GRIEVANCE POLICY AND PROCEDURES

UNIVERSITY OF MASSACHUSETTS AMHERST

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University of Massachusetts Amherst

GRIEVANCE POLICY AND PROCEDURES

Introduction

The Amherst campus of the University of Massachusetts is committed in policy, principle, and practice to maintain an environment which is divest of illegal discriminatory behavior and which provides equal opportunity for all persons regardless of race, color, religion, creed, sex, age, marital status, national origin, mental or physical disability, political belief or affiliation, veteran status, sexual orientation, gender identity and expression or genetic information. This commitment is consistent with federal and state laws and University policy. A major responsibility emanating from this commitment is the provision of a fair, effective, and efficient mechanism that rectifies or eliminates policies, practices, and actions that are discriminatory, lack provision for due process, or mitigate against the Amherst campus' affirmative action efforts.

Outlined on the following pages are the procedures to be used in filing a grievance alleging discrimination and a violation of the University's policies prohibiting such behavior. Questions regarding details of this procedure should be addressed to the Equal Opportunity (EO) Office, Room 225 Bartlett Hall.

In addition to this grievance procedure the EO Office has responsibility for the sexual harassment grievance procedure which is a separate and distinct process.

Sexual harassment is a form of sex discrimination and therefore a violation of federal and state laws and University regulations. Sexual harassment is defined as:

Unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when: 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic work; 2) submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual; or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working or academic environment.

For information regarding the Sexual Harassment Grievance Procedure, or if you or someone you know has been sexually harassed on the Amherst campus, contact the EO Office.
I. Affirmative Action and Equal Opportunity Grievance Policy

Definition

A grievance is an actual or perceived cause for protest or complaint arising out of some perceived or actual harm due to some action taken by the University or member(s) of the University community. This alleged action has the impact of imposing on the individual his or her legal rights, or has the impact of imposing on an individual's right to pursue an education or the right to work at the University of Massachusetts without fear or intimidation. An affirmative action and equal opportunity grievance alleges that this action caused the complainant to be treated differently on the basis of race, color, religion, creed, sex, age, marital status, national origin, mental or physical disability, veteran status, sexual orientation, gender identity and expression or genetic information in violation of federal or state laws. In addition, the University of Massachusetts Amherst specifically prohibits the differential treatment of employees, students, applicants for student status or employment on the basis of political belief or affiliation, and membership or nonmembership in any organization.

A grievance alleging discrimination is a written complaint submitted to the EO Office by employees, applicants for employment, graduate students, or undergraduate students. Discrimination charges may be brought by individuals, a group of individuals, or individuals on behalf of another individual or group. A charge of discrimination must be filed with the EO Office in a written and signed statement by the complainant detailing the facts related to the allegations of discrimination no later than one calendar year from the alleged discriminatory act.

Discriminatory behavior usually falls into two categories:

1. **Discrimination Based on Disparate Treatment** - Defined as treating some people less favorably than others because of the factors listed above. Intent to discriminate is important and sometimes can be inferred from the fact of differences of treatment.

2. **Discrimination Based on Disparate Impact** - Involves practices that fall more harshly on one group than another and cannot be justified by business necessity. (The intent to discriminate need not be shown in this case.)

II. Affirmative Action and Equal Opportunity Procedures for the Amherst Campus

The grievance process is intended to investigate and where possible resolve complaints of alleged discrimination against prospective employees, employees, prospective students, and students involved at the Amherst campus. The guidelines below are to be used by the EO Office to enable all University complainants to use the grievance process to resolve the initiating problem without fear of retaliation. These procedures are intended to ensure that the EO Office will conduct a thorough impartial investigation of all allegations of discrimination. The procedures should aid complainants and the University representatives in arriving at just resolutions.

