

ADMINISTRATIVE POLICIES AND PROCEDURES

SUBJECT:	GUIDELINES FOR HANDLING DISCRIMINATION COMPLAINTS
NUMBER:	711
AUTHORIZING BODY:	PRESIDENT'S CABINET
RESPONSIBLE OFFICE:	UNIVERSITY DIVERSITY & COMPLIANCE
DATE ISSUED:	APRIL 1989
LAST UPDATE:	JANUARY 2002

RATIONALE: To establish a framework for investigating alleged violations of the University's Equal Opportunity Policy.

POLICY:

1. Preliminary Issues.

- a. **Purpose of these Guidelines.** These Guidelines are intended to ensure that discrimination and retaliation complaints are handled promptly, effectively, and equitably. These Guidelines are not strict rules and University Diversity & Compliance (UDC) can deviate from them, as it deems appropriate, to respond effectively and equitably to individual complaints. These Guidelines do not create contractual rights for the parties.
- b. **Time Limit for Filing Complaints.** Complaints must be filed within 60 days of the offending incident or most recent offending incident. The University reserves the right, in its sole discretion, to investigate and act on complaints involving incidents that have occurred beyond the 60-day filing period. Such acceptance is not intended to, nor shall it; waive timeliness defenses the University may otherwise have available to it in any judicial or administrative proceedings.
- c. **Confidentiality of Investigation.** UDC cannot guarantee confidentiality, but will only share information about an investigation on an as needed basis or as required by law.



UDC will provide supervisors and appropriate Higher Management with information regarding the investigation. If one or more of the parties is a student, UDC will provide such information to the Dean of Students. Parties and witnesses to an investigation are expected to treat all information regarding the investigation as confidential.

- d. **Support Persons.** During the investigation, a party may have another member of the University community present as his/her support person. Attorneys may not serve as support persons. Faculty or staff who are members of a union may have a union representative as a support person.
- e. **False Reports.** If, at any point, UDC determines that the person making a complaint has knowingly lied or deliberately provided false information to UDC, UDC will refer the matter to the Assistant Vice President for Human Resources, the Vice President for Academic Affairs or Dean of Students, as appropriate, for disciplinary action. Disciplinary action may include termination of employment or expulsion. A Complainant whose allegations are truthful, but found by UDC not to constitute unlawful discrimination or retaliation, has not provided false information within the meaning of these Guidelines.
- f. **Collective Bargaining Agreements.** If either party is a member of a group subject to a collective bargaining agreement with the University and the terms of that agreement specifically alter or conflict with these procedures, the terms of the collective bargaining agreement shall prevail. Faculty and staff who are members of a collective bargaining unit may file a grievance under the applicable collective bargaining agreement, if any, instead of filing a discrimination complaint under these Guidelines.

2. Pre-Investigation Procedures.

- a. **Who May Lodge a Complaint?** Any person who believes s/he has been subjected to discrimination in a University program or activity, including, but not limited to employment and education, or to retaliation, may file a complaint. The person who lodges a complaint is called a "Complainant."
- b. **How and Where to Lodge a Complaint.** A person who wishes for the University to address a discrimination or retaliation complaint should submit a written statement containing all of the following:
 - the nature of the alleged offense
 - the name of the individual(s) against whom the complaint is made
 - the specifics of the offending incident(s), including precisely what happened, where it happened, when it happened, who was present, and who else the person making the complaint told about the matter
 - the date and the signature of the person lodging the complaint

If the complaint is about an employee, the complaint should be sent to:

University Diversity & Compliance
203 Wilson Hall
Rochester, Michigan 48309-4401
248/370-3496

If the complaint is about a student, the complaint should be sent to:

Dean of Students
Room 144 OC 248/370-3352

The Dean of Students will handle discrimination and retaliation complaints in accordance with the Oakland University Code of Conduct and Judicial System. UDC and the Dean of Students may refer written complaints to one another to ensure that the most appropriate procedure is used to respond to the matter.

