

EQUAL OPPORTUNITY COMPLAINT PROCEDURE (FOR CASES PRIOR TO 9/21/2017)

The University of Maine System is committed to maintaining a respectful, fair educational and work environment, free from discrimination or harassment. The goal of the University is to prevent discrimination or harassment from occurring and to provide a means of raising and resolving complaints. The Equal Opportunity Complaint Procedure may be used by any employee or student of the University of Maine System who believes that he or she has been discriminated against or harassed based on race, color, religion, sex, sexual orientation, including transgender status or gender expression, national origin or citizenship status, age, disability, genetic information or veterans status. Sex discrimination complaints alleging discrimination based on marital status, pregnancy, or parental status may also be raised through this procedure.

These procedures provide a mechanism for employees and students to file complaints and for investigation and resolution of such complaints. The University is responsible for providing an environment free of discrimination and harassment whether or not an employee or student chooses to file a complaint using these procedures. Nothing in this document should be construed to limit the University's ability to take corrective action when the University's Non-Discrimination policy is violated.

General Information

Who may file a complaint. Any employee or student with a concern about discrimination or harassment should contact the University Equal Opportunity Officer or other person designated by the University as soon as possible after the alleged incident. (In providing this procedure to the university community, each University shall specify the title(s), addresses, and telephone numbers of the persons designated. For the purposes of this System-wide procedure the title Equal Opportunity Officer will be used.) Any person may bring information or a concern about discrimination or harassment to the Equal Opportunity Officer. A complaint may be initiated by an employee or student who feels he or she has experienced discrimination or harassment, or by anyone with knowledge of an incident. When the complainant is not the person who may have experienced discrimination or harassment, the University's ability to investigate and resolve the situation may depend on that person's willingness to participate in the investigation. The Equal Opportunity Officer will provide information about University policy and relevant laws, suggest ways to handle the complaint either informally or formally, and provide referrals to counseling or other support services, as needed. In any situation in which the person accused of discrimination or harassment is a student and a formal complaint is filed, the investigation will be conducted by the Student Judicial Officer under the Student Conduct Code. In such cases the Equal Opportunity Officer may serve as a consultant.

Alternate investigator. The University shall also provide a qualified alternate investigator in certain circumstances (In providing this procedure to the University community, each University shall specify the title(s), addresses, and telephone numbers of the persons designated as alternate investigators or of the office or individual to whom a request for an alternate investigator should be made.) Complaints may be made to the alternate investigator if the Equal Opportunity Officer is the subject of the complaint. A request that the alternate investigator handle a complaint may be made if there is a concern that the Equal Opportunity Officer has a substantial conflict of interest in connection to the complainant or the person accused. If the Equal Opportunity Officer files a complaint, it shall be investigated by the Investigations Coordinator in the System Office of Human Resources.

Confidentiality. Investigations will be conducted as confidentially as possible to protect the privacy and due process rights of both the complainant and the individual accused. Consultation with and involvement of other employees, supervisors and others will be strictly limited to those who may have information about the alleged incident, who need to know that a complaint has been made, or whose job responsibilities include equal opportunity matters. All those involved in a complaint process are strongly encouraged not to discuss information about the complaint within the University in order to protect their privacy, the privacy of others, and the effectiveness of the process. The complainant and the person accused may discuss the matter with family and others outside the University as necessary for support and guidance and may obtain assistance from University counseling professionals.

Supervisor's responsibility. If a supervisor becomes aware of a discrimination or harassment concern regarding an employee's behavior, the supervisor should consult with the Equal Opportunity Officer. The Equal Opportunity Officer and the supervisor will discuss the situation and together decide how to proceed.

Time limits. The people responsible for this process will seriously attempt to meet all deadlines, but failure to do so will not prevent the process from continuing. Deadlines in this procedure are intended to serve as outside limits for actions to occur. In the interest of everyone concerned, all matters should be handled as expeditiously as possible. All deadlines refer to calendar days.

Retaliation. Retaliation against anyone who makes a complaint of discrimination or harassment or who is involved in a complaint process is illegal and constitutes a serious violation of University policy. Retaliatory action will be regarded as a basis for a separate complaint under these procedures.