The EO grievance process is comprised of two procedures - the formal procedure and the informal procedure.
A. Informal Procedure

1. Informal Resolution of Dispute

a. In an attempt to encourage prompt resolution of potential grievances, any of the parties involved may request the intervention of the EO Office to resolve the matter informally. The EO Office will attempt to resolve the matter informally with the administrators closest to and best able to discuss the situation. Informal resolution attempts will not have precedential value nor will any statements or efforts made to resolve the matter informally have prejudicial effect on any formal grievances.

b. The EO Office may initiate a review in the absence of a request by the allegedly aggrieved party but only on the basis of significant evidence.

c. Informal attempts at settlement will not extend beyond thirty calendar days without the written agreement of all parties. If the complainant requests an attempt at informal settlement, then he or she will not be free to make a formal complaint with the office until an informal settlement is proposed or the thirty days have elapsed whichever comes first.

B. Formal Procedure

1. Initiation of Formal Internal Complaint

a. An individual or group of individuals may initiate a formal complaint by detailing the factors related to the allegations of discrimination in a written and signed statement.

b. These allegations are filed with the EO Office, 225 Bartlett Hall. The telephone number is (413) 545-3464. The Office will acknowledge receipt of each complaint within 5 working days from the time the complaint is received. The complainant will be called in for an interview within 15 working days.

c. At the interview the complainant(s) is informed of the steps to be taken to resolve the specific complaint; the complainant then reviews the charge for accuracy; and signs the initiation of complaint form.

d. The charge is served on the respondent and the vice chancellor or executive officer of the respondent's unit in which this alleged act of discrimination is said to have occurred within 20 working days from the initial receipt of the complaint.

e. Data and documents from the parties, and rebuttal statements from the respondent are to be submitted to the EO Office within 20 working days from the date the charge is served.
2. Investigation Process

a. Investigation may include interview of witnesses, review and comparative analysis of data and documents, and may take up to 45 working days from the time of receipt of the position statement from the respondent.

b. Written finding(s) of fact is made by the EO Office and is sent within 15 working days of the conclusion of the investigation to the complainant, the respondent, and the University Legal Counsel; each of whom have an opportunity to submit rebuttals to the finding(s) of fact within 10 working days.

c. The EO Office may initiate an investigation into any apparent discrimination issue identified out of the investigation of a charge filed with it.

3. Resolution of Complaints

a. The EO Office prepares a written report of each formal investigation. It includes pertinent information related to the specific discrimination complaint, including finding(s) of fact. This report will make a recommendation to the appropriate vice chancellor or executive officer for settling the complaint.

Copies will be send to the complainant and the respondent. The report will be issued within 10 working days of receipt of all material referenced above.

b. The appropriate vice chancellor or executive officer will respond to the EO Office's letter of finding(s) within 10 working days and that response will be sent to the Executive Director for EO Office. The response will accept, reject, or modify the recommendation of the EO Office.

c. Within 5 working days of receipt of the response of the vice chancellor or executive officer, the EO Office will send a letter of notification to the complainant and to the respondent outlining the University's position.

III. Scope of Resolution of Complaints

Acceptable resolutions of a discrimination complaint must be made in accordance with federal, state, and University of Massachusetts Amherst Affirmative Action policies, and federal and state statutes and regulations.

IV. Appeals

A complainant dissatisfied with the University's resolution may seek redress by appeal to a state or federal compliance agency. Filing a complaint with the EO Office does not deny a person the right to file with outside agencies. These outside agencies and the issues they investigate are as follows:
A. Massachusetts Commission Against Discrimination (MCAD)

Under Chapter 151B, Massachusetts General Laws Annotated, it is unlawful to discriminate against a person(s) on the basis of race, color, religion, creed, national origin or ancestry, handicapping condition, veteran status, or sexual orientation. The MCAD, a state agency, monitors discrimination in the areas of housing, employment, loans, and educational opportunities. Any person claiming to be aggrieved by an alleged unlawful practice may file a complaint with this agency. The offices to contact are:

**Springfield Office:**
Massachusetts Commission Against Discrimination
436 Dwight Street, Room 220
Springfield, MA 01103
(413) 739-2145

