

Name of Policy

**INTERIM GUIDELINES ON THE PREVENTION AND ERADICATION OF BULLYING
WITHIN THE UNIVERSITY**

Version No.2

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1. CONTEXT / BACKGROUND

- 1.1 During its meeting of 12 March 2020, Senate noted that cases of bullying had been referred to the appropriate Offices (Employee Relations and the Transformation and Employment Equity Office) for investigation and resolution.
- 1.2 Organised labour had raised anecdotes of bullying on campus, which requires the University to strengthen the approach to eradicate and prevent the phenomenon. Human Resources had received notes from medical practitioners alluding to the impact of some acts of bullying and victimisation by line managers on the mental health conditions of employees, which requires urgent intervention.
- 1.3 The South African employment law framework does not specifically define bullying, which makes the management thereof a challenge in the workplace, as it may only be addressed through the applicable provisions of the Employment Equity Act as a form of harassment.
- 1.4 The Guidelines draw lessons from the United Nations (UN) Declaration on the Elimination of Violence against Women. Through these guidelines, the University commits to address the gaps identified in its social justice policies by implementing interim measures to swiftly resolve allegations relating to bullying and victimisation in order to create a conducive environment for learning and work.
- 1.5 These interim measures will be incorporated in the Anti-Discrimination Policy and Procedures as a lens from which the guidelines are developed. The Transformation and Employment Equity Office is currently reviewing the Policy to incorporate these guidelines therein.

2. DEFINITIONS

Definitions used in this section were adopted from the The Anti-Discrimination Policy and Procedure (C2020/037).

- 2.1 **Bullying** is defined in the as a form of unfair discrimination, which has simpler and complex dimensions. 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.

- 2.2 **Harassment** refers to derogatory or unwarranted remarks, ridicule, unwanted physical contact, physical assault or demands for undue favours for personal gratification.
- 2.3 **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 of the Policy, 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. REVIEW AND ANALYSIS OF EXISTING UNIVERSITY POLICIES

- 3.1 In consolidating the approach to eradicate bullying and victimisation, a review of existing related policies and procedures was conducted with the following outcomes:

Code of Conduct (HRG/26)

- 3.2 The Code of Conduct was developed to *inform the rules and disciplinary codes of the University* towards the regulation of ethical, respectful, responsible and diligent conduct of members of the University community.
- 3.3 In this regard, the Code seeks to prevent, *inter alia*, abuse of power, discrimination and all forms of harassment, but *does not provide specific guideline, which should not relieve an individual of the responsibility of applying the highest ethical standards when reacting to a situation.*
- 3.4 In the absence of specific guidelines to regulate abuse of power, with particular reference to bullying as a form of abuse of power, discriminatory conduct and harassment, by members of the University community, the interim guidelines seek to address this gap.

The Anti-Discrimination Policy and Procedure (C2015/24)

- 3.5 The Anti-Discrimination Policy and Procedures of the University highlights *bullying* as one of the identified key sites of potential *unfair discrimination* within the University and aims to prevent and eliminate it in the best interests of upholding the members' Constitutional right to human dignity.
- 3.6 Notwithstanding the definition and the implications thereof, the Policy does not provide guidelines to manage it, save for reference to mediation.
- 3.7 Paragraph 7.1 of the Policy provides for mediation as a *preferred alternative resolution procedure to deal with unfair discrimination cases*, and leaves the preference to an aggrieved party to choose *formal hearing*, which *when justified the University, in its sole discretion, may undertake*.
- 3.8 Paragraph 7.2.5.11 of the Policy alludes to the complainant undergoing a formal complaints process *if after 30 days from the date of the authorisation of mediation a binding settlement has not been reached*.
- 3.9 Section 8.1 of the Policy stipulates that *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 external recourse (non-italics added)*.
- 3.10 The Policy seems to adopt a complainant-centred approach to discipline, which may create inconsistencies in the application of University rules and disciplinary codes.
- 3.11 The identified gaps of lack of guidelines, protracted timelines and preference to mediation need to be addressed for a swift resolution of complaints relating to bullying and victimisation.

Employment Equity Policy (HRG/06)

- 3.12 The Policy aimed at eliminating all forms of unfair discrimination to affirm the human dignity of employees and focuses on such measures as affirmative action in relation to the appointment process. This narrow focus does not address the fact that bullying manifests in other context than just in the appointment process.

