

University of Maryland Eastern Shore
POLICY PROHIBITING DISCRIMINATION

POLICY STATEMENT

University of Maryland Eastern Shore (“UMES” or “University”) prohibits Discrimination on the basis of race, color, national origin, religion, physical or mental disability, religion, age, sex, sexual orientation, gender (including pregnancy-related medical conditions), gender identity or gender expression, political affiliation, protected veteran status, genetic information, and homelessness status that impedes equal access to any University education program or activity or that adversely impacts the working, learning, and living environment. The University further prohibits Retaliation against an individual who alleges a violation of this Policy or provides information about an alleged violation.

Should a student, faculty, staff, or third party want to bring forth a complaint of Discrimination on the basis of a protected class, they may contact the Office of Institutional Equity and Compliance at equity@umes.edu or www.umes.edu/oie. UMES will take appropriate action to address violations of this Policy. For example, University students or employees who violate this Policy may be subject to disciplinary action.

The University is committed to providing equal educational and employment opportunities in compliance with the University System of Maryland ("USM") Policy on Affirmative Action and Equal Opportunity, VI-1.00. All University policies, programs, and activities shall conform to USM policies on nondiscrimination and to similarly applicable federal and state laws, including but not limited to Titles VI and VII of the Civil Rights Act of 1964 as amended, Title IX of the 1972 Education Amendments, the Americans with Disabilities Act (“ADA”), and Section 504 of the Rehabilitation Act of 1973.

The University’s President has delegated authority to implement this Policy to the Office of Institutional Equity and Compliance (OIE). Accordingly, the University establishes this Policy to (a) prohibit Discrimination, (b) establish the responsibilities of the Executive Director of Institutional Equity and Compliance/Fair Practices Officer (reporting directly to the President of the University) in connection with this Policy, (c) establish a complaint procedure to investigate allegations of Discrimination, and (d) ensure appropriate remedial and/or punitive action, such as discipline, for persons who violate this Policy.

APPLICABILITY

This Policy prohibits Discrimination on the basis of an individual’s membership in a protected class that has the effect of creating a hostile environment for a member of the University Community, impedes equal access to any University education program or activity, or adversely impacts the education or employment of a member of the University Community regardless of where the conduct occurred. Nothing in this Policy is intended to supersede or conflict with any federal or state compliance obligations.

This Policy applies to students, faculty, staff, appointees, or third parties who engage in this type of conduct:

- i. In any University facility or on any University property;

- ii. Connected to any University sponsored, recognized, or approved program, visit, or activity, regardless of location;
- iii. Which adversely affects the University's pursuit of its mission or policies, regardless of location; or
- iv. Which otherwise threatens the health or safety of any member of the University Community, regardless of location.

The following actions do not constitute Discrimination under this policy:

- i. Complying with federal, state, or local laws and regulations; providing separate housing or other facilities; establishing separate athletic teams when required by athletic conference regulations; or permitting political, religious, and ethnic/cultural clubs.
- ii. Establishing bona fide job qualifications or qualifications required for the fulfillment of bona fide educational or other institutional goals. Complaints concerning the legitimacy of such qualifications may be the subject of other University policies or procedures.

RESPONSIBLE EXECUTIVE AND OFFICE

Responsible Executive: Executive Director and Fair Practices Officer, Office of Institutional Equity and Compliance

Responsible Office: Office of Institutional Equity and Compliance (OIE)

DEFINITIONS

For purposes of this Policy and Procedure, the following definitions apply:

- **Alternative Dispute Resolution (ADR)** is a method to resolve a complaint by conference, facilitated discussion, mediation, and/or conciliation.
- **Complainant** refers to a member of the University Community who has been subjected to conduct that may constitute a violation of this Policy.
- **Discrimination** is unequal treatment based on a legally protected status that (i) is sufficiently serious to interfere with or limit an individual's opportunity to participate in or benefit from a University program or activity or (ii) adversely affects a term or condition of the individual's working, learning, and living environment at the University.
- **Gender Expression** refers to how a person represents their gender identity, such as through behavior, clothing, hairstyles, voice, body characteristics etc.
- **Gender Identity** refers to each person's deeply held sense, knowledge, or experience of their own gender.

- **Harassment** is a form of Discrimination that encompasses unwelcome conduct based on a person's protected status. Harassment is severe and/or pervasive conduct that negatively affects the particular individual and also would negatively affect a reasonable person under the same circumstances. Harassment in violation of this Policy depends on the totality of the circumstances, including the nature, frequency, and duration of the conduct in question; the location and context in which it occurs; and the status of the individuals involved. When based on a person's protected status, Harassment may include, but is not limited to conduct, whether verbal, physical, written, graphic, or electronic that threatens, intimidates, offends, belittles, denigrates, or shows an aversion toward an individual or group. Examples include epithets, slurs, negative stereotyping, jokes, and/or nicknames that are offensive, denigrating, or demeaning.
- **Investigation** means a prompt, thorough, and impartial assessment of available evidence related to an alleged violation of this Policy conducted by a University employee or designee. The purpose of an Investigation is to determine whether there has been a violation of this Policy. A finding of a violation of the Policy may result in disciplinary action.
- **Interim Measures** means reasonably available steps, instituted on a case-by-case basis, to protect the University Community.
- **Protected Class** means a characteristic of a person which cannot be targeted for Discrimination. For the purpose of the University's Policies and Procedures, Protected Classes are defined by federal and state law, as they may be amended from time to time, and noted in the policy.
- **Respondent** refers to the individual alleged to have engaged in prohibited conduct under this Policy.
- **Retaliation** means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy promulgated by USM and/or the University relating to Discrimination, or because an individual has made a report, testified, assisted, or participated in any manner in an Investigation or proceeding related to Discrimination. Retaliation includes retaliatory harassment.
- **Sexual Orientation** is an enduring pattern of emotional, romantic and/or sexual attraction to any gender identity.
- **Advisor** for both the Complainant and the Respondent are entitled to be accompanied by an advisor in meetings related to the Investigation and/or disciplinary process. An advisor is someone who provides support, guidance, and/or advice to the individual. An advisor may be a family member, friend, faculty member, staff member, attorney, or other advisor/supporter. An advisor cannot speak on behalf of the individual, directly participate in the proceedings, or submit any written requests (including appeals) on behalf of the individual. Should an advisor not adhere to these expectations or attempt to play a direct and/or active role in any proceedings, they may be asked to leave.

