

Policy Approval Form

Executive Summary. (Type a short summary of the process followed to develop this policy, identify those involved in its development, reason for undertaking the process, and key features of the policy). This section is to be completed by the group or individual assigned to develop this policy.

Title: Revision of Affirmative Action and Non-Discrimination Policies

Date: January 13, 2005

Contact: Nicole S. Ack, Civil Rights Officer, extension 5371

After consultation with Art Costantino, Lee Hoemann, Don Bantz, and the Deans, the following proposal, to separate and revise the currently titled Affirmative Action and Equal Employment Opportunity Policy, was developed by Nicole Ack, with guidance from Kenneth Holstein and input from Paul Gallegos. This proposal was put forward to Senior Staff, and unanimously approved, on December 20, 2004. We propose to complete the entire separation and revision by July 1, 2005; the relatively few and minor changes specified below, and as shown in the attached "strike and insert" version, we propose to implement immediately upon approval.

The rationale for separating and revising the currently titled Affirmative Action and Equal Employment Opportunity Policy, approved in March 1995 is this:

- 1) Equal Employment Opportunity (EEO), Affirmative Action and Diversity are three different concepts. EEO laws require only that employers treat all employees and applicants equally, while Affirmative Action laws require employers to ensure that certain protected classes of employees are represented in their workforce. Diversity is not required by law, but is rather an approach to making decisions that values individual differences and attempts to include distinct opinions that result because of an individual's personal characteristics.
- 2) There are two separate positions in Human Resources (HR) now in place to deal with the three concepts outlined above: The Special Assistant to the President for Diversity Affairs and Equal Employment Opportunity Officer has responsibility for Affirmative Action and Diversity goals, and reports both directly to the President and to the Associate Vice President (AVP) of HR. The Civil Rights Officer is responsible for investigating and resolving violations of all civil rights laws, including EEO laws, and may offer a full gamut of processes for addressing discrimination complaints, ranging from education and training, to various forms of conflict resolution such as mediation, facilitated negotiation, up to and including formal civil rights investigations. The position reports solely to the AVP of HR.
- 3) The Affirmative Action and Diversity Program is charged primarily with pro-active affirmative action-related functions such as: training and education, reporting, providing counsel on hiring, access and recruitment strategies, etc.
- 4) The Civil Rights Officer has a more reactive role in that the Civil Rights Officer is charged with investigating complaints where all forms of discrimination based on race, color, religion, creed, national

origin, gender, sexual orientation, marital status, age, disability, or status as a disabled veteran or a Vietnam veteran (and I'm including here harassment based on all these areas, not just sexual) are alleged. As noted in #2 above, the Civil Rights Officer may offer a variety of processes for resolving complaints. The Civil Rights Officer also is responsible for taking a proactive approach to decreasing or eliminating discrimination through training and education.

5) Two separate policies, the Sexual Harassment Policy and the Reasonable Accommodation policy, both fall under the classification of EEO laws) and consequently should be the responsibility of the Civil Rights Officer. (Note: We all in HR agree that we should retain a separate Reasonable Accommodation policy to deal with the specifics of negotiating a reasonable accommodation, but that language specifying coverage under the Americans with Disabilities Act and other relevant laws, should be included in the Non Discrimination Policy.)

6) The procedures as currently written for civil rights investigations do not follow the best practices as generally agreed upon in current literature and by current experts in the field. Specifically, Evergreen's current policies prescribe that notes taken by the civil rights officer in preliminary interviews not include names and other identifying information, which prescription makes little sense when one operates on the assumption that any type of investigation mandates the most thorough note-taking at the earliest possible juncture to assure accuracy and preserve memory. It may also prevent having to drag up painful experiences later and/or repeatedly because notes were not kept initially. In addition, the investigation policies for all categories except sexual harassment complaints prescribe the use of an individual investigator *or* the use of an investigative team. While it may on occasion be preferable to exercise the option of using an investigative team, the policies should be consistent that an individual *or* a team may be used for all civil rights investigations for four main reasons: 1) the more people involved in an investigation the less likely some individuals are to speak frankly, 2) the more people involved the less likely that confidentiality will be preserved, 3) mandating the use of a team requires having a "trained and ready" group of individuals at TESC, and 4) the process will undoubtedly be slower and more cumbersome with more people involved.

7) Therefore, while there may be areas of duplication and cross-over, to clarify for ourselves and our clients what each office is responsible for, I suggest that the three main existing relevant policies (Affirmative Action and Equal Employment Opportunity Policy, Sexual Harassment Policy, and the relevant portions of the Reasonable Accommodation in Employment Policy (as discussed in #5 above) be revised and merged into two major policy documents, an Affirmative Action Policy Statement and a Non-Discrimination Policy Statement, with the Special Assistant to the President for Diversity Affairs and Equal Employment Opportunity Officer, Paul Gallegos, responsible for revising the portion of the existing policies relevant specifically to Affirmative Action and Diversity, and with the Civil Rights Officer, myself, having responsibility for revising the existing EEO provisions.

The specific changes I've requested (see attached strike and insert version) are:

1) Revise the Sexual Harassment Policy, adopted July 3, 1992, to comport both with the Affirmative Action and Equal Employment Opportunity Policy, approved in March 1995, and with best practices, by changing section "c" under Procedure for Filing and Investigating Formal Complaints to read: It shall be the responsibility of the Special Assistant for Civil Rights (original language needs to be updated to Civil Rights Officer) to solicit and compile information about the complaint either acting as the sole investigator or through an investigative team. The crux of the change here is that the use of a team is optional, rather than

mandated. The initial determination as to whether a team or individual approach is preferable will be made by the Civil Rights Officer, with the following factors taken into account: a) request of a party for one method or another; b) need for gender balance in a team; c) concerns about the neutrality of the Civil Rights Officer by any party; d) the Civil Rights Officer's own concern about lack of necessary substantive knowledge; and e) the complexity of the case and/or number of parties involved making a team approach possibly more efficient. Appeals to the Civil Rights Officer on the team vs. individual investigative approach may be made first to the Director of Human Resources and then to the Vice President of Finance and Administration, whose decision will be final.

2) Under the Optional Processes to Resolve Complaints sections of all relevant policies, the language referring to notes taken by the Civil Rights Officer should be revised to allow for specifics to be noted and kept in the officer's file. The crux of the matter here is best practices of any investigation dictate documenting information at the earliest possible time, and having that information available from notes (and not from memory) for future discussions and/or investigative processes.

3) And finally, clarify wherever relevant that the Human Resources Office may initiate an investigation on its own initiative whenever potentially discriminatory behavior is alleged. The point of this change is to gather information at the earliest possible time, pursuant to best practices, both with the goal of resolving complaints at the earliest possible juncture, and to compile relevant information at the most appropriate time in the event a full investigation is required. In addition, all management and supervisory personnel should be informed that it is their responsibility, both to ensure a fair and expeditious process, as well as to avoid legal liability, to inform HR of all reports of potentially discriminatory behavior, regardless of whether a party has expressed a wish to relay such information without any action being taken.

Vice President for Academic Affairs and Provost  Date 2-28-05

Vice President for Finance and Administration  Date 3/11/05
(interim)

Vice President for College Advancement  Date 3/11/05

Vice President for Student Affairs  Date 3-10-05

President  Date _____

Date policy becomes effective _____