

DISCRIMINATION COMPLAINT PROCEDURES

A. INTRODUCTION

It is the policy of Westfield State University to provide each student, employee, and other person having dealings with the University an atmosphere free from discrimination, discriminatory harassment and retaliation. The University prohibits discrimination, discriminatory harassment and retaliation based on race, color, creed, religion, national origin, gender, age, disability, sexual orientation, gender identity, marital status, genetic information or veteran status. The University has promulgated these procedures to address and resolve complaints of prohibited discrimination, discriminatory harassment and retaliation as expeditiously as possible and within the requirements of state and federal law.

A person who believes that he or she has been discriminated against, discriminatorily harassed, or retaliated against for filing a complaint of discrimination, participating in an investigation of such a complaint or protesting a discriminatory practice as outlined above in Section VI, may file a complaint under this procedure, or may file a charge directly with the state or federal agency having jurisdiction over discrimination complaints. Information and assistance on any of these options is available from the Human Resources and Affirmative Action Office.

A person or office charged with discrimination, discriminatory harassment or retaliation, or a person who has knowledge about incidents surrounding allegations, must respond promptly and completely to all requests for information that are initiated by professional staff members in the Human Resources and Affirmative Action Office or other office designated by the University to investigate complaints under this procedure, the Senior Area Administrator, or the President. Such response may include, but not be limited to, submission of a position statement, an explanation of the rationale for the alleged actions, appropriate documents, and/or participation in an interview of persons having knowledge pertaining to the claim/complaint.

(Please note: This is the procedure developed for use by all of the State Colleges/Universities. Individual Colleges/Universities may effect changes that are necessary to properly reflect the organizational structure of each campus. No such changes shall be inconsistent with the procedures described herein.)

B. APPLICATION

The following complaint procedure may be utilized by any person, including any University employee, student, or applicant for employment or admission, who

Westfield State University

Policy concerning:

Section Personnel
number 2070
page 2 of 14

APPROVED:

REVIEWED: September 2011

believes that he or she has been discriminated against, discriminatorily harassed or retaliated against by the University, by an employee or student of the University, or by other persons having dealings with the University, on the basis of race, color, creed, religion, national origin, gender, age, disability, sexual orientation, gender identity, genetic information, or marital or veteran status, as defined in Section VI of this *Plan (Massachusetts State Colleges Affirmative Action/Diversity/Equal Opportunity)*.

These complaint procedures may be used to address alleged discriminatory acts or acts of discriminatory harassment or retaliation that violate the policies and regulatory procedures set forth by the DHE, the Boards of Trustees of the State Colleges, or the requirements of Titles VI and VII of the Civil Rights Act of 1964; Title VI of the Civil Rights Act of 1968; Titles I and II of the Civil Rights Act of 1991; Title IX of the Education Amendments of 1972 and its regulations found at 34 C.F.R. part 106; Equal Pay Act of 1963; Civil Rights Restoration Act of 1988; Sections 503 and 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act of 1990; Section 402 of the Vietnam-era Veterans Readjustment Act of 1974, Uniformed Services Employment and Reemployment Rights Act (USERRA); Age Discrimination Act of 1975; Age Discrimination in Employment Act of 1967, as amended; Family and Medical Leave Act of 1993; Federal Executive Order 11246 of 1965, as amended by Executive Order 11375 of 1967; Federal Executive Order 12900 of 1994; Federal Executive Order 13145 of 2000; Federal Executive Order 13160 of 2000; Federal Executive Order 13166 of 2000; Massachusetts Civil Rights Act; Massachusetts General Laws Chapters 151B, 151C, and Chapter 149; and other applicable local, state and federal constitutions, statutes, regulations and executive orders.

