

UNIVERSITY OF THE
FREE STATE
UNIVERSITEIT VAN DIE
VRYSTAAT
YUNIVESITHI YA
FREISTATA



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UNIVERSITY OF THE FREE STATE

**Anti-Discrimination, Promotion of
Equality, and Social Justice Policy and
Procedures**

1. PREAMBLE

- 1.1. The University of the Free State (UFS) is committed to providing opportunities for its Staff and Students to pursue excellence and satisfaction in their academic and social lives.
- 1.2. The UFS consequently undertakes to safeguard and advance the fundamental rights and freedoms of all Students and Staff of the institution, especially the constitutionally guaranteed rights¹ of every person to inherent human dignity², Equality and non-discrimination³.
- 1.3. These rights have been enshrined in the Employment Equity Act (EEA) (in respect of employment) and the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) (in respect of all matters, except those covered by the EEA) and consequently these statutes, together with the Constitution and the relevant international standards, form the cornerstone of this Policy.
- 1.4. In line with its vision to promote Equality and Social Justice, and to prevent Unfair Discrimination within the institution, the UFS undertakes to protect all Students and Staff from direct and indirect Unfair Discrimination, whether such discrimination is based on listed, unlisted analogous or arbitrary grounds of Unfair Discrimination, by taking appropriate and informed action against all persons that engage in acts of Unfair Discrimination in accordance with this Policy and all other applicable UFS policies.
- 1.5. To eliminate any doubt, it is hereby recorded that the provisions of this Policy are not retrospective, and will consequently become effective from the date on which this Policy comes into operation.

2. DEFINITIONS AND INTERPRETATION

¹ The fundamental rights and freedoms as set out in the Bill of Rights in Chapter 2 of the Constitution.

² Section 10 of the Constitution.

³ Section 2 of the Constitution.

In this document, unless the context indicates otherwise, the following capitalised terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings:

- “Alternative Dispute Resolution”** means, collectively and in accordance with the relevant circumstances and as more comprehensively described in paragraph 9 of this Policy, the following:
- (i) negotiation;
 - (ii) mediation; and/or
 - (iii) disciplinary action;
- “Annexures”** means the Annexures to this Policy, which form an integral part of the Policy and should be read in conjunction with the provisions of this Policy;
- “Constitution”** means the Constitution of the Republic of South Africa, No 108 of 1996;
- “EEA”** means the Employment Equity Act, No 55 of 1998, as may be amended, varied or replaced;
- “Equality”** means, in relation to the UFS, a multi-faceted substantive approach to Equality as advanced by the Constitution, requiring social and occupational change by addressing inequality;
- “Law”** means all relevant laws of the Republic of South Africa, as well as all relevant provisions of applicable international law, to the extent that South Africa has committed to recognising such laws;
- “Mediators”** means objective persons identified, by the UFS

Department of Human Resources and the Directorate for Student Discipline and Mediation for employees and students of the UFS respectively, as eligible to act as mediators in resolving disputes of Unfair Discrimination and alleged bullying in terms of this Policy, and who have received adequate accredited training to act in such a capacity;

“PEPUDA”

means the Promotion of Equality and Prevention of Unfair Discrimination Act, No 4 of 2000, as may be amended, varied or replaced;

“Policy”

means this policy and procedures on the promotion of Equality and Social Justice and the prevention of Unfair Discrimination;

“Social Justice”

means justice and Equality in terms of the distribution of opportunities and privileges;

“Staff”

means all full-time, part-time and *ad hoc* employees of the UFS;

“Students”

refers to a Student as per the Definition of a Student contained in the General Rules of the University of the Free State, as amended from time to time;

“UFS”

means the University of the Free State, a university duly established under the Higher Education Act, No 101 of 1997; and

“Unfair Discrimination”

means, for the purposes of this Policy, any conduct which either directly or indirectly discriminates unjustifiably between persons or

classes of persons based on:

- (i) the grounds listed in section 9(3) of the Constitution, as well as all unlisted grounds analogous thereto;
- (ii) the grounds listed in section 6(1) of the EEA, as well as all unlisted grounds analogous thereto and all arbitrary grounds envisaged by the aforementioned section; and
- (iii) the provisions and grounds stipulated in Chapter 2 of PEPUDA.

3. OBJECTIVES OF THE POLICY

This Policy aims to advance the following objectives:

- 3.1 To clarify, deepen and promote an understanding of Equality, Social Justice and Unfair Discrimination among Staff and Students of the UFS.
- 3.2 To identify and promote an understanding of barriers to Equality within the UFS, as well as the various forms and practices of Unfair Discrimination that may occur, with an aim of preventing and eradicating such practices.
- 3.3 To identify bullying practices within the various vertical and horizontal relationships at the UFS, with an aim of understanding, preventing and eradicating such practices.
- 3.4 To describe the responsibilities, rights and duties of the various role players at the UFS in identifying and eradicating Unfair Discrimination and promoting Equality and Social Justice.
- 3.5 To establish the appropriate and acceptable procedures, processes and channels of communication for Staff and Students of the UFS to address their concerns pertaining to allegations of Unfair Discrimination and bullying.

4. GUIDING PRINCIPLES

- 4.1 The UFS is committed to establishing an institutional culture and work environment in which the inherent human dignity and right to Equality of all persons are respected.
- 4.2 Victims of Unfair Discrimination and bullying should be supported, protected and at liberty to express their grievances in accordance with the appropriate procedures and through the appropriate avenues, as described in this Policy.
- 4.3 All Staff and Students of the UFS have an obligation in terms of this Policy to assist in establishing and maintaining an institutional culture and work environment that promotes Equality and Social Justice and inhibits Unfair Discrimination. In discharging this obligation, Staff and Students must ensure that they do not engage in conduct that amounts to Unfair Discrimination and should discourage such conduct when it is engaged in by others.
- 4.4 Failure by Staff and Students to uphold and adhere to the provisions of this Policy may result in disciplinary action being taken by the UFS, in accordance with the designated UFS disciplinary procedures, policies and rules.
- 4.5 As part of its commitment to advance Equality, the UFS recognises that recruitment, selection and placement of Staff and prospective Staff members of the UFS are crucial aspects of managing redress and equity in the work environment. The UFS consequently undertakes to ensure that employment positions are advertised and positions are filled in compliance with its obligations under the EEA (including its institutional Employment Equity plan and targets) and this Policy.
- 4.6 The UFS recognises the importance of ensuring the adequate provision of training and development based on the individual needs of Staff members.
- 4.7 The designated UFS authorities must ensure that appropriate action is taken objectively in circumstances where alleged claims of Unfair Discrimination and bullying are brought to its attention, taking all reasonably necessary steps to

ensure that such allegations are adequately considered, investigated and discharged in accordance with the requirements set for Alternative Dispute Resolution in terms of this Policy and/or any other policy applicable.

- 4.8 The UFS undertakes to make reasonable resources (e.g. Staff, offices, operational budget) available in order to advance standards and mechanisms of good practice, aimed at eradicating all forms of Unfair Discrimination and bullying among Staff and Students and to engage in effective Alternative Dispute Resolution.
- 4.9 Alternative Dispute Resolution is selected as the preferred approach to dealing with matters related to Unfair Discrimination and bullying. Nothing in terms of this Policy prohibits the UFS from conducting the matter in terms of any other relevant policy or rules, and further does not prohibit an aggrieved individual to pursue his/her allegation of Unfair Discrimination or bullying in an appropriate forum and in accordance with the relevant provisions of applicable Law.
- 4.10 Allegations lodged by Staff and Students in respect of Unfair Discrimination or bullying will be viewed in a serious light. Consequently, Staff and Students who are found guilty of such conduct, as well as such persons who make allegations of this nature that are false, misleading or malicious by nature, will be dealt with in accordance with the provisions of this Policy.

5. RESPONSIBILITIES

- 5.1 The UFS community, consisting of both Staff and Students, is individually and collectively responsible for ensuring that the provisions of this Policy are adhered to.
- 5.2 Designated authorities and/or Mediators of the UFS will be responsible for overseeing and ensuring, as the case may be, that the procedures and processes pertaining to formal disputes and Alternative Dispute Resolution are adhered to.
- 5.3 As part of their induction into the management structure of the UFS, all

managerial Staff are required to undergo Equality and Social Justice training within six (6) months of being appointed to a managerial position.

5.4 All managerial Staff carry the following responsibilities (in addition to the responsibilities of Staff and Students contemplated in clause 5.5 below) in terms of this Policy:

5.4.1 Ensure that they, at no time, engage in any form of conduct that may violate this Policy;

5.4.2 Monitor the work environment to ensure that conduct which amounts to Unfair Discrimination and bullying is observed, addressed and adequately curbed;

5.4.3 Assist in the interpretation and understanding of this Policy by Staff and Students; and

5.4.4 Ensure that any allegations of Unfair Discrimination and bullying are dealt with adequately in terms of this Policy and/or any other policy applicable.

5.5 Staff and Students carry the following general responsibilities in terms of this Policy:

5.5.1 Ensure that they do not violate this Policy;

5.5.2 Report any occurrence of Unfair Discrimination and bullying in accordance with the provisions of paragraph 9 of this Policy;

5.5.3 Assist, where reasonable and possible, other Staff and Students who have allegedly suffered Unfair Discrimination or bullying, by ensuring that their complaints are dealt with in terms of this Policy; and

5.5.4 Ensure that confidentiality is maintained in respect of any allegation of Unfair Discrimination or bullying, and reasonably cooperate with designated authorities of the UFS in dealing with such allegations in

terms of this Policy.

6. APPLICATION OF THE POLICY

The Policy applies to all of the following:

- 6.1 Staff of the UFS;
- 6.2 Students of the UFS; and
- 6.3 Contractors of the UFS who perform work on any of the campuses of the UFS, for which purposes service-level agreements and sub-contractor agreements should be aligned with the provisions of this Policy.
- 6.4 The provisions of this Policy will apply to all Staff members and Students who, in the course and scope of their employment or studies, visit third-party venues and engage with society in general.

7. BULLYING IN THE HIGHER-EDUCATION ENVIRONMENT

- 7.1 The UFS recognises that the prevalence of bullying in the higher-education environment has escalated in recent years, giving rise to human-dignity violations that are comparable to those inflicted by acts of Unfair Discrimination.
- 7.2 There is presently no globally uniform definition of bullying. In light of the multi-faceted nature of bullying, this concept is most adequately defined in terms of its elements, symptomology and consequences, which may be described as follows⁴:

- 7.2.1 An unwanted personalised, often sustained attack on one or more

⁴ This definition has been adapted from the description of workplace bullying depicted by A Oade. 2009. *Managing Workplace Bullying: How to identify, respond and manage bullying behaviour in the workplace*. Palgrave MacMillan. See also the definition of bullying put forth by the Workplace Bullying Institute.

persons by another person(s) using behaviours that are emotionally and psychologically harmful;

7.2.2 Introducing a hostile dynamic into a workplace or educational relationship that involves a purposeful attempt by one person to injure another person's self-esteem, self-confidence and reputation or to undermine their competence to carry out their work duties or studies effectively; and/or

7.2.3 Handling a relationship with a person in a way that involves removing power from that person and placing it with oneself.

7.3. The UFS recognises that bullying also extends to group behaviour and is not limited to one-on-one conduct. Consequently, a group of persons may bully an individual.

7.4. Bullying can generally be categorised according to four (4) primary categories:

7.4.1. Physical;

7.4.2. Verbal;

7.4.3. Social; and/or

7.4.4. Cyber.

7.5. The following constitute examples of bullying behaviour:

7.5.1. Insults;

7.5.2. Interference;

7.5.3. Intimidation;

7.5.4. Undermining;

7.5.5. Withholding of resources;

7.5.6. Social exclusion and marginalisation;

7.5.7. Humiliation;

7.5.8. Rudeness and disrespect;

7.5.9. Lying;

7.5.10. Ignoring (including use of the silent treatment);

7.5.11. Persistent trivial criticism;

7.5.12. Sabotage;

7.5.13. Taking away responsibilities without reason;

- 7.5.14. Excessive monitoring;
- 7.5.15. Verbal insults and abuse;
- 7.5.16. Physical abuse;
- 7.5.17. Undervaluing legitimate efforts;
- 7.5.18. Unfair allocation of workloads;
- 7.5.19. Threats; and
- 7.5.20. Withholding of information.

- 7.6. While intention is a requirement for bullying at times, it is not a strict requirement, since this conduct may occur and cause harm to victims even in circumstances where there is no specific intention to do so.
- 7.7. Bullying gives rise to various potentially severe negative consequences, such as stress-related ill health, as well as psychological and emotional harm, which may adversely affect the right to dignity of bullied persons. The UFS is consequently committed to curbing and eradicating such conduct.

8. EQUALITY AND UNFAIR DISCRIMINATION IN THE HIGHER-EDUCATION ENVIRONMENT

- 8.1 This Policy addresses all the various listed and unlisted analogous grounds in respect of which direct or indirect Unfair Discrimination may take place. Any allegations of Unfair Discriminatory conduct will be dealt with in accordance with the provisions of this Policy.

- 8.2 The listed grounds of Unfair Discrimination are the following:

- 8.2.1 Race⁵;
- 8.2.2 Gender⁶;
- 8.2.3 Sex⁷;
- 8.2.4 Pregnancy;
- 8.2.5 Marital status;

⁵ The Annexure on Racism provides further insights in this regard.

⁶ The Annexure on Sex and Gender provides further insights in this regard.

⁷ The Annexure on Sex and Gender provides further insights in this regard.

- 8.2.6 Ethnic or social origin;
- 8.2.7 Colour;
- 8.2.8 Sexual orientation⁸;
- 8.2.9 Age;
- 8.2.10 Disability⁹;
- 8.2.11 Religion;
- 8.2.12 Conscience;
- 8.2.13 Belief;
- 8.2.14 Culture;
- 8.2.15 Language;
- 8.2.16 Birth;
- 8.2.17 Family responsibility;
- 8.2.18 HIV status; and
- 8.2.19 Political opinion.

8.3. The unlisted analogous grounds and arbitrary grounds of Unfair Discrimination may encompass the following:

- 8.3.1. Physical features¹⁰;
- 8.3.2. Health status¹¹; and
- 8.3.3. Xenophobia¹².

9. DISPUTES AND DISPUTE-RESOLUTION PROCEDURES¹³

⁸ The Annexure on Sexual Orientation provides further insights in this regard.

⁹ The UFS recognises that, as part of advancing Equality for people with disabilities, appropriate and reasonable accommodation measures may be required in order to remove barriers to participation in the academic and occupational environment.

¹⁰ The UFS recognises that while immutable physical characteristics, such as height and weight, are not expressly afforded legal protection as listed grounds of Unfair Discrimination, such conduct based on these features has the potential to impair the fundamental human dignity of these persons and is consequently regarded as impermissible.

¹¹ The UFS recognises that not all physical and mental health impairments will classify as legally protected disabilities according to the legal criteria, and therefore, to avoid any doubt, records that Unfair Discrimination based on health status impairs the fundamental human dignity of these persons and is consequently impermissible.

¹² The Annexure on Xenophobia provides further insights in this regard.

¹³ The Alternative Dispute Resolution procedures envisaged in this Policy does not apply to the resolution of disputes and settlements, which fall within the jurisdiction of the Employee Relations Office of the UFS.

9.1 General

- 9.1.1 The UFS recognises that, from time to time, Staff and Students may experience Unfair Discrimination and bullying in the institution. This Policy establishes and sets out the appropriate procedures and processes to be followed in circumstances where alleged violations of this Policy are reported.
- 9.1.2 The UFS further recognises the need for accessible, swift and effective dispute-resolution procedures for resolving allegations of Unfair Discrimination and bullying, especially in light of the psychological and emotional impact that such conduct may have on the victim and/or survivor, as well as the psychosocial and economic costs associated with litigation.
- 9.1.3 Alternative Dispute Resolution has been identified as the most effective manner to deal with disputes lodged in accordance with this Policy.
- 9.1.4 In light of the fact that pre-mediation and mediation, in terms of the Alternative Dispute Resolution procedure as envisaged in this paragraph (9), are internal processes, which are limited to internal stakeholders only, legal representation during these official processes is not permissible in general. In cases where a student is the alleged offender, the Manager: Directorate for Student Discipline and Mediation, after receiving a request, may grant permission for legal representation of the alleged perpetrator. However, this does not inhibit the right of Staff or Students in a dispute in any way to obtain legal advice regarding the matter pertaining to the dispute.
- 9.1.5 The UFS recognises that confidentiality during Alternative Dispute Resolution procedures is essential to conduct these processes effectively. Consequently, a commitment will be required from all parties in a dispute involving an allegation of Unfair Discrimination

and bullying, to keep the details of the allegation and these proceedings strictly confidential.

9.2 Lodging a complaint and declaration of a dispute

Staff and Students who allege a violation of this Policy are required to lodge an official complaint in the prescribed form with the Directorate for Student Discipline and Mediation and/or Department of Human Resources at the UFS.

9.3 Pre-mediation

9.3.1 An official file will be opened and a Mediator will be appointed to investigate and oversee the dispute. Investigation of the complaint will entail gathering evidence and interviewing the parties in the dispute, as well as any appropriate witnesses. In the case of a Student perpetrator, an investigating officer will be appointed to investigate the complaint. The process will unfold in compliance with Annexure B of the UFS General Rules in case of Student offenders.

9.3.2 The pre-mediation phase will involve informal discussions and negotiations with the parties in the dispute in order to attempt to settle the matter.

9.3.3 If the matter is settled at this stage, or if the Mediator is satisfied that the allegation of Unfair Discrimination or bullying is unfounded, the matter will be concluded and the file will be closed. The parties in the dispute will be notified accordingly.

9.3.4 In the event that the matter is not settled and there is sufficient basis for and evidence to support the allegation of Unfair Discrimination or bullying, the matter will proceed to the Mediation phase of Alternative Dispute Resolution, as contemplated in paragraph 9.4 (*Mediation*) below. In the case of a student offender, the Manager: Directorate for

Student Discipline and Mediation will manage the process to be followed further.

9.4. Mediation

- 9.4.1. Mediation constitutes a voluntary process and, consequently, both parties or groups of parties in a dispute involving an allegation of Unfair Discrimination or bullying must agree to it. An agreement to undergo mediation neither commits the complainant to pursue disciplinary or criminal charges, nor deprives the complainant of the right to do so. Therefore, formal complaint and/or grievance procedures remain available to complainants in circumstances where the mediation process breaks down.
- 9.4.2. The UFS recognises that not all disputes are eligible for mediation as a form of Alternative Dispute Resolution. These conditions may include circumstances where crimes or egregious human rights violations have occurred.
- 9.4.3. A request for mediation may arise from a variety of different sources, including:
 - 9.4.3.1. Directly from a complainant;
 - 9.4.3.2. From an individual whom the complainant has approached for advice or assistance; or
 - 9.4.3.3. From a managerial Staff member of the UFS who is aware of a real or potential conflict situation between Staff and/or Students which falls within the scope of this Policy.
- 9.4.4. In the event that the complainant is agreeable to mediation, the Mediator will engage with the alleged perpetrator, to ascertain his/her/their attitude towards mediation. The alleged perpetrator may be accompanied by another Staff member or Student as a support person at such a meeting.
- 9.4.5. If the alleged perpetrator does not agree to mediation, the complainant

will be advised that mediation cannot take place and that he/she has the option to initiate a formal complaint procedure at the Employment Relations Office of the UFS (in the event that the alleged perpetrator is a Staff member) or the Directorate for Student Discipline and Mediation (in the event that the alleged perpetrator is a Student) in accordance with the rules of the UFS.

- 9.4.6. In the event that the Mediator is satisfied that the parties in the dispute agree freely and voluntarily to mediation, these proceedings will commence, the details of which will be communicated by the Mediator to the parties in the dispute.
- 9.4.7. No formal complaint or disciplinary proceedings may commence or be pursued during the course of the mediation process.
- 9.4.8. The Mediator may, during any stage of the mediation process, declare that the mediation has been terminated for the following reasons:
 - 9.4.8.1. If either party withdraws their consent to mediation;
 - 9.4.8.2. If the Mediator decides, at his/her sole and absolute discretion, that mediation is not the appropriate process to resolve the dispute at hand; and/or
 - 9.4.8.3. If the Mediator decides, at his/her sole and absolute discretion, that it will not be possible to reach a fair and appropriate settlement within a reasonable period.
- 9.4.9. In such a case where the mediation is terminated, the matter will be referred to the Employment Relations Office of the UFS or the Directorate for Student Discipline and Mediation (as the case may be) for formal procedures to be initiated if the complainant so desires.
- 9.4.10. Until mediation is terminated in accordance with the ways of termination envisaged in this procedure (whether by settlement or otherwise), both parties to the dispute 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 cooperate with the Mediator, as sufficient grounds for determining that it will not be possible to reach a fair and appropriate settlement

within a reasonable period, which will constitute appropriate grounds for terminating the mediation process in terms of paragraph 9.4.8 of this Policy.

- 9.4.11. Nothing stated or revealed by either party or the Mediator during and for the purposes of mediation, will be admissible in any official disciplinary proceedings conducted by the UFS. Mediation in terms of this paragraph (9) does not, however, inhibit the right of the complainant to institute criminal charges against the perpetrator.
- 9.4.12. If, after the mediation process, the parties in the dispute agree to settle the complaint and the Mediator is satisfied that the nature and terms of the proposed settlement are appropriate and fair in accordance with the circumstances, the Mediator will draft the terms of the settlement. If both parties agree to the terms of this drafted settlement, they will sign the settlement to attest and ratify their agreement to it. The Mediator will then report to the Employment Relations Office of the UFS or the Directorate for Student Discipline and Mediation (as the case may be), who will record and confirm the terms of the settlement, after which it will become binding on the parties.
- 9.4.13. If the Employment Relations Office of the UFS or the Directorate for Student Discipline and Mediation (as the case may be) declines to endorse the settlement, it will express its reasons for doing so to the Mediator in writing and, if necessary, a designated person will meet with the parties concerned (especially with the complainant) to clarify the reasons for declining to endorse the settlement. If the parties, however, confirm in writing that they are satisfied with the settlement after the explanation of the designated official, the settlement will be binding on them.
- 9.4.14. Any breach of the binding settlement by either of the parties thereto will constitute misconduct under the Disciplinary Procedures for University Staff and/or the Rules for Student Discipline of the UFS (as the case may be). A binding settlement in respect of the allegation of Unfair Discrimination or bullying will preclude the UFS from instituting disciplinary actions, but not criminal charges.

- 9.4.15. After the settlement has been endorsed, a copy of the settlement will be provided to both parties and placed in the personal Staff/Student files of the parties involved in the mediation. A copy of the settlement is kept by the Employment Relations Office of the UFS or the Directorate for Student Discipline and Mediation (as the case may be) for a period of at least 12 (twelve) months after the date on which such a settlement becomes binding on the parties in terms of this paragraph (9).
- 9.4.16. All statements and evidence revealed and disclosed during the mediation process will be regarded as confidential and may not be disclosed by the parties in the dispute. Each dispute and settlement, whether binding or not, is similarly regarded as confidential and may not be disclosed at any time. A breach by a Staff member or Student of any obligation to ensure a confidentiality measure imposed by this Policy constitutes misconduct under the Disciplinary Rules for University Staff and/or the Rules for Student Discipline of the UFS (as the case may be).
- 9.4.17. If, after 30 (thirty) business days from the date of the authorisation of mediation, a binding settlement has not been reached by the parties thereto, the Mediator will declare the mediation terminated (in which case the Mediator reports the declaration and the reason for it to the Employment Relations Office of the UFS or the Directorate for Student Discipline and Mediation, as the case may be, in writing), or request that the period of the mediation be extended and provide reasons for such a request. If the Mediator declares mediation terminated or the Employment Relations Office of the UFS or the Directorate for Student Discipline, as the case may be (in consultation with the complainant), refuses to permit mediation to continue, mediation terminates and the formal complaint procedure, in terms of the rules and policies of the UFS, will commence if the complainant so desires. If the Employment Relations Office of the UFS or Directorate for Student Discipline (as the case may be) allows mediation to continue, it will stipulate a period within which mediation must be completed. Once this second period has expired, no further extensions of the mediation period will be granted. If a binding settlement has not yet been reached within the aforesaid

extended period of mediation, the mediation will automatically be declared terminated.