Informal Complaints

The University's experience is that most complaints can be resolved through an informal process. By its nature an informal process is less procedurally detailed than a formal process. The informal process provides the maximum privacy and an opportunity for the earliest possible resolution for everyone concerned.

If the complainant wishes to explore an informal resolution of the problem, the Equal Opportunity Officer will provide assistance without fully investigating the allegation. The objective of the informal process is to seek a resolution to which all parties involved can agree. The Equal Opportunity Officer may suggest that the complainant speak directly to the accused person or may act as an intermediary. A complainant may request that the person accused not be informed of the complainant's identity if this is not essential to resolve the complaint informally. The Equal Opportunity Officer may also gather information from other sources in an effort to resolve the complaint.

If the person accused elects not to participate in an informal process, the non-participation will not be considered as damaging evidence. Failure of the accused person to participate does not change the University's responsibility to investigate and to make decisions based on available information.

Attempts to resolve an informal complaint will be completed within thirty (30) days from the date of the complaint. The complainant and the person accused will be informed of the outcome of the informal process. This notification may be oral. At the completion of the informal process if a formal complaint will not be filed, the complainant or person accused may request a letter from the Equal Opportunity Officer regarding the status of the complaint. If a complaint cannot be resolved informally, the complainant or the Equal Opportunity Officer may request a formal investigation.

Formal Complaints

Filing a complaint. An employee or student who wishes to file a formal complaint should contact the Equal Opportunity Officer. Investigation of a formal complaint will normally be conducted by the Investigations Coordinator in the System Office of Human Resources. The complaint should be filed as soon as possible after the alleged incident or unsuccessful efforts to resolve the situation informally. A formal complaint must be put in writing and signed by the complainant. The complaint shall specify the incidents giving rise to the complaint. When possible, dates and location of incidents and potential witnesses shall be identified. The University will attempt to balance the wishes of a complainant who does not want to file a formal complaint with the University's responsibility to investigate serious allegations and take prompt corrective action. A complainant who decides not to proceed with a formal complaint may be asked to state that preference in writing.

Notifying the person accused. The person accused of discrimination or harassment in a formal complaint will be informed in writing by the Equal Opportunity Officer within seven (7) days of both the allegations and the complainant's identity.

Investigative process. The Investigations Coordinator will meet with the complainant and the person accused and may request to meet with them together. The Investigations Coordinator may also interview witnesses, supervisors, or other persons who have information about the alleged incident, and may review personnel or other records relevant to the complaint. Prior allegations, or findings about prior incidents of discrimination or harassment, shall not be considered in determining whether the present allegation has been substantiated.

Findings and remedies. The Investigations Coordinator will assess whether a violation of the University's non-discrimination or harassment policy has occurred and will submit findings in writing to the responsible administrator, the complainant, and the person accused within thirty (30) days of receiving the formal complaint. A copy of the findings will also be provided to the Equal Opportunity Officer. If the finding is that discrimination or harassment occurred, the Investigations Coordinator may discuss or provide information about appropriate remedies to the responsible administrator. The responsible administrator is the line administrator (for example, the dean, director, vice president, or president), who is responsible for acting on the findings and for making a decision regarding discipline of the person accused. Appropriate discipline may range from an oral reprimand up to and including termination, or any other appropriate remedial action.

In making a decision regarding discipline, the responsible administrator may consider properly established records of previous conduct and the seriousness of the violation. A complaint made more than twelve (12) months after the incident shall not be the basis for disciplining any person accused of discrimination or harassment. However, where there are allegations of discrimination or harassment made within the twelve (12) month period and a longer pattern or practice of discrimination or harassment exists, the responsible administrator shall consider the totality of events in determining appropriate discipline.

Before any disciplinary action is taken the responsible administrator shall discuss the findings and recommendations with the Investigations Coordinator, shall meet with the accused person, and shall offer to meet with the complainant. The responsible administrator may also interview other witnesses and review other relevant evidence. The accused person, the Investigations Coordinator, and the Equal Opportunity Officer will be notified of the decision of the responsible administrator in writing within fourteen (14) days. The complainant will be notified at the same time whether the allegations have been substantiated, what corrective action, if any, will be taken, and, in general, whether any discipline will be imposed. An employee who is disciplined after a complaint has been substantiated may grieve the discipline by filing a grievance according to the procedures in the appropriate collective bargaining agreement or non-represented employees' grievance procedure.