The Disciplinary Code and Procedure for Employees (G-S-2021-005) and Rules for Student Discipline (C2017/627A)

- 3.13 The Disciplinary Code and Procedure for Employees is premised on discipline for misconduct being a line manager's responsibility.
- 3.14 The Policy classifies bullying as misconduct that may be addressed progressively through final written warning (for first time occurrence) and dismissal (for second time occurrence). The Policy also envisages an investigation into alleged misconduct to ascertain the veracity thereof.

- 3.15 Section 1.4.1 of the Disciplinary Code and Procedure for Employees makes the resultant sanctions dependent *on the circumstances of the employee, the nature of the job, and the seriousness, nature and circumstances of a specific transgression, even a first transgression may result in dismissal, suspension or demotion. Similarly, mitigating factors could give rise to a lesser disciplinary sanction.* This presupposes an investigation into the alleged misconduct.
- 3.16 The Rules for Student Discipline vests the power to discipline students in the Vice-Chancellor who may delegate such power to a Vice-Principal or a DVC. In the Rules, misconduct is defined as *behaviour within or without the precincts of the University, which among others, constitutes conduct that tends to bring the University or any part of it or a member of its staff or a student or any part of its student body into contempt or disrepute.* Unlike the Disciplinary Code for Employees, the Rules do not classify or envisage bullying as a form of misconduct, inferences of which could be drawn from the above quote.

The Policy and Procedure on Disputes of Interest – Complaints (HRG/33)

- 3.17 The Policy defines disputes of interest as involving *any dissatisfaction or feeling of injustice in connection with an employee's work or employment situation where there are no established legal rights at issue.*
- 3.18 As bullying impact on the Constitutional Rights to human dignity and is a conduct associated with unfair discrimination, it cannot be addressed through the Policy and Procedure on Disputes of Interest.
- 3.19 In addition, Section 3.2 stipulates that *under this procedure, an employee shall not have the right to file a complaint concerning evaluations of performance unless it is alleged that the evaluation was based on factors other than performance. Suspensions, reductions in pay, transfers, layoffs, demotions and dismissals shall not be considered complaints under this procedure, but shall be handled under other procedures.*
- 3.20 In this regard, the Policy excludes the management actions referred to in 2.19 from its application, which may be fertile grounds for allegations of unfair discrimination, including bullying and victimisation to occur.

Disputes of Right - Grievance: Policy and Procedure (HRG/34)

- 3.21 In defining disputes of right, the Policy makes it clear that these disputes do *not include dissatisfaction arising from retrenchment, disciplinary sanction, sexual harassment or discrimination. The procedures for these issues are described separately.*
- 3.22 Currently, there are no separate procedures at the University to deal with these issues, hence this guideline document.

Having reviewed and analysed the University Policies, a conclusion was reached that the Anti-Discrimination Policy and Procedure of the University is the most appropriate

Policy to deal with matters of bullying and victimisation. The Policy should thus be expanded to include the interim Guidelines proposed in this document.

4. PURPOSE

- 4.1 The interim guidelines highlight the duties of parties to the employment relationship, and provide mechanisms to determine the extent to which either party may be in breach as regards issues of bullying.
- 4.2 The guidelines articulate the requirements for reporting, investigating and managing bullying and victimisation in order to create and maintain an environment conducive to the members of the University community to work, learn, undertake research and provide service to society.
- 4.3 The physical and mental health implications of bullying cannot be underestimated. Therefore, the guidelines provide avenues through which these implications may be addressed and/or curbed.

5. SCOPE OF APPLICATION

The provisions of this Policy shall apply to the entire University community, including students, employees, joint staff appointees, service providers and visitors.

6. PRINCIPLES

The application of this Policy shall be guided by the following principles:

- 6.1 **Advocacy and training** - bullying as a social phenomenon, is multifaceted and often misinterpreted and misunderstood. Therefore, in order to ensure common understanding and appropriate management thereof, advocacy programmes including education and awareness of members of the University community shall be undertaken.
- 6.2 **Care and Support** – the mental health and wellness of employees who allege bullying shall be maintained during and after the investigative process, through relevant programmes as the University shall develop and implement from time to time.
- 6.3 **Corrective and restorative justice** - any action taken against alleged perpetrators shall aim to correct behaviour by administering progressive discipline within the University. Restorative justice refers to restoring relationships as might have been broken, through such processes as mediation.
- 6.4 **Impartiality** - committees constituted to adjudicate over complaints must observe principles of impartiality and members recusing themselves to avoid conflict of interests for fairness of outcomes.
- 6.5 **Immediacy of action** - experiences of bullying must be reported as soon as practicable and investigated by a fact finder and, where applicable, adjudicated

immediately by a duly constituted mediation or disciplinary panel to avoid delays in the administration of justice.