9.5 The right to pursue external processes

These Alternative Dispute Resolution procedures contemplated in paragraph 9 do not remove or curtail the right of a Staff member to refer a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) (in terms of section 10 of the EEA) or to pursue a complaint externally in terms of PEPUDA, nor does it suppress the right of a Student or Staff member to go to the South African Human Rights Commission (SAHRC) or Commission for Gender Equality (CGE). However, Staff and Students are urged to exhaust all available internal mechanisms (Alternative Dispute Resolution and formal procedures) before resorting to such measures¹⁴.

10. INFORMATION, EDUCATION AND TRAINING

- 10.1 All orientation of Staff and Students must include education on fundamental constitutional rights and the provisions of this Policy. All Staff members are encouraged to promote Equality, Social Justice principles, sensitivity to diversity and inclusiveness awareness in their teachings and interfaces with other Staff members and Students where relevant.
- 10.2 All Students are encouraged to promote Equality in their respective faculties, departments, colleges and residences (on and off campus).
- 10.3 The University, through the line function across the three campuses and at different levels, should ensure that there are continuous inclusiveness-awareness information sessions, critical dialogue sessions and training sessions, which will be reviewed and the nature and scope of which will be

¹⁴ Section 10(4)(b) of the EEA should also be noted in this regard, which states: "The party that refers a dispute must satisfy the CCMA that ... the referring party has made a reasonable attempt to resolve the dispute."

determined on an annual basis, taking into account considerations from the preceding year.

- 10.4 The Department of Communication and Brand Management at the UFS is required to promote and support Equality on campus.

11. REVIEW OF THE POLICY

This Policy will be reviewed by the UFS every three (3) years, or as may be required by relevant legal developments under the South African and international legal frameworks.

ANNEXURES

ANNEXURE A:

RACISM

1. CONCEPTS AND VIEWS

The UFS acknowledges that there is a multitude of definitions of racism and that the term 'race' is understood to be both flexible and evolving. In this Policy, the UFS recognises that 'race' and racism are underpinned by the following:

1.1. Race

The UFS takes 'race' to be a social construct that has been proven to have no basis in biological taxonomy.

1.2. Racism

- 1.2.1. 'Racism' relates to discriminatory attitudes, unexamined assumptions and beliefs, as well as behaviours, societal and organisational practices that result in exclusions, restrictions, preferences, psychological distress, negative stereotypes and distinctions for individuals or groups that are 'othered'.
- 1.2.2. In South Africa, racism is the result of ideological, behavioural and emotional conditioning and structural arrangements that have occurred over centuries through slavery, colonisation and apartheid, at the heart of which was the creation of dominant and subservient groups in competition for economic resources and material wellbeing.
- 1.2.3. Racism is thus underpinned by ideology and practices that deem certain societal groups superior to others.
- 1.2.4. Racism and associated discriminations can be overt (direct, conscious, intentional) or covert (indirect, unconscious, unintentional). In all its forms, it can lead to harm and the impairment of the fundamental human

dignity of those who suffer this form of Unfair Discrimination.

- 1.2.5. In the educational environment, racism may present itself in both horizontal and vertical relationships. The UFS takes cognisance of racism that filters into knowledge production, research, the curriculum and the learning and teaching experience for both Students and Staff.
- 1.2.6. In South Africa, we have undergone processes of reconciliation and have aspired towards a non-racial 'rainbow nation'. This has contributed to increased discomfort and made it unpopular to address issues of race and racism directly.
- 1.2.7. Due to political and legislative changes in South Africa and globally, the nature of racism is constantly shifting. Even though overt racism is more easily named, identified and sanctioned, there are still such incidents in society. However, racism is taking on covert, unconscious forms that are more sophisticated, and which may be more difficult to identify and address.
- 1.2.8. All stakeholders should recognise that we carry this legacy with us and that it is constructed and socialised, and that this system has, to a greater or lesser extent, an impact on all South Africans. One intention behind this Policy is therefore to open forums for us to discuss these effects, make meaning of this phenomenon, its intentions and its complex and elusive manifestations and to intentionally and decisively act with a view to curb it and to eventually eradicate it completely.

1.3 Othering

'Othering' is the process of making distinctions between groups on the basis of race, skin colour, nationality, ethnic origin, country of birth, ancestry, culture, sexual orientation, gender, class, religion, language or other socially constructed differences.

1.4 Racial discrimination

Racial discrimination is any direct or indirect discrimination toward those who are 'othered', through utterances, actions, behaviours, traditions, norms,

policies, procedures, practices and structural arrangements, which has the effect of making someone feel inferior, or marginalising, excluding, oppressing and limiting their potential and restricting access to power, resources, organisational positions, advancement, promotions and university activities in ways that affect individuals and groups negatively.

1.5 Harassment

The UFS recognises that, as a form of Unfair Discrimination, harassment may take place based on race.

1.6 Bullying

The UFS recognises that Staff and Students may experience bullying based on race.

2. BACKGROUND

2.1 In South Africa, many persons share the legacy of apartheid. As we live in the present and move into the future, all stakeholders have a responsibility to ensure that this past is neither perpetuated nor that its vestiges and residues continue to influence our personal and work relationships. We also have to acknowledge that racism is not only a problem of the past, but in many quarters is still prevalent in the present. Racism and various forms of marginalisation persist globally and continue to shape human relations worldwide and in South Africa.¹⁵

2.2 It may be challenging for people to acknowledge that they are facing a world that is increasingly being divided along religious, national, ethnic colour lines and other forms of difference. It is equally challenging for them to accept that their socialisation on power, privilege, dominance, racialised ways of being and marginalisation is carried into the present. As Students and Staff, we have to remain cognisant of the impact and persistence of all forms of racism and how it intersects with other identities. Race and other forms of identity may influence

¹⁵ Report of the Ministerial Committee on Transformation and Social Cohesion and the Elimination of Discrimination in Public Higher Education Institutions (2008).

many actions and the types of relationships we forge with colleagues, students and other UFS stakeholders. In our commitment to contribute to a more just and fair society, we must be willing to engage with all the factors that may contribute to the perpetuation of unfair discriminatory behaviour patterns and practices that act as obstacles to all of us in reaching our fullest potential.

- 2.3 This Policy stipulates that the UFS will not tolerate discrimination on the grounds of racial, class, sexual orientation, gender, religious, ethnic or cultural background. Racial harassment or related forms of abuse, including bullying, will also not be tolerated.
- 2.3 The guidelines and procedures of this Policy for dealing with allegations of racism take into account the experiences of individuals and groups, as well as systemic and institutional practices, as these may often be entwined and mutually enabling.

3. OBJECTIVES

In this Policy, the UFS aims to:

- 3.1 Appropriately name race-based discrimination with a view to eliminate this form of discrimination within the UFS.
- 3.2 Create awareness about the various types of race-based and associated intersecting forms of discrimination, such as ethnic origin, culture, nationality, country of birth, colour, sexual orientation, gender, class, language, religion and ancestry.
- 3.3 Ensure that appropriate and accessible procedures exist for Staff and Students to address incidents of racism, in accordance with paragraph 9.

4. CONCOMITANT CONSIDERATIONS FOR DEALING WITH RACIAL DISCRIMINATION, HARASSMENT AND BULLYING

- 4.1 There is a need to facilitate reporting and responding to accusations of racism. For the reasons set out herein, issues of racism have become 'hot spots' and

inflammatory, which makes them difficult to report, receive, engage with and resolve. The procedures and guidelines offered in terms of this Policy are intended to facilitate a constructive process of engagement that brings positive development and resolution for all parties involved. The UFS accepts that racism can be unlearned and that dealing with it in a constructive manner is beneficial for our society, as it makes meaning of the past and how the past tendencies still manifest in the present, with the aim of eradicating such problematic racist tendencies.

- 4.2 It is noteworthy that racism is most often dealt with at the individual-relational level. However, it arises out of an ideology and system that is delivered at the level of the collective society. In dealing with racism at the UFS, all complaints will therefore be considered at an individual, collective and institutional level with remedial actions considered at all of these levels.
- 4.3 We recognise that racism operates in complex ways and that each case will be dealt with based on its own merits.
- 4.4 Remedial actions taken in terms of this Policy and any formal complaint procedures will be directed at establishing or re-establishing the following relationships:
 - 4.4.1 Relationships that are free of Unfair Discrimination, harassment and bullying, and are based on Equality, mutual respect and the observance of human rights and Social Justice;
 - 4.4.2 Relationships where individuals and groups are supported in overcoming the impact of racism; and
 - 4.4.3 Relationships where individuals or groups who consciously or unconsciously engaged in racialised attitudes, other than facing the consequences of their actions, are also offered tools and support for correcting these racialised attitudes.
- 4.5 Remedial actions taken in terms of this Policy and any formal complaint procedures will also be directed at rooting out institutional policies, procedures

and practices that enable racial discrimination by omission or commission.

- 4.6 It is therefore important that, during the course of the Alternative Dispute Resolution procedures, the rights of the complainant, the alleged perpetrator and all parties involved are protected and observed through procedural and substantive fairness and justice to ensure that no further Unfair Discrimination, harassment or bullying follows.
- 4.7 It is also noted that, in the first instance, the expectations of the complainant will be observed with regard to how the matter is dealt with.
- 4.8 Confidentiality will be observed during the time that the complaint is being addressed. Confidentiality needs to be maintained by all parties involved. In these circumstances, there is a natural need to seek allies and supporters in a public way, which could negatively affect departmental or organisational work relations, and this should be avoided. Disciplinary steps may be taken by the UFS against those who break confidentiality unreasonably or seek to inflame the situation. Divisive actions by managers, colleagues, Staff and Students should be avoided in order to allow Alternative Dispute Resolution procedures to advance unhindered.

5. DISPUTE RESOLUTION

In the event that there is a complaint concerning acts of racism, a complainant should follow the provisions of the Anti-Discrimination Policy, highlighted in paragraph 9 of the Policy. However, those involved retain their right to seek the intervention of an external body such as the CCMA, the Equality Court, the Human Rights Commission of South Africa and the Labour Court.

6. APPLICABLE POLICIES AND ACTS

- 6.1 Existing documentation of the South African higher-education sector that applies to this Policy:

- 6.1.1 The Higher Education Act, No 101 of 1997, as amended from time to time;
- 6.1.2 Report of the Ministerial Committee on Transformation and Social Cohesion and the Elimination of Discrimination in Public Higher Education Institutions, 2008;
- 6.1.3 Education White Paper, No 3 of 1997;
- 6.1.4 Chapter 2 (Prohibition of Unfair Discrimination) of EEA; and
- 6.1.5 PEPUDA.

ANNEXURE B:

GENDER IDENTITY

The UFS recognises that while gender identity forms an integral part of the umbrella concept of gender, it has elected to address this concept independently, in light of the significant barriers to Equality experienced by certain gender-identity groups in society.

1. DEFINITIONS AND CONCEPTS

The terms used in this Annexure are used by expert non-governmental organisations (NGOs) and appear in relevant legislation. The following key terms may be described as follows:

- 1.1 “**Cisgender**” refers to someone whose identity conforms to the gender assigned to them by society and whose gender matches their sex at birth.¹⁶
- 1.2 “**Cissexism**” (noun) behaviour, which grants preferential treatment to cisgender people, reinforces the idea that being cisgender is somehow better or more ‘right’ than queerness, or makes other genders invisible.¹⁷
- 1.3 “**Gender**” informs the socially constructed roles, behaviour, activities and attributes that a particular society considers appropriate for men and women.¹⁸
- 1.4 “**Gender characteristics**” means the ways in which a person expresses his or her social identity as a member of a particular sex by using style of dressing, the wearing of prostheses, or other means.¹⁹
- 1.5 “**Gender identity**” refers to one’s private sense of being a man, woman or

¹⁶ Gender Dynamix (2014). ‘Terminology’. <http://www.genderdynamix.org.za/documents/>

¹⁷ Killermann, S (2013). *The Social Justice Advocate’s Handbook: A Guide To Gender*. Impetus Books, ISBN 978-0-9897602-0-1.