If a complaint is about a University contractor, the complaint should be made to the Vice President of the division for which the contractor is providing services. The Vice President will be responsible for handling the complaint and these Guidelines will not apply.

If the complaint alleges discrimination or retaliation by employees of UDC, it should be made to a Vice President or the President.

- c. **Complaints Received from Third Parties.** If UDC receives information from a third party about possible discriminatory or retaliatory conduct, UDC will contact the person who is thought to have been subjected to the behavior and request a written statement.
- d. **Refusal to Provide a Written Statement.** If a person makes a verbal or anonymous complaint, or refuses to provide a written statement, UDC will investigate based upon available information, but only if that information is sufficient to enable the University to conduct a meaningful and fair investigation.
- e. **Identifying the Respondent.** The person alleged in the complaint to have engaged in discriminatory or retaliatory behavior is called the "Respondent." When the Respondent is an administrative unit, an appropriate administrative representative will respond on the unit's behalf.
- f. **Determining Whether to Investigate a Complaint.** When UDC receives a complaint, it reviews the complaint to ensure that:
 - It is timely;
 - The situation described in the complaint arose in the course of a University program or activity;

- The complaint is directed against a University employee, student or administrative unit;
- If factually supported, the alleged behavior could constitute unlawful discrimination or retaliation.

If the complaint does not meet the above criteria, UDC may close the case and notify the Complainant. The Respondent may still be subject to University action if the alleged behavior violates another University policy.

If UDC is unable at this preliminary stage to determine whether the alleged behavior, if factually supported, could constitute unlawful discrimination or retaliation, it may decide to investigate the matter.

UDC may decide not to investigate a complaint even when the allegations, assuming factual support, could constitute unlawful discrimination or retaliation, if the person against whom the complaint is made is no longer associated with the University or there is no effective remedial action that could be taken in response to the complaint.

3. The Investigation Process.

- Informing the Respondent.** UDC will contact the Respondent and provide him/her with the complaint and a copy of these Guidelines. If the Respondent agrees that the allegations in the complaint are true, UDC may, in its sole discretion, decide not to proceed with further investigation.
- Protective Measures.** Sometimes it is necessary to take steps before or during an investigation to protect the rights and interests of the Complainant and/or the Respondent. Protective measures may also guard against further actual or perceived discrimination or retaliation. Protective measures may include, but are not limited to, directives to the Complainant and Respondent to avoid personal contact or refrain from such contact without a neutral third person present.
- Dismissal during the Investigation.** UDC may dismiss the complaint at any point during an investigation at which it determines that the complaint, if factually supported, could not constitute unlawful discrimination or retaliation. The parties will be notified of the dismissal.
- Burden of Proof.** The investigator shall determine if there is unlawful discrimination based upon a preponderance of the evidence, meaning whether it is more likely than not that unlawful discrimination occurred.
- Investigation Report.** The investigator will create a written report describing his/her factual findings, the basis for those findings and a determination as to whether unlawful discrimination or retaliation occurred. UDC will strive to complete the investigation within 60 days of receipt of the complaint.

4. The Post-Investigation Process.

- a. **If No Discrimination or Retaliation is Found.** If UDC determines that unlawful discrimination or retaliation did not occur or that the allegations in the complaint lack sufficient evidentiary support, it will notify the parties and close the case.
- b. **If Discrimination is Found.** If UDC determines that discrimination or retaliation occurred, UDC will send its investigation report to the Assistant Vice President for Human Resources, the Vice President for Academic Affairs or the Dean of Students, as appropriate, for further action. If the Respondent is a Vice President, the report will be sent to the President.
- c. **Disciplinary Action.** Disciplinary action will be imposed in accordance with the applicable collective bargaining agreement, employment contract or employment policy, if any.

SCOPE AND APPLICABILITY:

DEFINITIONS:

PROCEDURES:

RELATED POLICIES AND FORMS:

APPENDIX: