Equal Opportunity/Affirmative Action Grievance Procedure

I. Scope

This procedure applies to all George Mason University employees and students, university contractors, vendors and visitors. This procedure does not apply when a Formal complaint is brought or made against a student as the Responding Party (the individual accused of discrimination); in those cases the matter will be referred to the Office of Student Conduct.

Additionally, this procedure does not apply to complaints of conduct that constitute Prohibited Conduct under Policy 1202 (i.e., sexual assault, dating violence, domestic violence, stalking, hostile environment or quid pro quo sexual harassment, sexual exploitation, complicity in Policy 1202 Prohibited Conduct, or retaliation related to a Policy 1202 matter). Such complaints are addressed under Policy 1202 and its corresponding procedures. CDE shall have the discretion to determine which procedure is applicable to a complaint.

II. 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 discrimination, including harassment, on the basis of race, color, religion, national origin, sex, physical or mental disability, status as a protected veteran, sexual orientation, gender identity or expression, age (40 or older), marital status, pregnancy status, or genetic information. CDE investigates such complaints of discrimination and renders a determination following such investigations.

III. Procedure Statement

The Equal Opportunity/Affirmative Action Grievance Procedure is the responsibility of Compliance, Diversity and Ethics (CDE).

CDE may amend this procedure as necessary.

Any student or employee who feels they are 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 or expression, age (40 or older), marital status, pregnancy status, or genetic information may file a complaint.

1 Contractors, vendors or visitors who are the Responding Party are not subject to the corrective action and sanctions contained herein.
genetic information, should follow the complaint procedures outlined below.

IV. Retaliation

Retaliation is a negative action taken against any individual as a result of a complaint of discrimination being filed, or because 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, including discriminatory harassment—even where the underlying complaint is not found to violate university policy.

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

V. Filing Procedure

Complaints

If a member of the University community believes that they have been the victim of discrimination, including discriminatory harassment, or has information about discrimination in the university community, they may report, without fear of retaliation, 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 their supervisor, department head, or Dean, who must immediately report any complaints they receive or incidents of alleged discrimination they witness to the CDE Office.

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

Where a Reporting Party has made a complaint that falls under CDE’s scope of responsibility, they 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 the university’s non-discrimination 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 the university’s non-discrimination policy, either with or without a preliminary inquiry, the Reporting Party will be notified that no further action will be taken with
regard to the complaint by CDE.\textsuperscript{2} If the threshold determination indicates that an investigation is required, an investigator(s) from CDE will be assigned to the complaint and will simultaneously notify in writing, the Reporting Party and Responding Party (the individual accused of discrimination) that said investigation shall begin. Written notification will contain sufficient details as to apprise the Responding Party of the facts/circumstances surrounding the complaint.

Types of fact-finding processes

**Informal.** CDE has adopted an informal investigative process through which complaints may be resolved promptly and discreetly, often through communication, education, and/or mutual agreement between the parties. A CDE staff member will meet with the parties individually to discuss the matter and alternatives for resolution, if possible. Options for informal resolution may include advising the complainant about methods to resolve the concern, arranging educational programs for individuals or departments, mediating between the parties, or intervening or arranging for a third party to intervene. The informal process is not a formal investigation.

If informal resolution fails to resolve the matter either party may ask for a formal investigation, or seek further assistance from CDE. CDE reserves the right to pursue a formal investigation into any allegations brought forth during the informal process should those allegations be indicative of a serious or continuing violation of the Equal Opportunity policies.

**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 concluded. At any time prior to the conclusion of the investigation, the supervisor to which the Responding Party is assigned may take interim emergency action, in consultation with CDE and HR, pursuant to university policy and employee handbooks, until the conclusion of the investigation.

At the conclusion of its investigation, CDE will issue a final written determination, containing relevant details. The final written determination will state whether a violation of this policy occurred and be shared with the Reporting Party and the Responding Party.

**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 information" supports a finding that the conduct occurred. This "preponderance" standard requires that the information supporting each finding be more convincing than the information offered in opposition to it.

\textsuperscript{2} If the complaint implicates other university policies, CDE may refer the complaint to the appropriate university office.
**Appeal**

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

Upon receipt of appeal, VPCDE will thoroughly review the appeal, the investigative file, and any other relevant materials. Within 10 business days of receipt, VPCDE will issue an appeal determination to the appealing party. The VPCDE may affirm the determination of the investigation, reverse the determination, or remand the matter back to the investigator for further investigation. Determinations following an appeal to the Vice President of CDE are final.

Following the conclusion of an appeal or if no appeal is filed within the required time, a copy of the written determination will be provided to the Responding Party’s supervisor, 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.

**Corrective Action and Sanctions**

If the investigation finds that discrimination occurred, the university will determine appropriate corrective action, up to and including dismissal, according to the applicable policies and employee handbooks.

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.

The Responding Party’s supervisor, Human Resources, or any other pertinent university official shall promptly notify CDE of any corrective action imposed, if any. The university may also take corrective action if no discrimination is found, but CDE’s investigation reveals possible violations of University policies. In those instances CDE will forward all pertinent information to Human Resources for appropriate follow up pursuant to its procedures.

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), for employee complaints, 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 or OCR, 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 will 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 principal parties upon nearing the conclusion of an investigation.

**VI. 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.

**VII. Right to Advisor**

The Reporting Party and the Responding Party have the right to have an advisor accompany them to any meeting during the process. If either Party chooses to exercise this option, CDE asks that the name and relationship of the advisor (e.g., legal counsel), be submitted in writing, at least 72 business hours prior to the meeting.

The role of the advisor is to support the Reporting/Responding Party and advise them on the process. The advisor may not speak on behalf of the Reporting/Responding Party, such as answering questions during interviews.

**VIII. Protection from Bad Faith Complaints**

It is the responsibility of the University to balance the rights of all parties. Therefore, if the University’s investigation reveals that any complaint is malicious or knowingly false, such allegations will be dismissed and the person who filed the complaint may be subject to disciplinary action according to the applicable policies and employee handbooks.

**IX. Effective Date**

These procedures will become effective upon the date of approval by the Senior Vice President for Administration and Finance and the Provost and Executive Vice President.
The applicable substantive policy in effect at the time of the alleged conduct shall be used to determine whether the alleged conduct constitutes a violation of the policy. These investigative procedures shall apply to the investigation of all complaints made after the effective date of these procedures (until superseded by a future revision of these procedures), regardless of when the conduct occurred.