¹⁸ Gender Dynamix (2014). ‘Terminology’. <http://www.genderdynamix.org.za/documents/>

¹⁹ No. 49 of 2003: Alteration of Sex Description and Sex Status Act.

otherwise, not linked necessarily to one's physical body.²⁰

- 1.6 “**Gender reassignment**” means a process that is undertaken for the purpose of reassigning a person's sex by changing physiological or other sexual characteristics, and includes any phase of such a process.²¹
- 1.7 “**Gender variant**” is an umbrella term used to describe all people who defy mainstream notions of gender²² (i.e. male and female).
- 1.8 “**Intersexed**” means a person whose congenital sexual differentiation is atypical to whatever degree.²³
- 1.9 “**Primary sexual characteristics**” means the form of the genitalia at birth.²⁴
- 1.10 “**Secondary sexual characteristics**” means those characteristics that develop throughout life and are dependent upon the hormonal structure of the individual person.²⁵
- 1.11 “**Sex**” refers to the biological and physiological characteristics that define men and women.²⁶
- 1.12 “**Transgender**” is an umbrella term for people whose gender identity, expression or behaviour is different from those typically associated with their assigned sex at birth, including, but not limited to, transsexuals, cross-dressers, androgynous people, genderqueers and/or gender non-conforming people. Some transgender people opt for gender-affirming treatment (those transgender people who choose to fully transition by means of such treatment are often called transsexual), while others choose not to, or to do so only partially. Transgender people can be heterosexual, bisexual or homosexual.

²⁰ Gender Dynamix (2014). 'Terminology'. <http://www.genderdynamix.org.za/documents/>

²¹ No. 49 of 2003: Alteration of Sex Description and Sex Status Act

Serano, J. (2013). Excluded: Making Feminist and Queer Movements More Inclusive. Seal Press. ISBN978-1580055048

²² Gender Dynamix (2014). 'Terminology'. <http://www.genderdynamix.org.za/documents/>

²³ No. 49 of 2003: Alteration of Sex Description and Sex Status Act.

²⁴ No. 49 of 2003: Alteration of Sex Description and Sex Status Act.

²⁵ No. 49 of 2003: Alteration of Sex Description and Sex Status Act.

²⁶ Gender Dynamix (2014). 'Terminology'. <http://www.genderdynamix.org.za/documents/>

'Trans' is shorthand for transgender.²⁷

2. PURPOSE

- 2.1 The purpose of this Annexure is to outline the procedures and responsibilities of the UFS to assist Students and Staff that experience Unfair Discrimination on the basis of gender variance.
- 2.2 This Annexure also outlines the responsibility of the UFS to challenge cissexism that is inherent in policies, administration and academic practices.
- 2.3 The goal of this Annexure is to create a supportive and safe environment within the UFS for all Students and Staff that are gender variant.
- 2.4 The procedures to be undertaken by the UFS, as well as the responsibilities and obligations of its specific departments, Staff and Students in supporting gender-variant persons, are emphasised herein.

3. CONTEXT

- 3.1 In the context of advocacy, there has been a consistent conflating of the needs of individuals who do not identify with heterosexual orientations and/or are gender variant.
- 3.2 While sexual orientation and gender identity overlap in certain respects and share certain characteristics, they should not be considered synonymous or be equated.
- 3.3 Two Annexures to this Policy exist to address heterosexism and cissexism, namely:
 - 3.3.1 This Annexure B, which relates to Gender Identity.

²⁷ Gender Dynamix (2014). 'Terminology'. <http://www.genderdynamix.org.za/documents/>

3.3.2 Annexure C, which relates to Sexual Orientation.

4. APPLICATION

4.1 This Annexure applies to all UFS Staff and Students.

4.2 The persons that this Policy applies to are those Staff and Students who disclose to the UFS their gender identity and/or their desire to transition (medically and/or socially), with the aim of seeking support.

4.3 Provision of support must be based on the self-disclosure of the individual and not the perceived gender variance of the individual.

5. IDENTIFYING, PREVENTING AND DEALING WITH UNFAIR DISCRIMINATION, PREJUDICE, HARASSMENT AND BULLYING IN RELATION TO GENDER VARIANCE

5.1 Acts of bullying, harassment and Unfair Discrimination contravene this Policy and will not be tolerated by the UFS. UFS policies protect the rights and dignity of gender-variant people at work and in their studies. Some indicative examples of direct Unfair Discrimination and/or prejudice on the grounds of gender variance include:

5.1.1 Refusing to assist or provide psychosocial, medical or managerial support or services to a Student or Staff member who is gender variant;

5.1.2 Verbally or physically threatening a gender-variant person or spreading malicious rumours about that person;

5.1.3 Refusing to associate with or ignoring someone because they are gender variant;

5.1.4 Refusing to address a person in their acquired gender or to use their new name;

- 5.1.5 Sexually harassing a person who is gender variant;
 - 5.1.6 Passing judgement on how convincing a gender-variant person is in their acquired gender;
 - 5.1.7 Refusing to acknowledge the rights of a gender-variant person and failing to acknowledge that a transition has occurred;
 - 5.1.8 Treating the gender variance of others without sensitivity and respect; and
 - 5.1.9 Distributing or displaying cissexist slurs in the form of written material, graffiti, music or speeches.
- 5.2. Steps that can be taken by UFS managerial Staff, support Staff, service providers and Student leadership to prevent harassment, Unfair Discrimination and bullying include:
- 5.2.1. Monitoring the policies and their impact regularly;
 - 5.2.2. Developing clear procedures for investigating complaints in accordance with this Policy;
 - 5.2.3. Training Staff members involved in investigating complaints in accordance with this Policy; and
 - 5.2.4. Encouraging the reporting of harassment, Unfair Discrimination and bullying.
- 5.3 Prejudice, Unfair Discrimination, harassment and/or bullying (including, but not limited to name-calling/derogatory jokes, unacceptable or unwanted behaviour, intrusive questions) in relation to gender identity will be dealt with in accordance with this Policy.

6. DUTY TO SUPPORT GENDER-VARIANT STUDENTS AND STAFF

- 6.1 Anti-discrimination legislation, for example the Constitution and PEPUDA, places a legal obligation on the UFS to ensure a welcoming, safe and supportive environment, as well as conducive, respectful and inclusive teaching and learning to Students.

- 6.2 The Alteration of Sex Description and Sex Status Act, No 49 of 2003, provides procedures to be followed for legal change of sex description on the birth register, and must be complied with by the relevant parties when a Staff member or Student who is gender non-conforming wishes to change relevant UFS documentation.
- 6.3 The UFS recognises and complies with the human rights afforded to gender-variant Students and Staff, as set out in the Constitution, which protect them from Unfair Discrimination and advocacy of hatred based on gender. These human rights entail both positive and negative duties.
- 6.4 The UFS must provide support to gender-variant Staff and Students, both systematically and on a case-by-case basis.
- 6.5 The gender-variant person who is seeking support must always be consulted. Community-based service organisations, such as NGOs, can be useful sources of information and assistance.

7. PRACTICAL EXAMPLES OF POSSIBLE SUPPORT MEASURES

Practical support by the UFS may include:

- 7.1 Ensuring that there is suitable and safe accommodation for a gender-variant Student or Staff member if they are applying for/or are already residing in a UFS residence;
- 7.2 In accordance with applicable policies, making provision for classes, tutorials and tests that may be missed due to medication side effects or surgery pursuant to undergoing a gender change;
- 7.3 Updating all academic and administrative documentation so that the Student or Staff member's preferred name and/or gender are displayed correctly, and affording the option to those who do not wish to have a title (Prof, Dr, Ms, Mr, etc.) displayed on their documents.

- 7.4 Striving to ensure that there are gender-neutral bathrooms in all buildings for persons who identify beyond heterosexual orientations and for gender-variant people who do not feel comfortable in male/female toilets due to direct or indirect Unfair Discrimination.
- 7.5 Creating a support structure in coordination with the Department of Student Counselling or the Department of Human Resources at the UFS (as the case may be) to assist Students and Staff both within and outside the UFS with navigating a gender change.

8. CONFIDENTIALITY AND DISCLOSURE

- 8.1 The gender-identity status of the individual must not be revealed under any circumstance without their explicit written permission.
- 8.2 All documentation should be updated to reflect the individual's new name and gender without any indication to an outside party that a change has taken place, unless such disclosure is required by Law.
- 8.3 The UFS will create a positive and safe environment that promotes acceptance and respect for gender-variant persons.
- 8.4 The UFS will respect that gender variance is personal and highly confidential.
- 8.5 The UFS will not require anyone to disclose gender variance unwillingly.
- 8.6 Where gender variance is disclosed, processes will be followed to support and accommodate Staff and Students who identify as gender variant in cases where they apply for support through the UFS Gender and Sexual Equality Office.

9. DOCUMENTATION

The following information should be documented and stored confidentially by the UFS Gender and Sexual Equality Office:

- 9.1 Information on how the need for support was identified, including the application

form for support;

- 9.2 All forms of correspondence between relevant parties in the support process;
- 9.3 All forms of possible support offered, including evidence of this support where such support has been provided;
- 9.4 All expert/specialist advice obtained to assist in the support process; and
- 9.5 Any other information deemed necessary.

10. UFS SEXUAL-ORIENTATION AND GENDER-IDENTITY ADVISORY GROUP

10.1 The UFS Sexual-Orientation and Gender-Identity Advisory Group (from hereon called the Advisory Group) will be established within a reasonable time (of this Policy being approved by the Council of the UFS) by the UFS Gender and Sexual Equality Office to assist in the implementation of the Annexures that relate to Gender Identity and Sexual Orientation. In the event of the Advisory Group being formed, the group will decide on their own terms of reference in accordance with the provisions of this Policy.

10.2 The Advisory Group may include:

10.2.1 A union representative;

10.2.2 A representative of the UFS Gender and Sexual Equality Office;

10.2.3 A representative of the Department of Student Counselling and Development;

10.2.4 A representative of the UFS Campus Health and Wellness Centre;

10.2.5. A representative of the UFS Property Infrastructure Management Department;

- 10.2.6. A representative of the UFS Protection Services;
- 10.2.7 A representative of the UFS Centre for Universal Access and Disability Support (CUADS);
- 10.2.8 A representative of the UFS Student Representative Council;
- 10.2.9 A representative of the UFS Residence Life;
- 10.2.10 A representative of the UFS Dean of Student Affairs;
- 10.2.11 Representatives of any student-led organisations who are interested in the field;
- 10.2.12 A representative of the UFS Human Resources Department;
- 10.2.13 A representative of the UFS Institute for Reconciliation and Social Justice;
- 10.2.14 A representative of the UFS Safe Zones Reference Group;
- 10.2.15 A representative of the Directorate for Student Discipline and Mediation;
- 10.2.16 A representative of the Free State Centre for Human Rights;
- 10.2.17 At least one (1) and up to a maximum of three (3) openly ('out') gender-variant Staff members and/or Students and/or allies; and
- 10.2.18 At least one (1) and up to a maximum of three (3) Staff members and/or Students who identify openly ('out') beyond heterosexual orientations or are allies.

11. RESPONSIBILITIES

The major responsibilities that each party, as identified below, has in relation to the support procedure, are as follows:

Person	Responsibilities
Gender-variant persons seeking support	<ul style="list-style-type: none"> • Inform the UFS Gender and Sexual Equality Office of their identity. • Complete the Gender Identity Support Application Form provided by the UFS Gender and Sexual Equality Office, and supply any relevant documentation with regard to legal document changes.
UFS Gender and Sexual Equality Office	<ul style="list-style-type: none"> • Provide consultative services, advice and guidance to gender-variant persons seeking support. • Provide assistance and support to the Advisory Group. • Act as a resource and provide advocacy tools to academic and managerial Staff members. • Coordinate overall responses to support needs, as appropriate. • Periodically monitor and review the effectiveness, relevance and success of measures put in place.
UFS Employment Relations Office	<ul style="list-style-type: none"> • Investigate Staff complaints or grievances arising from requests for support that are denied or where issues arise regarding the implementation of approved measures.
Directorate for Student Discipline and Mediation	<ul style="list-style-type: none"> • Investigate complaints or grievances where a contravention of this Policy is alleged to have occurred and where the alleged offender is a student.
UFS HR	<ul style="list-style-type: none"> • Provide information about gender-variance support to Staff applicants. • Refer Staff applicants who request support to the UFS Gender and Sexual Equality Office. Provide on-going assistance to Staff who request it, or for whom support has been provided.

