Report of the Boulder Faculty Assembly's (BFA) ODH Policy and Procedure Committee

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I. Introduction

On February 21, 2014, the Boulder Faculty Assembly at the University of Colorado convened the ODH Policy and Procedure Committee (ODH Committee) with the charge to: “Review established Office of Discrimination and Harassment (ODH) procedures related to administrative and faculty processes, with the purpose of addressing faculty concerns, recommending, where needed, improvements to such procedures.” This charge was prompted by perceptions on the CU-Boulder campus regarding the role and practices of the ODH. Recent events on campus have raised faculty concerns about how discussions in the classroom could result in ODH complaints and possible disciplinary actions. Lack of understanding of how ODH operates, its role in disciplinary matters, and the relationship between complaints and career risk have all contributed to a general feeling of concern among faculty on campus. The BFA thus charged the committee with determining the reality behind these concerns and recommending any ways to enhance the overall ODH processes.

The ODH Committee worked concurrently to the Adler Review Committee with a specific focus on the education of the CU community about ODH. It was not the charge of the ODH Committee to be an investigative committee, nor was it looking at issues specific to any case. However, the general climate on campus regarding recent events was discussed by the committee in the context of recommendations that could be made to improve the relationship between ODH and the faculty. Therefore, the recommendations included here should not be interpreted as a direct response to recent events, but they are influenced by the overall campus climate.

The ODH Committee believes that ODH serves an essential function on the CU-Boulder campus and that the work that the ODH performs is critical to addressing climate issues of students, staff, and faculty. Many of the concerns about ODH were found to be the result of both misunderstandings and a lack of clarity in processes. However, a major component of the misunderstandings originates from individual department politics and how they get represented externally. As recommended in this report, ODH can improve its effectiveness by removing departmental politics from its investigative and disciplinary process.

The ODH needs to be a partner in the effort to develop a healthy campus climate. This report is intended to provide the recommendations necessary to achieve this result.

There are many positive aspects of ODH’s work at the University of Colorado Boulder, but we are disturbed by the lack of clarity in ODH’s procedures and processes and in the lack of transparency in its explanations for those processes and procedures. We believe it is ODH’s responsibility to clarify the steps in the process, procedures in cases (e.g., formal and informal), and definitions of terms (e.g., concern, complaint, informal investigation, fact-finding). The clarifications should be made in the ODH’s paperwork, website, and training programs – for the potential complainant, respondent, and supervisor.
II. Recommendations

Our review of existing ODH policies and procedures has prompted the following six recommendations for change within ODH and the larger university.

A. Clarification of Steps in the Process. There is a need to clarify the steps in the ODH process, particularly during the early phases of an investigation, which ODH refers to as an “informal investigation” (see Appendix A: ODH’s Procedural Flow Chart). The committee has taken a first step toward clarifying the steps in the ODH process but we believe that ODH will need to formalize this clarification (see Appendix B: BFA ODH Policy and Procedure Committee’s Revised Flow Chart) by:
   1. formally numbering and labeling all of the steps in the process;
   2. clarifying the definition of an “informal investigation”;
   3. clarifying the meaning of fact-finding/assessment (i.e., What steps are taken in fact-finding? What is the scope of fact-finding?).

B. Clarification of Timing of and Reasons for Classroom Visits. There is a need to elucidate the timing of and reasons for a potential classroom visit during an ODH inquiry.

C. Neutral Oversight Body for ODH at the University Level. As previously stated, academic departmental governance and politics create inconsistencies across campus, which can significantly influence how ODH policies and procedures are implemented. Current ODH policies and procedures do not address the unique governance and political factors present in academic departments. Thus, we believe the university should replace the 50-Member ODH Report Review Committee with a standing Committee on Discrimination and Harassment to rectify four problems we identified with ODH’s policies and procedures. This committee should report to the Provost.
   1. We found it troubling that none of the members of the BFA’s ODH Committee, which included a former dean, tenured faculty, instructors, and graduate students, knew of the existence of the 50-Member ODH Report Review Committee. The proposed ODH Review Committee would perform the following functions:
      a. review ODH issued reports (as currently done by the 50-Member ODH Report Review Committee);
      b. monitor cases to ensure consistency in the implementation of policies and procedures;
      c. minimize the influence of department governance and politics in the ODH process;
      d. improve transparency in policies and procedures.
   2. Academic department chairs are not well equipped to manage discrimination and harassment issues among personnel and within a department’s culture, particularly with issues that never rise to the level of a formal investigation. Chairs frequently change every three to four years, and they are not typically viewed as the “supervisor” or “up-
line” in academic departments (e.g., hiring and firing faculty) as they are in other offices. While some might argue that this finding suggests that department chairs should simply receive more training on these issues, our review suggests that training is not the only answer.