The University will promptly respond to all claims or complaints of discrimination, discriminatory harassment and retaliation, with the intention to fully, quickly and adequately resolve the claim/complaint on an internal basis and to prohibit further occurrences. Individuals have the right to file charges of unlawful discrimination with the appropriate government agency with or without first utilizing these Discrimination Complaint Procedures. Such agencies include:

U.S. Department of Education/Office for Civil Rights
33 Arch St., Suite 900
Boston, Massachusetts 02110-1491
617-289-0111

U.S. Equal Employment Opportunity Commission
John F. Kennedy Federal Building, Rm. 475
Government Center
Boston, Massachusetts 02203-0506
617-565-3200

TTY: 617-565-3204

Massachusetts Commission Against Discrimination
One Ashburton Place, Rm. 601
Boston, Massachusetts 02108
617-727-3990 (x588 for TTY)

Massachusetts Commission Against Discrimination
436 Dwight Street
Second Floor, Room 220
Springfield, MA 01103
(413) 739-2145

C. INITIATING THE COMPLAINT PROCEDURE

1. Time Limits

This procedure is designed to promote the speedy investigation and resolution of complaints. The various steps of these procedures contain time limits that are measured in “working days.” For purposes of these procedures, the definition of the term “working days” shall be days when the administrative offices of the University are regularly open for business. Holidays, weekends, snow days and other days when the University is closed for any other reasons will not be counted. In making a determination concerning the extension of time limits under these procedures, the Assistant VP, Human Resources and Affirmative Action or other officer charged with the investigation of complaints under these procedures, the Senior Area Administrator and/or the President will apply a standard of reasonableness, having regard, when appropriate, to academic recesses and semester breaks.

2. Acceptance of Complaints

Neither the receipt of a complaint nor the written acknowledgment of receipt by the designated office of the University will be deemed to be an admission of any violation of law or policy by any of the named parties or by the institution.

D. COMPLAINT PROCEDURES

1. Informal Complaints

a. Preliminary Steps

Prior to the filing of a complaint, an individual may seek advice, counsel, investigation and informal resolution by the Assistant VP, Human Resources and Affirmative Action.

A person wishing to explore the possibility of resolving a complaint informally or mediating a complaint should request a meeting with the Assistant VP, Human Resources and Affirmative Action or other designated office within a reasonable time. Because it is beneficial to all parties to resolve complaints promptly, they should ordinarily be brought to the attention of the designated officer within thirty (30) days following the occurrence of the events that are thought to constitute discrimination, discriminatory harassment and/or retaliation. In individual cases, circumstances may make that difficult or impractical. Whenever a claim has been initiated more than thirty (30) days following the occurrence of such events, the Assistant VP, Human Resources and Affirmative Action or other designated officer will determine whether the claim has been initiated within a reasonable time.

Whenever a complaint of discrimination is brought to the attention of the Assistant VP, Human Resources and Affirmative Action or other designated officer, he or she will provide assistance in:

- a. explaining the avenues of recourse that are available;
- b. providing information about the applicable federal and state laws and regulations;
- c. informing the complainant of the right to file charges with the appropriate government agency, as well as the need to meet applicable time requirements for such filing;
- d. explaining the University's complaint process;
- e. determining whether the complaint procedures are applicable;
- f. informally investigating complaints made on an anonymous basis;
- g. mediating the complaint; and/or, when requested;
- h. properly completing the Discrimination Complaint Form.

An individual may seek to proceed with an informal complaint on an anonymous basis. While Westfield State University cannot guaranty

confidentiality, if a complainant has not authorized the release of his or her name for the purposes of the University's investigation and possible informal resolution of the complaint, the University shall take all measures practicable to prevent disclosure of the complainant's identity in the course of its informal investigation. The Assistant VP, Human Resources and Affirmative Action or other designated officer shall maintain a confidential record of all proceedings in which a complainant requests anonymity. If the complainant subsequently elects to make a formal complaint, the confidential record of the informal investigation may be disclosed and used in addressing the formal complaint. This possibility should be disclosed to the person against whom an informal complaint is made if he or she is interviewed in connection with the processing of the informal complaint.

Whether or not the complainant has authorized the release of his or her name, the Assistant VP, Human Resources and Affirmative Action or other designated officer must also take care to protect the accused from inappropriate disclosure of any pending claims.

If the University believes it is appropriate that the Complaint Procedures be initiated without informal investigation, or if the person filing the complaint does not wish to mediate the complaint in accordance with the procedure set forth below, the complaint shall be handled under the Formal Complaint process.

b. Mediation

Separate from the informal investigation process, a complainant may seek mediation of his or her complaint. Mediation is a process by which both parties, the complainant and the accused, agree to seek informal resolution of the complaint. In mediation, the Assistant VP, Human Resources and Affirmative Action or other designated officer serves as a facilitator between the parties. Mediation is a confidential process. Each party must maintain the confidentiality of mediation, and neither party nor the University may rely on any information obtained through mediation in any subsequent investigation or procedure.