- Immediately notify the UFS Gender and Sexual Equality Office of any challenges arising from support measures that have been put in place in terms of this Policy.

Managerial Staff members and Deans

- Immediately notify the appropriate Human Resources manager or the UFS Gender and Sexual Equality Office of any support request received from a Staff or Student applicant.
- Give input into the consultative process to determine the most suitable support.
- Implement support as determined by the UFS Gender and Sexual Equality Office.

12. PREVENTING DISCRIMINATION

Requesting support

The Staff member or Student has the responsibility to approach the UFS Gender and Sexual Equality Office or their line manager/Dean/HOD/SRC representative with the request for gender-identity support. The line manager/Dean/HOD/SRC representative will then refer the Staff member or Student to the UFS Gender and Sexual Equality Office.

Initial discussion

The UFS Gender and Sexual Equality Office is required to determine the validity of the request as well as the extent to which the individual will need assistance, which may include:

- Speaking to relevant Staff members and with the individual about the support required by the individual;

- Referral to the UFS Department of Student Counselling and Development or other expert support structures;
- Assisting in the changing of UFS documentation;
- Engaging with the residence management of the UFS in order to make the necessary arrangements for the accommodation of such an individual in accordance with the process regarding residence accommodation as set out hereunder; and/or
- Facilitating support in other relevant areas where possible, including sports and student organisations and societies.

Process specific to residence accommodation

After a Student has applied for residence accommodation and disclosed their gender-variant status, the residence officer processing the application must make sure that whoever the individual may be sharing their accommodation with has been screened and informed (only after the gender-variant individual gives consent). This must happen prior to the arrival of the gender-variant individual at the residence.

This, if need be, will take place after the initial discussion as contemplated in paragraph 12 under 'Initial Discussion'. All official UFS documentation must be updated to reflect the gender-variant

individual's gender, new name and preferred gender pronouns.

Process specific to documentation

This, if need be, will take place after the initial discussion as contemplated in paragraph 12 under 'Initial Discussion'. All official UFS documentation must be updated to reflect the gender-variant individual's gender, new name, and preferred gender pronouns.

Process specific to safety in facilities

It is the responsibility of the UFS to provide a safe environment to all Staff and Students. This includes providing facilities that cater for every Staff member and Student who is gender variant and who feels more comfortable utilising facilities that are gender neutral. This applies beyond the UFS and, where possible, all service providers with whom the UFS has agreements to provide teaching facilities (schools, hospitals, clinics, etc.) must be requested to provide safe and accessible facilities that cater for every Staff member and Student who is gender variant.

Process:

Where possible (from a building perspective), all new buildings should provide gender-neutral facilities (change rooms, toilets, bathrooms, etc.). Where applicable, all disabled toilets, change rooms and bathrooms should be considered gender-neutral spaces

Curriculum

available for use by gender non-conforming Staff and Students with disabilities. Signage should reflect this. Consistency is vital in all implementation. Implementation should be guided by engagement with the Advisory Group.

Curricula in Student and Staff teaching and training must demonstrate reflections on and engagements with possible cissexism.

Process:

All new academic Staff members, as part of their induction into the UFS, must read this Policy Annexure. All new and existing Staff members should implement the following:

- Diversity and Sensitivity engagement within the curriculum that utilises examples in class which are not limited to cisgender people, and cater for a wide range of gender variance. An example of this would be using case studies that are not exclusively cisgender;
- Providing curriculum engagement with the student population that includes the experiences of gender-variant people. An example of this would be to include guest lectures and presentations by NGOs and student

societies providing support for gender variance or seeking the guidance of or consultation with these stakeholders in curriculum development.

- Creating safe and welcoming learning spaces where all Students who are gender variant feel included, with facilitated classroom discussions where cissexist comments and jokes are not encouraged and, where these do arise, using these moments as opportunities to educate those involved about gender variance.

The above applies to all support and academic Staff training and development.

Follow-up discussions

The individual and the UFS Gender and Sexual Equity Office will meet at an interval determined in the initial discussion as contemplated in this paragraph (12) under 'Initial Discussion'. The purpose of these meetings will be to check up on the individual to determine what needs have or have not been met, refer them to the UFS Department of Student Counselling and Development or support structures, and to deal with any complaints about harassment and cissexism.

Communication

This Policy and its Annexures will be placed on the Intranet of the UFS, which can be accessed by all Staff and Students.

13. SUPPORTING POLICIES AND LEGISLATION

Supporting policies and legislation include:

- 13.1 EAA;
- 13.2 Alteration of Sex Description and Sex Status Act, No 49 of 2003, as amended, varied or replaced;
- 13.3 PEPUDA;
- 13.4 Newcastle University Transgender Policy – Student Wellbeing Service, 2012 (example of best practice);
- 13.5 Protection from Harassment Act, No 17 of 2011.

14. FUNDING

All departments, schools, faculties and divisions of the UFS will be required to integrate gender-variance support progressively into their budgeting processes where applicable to Staff training and facilities managements, as well as other measures to advance this Policy.

15. DISPUTES

Disputes will be resolved according to paragraph 9 of the Policy.

16. CONTACTS

Queries relating to this Annexure B can be addressed to the UFS Gender and Sexual Equality Office.

SEX AND GENDER

1. DEFINITIONS

- 1.1 “**Gender**” is a personal and/or social understanding of self, which may be described as man, woman, genderqueer or by a range of other identities. Gender expression refers to the way in which a person presents himself or herself and includes, but is not limited to masculine, feminine or androgynous.²⁸
- 1.2 “**Gender variant**” is an umbrella term used to describe all people who defy cisgender notions of gender²⁹ (i.e. male and female). Cisnormativity refers to the implicit assumption that all people are cisgender, thereby erasing the existence of gender-variant people. Cissexism grants preferential treatment to cisgender people and contributes to the oppression of transgender people and reinforces the gender binary, or makes other genders invisible,³⁰ and is a manifestation of sexism.
- 1.3 “**Sex**” usually refers to a person’s physical body and biological characteristics, their genitals, hormones, chromosomes, etc. (i.e. male and female). In general, people are assigned sex at birth by medical practitioners.³¹
- 1.4 “**Sexism**” is defined as the perception and treatment of any person, not as an individual but as a member of a category based on sex/gender, accompanied by judgement of the category as either superior or inferior to another.

Unfair Discrimination may take place on the basis of sex, gender or both. Misogyny

²⁸ Ctrl Alt Gender. (2014). *Being an Ally to Trans* People*.

²⁹ Serano, J. (2013). *Excluded: Making Feminist and Queer Movements More Inclusive*. Seal Press. ISBN978-1580055048.

³⁰ Killermann, S (2013). *The Social Justice Advocate’s Handbook: A Guide To Gender*. Impetus Books, ISBN978-0-9897602-0-1.

³¹ 2008. Western Michigan University Policy on Sexual Harassment and Sexism.

refers to oppressive prejudice towards women and may also manifest through cissexism as a form of trans-misogyny meted out against gender-variant people. Sometimes sex/gender discrimination is described at the organisational level as a system or policy of treating a sex/gender unfairly. Sex/gender discrimination may be practised to benefit a specific sex/gender, or simply because a sex/gender is subjectively considered to be inferior.³² Whether expressed in overt or subtle forms such as sex/gender-related jokes or materials, sex/gender discrimination in the lecture venue or workplace is unacceptable at the UFS, and its elimination is the collective responsibility of the entire UFS community.

2. CONTEXT

- 2.1 In post-apartheid South Africa, sex and gender-based discrimination continues to be pervasive and women in particular continue to be disempowered in various social, economic and political ways. Like racism, sex and gender discrimination is an ideological phenomenon, based on unequal relations of power between men and women and underpinned by the ideology of patriarchy.³³
- 2.2 Sex/gender discrimination can be practised against all sexes/genders, although it is most often related to discrimination against women and femininity. Sex/gender discrimination is also practised against gender-variant individuals (for more information in this regard, refer to Annexure B).
- 2.3 Unfair Discrimination can be based on a person's actual or perceived sex, as well as their stated or expressed gender. Sex refers to a person's physical assignment as male, female or intersex. Gender refers to a personal and/or social understanding of self, which may be described as man, woman, genderqueer or by a range of other identities. Gender expression refers to the way in which a person presents himself or herself and includes, but is not limited

³² 2008. Western Michigan University Policy on Sexual Harassment and Sexism.

³³ Soudien, C. *et al.* (2008). Report of the Ministerial Committee on Transformation and Social Cohesion and the Elimination of Discrimination in Public Higher Education Institutions.

to, masculine, feminine or androgynous.

- 2.4 Privilege is an artefact of oppression, and groups that hold power in the oppression differential typically possess the most privilege.³⁴ One of the most universal forms of internalised dominance is embodied in male privilege. This is embedded in patriarchal structures that exist and often thrive within academic spaces.

3. PURPOSE

In this Policy, the UFS aims to:

- 3.1 Remove the unequal power relation that permeates sex/gender discourse and combat male privilege within the higher-education institution context;
- 3.2 Appropriately name sex/gender-related discrimination with a view of eliminating these forms of Unfair Discrimination within the UFS;
- 3.3 Create awareness about the ways in which sex/gender discrimination manifests itself; and
- 3.4 Ensure that appropriate and accessible procedures exist for Staff and Students to address incidents of sex/gender discrimination.

4. IDENTIFYING, PREVENTING AND DEALING WITH UNFAIR DISCRIMINATION, BULLYING AND HARASSMENT IN RELATION TO SEX/GENDER

- 4.1 Acts of Unfair Discrimination contravene the Policy and will not be tolerated. Some indicative examples of Unfair Discrimination, bullying and/or prejudice include:

- 4.1.1 Verbally or physically threatening a person based on their sex/gender;

³⁴ Killermann, S (2013). *The Social Justice Advocate's Handbook: A Guide to Gender*. Impetus Books, ISBN 978-0-9897602-0-1.

- 4.1.2 Sexual harassment and sexual assault;
 - 4.1.3 Assuming anything pertaining to the intelligence/ability/objectivity/rationality or credibility of a person based on their sex/gender;
 - 4.1.4 Treating the sex/gender of others without respect;
 - 4.1.5 Refusing consistent and equal payment for people across all sexes/genders;
 - 4.1.6 Discrediting the legitimacy of leadership based on a person's sex/gender; and
 - 4.1.7 Distributing or displaying sex/gender discriminatory slurs in the form of written material, graffiti, music or speeches.
- 4.2. Remedial actions taken in terms of this Policy will be directed at establishing or re-establishing relationships such that:
- 4.2.1. Relationships are free of Unfair Discrimination and harassment and are based on equality, mutual respect and the observance of human rights;
 - 4.2.2. Individuals and groups are supported in overcoming the impact of sex/gender discrimination;
 - 4.2.3. Compliance with obligations contained in applicable legislation and international agreements is ensured; and
 - 4.2.4. Individuals or groups who consciously or unconsciously engage in sex/gender-biased attitudes do not only face the consequences of their actions, but are also offered support and appropriate methods for correcting their sexist attitudes and misogynous conduct.
- 4.3. Remedial actions taken in terms of this Policy will also be directed at rooting out institutional policies, procedures and practices that enable or facilitate sex/gender-based discrimination by omission or commission.

5. DUTY TO SUPPORT STUDENTS AND STAFF

The UFS must provide equal services to Staff and Students regardless of sex or gender,

and provide support that takes into consideration the specific needs of different sexes and genders.

6. DOCUMENTATION

All documentation specific to sex/gender-related equity must reflect the realities of sex/gender prejudices accurately and take into account structural inequality and male privilege when considering the formation of policies and other procedural documents.