3. We find the lack of consistency in the way that cases across the university are handled to be troubling. For example, in the Adler case, which involved no formal complainant and resulted in no formal ODH investigation, disciplinary measures were still considered.

4. We have learned that neither ODH nor the Ombuds’ Office is equipped to address grievances with ODH. We feel strongly that ODH needs to be accountable to these grievances – to ensure the trust of the university community. To address these problems, the newly proposed ODH Review Committee would:
   a. hear about all cases at the informal stage of investigation, to serve as a neutral type of up-line (in lieu of the department chair’s authority);
   b. track recurring low-level issues within departments or offices, to monitor departments or offices that have had multiple informal cases or minor formal cases coming to ODH’s attention (Note: ODH is not the best entity to handle this task because it is not seen as neutral);
   c. review disciplinary recommendations and actions to ensure consistency in the sanctions imposed across the university; and
   d. provide a system of checks and balances, so that if anyone has a grievance against ODH (e.g., potential complainant, potential respondent), they can take the grievance to this body.\(^1\)

D. **Enhancement of Training for Department Chairs and Executive Committee Leaders.** It is recommended that the ODH consult with a task force, and perhaps other universities’ Offices of Discrimination and Harassment, to identify ways to improve chair and other up-line personnel (or department leadership) training on discrimination and harassment. The task force should be convened by the Provost to work directly with ODH to improve these training procedures.

E. **Annual University-Issued Report on ODH Cases and Disciplinary Actions.** The university must strive to communicate the number and outcome of ODH cases to the public each year – in an annual report, much like the university’s annual Safety and Fire Report (see [http://police.colorado.edu/sites/default/files/2013clery.pdf](http://police.colorado.edu/sites/default/files/2013clery.pdf)). Our review revealed that ODH handles numerous cases each year and most of these cases have no basis to proceed (e.g., lack of evidence, lack of a formal complainant), but in the cases that do go forward, they are handled in a proscriptive manner. For instance in 2012-13, six ODH cases resulted in disciplinary actions ranging from additional training to termination. The university-issued annual report would both help to dispel the current myth that the University of Colorado Boulder has numerous

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\(^1\) We have heard that each department is supposed to have a grievance committee, but we are unclear about how these committees are organized and how an instructor, faculty member, graduate student, undergraduate student, or staff member might contact such a committee.
unresolved discrimination and harassment problems (e.g., sociology, philosophy) and that faculty can be disciplined without due process or a formal ODH investigation. This report would further improve communication between ODH and the larger university community, as well as the university and the public.

F. Committee to Monitor the Implementation of the Recommendations from the BFA ODH Policy and Procedure Committee. To ensure the full and complete implementation of the above-outlined recommendations, a collaborative committee of faculty, staff, and students should be formed to review ODH’s work. ODH should be required to submit a Recommendations Implementation Compliance Report each year for five years to the BFA starting in May 2015. In addition, ODH should provide information on recent cases and recurring issues at the same time that it provides the bi-annual Case Summary Report to the Provost. More specifically, when ODH provides its bi-annual report to the administration (e.g., Provost), it should be required to report on:

1. all cases (formal and informal) since the last reporting period;
2. the historical context for any recurring cases within departments or offices (formal and informal) over the most recent six years (to cover more than one chairperson’s rotation).

III. Concluding Remarks

In conclusion, the BFA ODH Policy and Procedure Committee reviewed existing ODH policies and procedures with a focus on enhancing the CU community’s understanding of such policies and procedures. The review process resulted in the above-listed recommendations, which seek to identify the gaps in ODH procedures and improve the effectiveness of ODH processes. The effective implementation of these recommendations will prove critical to restoring a climate of trust and respect on ODH-related matters across campus. However, it is important to note that these improvements will be difficult to achieve if the university’s administration and ODH do not address the current disconnect between ODH’s policies and procedures and academic departments’ shared governance. We urge the campus community to seriously consider these recommendations as a first step toward improving both ODH’s policies and procedures and the climate of trust on campus.

IV. Appendices

- Appendix A: ODH’s Procedural Flow Chart
- Appendix B: BFA ODH Policy and Procedure Committee’s Revised Flow Chart

Appendix A: ODH’s Procedural Flow Chart
Informal Resolution

Meet separately with Complainant and Respondent. No findings made or report issued.

Chair/Dean notified of allegations and response.

Parties and supervisory upline provided copy of report (Chair, Dean, Provost, Chancellor)

If policy violation found, sanction imposed by disciplinary authority (Dean in consultation with Chancellor and University Counsel).

Formal Investigation

Findings of fact and conclusions made after meeting with each party and witnesses. Report drafted by ODH.

Report reviewed by review committee.

No policy violation found

Policy violation found
Appendix B: BFA ODH Policy and Procedure Committee’s Revised Flow Chart