The facilitator does not have the authority to impose a settlement on the parties. Both parties must agree to any settlement or resolution of the complaint. If mediation does not result in a mutually agreeable settlement or resolution, the complainant has the option of pursuing a formal complaint in accordance with the procedures set forth as follows.

2. Formal Complaints

The Formal Complaint Process is provided to allow employees, students and persons having dealings with the institution an avenue to address complaints of discrimination, discriminatory harassment and retaliation as defined by this Policy. The three steps are provided to allow for adequate appeal rights of the parties. Resolution of a complaint, however, is possible at any step of the procedure through the written agreement of the parties and with the approval of the Assistant VP, Human Resources and Affirmative Action or other designated officer at the institution.

If the Assistant VP, Human Resources and Affirmative Action or other designated officer, the Senior Area Administrator or the President believes that he or she is unable to make an objective judgment when a complaint filed under these procedures comes before him/her, then he or she will so advise the parties and the other two institutional officers and will appoint a designee to serve as a replacement.

a. Step I: Designated Office

The complainant shall file a Discrimination Complaint Form, accompanied by any pertinent supporting documentation, with the Assistant VP, Human Resources and Affirmative Action or other designated office.

Complaints that involve students may be investigated and adjudicated/processed in concert with the student conduct office.

The complaint must contain, as essential elements, the signature of the complainant, the date signed, the prohibited basis on which the complaint is filed, and the alleged act(s) of discrimination, discriminatory harassment and/or retaliation. The names of any witnesses and any appropriate documents should be attached to the complaint form. A complaint form can be found at the end of these Procedures.

A complaint shall normally be filed within forty (40) working days from the date upon which the complainant had knowledge or should have had knowledge of the alleged act(s) of discrimination, discriminatory harassment or retaliation, or twenty (20) days following the completion of the informal mediation process, if utilized. Where, however, the act complained of is one of a continuing nature, has a continuing effect, or,

in the judgment of the designated person warrants proceeding, the time limit may be reasonably extended.

The Assistant VP, Human Resources and Affirmative Action or other designated officer will promptly consider the complaint and will, within thirty (30) working days of the filing thereof:

- (1) Determine whether the complaint has been filed in accordance with the provisions of these procedures;
- (2) Determine whether the complaint alleges discrimination or discriminatory harassment on the basis of race, color, creed, religion, national origin, gender, sexual orientation, gender identity, age, disability, veteran status, marital status, or genetic information or alleges retaliation;
- (3) Investigate the complaint by taking, at a minimum, the following steps:
 - (a) providing a copy of the formal complaint to the person accused;
 - (b) requesting and considering the response of the person accused;
 - (c) reviewing relevant documents and, at the discretion of the designated officer, interviewing of the persons identified by either party as ones having information pertinent to the allegations;
 - (d) collecting further evidence relevant to the investigation;
 - (e) presenting the evidence to each party and considering any rebuttal; and
 - (f) such other steps as the designated officer believes are necessary.
- (4) Attempt to resolve the complaint to the mutual agreement of the parties and the designated officer. If such agreement is reached, it will be reduced to writing and the designated officer will notify the parties, the Senior Area Administrator and the President of the closure of the complaint file.

- (5) If a resolution is not reached, the designated person will provide a Statement of Findings and Recommendations to the parties, the Senior Area Administrator and the President.

If the Assistant VP, Human Resources and Affirmative Action or other designated office determines that more than thirty (30) days are needed, he or she will notify the parties of the anticipated completion date of this Step.

If, upon receipt of the Statement of Findings and Recommendations, either party takes exception, he or she may appeal to Step II, by notifying the Assistant VP, Human Resources and Affirmative Action or other officer issuing the Statement of Findings and Recommendation in writing and stating the basis of the Appeal within ten (10) working days of her/his receipt of the Finding. In such cases, a copy of the entire Step I record and the Letter of Appeal will be transmitted to the Senior Area Administrator, with a copy to the President.

If no appeal has been filed, the Assistant VP, Human Resources and Affirmative Action or other designated officer will pursue one of the following courses at the end of the ten (10) day period:

If no finding of violation has been made and/or no remedy has been recommended, the designated officer will issue a Statement of Closure to the parties, with a copy to the Senior Area Administrator and the President.