7. SUPPORTING POLICIES AND LEGISLATION

Supporting policies and legislation include:

- 7.1 PEPUDA;
- 7.2 Protection from Harassment Act, No 17 of 2011, as amended, varied or replaced;
- 7.3 The Convention on the Elimination of All Forms of Discrimination against Women (December 1979)
- 7.4 The Beijing Declaration and Platform for Action (September 1995);
- 7.5 The Millennium Declaration and Development Goals (September 2000).
- 7.6 The Solemn Declaration on Gender Equality in Africa (July 2004); and
- 7.7 The Southern African Development Community Protocol on Gender and Development (August 2008).

SEXUAL ORIENTATION

1. DEFINITIONS

The terms used in this Annexure are used by expert non-governmental organisations (NGOs) and appear in relevant legislation.

- 1.1. “**Cisgender**” is someone whose identity conforms to the gender assigned to them by society and whose gender matches their sex at birth.³⁵
- 1.2. “**Gender identity**” refers to one’s private sense of being a man, woman or otherwise, not necessarily linked to one’s physical body.³⁶
- 1.3. “**Heterosexism**” refers to a set of attitudes that is consistent with the belief that heterosexuality is a superior psychological, social and moral stance. This serves to create an invisibility or lack of validation and representation for those individuals who do not have an ‘opposite sex’ sexual orientation.³⁷
- 1.4. “**Sexual Orientation**” is the type of sexual, romantic, physical and/or spiritual attraction one feels for others, often labelled according to the gender relationship between the person and the people to whom they are attracted (often mistakenly referred to as sexual preference). “Sexual orientation refers to the emotional, romantic or sexual attraction to men; women; neither sex; the same sex; or both sexes.”³⁸

2. PURPOSE

- 2.1. The purpose of this Annexure D is to outline the procedures and responsibilities of the UFS to assist Students and Staff who identify beyond heterosexual orientations and who may be exposed to heterosexism.

³⁵ Gender Dynamix (2014). ‘Terminology’. <http://www.genderdynamix.org.za/documents/>

³⁶ Gender Dynamix (2014). ‘Terminology’. <http://www.genderdynamix.org.za/documents/>

³⁷ Kotze, E. & Jacobs, C.A. (2012). Safe Zones@UFS Training Manual. <http://www.UFS.ac.za/files/ffk3k156979001358954850.pdf>

³⁸ Killermann, S. (2013). *The Social Justice Advocate’s Handbook: A Guide To Gender*. Impetus Books, ISBN 978-0-9897602-0-1.

- 2.2. Annexure D also outlines the responsibility of the UFS to challenge heterosexism, which is inherent in its policies, administration and academic practices.
- 2.3. In addition to a general outline of procedures and responsibilities as noted in paragraph 2.1, Annexure D clarifies the responsibilities and obligations of specific departments and Staff at the UFS.
- 2.4. The aim of Annexure D is to promote a working and learning environment in which Unfair Discrimination, harassment and bullying are known to be unacceptable and where individuals have the confidence to deal with such conduct without fear of victimisation.

3. CONTEXT

- 3.1. In the context of advocacy, there has been a consistent conflating of the needs of individuals who do not identify with heterosexual orientations and/or are gender variant.
- 3.2. It must be noted that sexual orientation and gender identity share grounds in some areas, but should in no way be regarded as synonymous.

4. APPLICATION

- 4.1. This Annexure applies to all Staff and Students.
- 4.2. Provision of support must be based on the self-disclosure of the individual and not the perceived sexual orientation of the individual.

5. IDENTIFYING, PREVENTING AND ADDRESSING UNFAIR DISCRIMINATION, BULLYING AND HARASSMENT IN RELATION TO SEXUAL ORIENTATION

- 5.1. The Policy protects the rights to dignity of people of all sexual orientations, at work and in their studies. Some indicative examples of direct Unfair

Discrimination, bullying and/or harassment include:

- 5.1.1. Refusing to assist or provide psychosocial, medical or managerial support or services to a Student or Staff member who identifies beyond heterosexual orientations;
 - 5.1.2. Verbally or physically threatening a person or spreading malicious rumours about that person because of their sexual orientation;
 - 5.1.3. Refusing to associate with, or ignoring someone because they identify beyond heterosexual orientations;
 - 5.1.4. Sexually harassing a person who identifies beyond heterosexual orientations;
 - 5.1.5. Refusing to acknowledge the rights of persons who identify beyond heterosexual orientations;
 - 5.1.6. Failing to acknowledge the presence of persons who identify beyond heterosexual orientations;
 - 5.1.7. Treating the sexual orientation of others without sensitivity and respect; and/or
 - 5.1.8. Distributing or displaying heterosexist-orientated statements or slurs in the form of written material, graffiti, music or speeches.
- 5.2. Steps that can be taken by UFS line managers, support Staff, service providers, student leadership and academics to prevent Unfair Discrimination, bullying and harassment include:
- 5.2.1. Regularly monitoring the various applicable UFS policies and their impact;
 - 5.2.2. Developing clear procedures for investigating complaints;
 - 5.2.3. Providing training to particular Staff and Students who may be approached in dealing with complaints and requests for support;
 - 5.2.4. Encouraging the reporting of Unfair Discrimination, bullying and harassment; and
 - 5.2.5. Undertaking to remove and curb any heterosexist propaganda.
- 5.3. Prejudice, harassment or bullying (name calling/derogatory jokes, unacceptable or unwanted behaviour, intrusive questions) in relation to sexual orientation will be dealt with in accordance with the provisions of this Policy.

6. DUTY TO SUPPORT STUDENTS AND STAFF WHO IDENTIFY BEYOND HETEROSEXUAL ORIENTATIONS

- 6.1. Anti-discrimination and promotion of Equality legislation flowing from the Constitution, as well as the PEPUDA, establish a legal obligation to ensure a welcoming, safe and supportive environment and conducive, respectful and inclusive teaching and learning to Students.
- 6.2. The UFS must provide support to Staff and Students who identify beyond heterosexual orientations, on a case-by-case basis.
- 6.3. All persons who identify beyond heterosexual orientations must always be consulted in matters affecting them. The UFS should consult community-based service organisations and NGOs that address sexual-orientation issues for guidance where necessary.

7. PRACTICAL EXAMPLES OF POSSIBLE SUPPORT MEASURES Practical support may include:

- 7.1. Ensuring that there is suitable and safe accommodation for a Student or Staff member if they are applying for, or are already in a UFS residence;
- 7.2. In accordance with applicable policies, making provision for classes, tutorials and tests that may be missed due to cases of Unfair Discrimination, bullying or harassment;
- 7.3. Striving to ensure that there are gender-neutral bathrooms in all buildings for persons who identify beyond heterosexual orientations and for gender-variant people who do not feel comfortable in male/female toilets due to direct or indirect Unfair Discrimination; and/or
- 7.4. Creating a support structure in coordination with the UFS Gender and Sexual Equality Office and other Social Justice stakeholders to assist Students and Staff both within and beyond the UFS with navigating sexual-orientation issues and concerns.

8. CONFIDENTIALITY AND DISCLOSURE

- 8.1. The sexual orientation of any individual may not be revealed without their

explicit written consent.

8.2. Disclosure of sexual orientation will always be guided by the following:

8.2.1. The UFS will create a positive and safe environment that promotes acceptance and respect;

8.2.2. The UFS will not require anyone to disclose their sexual orientation unwillingly; and

8.2.3. Where sexual orientation is disclosed, appropriate processes will be followed to support and accommodate members of the UFS community who identify beyond heterosexual orientations in cases where they apply for support via the UFS Gender and Sexual Equality Office.

9. DOCUMENTATION

The following information should be documented and stored confidentially by the UFS Gender and Sexual Equality Office:

9.1. Information on how the need for support was identified, including the application form for support;

9.2. All forms of correspondence between relevant parties in the process;

9.3. All forms of possible support offered, including evidence of this support where such support has been implemented;

9.4. All expert/specialist advice obtained to assist in the process; and

9.5. Any other information deemed appropriate, necessary and relevant.

10. UFS SEXUAL-ORIENTATION AND GENDER-IDENTITY ADVISORY GROUP

10.1. The Advisory Group (as contemplated in paragraph 10 of Annexure B) should be established to assist in the implementation of this Annexure D, as well as Annexure B (relating to Gender Identity) to this Policy. In the event of the

Advisory Group being formed, the group will decide on its own terms of reference.

10.2. The Advisory Group may include:

10.2.1. A union representative;

10.2.2. A representative of the UFS Gender and Sexual Equality Office;

10.2.3. A representative of the Department of Student Counselling and Development;

10.2.4. A representative of the UFS Campus Health and Wellness Centre;

10.2.5. A representative of UFS Facilities Management;

10.2.6. A representative of the UFS Protection Services;

10.2.7. A representative of the UFS Centre for Universal Access and Disability Support (CUADS);

10.2.8. A representative of the UFS Student Representative Council;

10.2.9. A representative of the UFS Residence Life;

10.2.10. A representative of the UFS Human Rights Desk;

10.2.11. Representatives of any student-led organisations who are interested in the field;

10.2.12. A representative of the UFS Department of Human Resources;

10.2.13. A representative of the UFS Institute for Reconciliation and Social Justice;

10.2.14. A representative of the UFS Safe Zones Reference Group;

10.2.15. A representative of the Directorate for Student Discipline and Mediation;

10.2.16. A representative of the Free State Centre for Human Rights;

10.2.17. At least one (1) and up to a maximum of three (3) openly ('out') gender-variant Staff members and/or Students and/or allies; and

10.2.18. At least one (1) and up to a maximum of three (3) Staff members and/or Students who identify openly ('out') beyond heterosexual orientations or are allies.

11. RESPONSIBILITIES

The major responsibilities that each party (as identified below) has in relation to the support procedures are as follows:

Person	Responsibilities
Person who identifies beyond heterosexual orientations seeking support	<ul style="list-style-type: none">• Inform the UFS Gender and Sexual Equality Office of their identity.• Complete the Sexual Orientation support application form provided by the UFS Gender and Sexual Equality Office and supply any relevant documentation requested in the form.• Contact a representative of any student-led organisation that is interested in the field, if assistance from a student perspective or a student organisation is needed or requested
UFS Gender and Sexual Equality Office	<ul style="list-style-type: none">• Provide consultative services, advice and guidance to people who identify beyond heterosexual orientations seeking support.• Provide assistance and support to the Advisory Group.• Act as a resource and provide advocacy tools for Staff and Students.• Coordinate overall responses to support needs, as appropriate.

- Periodically monitor and review the effectiveness, relevance and success of measures put in place.

UFS Employment Relations Office

- Investigate Staff complaints or grievances arising from requests for support that are denied or where issues arise regarding the implementation of approved measures.

Directorate for Student Discipline and Mediation

- Investigate complaints or grievances where a contravention of this Policy is alleged to have occurred and where the alleged offender is a student.
- Provide consultative services, advice and guidance to people who identify beyond heterosexual orientations seeking support.
- Provide assistance and support to the Advisory Group.
- Act as a resource and provide advocacy tools for Staff and Students.
- Coordinate overall responses to support needs, as appropriate.
- Periodically monitor and review the effectiveness, relevance and success of measures put in place.
- Investigate Staff complaints or grievances arising from requests for support that are denied or where issues arise regarding the implementation of approved

measures.

UFS HR

- Provide information about support for people identifying beyond heterosexual orientations to Staff applicants.
- Refer Staff applicants who request support to the UFS Gender and Sexual Equality Office.
- Provide ongoing assistance to Staff who request support, or for whom support has been provided.
- Immediately notify the UFS Gender and Sexual Equality Office of any issues arising from support measures that have been put in place in terms of this Policy.

Managerial Staff members and Deans

- Immediately notify the appropriate Human Resources Business Partner or the UFS Gender and Sexual Equality Office of any support request received from a Staff or Student applicant.
- Give input into the consultative process to determine the most suitable support.
- Implement support as determined by the UFS Gender and Sexual Equality Office.

12. PREVENTING UNFAIR DISCRIMINATION

Seeking support

A Student, Staff member or applicant to whom a conditional job offer has been made, and who seeks support with and

identifies beyond heterosexual orientations, must complete the Sexual Orientation support application form and submit it to the UFS Gender and Sexual Equality Office.

Support meeting Following receipt of the form, the UFS Gender and Sexual Equality Office will consult with the Staff member or Student and facilitate a mutual understanding of any support needed. A telephone discussion may suffice in cases of an applicant for employment, if referred by the HR Business Partner as part of a recruitment process.

