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PD 96-04

November 20, 1996

MEMO TO: Vice Presidents, Associate Vice Presidents, Deans,
Directors, Department Chairs

FROM: Robert L. Caret
President

SUBJECT: Presidential Directive, 96-04

**SAN JOSE STATE UNIVERSITY DISCRIMINATION COMPLAINT PROCEDURE
FOR STUDENTS AND APPLICANTS FOR ADMISSION**

Note: This directive supersedes Presidential Directive 91-03 and all prior discrimination complaint procedures for SJSU students, including procedures for complaints of sexual harassment.

PURPOSE:

It is the purpose of this Presidential Directive to assure that San Jose State University (SJSU) continues to comply with all Federal and State legislation and California State University policies regarding unlawful discrimination. San Jose State University is committed to creating an atmosphere in which all persons and groups can work and study free of unlawful discrimination.

PERSONS AND GROUPS HAVING RIGHT TO FILE GRIEVANCES:

In accordance with the equal opportunity policies of SJSU, these procedures provide students and applicants for admission with an opportunity to request and receive a fair and impartial review of any act(s) by an SJSU employee, student, or organization, or any on-campus incident that is believed to be discriminatory on the basis of race, color, national origin, disability, sex (including sexual harassment), age (over 40), sexual preference, religion, or marital status.

These procedures were adopted to encourage students and applicants for admission to seek redress of perceived discrimination through an internal process that is readily available, prompt, and meets high standards of fairness. However, no student or applicant is precluded by these procedures from filing a complaint, at any time, with the U.S. Department of Education, Office for Civil Rights.

COMPLAINT FILING DEADLINE:

A student or applicant for admission may fill out and submit a complaint form within 180 days after he or she knows or could be expected to have known that an action of discrimination has taken place.

FILING A COMPLAINT

A student or applicant for admission can file a complaint by submitting a written statement to the Office of Equal Opportunity, San Jose State University, One Washington Square, San Jose, CA 95192-0003.

ACKNOWLEDGMENT OF COMPLAINT

The Director of the Office of Equal Opportunity shall notify in writing the student or applicant for admission who has filed a complaint, within ten (10) days of receipt of the complaint, whether the complaint is being processed or has been found to be deficient in some manner. The letter of notification will include a copy of PD 96-04, identify the complaint issue(s) to be reviewed and state the time frames for informal resolution, formal investigation and appeal to the President.

INFORMAL RESOLUTION PERIOD

Upon acknowledgment by the Director of the Office of Equal Opportunity (OEO) that a r-14 complaint is being processed, the Director of OEO will have thirty (30) days to attempt to resolve the complaint informally in a manner that addresses any harm that may have been suffered as a result of possible discrimination and prevents similar possible discrimination from recurring. When participating in the informal resolution process regarding an allegation of sexual harassment, the complainant will not be required to speak directly to, or be in the same vicinity, as the alleged harasser.

FORMAL INVESTIGATION

If the complaint is not resolved during the Informal Resolution Period, the Director of OEO will conduct a thorough, impartial investigation that meets basic procedural standards of fairness and justice. This investigation will take a maximum of sixty (60) days and will conclude with issuance by the Director of OEO of a report delineating: 1) the allegations which were investigated; 2) the evidence gathered and findings based on a preponderance of the evidence standard of proof; and 3) a determination as to whether reasonable cause exists to believe that discrimination has occurred.

The Director of OEO will promptly present the investigative report to the appropriate Vice President(s) of the campus with authority to act on the report and provide the student or applicant for admission with an appropriate remedy for any possible discrimination suffered. The appropriate Vice President(s) of the campus will have ten (10) days to act on the report of the Director of OEO. The Director of OEO will promptly

notify a complainant in writing that the complaint has been investigated, the finding, and how to appeal. Where there has been a finding of discrimination, the complainant will be notified of the action that has been taken by the University.

APPEAL TO PRESIDENT

If the complainant remains dissatisfied with the resolution of his or her complaint of discrimination, the complainant has the right to appeal the matter in writing to the President of San Jose State University within (10) days of receipt of notice from the Director of OEO that the complaint has been investigated and a description of remedial steps taken, if appropriate.

The President will have twenty-one (21) days to act on the appeal. The Director of OEO will be responsible for promptly notifying the student or applicant for admission that the appeal has been considered and that any finding of possible discrimination has been appropriately remedied.

RIGHT TO REPRESENTATION

Any complainant who has filed a complaint with the Director of OEO may be represented by another person at any stage of this complaint process, provided that he or she gives the Director of OEO written notice of the designated representative.

Reasonable extension of any time limit in these procedures will be granted by the Director of OEO for just cause, provided all concerned parties are given adequate notice of extension.

RETALIATION PROHIBITED

Retaliation, intimidation, or harassment of any kind by an employee or agent of SJSU against a person or group seeking redress under these grievance procedures in an investigation or otherwise participating in any proceeding under this Presidential Directive is prohibited and shall be regarded as separate and distinct discrimination that may be grieved.

CONFIDENTIALITY

Every effort will be made by SJSU to protect the confidentiality of all participants in the processing of a grievance. Disclosure of information will be limited to the persons necessary to the investigation, mediation and resolution of a grievance.

MAINTENANCE OF DOCUMENTATION

Documentation gathered and produced in final form by SJSU officials as a part of the processing of complaint shall be maintained by the Director of OEO for three (3) years from the date of resolution of the complaint. Such documentation shall be maintained on a confidential basis.