropriate and fair, the mediator shall draft the terms of the settlement. If both parties agree to the mediated settlement, they shall sign the settlement to ratify their agreement to it. The mediator shall then reports to the Manager: Diversity, Ethics & Social Justice and presents the settlement for endorsement. It is only by such an endorsement that a settlement becomes binding.
- 7.5.2.7 If the Manager: Diversity, Ethics & Social Justice declines to endorse the settlement, s/he will express his/her reasons for declining to endorse the settlement to the mediator and if needs be s/he will also meet with the parties concerned (especially with the complainant) to clarify her/his reasons for declining to endorse the settlement. If the parties are still satisfied with the settlement despite the explanation of the Manager: Diversity, Ethics & Social Justice, the settlement shall be binding.
- 7.5.2.8 Any breach of the binding settlement constitutes misconduct under the Disciplinary Procedures for University Staff and/or the Rules for Student Discipline. A binding settlement precludes the pressing of disciplinary, but not criminal charges, in respect of the complaint it settles. Every mediated settlement should therefore stipulate such consequence.
- 7.5.2.9 After the mediated settlement has been endorsed, a copy of the settlement shall be given to both parties, and placed on the personal staff/student files of all involved in the mediation. A copy of the settlement shall be kept by the Manager: Diversity, Ethics & Social Justice for a period of 12 months.
- 7.5.2.10 Every mediated settlement, whether binding or not, is confidential to the parties involved, the mediator and the University. Any breach by a staff member or student of any obligation to confidentiality imposed by this paragraph constitutes misconduct under the Disciplinary Rules for University Staff and/or the Rules for Student Discipline.
- 7.5.2.11 If after 30 days from the date of the authorisation of mediation a binding settlement has not been reached, the mediator shall declare the mediation terminated, in which case the mediator shall report that declaration and the reason for it to the Manager: Diversity, Ethics & Social Justice or shall apply

to the Manager: Diversity, Ethics & Social Justice in writing, providing reasons, for a further period in which to continue the mediation. If the mediator declares mediation terminated, or the Manager: Diversity, Ethics & Social Justice (in consultation with the complainant) refuses to permit mediation to continue, mediation terminates and the formal complaint procedure will commence if the complainant so desires. If the Manager: Diversity, Ethics & Social Justice allows mediation to continue, she/he stipulates a period within which mediation must be completed. Once this second period has concluded, no further extensions will be granted. If a binding mediated settlement has not yet been reached, the mediation will be declared terminated and the formal complaint procedure will commence if the complainant so desires.

7.6 COMPLAINTS INVOLVING VISITORS AND INDEPENDENT CONTRACTORS

- 7.6.1 Disputes involving visitors and independent contracts must be submitted to the Registrar, who in consultation with the Legal Office and/or Transformation and Employment Equity Office will find resolution thereto.
- 7.6.2 In the event of non-resolution of the dispute, parties may seek recourse to the Human Rights Commission or the Courts.

7.7 MEDIATORS

- 7.7.1 Members of the Faculty Transformation Committees, interested staff and students will be trained as mediators. Trained individuals will constitute a pool of internal mediators.
- 7.7.2 Each faculty, school and department will keep a database of individuals that have undertaken mediation training. This database will be accessible to members of the faculty, school and department.
- 7.7.3 The Manager: Diversity, Ethics & Social Justice will also keep a central database of all the trained mediators in Wits.
- 7.7.4 External mediators may be appointed following the University's procurement processes, depending on the complexity and sensitivity of the dispute involved.

8 THE RIGHT TO PURSUE EXTERNAL PROCESSES

- 8.1 Employees or staff members:** These procedures do not remove the right of an employee to refer a dispute to the CCMA (in terms of S10 of the EEA) or to pursue a complaint externally in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act. However, employees are urged in terms of Section 10(4) of the Employment Equity Act 55 of 1998, as amended, to exhaust all available internal mechanisms (*pre-mediation, mediation, formal procedure*) before resorting to such measures.
- 8.2 Students:** For disputes involving students, the matter may be referred to the Human Rights Commission for adjudication or for litigation.

9. REVIEW OF POLICY AND PROCEDURES

The policy and procedures will be reviewed after every 3 years, or when relevant legislation changes. Appropriate changes in line with any change in legislation will be made.