Assessment Once the Sexual Orientation support application form has been received, the UFS Gender and Sexual Equality Office will discuss issues necessitating support and, where possible, take the applicable steps towards resolution. Where necessary, with the applicant's permission, the UFS Gender and Sexual Equality Office will draw experts, stakeholders and/or management into the discussion.

Case-by-case basis The needs of the applicant will be assessed on a case-by-case basis, as no two applicants are likely to have identical needs.

Process specific to safety in facilities It is the responsibility of the UFS to provide a safe environment to all Staff and Students. This includes providing facilities that cater for Staff and Students who identify beyond heterosexual orientations and who feel more comfortable utilising facilities that are gender neutral. This applies beyond the UFS and, where possible, all service providers with which the UFS has agreements to provide teaching facilities (schools, hospitals, clinics, etc.) must be requested to provide safe and accessible facilities.

Process:

Where possible (from a building perspective), all new

Curriculum

buildings should provide gender-neutral facilities (change rooms, toilets, bathrooms, etc.). Where applicable, all disabled toilets, change rooms and bathrooms should be considered gender-neutral spaces available for use by Staff and Students with disabilities. Signage should reflect this. Consistency is vital in all implementation. Implementation should be guided by engagement with the Advisory Group.

Curricula in Student and Staff teaching and training must demonstrate reflections on and engagements with possible heterosexism

Process:

All new academic Staff members, as part of their induction into the UFS, must read this Annexure D. All new and existing academic Staff members should implement the following:

- Diversity and Sensitivity engagement within the curriculum that utilises examples in class which are not limited to heterosexual people, and cater for a wide range of sexual orientations and identities. An example of this would be using case studies that are not exclusively heterosexual.

Providing curriculum engagement with the Student population that includes the experiences of people who identify beyond heterosexual identities. An example of this would be to include guest lectures or presentations by NGOs and student societies that provide support for

sexual orientation, or by seeking out the guidance or consultation of these stakeholders in curriculum development. Creating safe and welcoming learning spaces where all Students who identify beyond heterosexual identities feel included, using facilitated classroom discussions where homophobic comments and jokes are not encouraged and, where they do arise, using these moments as opportunities to educate those involved about sexual orientation.

Follow-up discussions

The individual and the UFS Gender and Sexual Equality Office will meet at regular intervals determined in the initial discussion. The purpose of these meetings will be to check up on the individual and determine what needs have or have not been met, refer them to the UFS Department of Student Counselling and Development or other support structures when necessary, and deal with any complaints about harassment.

Communication

The Policy will be placed on the Intranet of the UFS, which can be accessed by all Staff and Students.

13. FUNDING

All departments, schools, faculties and divisions will be required to progressively integrate sexual-orientation support structures into their budgeting processes where applicable to Staff training and support as well as facilities management.

14. CONTACTS

Queries relating to this Annexure D can be addressed to the UFS Gender and Sexual Equality Office.

15. DISPUTE RESOLUTION

In the event that there is a complaint concerning an act of sexism, a complainant should follow the provisions of this Policy highlighted in paragraph 9.

16. SUPPORTING POLICIES AND LEGISLATION

Supporting policies and legislation include:

- 16.1 PEPUDA;
- 16.2 Sexual Harassment Policy and Procedures; and
- 16.3 Protection from Harassment Act, No 17 of 2011 as amended, varied or replaced.

XENOPHOBIA

1. DEFINITIONS

- 1.1 “**Xenophobia**” is defined by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance as “attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity”.³⁹ It encompasses the ethno-linguistic and cultural identifiers that form the basis of distrust and suspicion of the other.⁴⁰ Unlike old racism, which is based on discriminatory treatment at the hands of a ‘race’ different to one’s own, xenophobia can be linked to new racism, which is based on the discriminatory treatment of the ‘other’, on the basis of the other’s national origin or ethnicity. New racism is a “shift in racism, from notions of biological superiority, to exclusion based on cultural and national difference”.⁴¹ It dispenses with the notion of superiority and instead the focal point is difference.
- 1.2 Xenophobia is a broad notion, associated with a variety of meanings. The term ‘xenophobia’ comes from the Greek words ξένος (xenos), meaning ‘foreigner’, ‘stranger’, and φόβος (phobos), meaning ‘fear’. Manifestations of xenophobia are usually triggered by intense dislike or hatred against people who are perceived as outsiders, strangers or foreigners to a group, community or nation, based on their presumed or real descent, national, ethnic or social origin, race, colour, religion, gender, sexual orientation or other grounds. Manifestations of xenophobia include acts of direct discrimination, hostility or violence, and

³⁹ WCAR. (2001 February 18). Declaration on Racism, discrimination, Xenophobia and Related Intolerance against Migrants and Trafficked Person Asia Pacific NGO Meeting for the World Conference Against www.redfame.com/ijsss International Journal of Social Science Studies Vol. 1, No. 1; 2013 205

⁴⁰ Nyamnjoh, F.B. (2006). *Insiders and Outsiders: Citizenship and Xenophobia in Contemporary Southern Africa*. London, England: Zed Books.

⁴¹ Ibrahim, M. (2005). The Securitization of Migration: A Racial Discourse. *International Migration*, 43(5), 163-187.

incitement to hatred. Xenophobic acts are intentional as the goal is to humiliate, denigrate and/or hurt the person(s) and the 'associated' group of people.⁴²

2. INTRODUCTION

- 2.1 Post-apartheid South Africa was built on a culture of inclusiveness, tolerance and human rights as embodied in the Constitution. However, in forging a nation out of a multicultural and multi-ethnic society, South Africa could not rely on common culture or ethnicity to create its 'imagined community'.⁴³ As such, it focused on citizenship as the unifying force. Imbued in the concept of citizenship is a sense of belonging and ownership that provides and guarantees access to state resources. In creating this notion of inclusiveness, those who did not meet the criteria were effectively excluded.
- 2.2 In defining itself, South Africa had to define who or what was to be excluded from the nation. Citizenship therefore forms the grounds for exclusion by drawing boundaries between insiders and outsiders. National identity in the new democratic South Africa has therefore been built on citizenship. Access to state and public resources is determined by citizenship and protected by legal instruments. For this reason, the Constitution states that while some rights are held by all, regardless of nationality, others are for citizens only.
- 2.3 Therefore, according to the politics of access, only citizens have the legitimate right to access the fruits of this newly founded democracy. Stripped of their citizenship rights under apartheid, black South Africans now enjoy full citizenship in the new South Africa. In spite of this, the majority of South Africans have realised that their constitutional rights have been slow in delivering the material benefits of citizenship. Unwittingly, citizenship defined in racial terms has been used to exclude the 'other' black African immigrants.

⁴² www.nhri.ohchr.org/EN/Themes/Durban/Documents/Xenophobia.pdf-United Nations Human Rights, 2013.

⁴³ Carol Adjai & Gabriella Lazaridis, 2013, pp. 192-194. *International Journal of Social Science Studies*, 1(1); April 2013-ISSN 2324-8033 E-ISSN 2324-8041-www.redfame.com/ijsss International Journal of Social Science.

- 2.4 Issues related to lack of accountability and recurring impunity remain largely unaddressed. Disaggregated data collection is scarce. Frequently, those who commit xenophobic acts are not held accountable or are released shortly after being arrested. The lack of prompt and effective investigation and prosecution generates distrust. Victims and witnesses of hate crimes are reluctant to report them and to seek effective remedies. Thus, many incidents of xenophobic threats, verbal abuse, rape and violence go unreported, leaving the false impression that such problems do not occur.
- 2.5 Manifestations of xenophobia occur on a day-to-day basis and these are more often than not unacknowledged. For offenders, it is sufficient to perceive someone as having certain characteristics to trigger a xenophobic act. Migrants, refugees and asylum seekers, indigenous people, persons belonging to national or ethnic, religious and linguistic minorities are among the hardest hit by xenophobic acts. People with different sexual orientations or gender identities are also victims of hate crimes. Abuse of persons with disabilities is also widely unaddressed. Women and children who belong to these groups are often at greater risk and suffer from multiple forms of Unfair Discrimination.
- 2.6 A holistic, human rights-based approach is required in order to effectively prevent and address xenophobic acts, including policy, legal, administrative, educational and awareness measures such as:
- 2.6.1 Developing effective awareness and educational campaigns, which cherish diversity as a source of enrichment;
 - 2.6.2 Adopting and enforcing Laws and a value system to address hate crimes;
 - 2.6.3 Ensuring prompt, impartial and thorough investigation in dealing with cases;
 - 2.6.4 Combating impunity and lack of accountability for transgressors;
 - 2.6.5 Ensuring effective remedies for victims and equal access to such remedies;

2.6.7 Unequivocally condemning manifestations of xenophobia and encouraging Staff and Students to speak against xenophobia while preventing such conduct from occurring on the UFS campuses; and

2.6.8 Ensuring full and effective participation of victim groups in the design and implementation of measures against xenophobia.⁴⁴

2.7 As the UFS increases enrolment of more international Students and employs more international Staff in line with the UFS 2022 Strategic Vision, mechanisms to prevent and eradicate xenophobia must be instituted.

3. OBJECTIVES

In this Policy, the UFS aims to:

3.1 Appropriately name xenophobic-related acts of Unfair Discrimination with a view to eliminating this form of Unfair Discrimination within the UFS;

3.2 Provide an adequate background in order to advance the understanding of xenophobia for Staff and Students;

3.3 Create awareness about the ways in which xenophobia manifests itself; and

3.4 Ensure that appropriate and accessible procedures exist for Staff and Students to address incidents of xenophobia.

4. DISPUTES

In the event that there is a complaint concerning an act of xenophobia, a complainant should follow the provisions of this Policy, highlighted in paragraph 9.

5. APPLICATION

This Annexure applies to all Staff, Students and contractors of the UFS.

⁴⁴ Carol Adjai & Gabriella Lazaridis, 2013, pp. 192-194. *International Journal of Social Science Studies*, 1(1); April 2013-ISSN 2324-8033 E-ISSN 2324-8041-www.redfame.com/ijsss

6. IDENTIFYING, PREVENTING AND ADDRESSING XENOPHOBIA

6.1 UFS policies protect the right to dignity of people of all nationalities at work and in their studies. Some indicative examples of direct forms of Unfair Discrimination and/or prejudice include:

6.1.1 Refusing to assist or provide managerial support or services to a Student or Staff member who is a foreign national based on their nationality; and

6.1.2 Verbally or physically threatening a person or spreading malicious rumours about that person because of their nationality.

6.2. Steps that can be taken by UFS line managers, support Staff, service providers, student leadership and academics to prevent xenophobia include:

6.2.1. Regularly monitoring the relevant UFS policies and their impact;

6.2.2. Developing clear procedures for investigating complaints;

6.2.3. Providing training for particular Staff and Students who are tasked with dealing with complaints and requests for support; and/or

6.2.4. Encouraging the reporting of xenophobia.

6.3 Prejudice, harassment or bullying (name-calling/derogatory jokes, unacceptable or unwanted behaviour, intrusive questions) in relation to nationality will be dealt with accordingly under the Policy.

7. DUTY TO SUPPORT STUDENTS AND STAFF WHO ARE FOREIGN NATIONALS

7.1 Anti-discrimination legislation within the Constitution and the PEPUDA place a legal obligation on the UFS to ensure a welcoming, safe and supportive environment, conducive to respectful and inclusive teaching and learning.

7.2 The UFS must provide support to Staff and Students who are immigrants.

8. CONFIDENTIALITY

All cases must be dealt with sufficient levels of confidentiality and sensitivity at all times.

9. DOCUMENTATION

The following information should be documented and stored confidentially by the UFS Gender and Sexual Equality Office:

- 9.1 Information on how the need for support was identified;
- 9.2 All forms of correspondence between relevant parties in the process;
- 9.3 All forms of possible support offered, including evidence of this support, where implemented; and
- 9.4 Any other information deemed necessary.

10. SUPPORTING LEGISLATION

PEPUDA forms part of the supporting legislation.