**Boston Office:**
Massachusetts Commission Against Discrimination
One Ashburton Place, Suite 601
Boston, MA 02108
(617) 994-6000
TTY (617) 994-6196

B. Office of Federal Contract Compliance Programs (OFCCP)/ Department of Labor

On October 5, 1978, President Carter signed Executive Order 12086. This order is the most recent amendment to Executive Order 11246. It gives OFCCP the compliance responsibility for equal opportunity programs previously assigned to eleven other federal agencies. This agency monitors discrimination in employment and in educational institutions (including hiring, upgrading, salaries, fringe benefits, training, and other conditions of employment) on the basis of race, color, religion, national origin, or sex. The local office to contact is:

Office of Federal Contract Compliance Programs
U.S. Department of Labor
John F. Kennedy Federal Building
Room E-235
Boston, MA 02203
(617) 624-6780

C. Equal Employment Opportunity Commission (EEOC)

The EEOC monitors discrimination in employment under Title VII which prohibits discrimination in employment (including hiring, upgrading, salaries, fringe benefits, training, and other conditions of employment) on the basis of race, color, religion, national origin or sex. The EEOC places great emphasis on employment practices which classify jobs as "male" or "female" or which maintain separate line of progression based on sex where this would adversely affect any employee. The local office to contact is:
D. Office for Civil Rights (OCR)/U.S. Department of Education

The OCR monitors: 1) Title IX, which specifies prohibitions against discrimination on the basis of sex in educational programs; 2) the Rehabilitation Act of 1973, which prohibits discrimination based on handicap in areas related to employment, program accessibility, and student programs. Anyone who has a complaint relating to sex discrimination or discrimination based on personal impairment may contact:

U.S. Department of Education
Office for Civil Rights
5 Post Office Square, 8th Floor
Boston, MA 02109-3921
Telephone: (617) 289-0111
TTY: (800) 877-8339

V. Procedures Related to Complaints Filed Outside the University System

A. Notification of external complaints are usually sent by the outside agencies directly to the Chancellor's Office to the attention of the EO Office. A copy of the complaint is then sent to the appropriate vice chancellor or executive officer and the University Legal Counsel for their information.

B. Responses to compliance agencies' queries are submitted to the EO Office by the appropriate parties closest to the alleged problem. The Chancellor, in consultation with the EO Office, University Legal Counsel, and the appropriate administrators, will determine the University's position vis-a-vis the complaint. The EO Office will typically investigate and coordinate, with assistance of the University Legal Counsel, the responses to the outside agency and advise the University administrators who present the University's position to the agency.

C. Any determination or resolution of these complaints is made by the appropriate vice chancellor or executive officer in whose area the complaint has been filed, usually after consultation with the EO Office and the University Legal Counsel.

D. All legal matters are handled by the University Legal Counsel in consultation with the vice chancellor or executive officer in whose area the complaint has been placed, and the Executive Director for EO.
VI. Retaliation

In accordance with federal regulations, the University is required to take all necessary steps to ensure that "no person intimidates, threatens, coerces, or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of...the Federal, State, or local laws requiring equal employment opportunity." Therefore, the following policy is made known for information and dissemination.

The University will not take retaliatory or punitive action against any individual who alleges discriminatory practices by the administration. Charges of harassment or retaliation will be expeditiously and vigorously investigated by the University's administration in conjunction with appropriate in-house groups such as Faculty Grievance Committee, Ombudsperson, Union representatives and persons responsible for Affirmative Action grievances.

If the University determines that retaliatory or punitive action has been taken against an individual who alleges discriminatory practices by the administration, the University will take action which may include sanctions from verbal reprimand to dismissal. Such action will depend upon the existing law, regulations, and procedures which govern the disposition of such matter. In all cases, where possible, the person who has suffered the retaliation or punitive action will be offered redress.

Chancellor's Policy
June 1979