- 6.6 **Privacy and Confidentiality** - complaints resolution and disciplinary processes must ensure that privacy and the rights of the affected person(s) and / or complainant(s) are upheld.
- 6.7 **Protected disclosure** - Employees have the right to disclose information about any criminal and other irregular conduct at the University (whistleblowing), without fear of reprisals by their line managers. While disclosure may be protected, it is recognised that there is a limit to which the University can proceed with anonymous complaints given the rules around *audi alteram partem* (the alleged perpetrator's right to be heard and test the veracity of a complaint against him/her), at which point consent of the complainant would need to be sought.
- 6.8 **Due process** – The University shall handle all complaints on the presumption of innocence and will provide the alleged perpetrator with a fair opportunity to state their version either viva voce or in writing (*audire alteram partem* rule).

7. INTERIM GUIDELINES

- 7.1 The University recognises and expects that in the conduct of employment relationship, line managers and employees owe each other certain duties and responsibilities, as follows:
- 7.1.1 The employee owes the University the following duties, inter alia:
- To perform or render services as per their contract of employment
 - In performing their duties or rendering of services, the employee must exercise due diligence and skills
 - To serve honestly and faithfully (duty of good faith)
 - Obey lawful instructions and authority (duty of subordination)
 - Maintain levels of professionalism and collegiality
- 7.1.2 The University, through its line management owes the employee the following duties, inter alia:
- Allocate work
 - Remunerate employees for work performed,
 - Provide leave and other agreed benefits
 - Ensure that the working environment is safe (duty of care)
 - Maintenance of discipline, in the event of the employee not performing their duties stipulate above.
- 7.2 Similarly, students have duty and responsibility to abide by the values espoused in the University Code of Conduct.
- 7.3 The University acknowledges that incidents of bullying and victimisation as defined in paragraph 2.1 hereof may be alleged, necessitating remedial action.
- 7.4 The University commits to decisively prevent and eradicate all forms of bullying in order to create an environment conducive for performance of duties, as well as enhance its character as an agent of progressive change in the society it represents.
- 7.5 The University recognises that bullying manifests in various forms, and commits to adopting a multi-pronged approach to manage it. In managing incidents of

bullying, the University commits to the principles articulated in paragraph 6 hereof, which commitment relies on members reporting these incidents as soon as practicable, without fear or favour.

- 7.6 The University acknowledges that some members experiencing bullying and victimisation may not willingly report these for management intervention because of fear of prejudicing their study or career prospects. Therefore, protected disclosure shall be encouraged and advocacy programmes and/or support programmes shall be implemented to sensitise members of the University to the existence and importance of legally recognised avenues of reporting.
- 7.7 In performing their academic work, all members of the academic staff are encouraged to promote anti-bullying conduct among students. Line managers are expected to promote inclusiveness in their respective units/departments.
- 7.8 Noting the implications of bullying on the physical, mental health and wellness of members, the University undertakes to identify and implement programmes aimed at enhancing the overall wellness of members who experience bullying.
- 7.9 Because of the adverse implications of bullying for both the individual and the institution, the University shall ensure that proper steps are taken to fully investigate incidents reported in terms of paragraph 8.1 hereof, with due regard for principles of due process, privacy and consent.
- 7.10 Following an investigation by the fact finder, student or staff rules pertaining to discipline shall be followed where applicable. In the event of an employee of the service provider or joint staff appointee being involved, the matter shall be reported to the service provider for action and or primary employer for the joint staff appointee.
- 7.11 Vexatious or malicious allegations will be viewed in an extremely serious light, and the person making such allegations may face disciplinary action. In the event of vexatious and malicious allegation, the University has a duty to provide care and support to the maligned individual and apply restorative justice aimed at protecting such an individual from reputational damage.
- 7.12 The University acknowledges that while bullying may manifest in abuse of power by person/s, which must be reported to the Senior Director: HR (for staff) and the Dean of Students (for students), the context in which the power is used must be taken into consideration.

