

University of Maryland Eastern Shore
PROCEDURES PROHIBITING DISCRIMINATION

I. Complaints:

a. Generally

Individuals subjected to Discrimination should be aware that there are many ways to bring it to the attention of the University and, where proper, obtain redress or protection. Should a student, faculty, staff or third party complain of Discrimination on the basis of a protected class, they may contact the University Police Department (“UMESPD”), OIE, or report online at www.umes.edu/oie. UMES will take appropriate action to address violations of this Policy.

In the event an employee reports an alleged violation of this policy to a supervisor, department head, dean, chair, or any other administrator in the employee's direct line of supervision, that person shall promptly refer the employee to OIE and/or personally notify OIE. OIE shall then notify the complaining employee of the Policy prohibiting Discrimination and of the procedures for filing a complaint or verify that the employee already has this information. In accordance with state law and UMESPD policies, discipline against a sworn police officer will be handled through UMESPD’s internal procedures. UMESPD will, however, notify OIE of any such outcomes.

b. Reporting/Filing a Complaint

The University encourages students, faculty or staff members, and third parties who have experienced or are aware of alleged Discrimination to file a complaint with or make a report (to UMESPD, OIE, and/or online at www.umes.edu/oie).

Written complaints or reports are encouraged but not required. The University expects a person to make a complaint or report within one year of the alleged incident. OIE may waive this one-year period upon a showing of good cause. However, if too much time has passed since the incident occurred, the delay may result in loss of relevant evidence and witness testimony, impairing the University’s ability to respond and take appropriate action.

c. Good Faith Requirement

Reports or complaints of Discrimination must be made in good faith because they are so serious and have the potential to cause great harm if made without justification. Accordingly, it is a violation of the Policy and Procedure for an individual to make a complaint or report in bad faith or without justification. An individual found to have made a complaint or report in bad faith or without justification may be subject to disciplinary or other action.

d. OIE Intake

Upon receiving an initial report or complaint, OIE will assess whether an Investigation is justified and/or use of Alternative Resolution may be appropriate. OIE has the discretion to proceed with an Investigation regardless of the parties’

preferences. In addition, OIE may implement appropriate Interim Measures. Examples of Interim Measures include, but are not limited to, a referral to the University counseling or health center; academic assistance (such as course changes or withdrawals); referral to the Employee Assistance Program (“EAP”); schedule adjustments; or changes in work location.

e. Alternative Resolution

Upon receipt of a report or complaint, OIE offers the parties a chance to resolve the matter through Alternative Resolution. To pursue Alternative Resolution, both parties must agree and OIE deem it appropriate. The purpose of Alternative Resolution is not to determine whether or not Discrimination occurred, but to eliminate the alleged Discrimination through discussion and conciliation. If the parties resolve the matter through Alternative Resolution, OIE may summarize the resolution in writing and/or close the case. In addition, OIE remains available to assist the parties with concerns. If Alternative Resolution does not succeed within 45 business days of the complaint or report, OIE will proceed as appropriate.

f. Investigation

If Alternative Resolution is not utilized and the University knows (or reasonably should know) of possible Discrimination, it will take prompt and appropriate action, in accordance with this Policy and Procedure, to investigate or otherwise determine what occurred. This obligation applies to Discrimination covered by this Policy and Procedure, regardless of where the Discrimination allegedly occurred, whether a parallel law enforcement investigation or action is pending, or whether a written complaint/report is filed.

An Investigation is an impartial, fact-gathering process. It is intended to prove the parties an opportunity to share their perspectives and identify information they believe relevant to the allegations. The investigator interviews the parties and/or witnesses separately. They also gather physical evidence, such as documents, communications (including correspondence, email, text messages, social media, or other digital information), recordings (including audio and video), and other records as appropriate and available.

g. Due Process Rights of the Parties

The University provides fundamental fairness to the parties. Among other things, this means they are provided notice of the charges and evidence, the right to present information and identify witnesses relevant to their case, to take part in an impartial Investigation, and to appeal the findings and/or sanctions. In addition, a party may have a Support Person present during meetings related to an Investigation.

If the Responding Party is a University employee, then any employee misconduct investigation procedures outlined in any University Policies and Procedures may

apply. If either party is a student, please refer to the applicable disciplinary procedures noted in the University's Code of Student Conduct.

h. Standard of Review

The University investigates allegations of Discrimination to determine whether there is evidence to indicate a policy violation is "more likely than not." This standard, called the preponderance of the evidence, corresponds to an amount of evidence indicating a policy violation is more than 50% likely.

In such Investigations, legal terms like "guilt," "innocence" and "burdens of proof" are not applicable, but the University never assumes a Responding Party is in violation of university policy. Investigations are conducted to take into account the totality of all evidence available, from all relevant sources.

i. Written Report of Investigation and Finding

OIE shall complete a draft written report of its Investigation. The report should include a summary of the allegations, evidence reviewed, and witness statements; findings of material facts and an analysis of those facts; and a finding whether a Policy violation occurred. OIE will then notify the parties and give them an opportunity to review it. The office will then issue a notice of findings to both parties and to appropriate University administrators.

j. Resolution Timeline

The University endeavors to resolve complaints of Discrimination within 120 days. There may be circumstances that prevent the University from meeting this timeline and it reserves the right to extend this timeline for good cause.

II. Sanctions

The following sanctions may be imposed upon any member of the community found to have violated this Policy and Procedure. Factors considered in sanctioning are defined in the University Code of Student Conduct and other applicable University Policies and Procedures. Sanctions that may be imposed, include, without limitation:

- a. Student Sanctions (listed below and defined in the Code of Student Conduct)**
- i. Probation;
 - ii. Suspension; and
 - iii. Expulsion.

