



Compliance, Diversity and Ethics

March 2019

Equal Opportunity/Affirmative Action Grievance Procedure

This procedure replaces all previous procedures for investigation of complaints of discrimination and sexual harassment.

I. Scope

This procedure applies to all George Mason University faculty, staff, students, university contractors, vendors and visitors.

II. Policy Statement

The Equal Opportunity/Affirmative Action Grievance Procedure is the responsibility of Compliance, Diversity and Ethics (CDE). The procedure assists the university in carrying out its responsibilities in administering and enforcing applicable federal and state laws and university policies related to nondiscrimination and investigation of such complaints. CDE may amend this procedure as necessary. Any student, faculty, staff, contractor, vendor or visitor who feels she or he is the victim of discrimination on the basis of race, color, religion, national origin, sex, physical or mental disability, status as a protected veteran, sexual orientation, gender identity, age (40 or older), marital status, pregnancy status, or genetic information, should follow the complaint procedures outlined below. Consistent with George Mason University's duty to provide a work and academic environment free from unlawful harassment or discrimination, the university reserves the right to investigate any allegation of harassment or discrimination upon receipt of sufficient factual information to sustain such claims.

Retaliation

Retaliation is a negative action taken against an individual as a result of a complaint of discrimination being filed, or after an individual has participated in or cooperated with CDE's investigative process in some manner. It is against federal law and the university's Non-Discrimination Policy for any agent, employee or student of the university to intimidate, harass, coerce, or discriminate against an individual for taking steps to stop discrimination or discriminatory harassment—even where the underlying complaint is not found to violate university

policy. Charges of retaliation will be treated as separate and distinct from original charges and allegations, and may be investigated and resolved by CDE accordingly. Those in a supervisory position must monitor the academic or work environment to ensure that it is free from retaliation.

III. Filing Procedure

Complaints

If a member of the George Mason University community believes that she or he has been the victim of discrimination or discriminatory harassment or has information about discrimination/harassment in the university community, she or he may promptly report, without fear of reprisal, the facts of the incident and the name(s) of the individual(s) involved to CDE, located on the Fairfax Campus, Aquia Building, Suite 373. They may also email the office at cde@gmu.edu, or call the office at (703) 993-8730. Alternatively, a member of the university community may report the situation to her or his immediate supervisor, department head, or Dean, who will immediately notify CDE of the report. Supervisors must immediately report any complaints they receive or incidents of alleged discrimination they witness to the CDE Office.

A complaint should be filed within one hundred eighty (180) calendar days of the most recent incident. The university will consider requests to extend this period where the Reporting Party can show she or he needed additional time due to circumstances beyond her or his control, or a pattern of ongoing discriminatory behavior. All complaints of discrimination will be treated in the strictest confidence possible under the particular circumstances.

The Reporting Party will meet with a member from CDE to discuss their concerns. Assuming the complete veracity of the allegation(s), CDE will make a threshold determination as to whether the allegation(s) contained in the complaint constitute a violation of university policy. This threshold determination will be made within five (5) business days of the initial meeting with a CDE member. Where appropriate, CDE may conduct a preliminary inquiry to determine whether an investigation is required. If the threshold determination indicates that the allegation(s) in the complaint do not constitute a violation of university policy, either with or without a preliminary investigation, the Reporting Party will be notified that no further action will be taken with regard to the complaint. If the threshold determination indicates that an investigation is required, CDE will determine the appropriate investigation process, and an investigator from CDE assigned to the complaint will notify the Reporting party and Responding party (the individual accused of discrimination) that said investigation is under way.

Types of Investigations

Informal. Discuss allegations and concerns with Responding Party (the accused) and attempt to resolve the situation. The Responding Party is reminded that George Mason University expects all to adhere to our Equal Opportunity policies. The Responding Party is put on notice that behavior has been questioned, and informal resolution is sought, if possible. CDE reserves the right to pursue a Formal investigation into any allegations brought forth during the Informal Procedure should those allegations be indicative of a serious or continuing violation of the Equal Opportunity policies.

At the conclusion of its investigation, CDE will communicate a determination—to be shared with the Reporting and Responding parties—that states whether a violation of this policy occurred. CDE's involvement in the matter concludes once a final determination is communicated.

Formal. An investigation is conducted by CDE with interviews of the Reporting Party, the Responding Party, and any material witnesses identified, as well as a review of any relevant documentation. The Reporting and Responding parties will be given the opportunity to provide any additional relevant information to the investigator, including the names of additional witnesses to contact and/or additional documents to review before the investigation is closed. At any time prior to the conclusion of the investigation, the designated supervisor to which the Responding Party is assigned may take interim emergency action until the conclusion of the investigation.