OR

If a finding of violation has been made, and if a remedy has been requested or recommended which must be effected by the Senior Area Administrator or the President, the designated officer will issue a Statement of Resolution and a Recommendation to Effect Remedy to the parties, the Senior Area Administrator and the President.

b. Step II – Senior Area Administrator

Unless otherwise determined by the President, the Senior Area Administrator responsible for hearing appeals at Step II is the person who has overall responsibility for the supervision of the individual accused in the complaint and who reports to the President. If the accused's supervisor is the President, the President will appoint a designee to serve in her/his stead. In some cases, the Senior Area Administrator may choose to appoint another high level administrator to serve as designee. For complaints arising between students in both the Day College and the Divisions of Graduate Education and Continuing Education and Special Programs, the President will designate the

person/persons to serve as the Senior Area Administrator to hear appeals under Step II of these procedures.

The Senior Area Administrator or designee will promptly consider the complaint and will, within fifteen (15) working days of the receipt of the Step I record and the appeal:

- (1) Determine whether the complaint and the Step II appeal have been filed in accordance with the provisions of these procedures.
- (2) Take the steps necessary to review the record and the appeal, investigate the complaint further if deemed necessary, make a preliminary determination on the matter and informally discuss it with both parties.
- (3) Offer the non-prevailing party the opportunity for a hearing. Such hearing must be requested within ten (10) days of the offer. If the party requests such hearing, the parties will be accorded the following:
 - (a) The right to receive written charges in advance of the expected response.
 - (b) The right to have a representative present to serve in an advisory role.
 - (c) The right to have a response heard and considered.
 - (d) The right to present documentary and testimonial evidence.
 - (e) The right to question the opposing party and persons giving testimonial evidence.
 - (f) The right to rebut documentary and testimonial evidence.
 - (g) The right to receive a written decision.

If the Senior Area Administrator determines that more than fifteen (15) days are necessary, he or she will notify the parties of the anticipated completion date.

If, upon receipt of the Senior Area Administrator's Statement of Findings and Proposed Remedy, either party takes exception, he or she may appeal to Step III, stating the basis of the appeal, by notifying the Senior Area Administrator and the Assistant VP, Human Resources and Affirmative Action

Westfield State University

Policy concerning:

Section Personnel
number 2070
page 10 of 14

APPROVED:

REVIEWED: September 2011

or other designated Step I officer in writing within ten (10) working days. In such cases, the Senior Area Administrator will transmit a copy of the entire Step I and Step II records, and the Letter of Appeal to the President.

If no appeal has been filed, the Senior Area Administrator will pursue one of the following courses at the end of the ten (10) day period:

If no finding of violation has been made and/or no remedy has been recommended, the Senior Area Administrator will issue a Statement of Closure to the parties, with a copy to the designated person and the President.

OR

If a finding of violation has been made and, if a remedy has been proposed which can be effected by the Senior Area Administrator, he or she will give effect to such remedy and will issue a Statement of Resolution to the parties, with a copy to the Assistant VP, Human Resources and Affirmative Action or other designated Step I officer.

OR

If a finding of violation has been made and, if a remedy has been proposed which must be effected by the President, the Senior Area Administrator will issue a Statement of Resolution and a Recommendation to Effect Proposed Remedy to the parties, with a copy to the President and the Assistant VP, Human Resources and Affirmative Action or other designated Step I officer.

c. Step III – President

Unless the President is personally charged under these procedures, in which case the procedures under the Complaints Against Institutional Officers section of these procedures will apply, or disqualifies her/himself, the President will be the sole Step III Appeal Officer.

The President will promptly consider the complaint and will, within ten (10) working days of receipt of the Step I and Step II records and the Letter of Appeal:

- (1) Determine whether the complaint and the Step III appeal have been filed in accordance with these procedures.
- (2) Take the steps necessary to review the record of the two preceding steps and the appeal.

- (3) At his/her discretion, remand the case to the Senior Area Administrator or the Assistant VP, Human Resources and Affirmative Action or other designated Step I officer for the purpose of further investigation or hearing.
- (4) Make a final determination on the complaint of discrimination and take whatever action he or she deems appropriate to the situation. A Notice of Final Resolution will be issued by the President to the parties, the Senior Area Administrator and the Assistant VP, Human Resources and Affirmative Action or other designated Step I officer.

