To: Joint Committee on Capitol Culture
Date: February 20, 2019
Subject: Comments from Andrew Altschul re: Proposed PR 27/HCR 20

1. 10(f) should be deleted and replaced with the following language: "all reports received by the Human Resources Director or the designated Staff of Employee Services shall be forwarded to the principal investigator." As currently written reports to the HR Director, even if significant, need not be passed on, and reports to the designated Employee Services staff only need to be shared if the director of HR thinks its valid. Admittedly, this is (if I recall correctly) what the task force recommended, but it completely undermines the whole point of the equity office's independence and allows the legislative HR Director to control what gets investigated more so than even the current rule. It also is in complete contradiction with the point of Section 10(g), which makes clear, that "*the principal investigator shall review all reports* under this section to determine whether an investigation is needed…"

2. I would strike the definitions for "pervasive," and "severe" (Section 3(q) and (u)). The terms are not defined in the anti-discrimination laws or regulations and not sure that these definitions are correct as they are applied in practice. Plus for reasons noted below, they are not needed.

3. I would strike Section 4 (harassment and hostile work environment), section 5 (sexual harassment) and section 6 (retaliation) in their entirety. They purport to define these terms, but the definitions are not the same as those in the anti-discrimination laws, regs and case law. Most of the definitions are not bad, but I think it is not helpful to have multiple definitions of these key terms. Instead, the legislative body should be subject to the same laws as everyone else. (The definitions also contain a fundamental misunderstanding: sexual harassment is a form of sex discrimination, but section (5)(j) turns this fundamental fact on its head and claims sex discrimination is a form of sexual harassment).

4. Section 14—Somewhere in remedial measures it should be clear that individuals can pursue relief under ORS 659A.030, when legally allowed, regardless of what happens through this process. AND for those who have claims not protected by that law, there should be some avenue to receive compensatory damages.

5. I would amend Section 7(a) to prohibit discrimination and retaliation under ORS 659A.030, including but not limited to harassment on the basis of sex and other protected characteristics as further defined in OAR Chapter 839, Division 5, and current case law.

6. I would add a subsection (b)(F) to subsection 9 that allows the principal outreach officer to share information relevant to a non-confidential complaint with the principal investigator that does not reveal the names of individuals who may have confidentially shared relevant information. And maybe allow for a way for the investigator to confidentially talk to individuals that made related confidential complaints. What I'm getting at is that if person A publicly complains about "respondent" and they are being investigated, if the equity officer knows that

there were a dozen confidential complaints of a similar nature against the “respondent” that information really needs to be shared in some fashion.

7. I would also add a subsection (b)(G) that allows the equity officer to report something that might prompt an investigation if a significant pattern of seemingly discriminatory/harassing behavior has been repeatedly reported.

8. Section 12(a)(A)&(B) should clarify that the respondent—not complainant—is the one who may be temporarily reassigned or “duty stationed at home.”

9. Section 13(b)—I think 84 days is really long for an investigation. I would recommend 60, and an additional 30 days if necessary per the reasons described in this subsection.

10. Section 13(e)(C)—I think it is a mistake to only allow committee members to ask questions at a hearing. If the complainant or respondent wants or has a lawyer, their lawyer should be allowed to ask questions. Perhaps there is another way, but it seems unclear how ones case or defense will be fully presented if it Is left to the committee to ask questions when they won’t know the case in full to begin with.

11. Section 13(f)—I understand that constitutional concerns warrant limiting allowing the investigator to make a determination as to whether the facts constitute a violation of the rule when investigating a sitting assembly member, but if the investigation must continue even after a member resigns (which is a good thing), then I think the final report can and should contain a final determination as to whether a violation occurred.