At the conclusion of its investigation, CDE will issue a final written determination. The final written determination will state whether a violation of this policy occurred and be shared with the Reporting party, the Responding party, and the designated supervisor. A copy of the written determination may be provided to Human Resources and other pertinent university officials as necessary to ensure proper resolution and follow-up regarding the matter. CDE's involvement in the matter concludes when a final determination is made.

Standard of Proof

The investigator's findings of fact will be made using the "preponderance" standard. Under this standard, individuals are presumed not to have engaged in the alleged conduct unless a "preponderance of the factual information" supports a finding that the conduct occurred. This "preponderance" standard requires that the factual information supporting each finding be more convincing than the factual information offered in opposition to it.

Corrective Action and Sanctions

If the investigation finds that discrimination occurred, the university will determine appropriate corrective action, up to and including dismissal. The university may also take corrective action if no discrimination and/or unlawful harassment is found, but Responding Party is found to have engaged in inappropriate workplace behavior.

The Responding Party's designated supervisor, Human Resources, or any other pertinent university official shall promptly notify CDE of any corrective action imposed, if any.

Sanctions imposed on those individuals who have been found to be in violation of George Mason University's Equal Opportunity policy or its Discriminatory Harassment policy shall be commensurate with the severity and/or frequency of the conduct, and shall be adequate and sufficient to prevent such conduct in the future.

Corrective actions may include a directive to stop any ongoing discrimination, unlawful harassment, or retaliation; disciplinary or other corrective action against the Responding Party or others; relief for the Reporting Party to remedy the effects of the discrimination, harassment or retaliation; and any other action considered necessary to ensure that this or similar conduct will not happen again.

Appeal

A finding from a formal investigation may be appealed, in writing, to the Vice President of CDE within ten (10) business days from receipt of a determination letter. A party's appeal must be based on the discovery of new information that was not previously available, or a significant irregularity in the procedural process that could affect the outcome. Appellants should be as specific as possible in setting out a basis for appeal; general dissatisfaction with the outcome will not be sufficient. Determinations following an appeal to the Vice President of CDE are final.

At any time prior to filing a charge, or while a complaint proceeding is in progress, a Reporting Party may file their complaint with the appropriate external agencies, such as the Department of Education Office of Civil Rights (OCR) or the Equal Employment Opportunity Commission (EEOC), within applicable time limits. In addition, any person who is dissatisfied with George Mason University's internal procedures utilized for handling complaints, or who is dissatisfied with the result of the investigation or the sanctions imposed, may seek redress through the EEOC, to the extent allowed by law. The Reporting Party should be aware that filing a complaint with CDE or other university resources does not extend or postpone the deadline for filing with external agencies. In the event that a complaint is filed with an external agency or court, the university reserves the right to determine, at its discretion, whether the university's internal complaint resolution procedure should be discontinued or continued separately.

Time Line for Investigations

CDE will complete its investigations as expeditiously as possible. The investigation shall normally be completed within forty-five (45) business days (excluding holidays and university closings) from the determination that an investigation will ensue, including notification to the parties of the investigation outcome. Many factors can affect the desired forty-five day timeline, including unavailability of witnesses or the complexity of the issues involved. In extraordinary circumstances, CDE reserves the right to extend this time to a reasonable period and all parties will be notified if such an extension is necessary. CDE may notify respective parties upon nearing the conclusion of an investigation.

IV. Confidentiality

CDE takes any allegation of discrimination, harassment, and/or retaliation seriously and is committed to protecting the integrity of the investigation process including confidentiality and the due process rights of all individuals. Note that all those involved (the Responding Party, the Reporting Party, and the witnesses) have privacy interests. Therefore, outside the scope of the investigation, all parties are encouraged not to publicize or divulge the nature of the proceedings, or the identity of those involved.

V. Right to Advisor

The Reporting Party and the Responding Party each have the right to bring an advisor to the investigative meeting. If either Party chooses to exercise this option, CDE asks that you submit the name and relationship of the advisor (e.g., legal counsel), in writing, at least 72 business hours prior to the meeting.

VI. Responsibilities and Jurisdiction of Compliance, Diversity and Ethics Office

Consistent with federal and state laws and university policies related to nondiscrimination, CDE investigates complaints of unlawful harassment and/or discrimination on the basis of race, color, religion, national origin, sex, physical or mental disability, status as a protected veteran, sexual orientation, gender identity, age (40 or older), marital status, pregnancy status, or genetic information. CDE investigates such complaints of discrimination at George Mason University and renders a determination following such investigations.