With respect to Student Responding Parties, the Office of Institutional Equity and Compliance, in accordance with the provisions of the Code of Student Conduct, is responsible for imposing disciplinary action. Failure to comply with any sanctions may result in further disciplinary action that could impact a student's disciplinary status with the University.

OIE may provide other remedies, in consultation with the Office of Student Conduct, as appropriate.

Factors considered in sanctioning are defined in the University Code of Student Conduct and other applicable University Policies and Procedures. The University imposes sanctions consistent with the Code of Student Conduct. Failure to comply with sanctions may result in further disciplinary action.

b. Staff Sanctions

With respect to Staff Responding Parties, any disciplinary action or corrective measures will be imposed by the appropriate supervisor, in consultation with the Office of Human Resources, OIE, and other relevant administrators, as needed. This may include the following:

- i. Unit transfers;
- ii. Reassignment of duties;
- iii. Mandatory training;
- iv. Verbal reminders;
- v. Written reminders/letter of reprimand;
- vi. Suspension without Pay;
- vii. Suspension pending charges of removal; and
- viii. Termination

Staff may grieve discipline imposed as a result of a violation of this Policy in accordance with their respective grievance rights. See USM Policies VII-08.00 (Policy on Grievances for Nonexempt and Exempt Staff Employees) and VII08.05 (Policy on Grievances for Regular Exempt Employees).

c. Faculty Sanctions

With respect to Faculty Responding Parties, disciplinary action or corrective measures will be imposed by the appropriate supervisors, in consultation with the Office of the Provost, OIE, and other relevant administrators, as needed. This may include the following:

- i. Reassignment of duties;
- ii. Mandatory training;
- iii. Verbal reminders;
- iv. Written reminders/ letters of reprimand;
- v. Suspension with or without pay;
- vi. Termination.

Faculty may grieve discipline imposed as a result of a violation of this Policy in accordance with their respective grievance rights under 02-04.00

III. Appeals

A party may appeal an OIE finding regarding a violation of the Policy. The Executive Director of the Office of Institutional Equity and Compliance or their designee hears appeals and their decision is final.

A party must submit a written statement of their intent to appeal and grounds within five (5) business days of the date of receipt of the notice of finding to OIE at oie@umes.edu. If an appeal is received by OIE, the other party will be notified and given five (5) business days to submit a written statement. All appeals and responses shall include the party's name and contact information. All appeal documents submitted by a party will be shared with the other party.

If neither party submits an appeal, the decision will be considered final five (5) business days after the last date either party received the findings. Appeals submitted after five (5) business days shall be denied, except upon a showing of good cause.

a. Grounds for Appeal of OIE Finding

The appealing party has the burden of proof, and the standard of proof is preponderance of the evidence. Appeals are not intended to allow for a review of the entire investigation, with the exception of new evidence, as referenced above.

Dissatisfaction with a finding or sanction is not a valid basis for appeal. However, either party may appeal an OIIE finding on the following grounds:

- i. A flaw or denial of due process rights;
- ii. New evidence or insufficient consideration of all aspects of the situation; and/or
- iii. Evident bias in the Investigation

b. Appeal Format and Content

All requests for appeals must be submitted in writing to OIE:

- i. Emailed to: oie@umes.edu; or
- ii. Mailed or hand-delivered to
Office of Institutional Equity and Compliance
Early Childhood Research Building Suite 1237
Princess Anne, MD 21583

The appeal must specifically state the basis for appeal and include relevant supporting documentation. The party appealing should address the central issue of the appeal directly, as irrelevant information will not be considered. If the appeal is a response to the other party's appeal, the appeal should act as a response, either in support or in opposition, to the central issues of the other party's appeal.

c. Appellate Finding

The Executive Director of the Office of Institutional Equity and Compliance or their designee will review the written record, including the investigation report

and the parties' appeal documents. The parties are not entitled to a hearing or meeting with the Executive Director. Decisions regarding appeals are typically made within ten (10) business days after receipt of all necessary documentation. OIE will forward a copy of the written decision to the parties and to appropriate University administrators.

The Executive Director or their designee will issue a written decision, including a summary of their rationale and:

- i. Deny the appeal (including for failure to meet a deadline or comply with these procedures);
- ii. Uphold OIE's original finding;
- iii. Reject and reverse OIE's original finding; or
- iv. Send the case back to an alternate investigator with specific directions to reconsider the original finding.

IV. External Filing Procedures

OIE shall ensure that the parties receive notice of their right to make a complaint to state or federal agencies. A person wishing to file a complaint with an external agency may do so with one of the following:

Equal Employment Opportunity Commission (EEOC)
10 Howard Street, Third Floor
Baltimore, Maryland 21201
TTY: 1-800-669-6820
<http://mccr.maryland.gov/>

Office of Civil Rights - United States Department of Education
Philadelphia Office (Regional Office for Maryland)
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Phone: 215-656-8541
Fax: 215-656-8606
Email: OCR.Philadelphia@ed.gov
Website: <http://www2.ed.gov/about/offices/list/ocr/index/html>

Maryland Commission on Human Relations
6 Saint Paul Street
Baltimore, Maryland 21202
Phone: 410-767-8600
Fax: 410-333-1841
http://www.mchr.state.md.us/contact_us.html

Please contact one of these agencies to determine the filing requirements and time limitations. Failure to meet required deadlines may result in a loss of rights to seek a legal remedy.

Questions and Contact Information:

Jason A. Casares

Office of Institutional Equity and Compliance

Email: jacasares@umes.edu

Phone: (410) 651-7848