If the President determines that more than ten (10) days are necessary, he or she will notify the parties of the anticipated completion date.

The President will be the final adjudicator under these procedures. Her/his decision will be binding with full recognition that, at any time, the complainant has the right to file charges with appropriate local, state and/or federal agencies.

4. Application Of Time Limits

In the event that a complaint has not been resolved within fifty-five (55) days following its filing at any step, either party may elect to have the matter considered at the next step of these procedures.

E. COMPLAINTS AGAINST INSTITUTIONAL OFFICERS

If a complaint is directed against a Senior Area Administrator or the Assistant VP, Human Resources and Affirmative Action or other designated Step I officer, the functions assigned to that person by these procedures will transfer to the President or her/his designee. Complaints directed against the President will be filed with the Chairperson of the Board of Trustees and will follow the Grievance Procedures with Respect to Presidents established by the Board of Regents, as contained in the Report of the Task Force on Complaint/Grievance Procedures dated September, 1987.

F. RETALIATORY ACTION PROHIBITED

The University prohibits retaliatory action taken against persons who file claims, complaints or charges under these procedures, or under applicable local, state or federal statute, who are suspected of having filed such claims, complaints or charges, who have assisted or participated in an investigation or resolution of such claims, complaints or charges, or who have protested practices alleged to be violative of the non-discrimination policy of the University, the DHE, or local, state or

federal regulation or statute. Such retaliation is recognizable under these procedures as well as under state and federal law. Retaliation, even in the absence of provable discrimination in the original complaint or charge, constitutes a violation as serious as proved discrimination under the original claim, complaint or charge. Any person who believes he or she has been retaliated against in this manner is encouraged to immediately file a claim or complaint under these procedures.

G. REMEDIAL ACTIONS

Should discriminatory harassment, retaliation or discrimination in treatment or effect be found to exist in any employment, educational or service decision, action, inaction or practice within the University, all appropriate corrective and/or disciplinary actions will be taken under the direction of the President, subject to any applicable collective bargaining agreement or other policies or procedures of the University.

H. RECORDKEEPING

A record of any claim or complaint submitted for consideration in accordance with these Discrimination Complaint Procedures will be kept on file in the University's Human Resources and Affirmative Action Office. This record will include a record of all steps of these procedures and will be the only file so maintained. The information contained in such files will be considered confidential and will be accessed/used only for purposes of the enforcement of non-discrimination policies and by appropriate staff.

1. For a claim filed under the Informal Complaint Process, the record will contain at a minimum:
 - (a) a brief description of the claim, its allegations and the manner in which it was resolved; and
 - (b) if given, signed authorization to use the complainant's name in the investigation/resolution of the claim.
2. For a complaint filed under the Formal Complaint Process, the record will contain at a minimum:
 - a a copy of the complaint;
 - b. copies of all witness statements;
 - c. any documentary evidence or written statements presented by the parties; and

Westfield State University

Policy concerning:

Section Personnel

number 2070

page 13 of 14

APPROVED:

REVIEWED: September 2011

d. a copy of the final disposition/resolution.

3. Student Complaints: Complaints that involve students may be investigated and adjudicated/processed in concert with the student conduct office.

REVIEW

This policy will be reviewed annually by the Assistant VP, Human Resources and Affirmative Action

Discrimination Complaint Policy Attached

DISCRIMINATION COMPLAINT FORM

NAME OF COMPLAINANT: _____

PLACE WHERE YOU MAY BE CONTACTED:

Address: _____

Phone: _____

E-mail: _____

DATES OF ALLEGED DISCRIMINATORY ACT: _____

ALLEGED DISCRIMINATOR: _____

NATURE OF COMPLAINT AND RELIEF DESIRED: Include all events, places and persons that you feel are involved with this complaint. (Use additional pages if necessary)

The above information is complete and accurate to the best of my knowledge and belief and I hereby elect to use the procedures outlined in the *Discrimination Complaint Procedures*. I (do) (do not) authorize the use of my name in the investigation and resolution of this claim/complaint and the disclosure of this document to appropriate administrators and any or all persons named above, including their representatives.

Signature of Complainant: _____ Date: _____