11. FUNDING

All departments, schools, faculties and divisions of the UFS will be required to integrate anti-discrimination, promotion of Equality and Social Justice support structures progressively into their budgeting processes where applicable to Staff training, etc.

12. CONTACTS

Queries relating to this Annexure can be addressed to the UFS Gender and Sexual Equality Office.

DISABILITY

1. DEFINITIONS

The terms used in this Annexure are used by relevant government documents and legislation.

1.1 **“Barriers”** refers to policies, actions, behaviours, practices, procedures and institutional strategies that adversely affect Students’ prospects of entry and/or advancement in academia. These may be:

- 1.1.1. Attitudinal barriers caused by values inconsistent with the spirit of this policy, for example ignorance and inadequate knowledge, or prejudicial attitudes and false perceptions about disability and disabled persons, and which have the effect of discriminatory behaviour;
- 1.1.2. Organisational/institutional barriers caused by policies, procedures, guidelines and practices, which deprive Students with disabilities of fair access to studying and other opportunities; and/or
- 1.1.3. Environmental barriers caused by physical and structural aspects of the built environment, which have the effect of unfairly making facilities and amenities inaccessible, or result in unfair exclusion or unequal rights to use, enjoy and benefit from them.

1.2 **“Learning experience”** means the UFS culture, processes, curricula, teaching methodologies, services, Staff expertise, attitudes, built environment and facilities that, as a collective, provide Students with disabilities equal opportunities to complete their studies.

1.3 **“Reasonable accommodation”** means any modification or adjustment to the environment that will enable a student with a disability to have access to, or to participate or advance in academia. These measures ensure that persons with disabilities enjoy equal opportunities.

1.4 **“Unjustifiable hardship”** is an action that requires a significant or considerable difficulty or expense that would harm the viability of the institution substantially. This will involve considering the impact of the accommodation and the extent to which it would

seriously disrupt the operations/activities of the institution.

1.5 **“Students with disabilities”**. The scope of support for students with disabilities focuses on the effect of an impairment on the person in relation to the barriers experienced in his/her academic, learning, physical, student-life, administrative and social environments, and *not on the diagnosis of the impairment*.

Students who satisfy the criteria in the definitions below are considered students with disabilities:

1.5.1 *Long-term or recurring impairments or progressive conditions*

1.5.1.1 **“Long-term”** means the impairment has lasted, or is likely to persist for at least 12 months. A short-term or temporary illness or injury is not an impairment that gives rise to a disability.

1.5.1.2 A **“recurring impairment”** is one that is likely to happen again and to be limiting substantially (see below). It includes a constant underlying condition, even if its effects on a person fluctuate.

1.5.1.3 **“Progressive conditions”** are those that are likely to develop, change or recur. People living with progressive conditions or illnesses are considered people with disabilities once the impairment starts to be substantially limiting. Progressive or recurring conditions that have no overt symptoms or that do not limit a person substantially are not disabilities.

1.5.2 *Impairment*

1.5.2.1 The nature of an impairment may be physical, psychosocial or specific learning difficulties.

1.5.2.2 **“Physical”** impairment includes a partial or total loss of a bodily function or part of the body. It includes sensory impairments such as being deaf, hearing impaired or visually impaired and any combination of physical or mental impairments.

1.5.2.3 **“Psycho-social”** impairment includes a clinically recognised condition or illness that has an effect on a person’s thought processes, judgement or emotions.

1.5.2.4 “**Specific learning difficulties**” includes clinically recognised and measurable conditions e.g. dyslexia, ADHD, dyscalculia, that may significantly influence the ability of a student to successfully complete his/her studies without support.

1.5.3 *Substantially limiting*

1.5.3.1 An impairment is “**substantially limiting**” if, in the absence of reasonable accommodation by the UFS, a student would either be totally unable to learn or would be significantly limited in learning or would be unable to perform their work and engage in activities of learning.

1.5.3.2 An assessment of the extent to which the effects of the impairment are substantially limiting must consider if medical treatment or other devices would control or correct the impairment so that the limitation can be eliminated.

1.5.3.3 For reasons of public policy, certain conditions or impairments may not be considered disabilities. These include but are not limited to:

1.5.3.3.1 Sexual behaviour disorders that are against public policy;

1.5.3.3.2 Compulsive gambling, a tendency to steal or light fires;

1.5.3.3.3 Disorders that affect a person’s mental or physical state if they are caused by current use of illegal drugs or alcohol, unless the affected person is participating in a recognised programme of treatment;

1.5.3.3.4 Normal deviations in height, weight and strength; and

1.5.3.3.5 Conventional physical and mental characteristics and common personality traits.

1.6 “**Universal design**” means the design of products, environments, programmes and services to make it usable by all people to the greatest extent possible, without the need for adaptation or specialised design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities, where needed (UNCRPD, Art

2).

1.7 **“Universal access”** is when the focus of attention is shifted from the individual with the problem to the environment and society needing to be more adaptable and flexible. The approach of universal access conceptualises a disability as an experience when the environment a person functions or interacts in is inaccessible, which includes social, attitudinal, learning, administrative and physical barriers for a student.

1.8 **Coding framework**

Washington Group	Category of Disability	Description of Disability
Sensory Disability	Blind	No functional vision
	Partially-sighted	Functional vision with limitations that may be reduced using electronic or manual low-vision devices. (Vision cannot be fully corrected using prescriptive lenses.)
	Deaf (capital D)	Little or no hearing. Generally makes use of South African Sign Languages (SASL) and typically subscribes to Deaf Culture.
	deaf (lowercase d)	Little or no hearing. Does not make use of sign language as a medium of communication. Makes use of various means of communication such as speech, speech reading/cochlear implants or a combination of these. Aligns with impairment/disability and the hearing world.
	Hearing Impaired	None, little or some hearing. Generally makes use of appropriate hearing technology e.g. cochlear implants, hearing

		aids and other assistive listening/living devices and typically uses verbal communication. Aligns with impairment and the hearing world.
	Hard of Hearing	Persons with different degrees of hearing loss, who do not align with impairment and disability.
	Deaf-Blind	No functional vision and no hearing.
Specific Learning/ Developmental Disability	Neuro-developmental Disability	Intellectual Disability, Communication Disability, Language and Speech Disability (e.g. stuttering), Autism Spectrum Disorder, Attention Deficit/Hyperactivity Disorder (ADHD), Specific Learning Disability.
Psychosocial/ Psychiatric Disability	Psychosocial Disability	Examples are Depression and Schizophrenia.
Physical Disability	Physical Disability	Loss of a limb or makes use of crutches or a wheelchair. Person with Cerebral Palsy.
	Chronic Illness	A long-standing medical condition/illness that affects daily functioning, such as Chronic Heart Condition, Chronic Diabetes or Cancer.
Any disability not mentioned above	Give details	Any disability not mentioned above.
Physical Disability of	Temporary Disability:	Physical Disability of a

- 4.2 The persons that this Policy will apply to are those Staff and Students who disclose their disability to the UFS with the aim of seeking support.
- 4.3 Provision of support must be based on the self-disclosure of the individual and not the perceived disability of the individual.

5. IDENTIFYING, PREVENTING AND DEALING WITH DISCRIMINATION, PREJUDICE AND HARASSMENT IN RELATION TO PEOPLE WITH DISABILITIES

- 5.1 Acts of bullying, harassment and discrimination contravene the Policy and this will not be tolerated. University policies protect the rights of people with disabilities to dignity at work and in their studies. Some indicative examples of direct discrimination and/or prejudice include:
 - 5.1.1 Refusing to assist or provide psychosocial, medical or managerial support or services to a Student or Staff member with a disability;
 - 5.1.2 Verbally or physically threatening a person with a disability or spreading malicious rumours about that person;
 - 5.1.3 Refusing to associate with, or ignoring someone because of his/her disability;
 - 5.1.4 Refusing to address the person in their presence;
 - 5.1.5 Sexually harassing a person with a disability;
 - 5.1.6 Refusing to acknowledge the rights of a person with a disability;
 - 5.1.7 Treating the person with a disability without sensitivity and respect; and/or
 - 5.1.8 Distributing or displaying discrimination towards disability in the form of written material, graffiti, music or speeches.
- 5.2 Steps that can be taken by UFS line managers, support Staff, service providers, student leadership and academics to prevent harassment include:
 - 5.2.1 Regularly monitoring the policies and their impact;
 - 5.2.2 Developing clear procedures for investigating complaints;
 - 5.2.3 Training particular staff members who are tasked with dealing with complaints and requests for support;
 - 5.2.4 Encouraging the reporting of harassment; and

5.2.5 Undertaking to remove any propaganda in the disability spectrum.

5.3 Prejudice, harassment or bullying (name calling/derogatory jokes, unacceptable or unwanted behaviour, intrusive questions) in relation to disability will be dealt with under the Policy.

6. DUTY TO SUPPORT STUDENTS AND STAFF WITH A DISABILITY

6.1 Anti-discrimination legislation within the Constitution of the Republic of South Africa and the Promotion of Equality and Prevention of Unfair Discrimination Act (2000) place a legal obligation upon the UFS to ensure a welcoming, safe and supportive environment conducive to respectful and inclusive teaching and learning.

6.2 The UFS must provide support to Staff and Students with a disability on a case-by-case basis.

6.3 A person with a disability must always be consulted in matters affecting them. The UFS should consult community-based service organisations and NGOs who advocate for persons with disabilities for guidance where necessary.

7. PROTOCOL AND POSSIBLE MEASURES OF SUPPORT

7.1 To ensure that a person with a disability is reasonably accommodated upon disclosure, the following needs to be addressed:

7.1.1 The degree of disability experienced due to barriers in the academic, physical, support, administrative and student-life environments;

7.1.2 A critical description thereof;

7.1.3 The functional impact of the disability on participation and inclusion; and

7.1.4 Recommended managing strategies.

7.2 To address the above, there must be consultation with:

7.2.1 The individual with a disability;

7.2.2 The individual's doctor/psychologist/any other relevant practitioner;

7.2.3 A representative from the disability sector (an expert on the impact of the specific disability); and

7.2.4 A representative of the UFS representing Staff with disabilities.

7.3 The aim of reasonable accommodation is to reduce the impact of the impairment on the person's capacity to fulfil the essential functions of a job or enjoy the

Student experience (academic and student life). The most cost-effective means to remove the barrier(s) to a person's ability and to enable them to enjoy equal access to the benefits and opportunities may be adopted.

- 7.4 Accommodation may also include any action to reduce the impact of the disability. Such action must be reasonable and not impose unjustifiable hardship on the institution.
- 7.5 Reasonable accommodation includes three interrelated factors:
 - 7.5.1 In cases where the individual is suitably qualified for the job or to study, the barriers to the individual's ability to perform must be removed;
 - 7.5.2 The person with a disability must enjoy equal access to the benefits and opportunities of employment or of being a Student; and
 - 7.5.3 The institution must adopt the most cost-effective means to achieve the abovementioned two objectives.
- 7.6 Unfair discrimination will occur when the disability is not related to an inherent job requirement or the career path a student takes and yet is used to deny an individual access to employment, a study course or to an employment/Student benefit.
- 7.7 Reference is also made to Universal Access for Staff with Disabilities at the UFS adopted by Council 2015.

12 April 2018

Consultation process for policies intended for adoption:

Anti-Discrimination, Promotion of Equality and Social Justice Policy and Procedures	10/03/2017	Draft document sent to PHI for comment and development
	17/05 - 15/06/2017	Draft document distributed to university population for comment
	19/05/2017	Draft document referred to Student Affairs HOD's policy summit
	04 - 06/08/2017	Draft document discussed and developed at Student Consultative policy summit
	16/08/2017	Draft document referred to student parliament secretariat for discussion through student parliament channels
	07/02/2018	Referred to UMC for noting and comment via round robin
Sexual Harassment, Sexual Misconduct and Sexual Violence Policy	16/03/2017	Draft document sent to PHI for comment and development
	17/05 - 15/06/2017	Draft document distributed to university population for comment
	19/05/2017	Draft document referred to Student Affairs HOD's policy summit
	04 - 06/08/2017	Student Consultative policy summit
	16/08/2017	Referred to student parliament secretariat on both campuses for discussion through student parliament channels
	07/02/2018	Referred to UMC for noting and comment via round robin

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