Appeals of Formal Complaints

Either the complainant or person accused may file an appeal if (1) the findings include relevant factual errors or omit relevant facts, (2) relevant procedural errors are alleged, or (3) relevant issues or questions concerning interpretation of University policy are raised. An appeal must be made in writing to the Equal Opportunity Director for the University System within seven (7) days of being notified of the responsible administrator's decision. The appeal must state the reason(s) for the appeal. The Equal Opportunity Director will review the written record and may request additional information from the Investigations Coordinator, complainant, person accused, responsible administrator, or others with direct knowledge about the complaint. The Equal Opportunity Director's review will be completed within fourteen (14) days and will be reported in writing to the complainant, person accused, Investigations Coordinator, Equal Opportunity Officer, responsible campus administrator, and University president. The final decision on an appealed complaint rests with the University President. During an appeal, the University shall not impose any discipline on a respondent for the behavior which is the subject of the appeal.

At any point in the complaint process if the University believes that the accused person represents a danger to individuals or to operations of the University, the accused may be placed on a leave with pay.

Right to Representation

General. The complainant and the person accused have the right to representation as specified below. **Any representative may attend any inquiry with the employee or student and may receive copies of documents, notice of proceedings, and copies of findings, but may not participate in the inquiry.**

Bargaining unit members. The University shall inform a bargaining unit member who is the subject of a complaint of the member's right to be accompanied by a grievance representative. An employee who files a complaint and who is a bargaining unit member may also be accompanied by a union representative.

Students and non-represented employees. A student or non-represented employee, as either complainant or accused, shall also have the right to be accompanied by another student or employee at the campus or other person.

Attorneys. Either the complainant or the accused may be accompanied by legal counsel when a formal complaint has been made.

Written Records

The kinds of written records relating to a charge of discrimination or harassment that may be placed in an accused employee's official personnel file include: any document that has been mutually agreed to by the University and the employee; a letter issued by the responsible administrator to the employee at the conclusion of a formal investigation, which notifies the employee about discipline to be imposed or other remedies; a settlement agreement between the parties. Inclusion of such information in the personnel file shall be in accordance with the relevant collective bargaining agreement.

Other written records of informal or formal complaint investigations will be marked "CONFIDENTIAL" and will be retained in a separate and secure (locked) confidential file by the Equal Opportunity Officer and Investigations Coordinator.

Alternative Procedures

Employees are encouraged to use the Equal Opportunity Complaint Procedure to address any complaints of discrimination or harassment based on protected class status. However, an employee may elect to file a grievance under the provisions of the applicable collective bargaining agreement or non-represented employees' grievance procedure, if the alleged incident is also a violation of the collective bargaining agreement or non-represented employees' handbook. This action may be in addition to, or in the place of, the procedures described above. An employee who wishes to use the Equal Opportunity Complaint Procedure but also to preserve his or her right to file a grievance must ask for, and normally will be granted, an extension of the initial deadline for filing a grievance. Such a request shall be made in writing before the initial deadline for filing a grievance passes by the bargaining agent or the non-represented employee to the University administrator with authority to grant an extension.

Any complaint of discrimination or harassment filed under these procedures shall be processed even if the complainant also files a complaint or suit with an outside agency, including the Maine Human Rights Commission, U.S. Equal Employment Opportunity Commission, or U.S. Department of Education Office for Civil Rights.

Academic Freedom

Harassment based on sex, race, or other protected characteristics includes verbal conduct which has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive work or educational environment. However, harassment does not include verbal expression which is relevant to

course subject matter, and University procedures for handling harassment complaints shall not abridge academic freedom.

Dissemination of Procedures

A summary of the Equal Opportunity Complaint Procedure will be provided to all employees and students. Periodic notices sent to students, employees, and supervisors about the University's equal opportunity and sexual harassment policies will include information about the complaint procedure and will refer individuals to the Equal Opportunity Officer for additional copies.