8. PROCESS

8.1 Lodging a complaint

- 8.1.1 Complaints of bullying and/or victimisation must be lodged within a reasonable time from the occurrence of the incident.
- 8.1.2 A complainant may elect to lodge an informal or a formal complaint as envisaged in the **Anti-Discrimination Policy and Procedures**.
- 8.1.3 In lodging an informal complaint, a complainant may lodge it verbally or in writing to the alleged perpetrator, notifying the line manager. A fellow employee or student must accompany complainants who elect to lodge complaints verbally.
- 8.1.4 In the event that a complainant elects to lodge a formal complaint, they must do so in writing, attaching supporting documentation and filing same with the Director: Transformation and Employment Equity Office (Director: TEEO), copying in the relevant line manager or a Head of School, as appropriate.
- 8.1.5 Within 5 days of receiving a written complaint, the Director: TEEO shall convene a Standing Committee¹ dealing with social justice matters to:
- a) Recommend any interim measures that should be implemented to the Employee Relations Office (for staff) and Vice-Chancellor (for students) accordingly;
 - b) Draft the terms of reference for an investigation;
 - c) Recommend the appointment of a fact finder to the Vice-Chancellor;
 - d) Upon the VC endorsing the recommendations, submit documents to the appointed fact finder to proceed with the investigation; and
 - e) Recommend complainant protection measures to be implemented to the Employee Relations Office (for staff) and Legal Services (for students) accordingly.

8.2 Investigation

- 8.2.1 Investigations shall commence as soon as the Standing Committee has formally been appointed and provided the terms of reference to a fact finder.
- 8.2.2 The timelines for its completion depends on the nature of the complaint and circumstances surrounding it. The fact finder shall provide progress updates to the parties on a continuous basis.
- 8.2.3 The investigation may take the form of desktop review of submitted documents, interviewing the parties to the complaint and any witnesses who are able to provide pertinent information on the complaint.
- 8.2.4 Based on duties specified in paragraph 7.1 hereof, the fact finder shall have the responsibility to determine the extent to which the alleged perpetrator might have committed misconduct. The fact finder shall also ascertain, on information provided, the veracity and/or *bona fides* of the complaint.

¹ The University shall appoint a Social Justice Committee comprising of at least two chairpersons of Transformation Committees (PAS and Academic), a member of the Sexual Harassment Committee and Chaired by the DVC responsible for Transformation matters.

8.2.5 Upon concluding the investigation, the fact finder must compile a report with clear recommendations, which may include but may not be limited to mediation or instituting disciplinary action as per the relevant University Policies.

8.3 Remedies, Appeal or Review

8.3.1 Informal complaints shall be resolved in accordance with the alternative dispute resolution processes articulated in the Anti-Discrimination Policy and Procedures (C2015/24)

8.3.2 Formal complaints shall, where applicable, be managed through the Disciplinary Code and Procedure (G-S-2021-005 - for staff), Rules for Student Discipline (C2017/627A), Service Level Agreements (for service provider employees) and Integrity Hotline (for visitors).

8.3.3 Appeals or review applications by students shall be managed through paragraph 7 of the Rules for Student Discipline (C2017/627A).

8.3.4 Appeals by staff shall be managed through chapter 4 of the Disciplinary Code and Procedure (G-S-2021-005).

8.3.5 Parties to the complaint may have recourse to external remedies, including the Commission for Conciliation, Mediation and Arbitration (for staff) or the Human Rights Commission (for both staff and students)

8.3.6 In the event of the outcomes of any disciplinary processes resulting in the alleged perpetrator invoking external legal recourse, the Office that facilitated the disciplinary process shall represent the University in such proceedings. The University reserves the right to appoint a legal representative to act on its behalf.

9. ROLES AND RESPONSIBILITIES

9.1 Employees or students shall report all incidents of bullying and victimisation experienced and allegedly perpetrated by staff or students.

9.2 Line managers must ensure that incidents within their knowledge are reported and they must facilitate disciplinary steps, where necessary against perpetrators.

9.3 The Legal Office will manage any disciplinary processes involving students in line with the Rules for Student Discipline.

9.4 Employee Relations will manage any disciplinary processes involving employees in line with the prevailing staff disciplinary procedure.

9.5 The Legal Office and/or the Employee Relations Office shall assist in matters that are referred to external recourse by students (Legal Office) and staff (Employee Relations).

10. REVIEW

The Interim Guidelines shall be reviewed once the Anti-Discrimination Policy review has been finalised or when applicable legislation changes, whichever is earlier.

VERSION HISTORY

Version	Date	Summary	Changed by
1	18 September 2020	Interim Guidelines to regulate incidents of bullying at the University	HRC and approved by Senate