- **University Community** is defined to mean University students, faculty, staff, and third parties (including visitors, volunteers, applicants for admissions or employment, vendors, and contractors).

NOTIFICATION OF POLICY REQUIREMENTS

This Policy is available for public access on the University policy website at:

<https://www.umes.edu/oie>

DUE PROCESS RIGHTS OF THE PARTIES

The University provides fundamental fairness and due process to the parties as indicated in the Procedures. This includes the right to notice, a fair Investigation, a chance to present relevant evidence, and to file an appeal.

PROCEDURES PROHIBITING DISCRIMINATION

COMPLAINTS

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”), the Office of Institutional Equity and Compliance (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 the OIE. OIE shall then notify the Complainant 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.

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.

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.

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.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

Upon receipt of a report or complaint and subsequent assessment, when appropriate, OIE can present parties with the option to resolve the matter through Alternative Dispute Resolution (ARD). To pursue ADR, both parties must agree and OIE deem it appropriate. The purpose of ADR is not to determine whether or not Discrimination occurred, but to address the alleged Discrimination through discussion and conciliation. If the parties resolve the matter through ADR, OIE may summarize the resolution in writing and close the case. In addition, OIE remains available to assist the parties with concerns that may arise from the informal agreement (result of ADR process). If Alternative Resolution does not succeed within forty-five (45) business days of the complaint or report, OIE will proceed as appropriate.

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.

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.

The University endeavors to resolve complaints of Discrimination within ninety (90) 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.

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 an Advisor present during meetings related to an investigation.

If the Respondent 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 Student Code of Conduct.

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 that a policy violation is more than 50% likely. Investigations are conducted to take into account the totality of all evidence available, from all relevant sources.

SANCTIONS

The following sanctions may be imposed upon any member of the University Community found to have violated this Policy and Procedure. Factors considered in sanctioning are defined in the University Student Code of 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 Respondents, the Office of Institutional Equity and Compliance, in accordance with the provisions of the Student Code of 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 Student Code of Conduct and other applicable University Policies and Procedures. The University imposes sanctions consistent with the Student Code of Conduct. Failure to comply with sanctions may result in further disciplinary action.

- b. Staff Sanctions**
 - 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

With respect to Staff Respondents, 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.

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

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

With respect to Faculty Respondents 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.

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

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 equity@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.

GROUND FOR APPEAL OF OIE FINDING

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 OIE 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

APPEAL FORMAT AND CONTENT

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

- i. Emailed to: **equity@umes.edu**; or
- ii. Mailed or hand-delivered to:
Office of Institutional Equity and Compliance
Early Childhood Research Building, Suite 1129
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.

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.

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.

PRIVACY

The University supports an individual's general interest in privacy. Private information is sensitive or personal information that is not usually disseminated. A member of the University Community may request that private information not be disclosed to others. UMES will evaluate requests for privacy in light of its responsibility to provide a safe and secure environment. In certain situations, UMES may override a request for privacy in order to meet its obligations. The University will act reasonably and in good faith to limit such disclosures, maintain them in a secure manner, and only share them with individuals who are responsible for handling the University's response to the allegations of Discrimination. To the extent practicable, the University will notify individuals when private information will be disclosed, to whom it will be disclosed, and why.

CONFIDENTIALITY

Confidential information cannot be disclosed without authorization or considered as part of OIE's Investigation (and finding) and/or an appeal. The University will not make disclosures that violate confidentiality requirements. Failure to exercise care in the disclosure of confidential information may constitute a violation of the law or University policy.

Related Policies:

- USM Policy VI-1.00
- USM Policy VI-1.05

Effective Date: March 2019, Revised October 2019

MANAGEMENT RESPONSIBILITIES

It is the duty of every manager and supervisor to immediately report to the Office of Institutional Equity and Compliance any incident of Discriminatory Harassment and/or Discrimination that is witnessed by the manager or supervisor or brought to their attention by another employee.

DATA COLLECTION

It is imperative that the data on complaints and the outcome of investigations be collected by the Office of Institutional Equity and Compliance.

Questions and Contact Information:

Jason A. Casares

Office of Institutional Equity and Compliance

Email: jacasares@umes.edu

Phone: (410) 651-6135

***Adapted with permission from University of Maryland System, University of Maryland College Park, Towson University, University of Baltimore, Morgan State University, Frostburg State University, and Bowie State University.*