

## **INSTITUTIONAL COMPLAINT PROCEDURES**

Worcester State College has established specific complaint procedures to help resolve claims and complaints of discrimination on the campus. The College's "Discrimination Complaint Procedures" will serve a system of review and resolution for complaints of discrimination. Any member of the College community who believes s/he has been a victim of discrimination may initiate the informal claim or formal complaint procedures as outlined in the Colleges "Discrimination Complaint Procedures." Further information or advice may be obtained by contacting the Director of Diversity / Affirmative Action Officer, located in the Administration Building third floor Room 335 or via telephone - 508.929.8169.

### **Discrimination Complaint Procedures**

#### **A. INTRODUCTION**

It is the policy of Worcester State College to provide each student, employee, and other person having dealings with the institutions an atmosphere free from discrimination, discriminatory harassment and retaliation. The College prohibits discrimination, discriminatory harassment and retaliation based on race, color, creed, religion, national origin, gender, age, disability, sexual orientation, gender identity, marital status, political affiliation practices or status as a Vietnam era or specially disabled veteran. The College has promulgated these procedures to address and resolve complaints of prohibited discrimination, discriminatory harassment and retaliation, and to address any improper behavior as expeditiously as possible and within the requirements of state and federal law.

A person who believes that he or she has been discriminated against or harassed on a prohibited basis as outlined above in Section VI, or retaliated against for filing a complaint of discrimination, participating in an investigation of such a complaint or protesting a discriminatory practice may file a complaint under this procedure, or may file a charge directly with the state or federal agency having jurisdiction over discrimination complaints. Information and assistance on any of these options is available from Office of the Director of Civil Rights Compliance and Diversity.

A person or office charged with discrimination, discriminatory harassment or retaliation, or a person who has knowledge about incidents surrounding allegations, must respond promptly and completely to all requests for information that are initiated by professional staff members in the Director of Civil Rights Compliance or other office designated by the College to investigate complaints under this procedure, the Vice President, or the President. Such response may include, but not be limited to, submission of a position statement, an explanation of the rationale for the alleged actions, appropriate documents, and/or participation in an interview of persons having knowledge pertaining to the claim/complaint.

(Please note: This is a procedure developed for use by all State Colleges. Individual Colleges may effect changes that are necessary to properly reflect the organizational structure of each campus. No such changes shall be inconsistent with the procedures described herein.)

## B. APPLICATION

The following complaint procedure may be utilized by any person, including any College employee, student, or applicant for employment or admission, who believes that he or she has been discriminated against or discriminatorily harassed by the College, by an employee or student of the College, or by other persons having dealings with the institution, on the basis of race, color, creed, religion, national origin, gender, age, disability, sexual orientation, gender identity, genetic information, marital status, political belief or affiliation or veteran status, or by a person who believes he or she has been the victim of retaliation as defined in the retaliation in section of the Worcester State College Equal Employment Opportunity procedures.

These complaint procedures may be used to address alleged discriminatory acts or acts of discriminatory harassment or retaliation that violate the policies and regulatory procedures set forth by the BHE, the Boards of Trustees, or the requirements of Titles VI and VII of the Civil Rights Act of 1964; Title VI of the Civil Rights Act of 1968; Titles I and II of the Civil Rights Act of 1991; Title IX of the Education Amendments of 1972 and its regulations found at 34 C.F.R. part 106; Equal Pay Act of 1963; Civil Rights Restoration Act of 1988; Sections 503 and 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act of 1990; Section 402 of the Vietnam-era Veterans Readjustment Act of 1974, Uniformed Services Employment and Reemployment Rights Act (USERRA); Age Discrimination Act of 1975; Age Discrimination in Employment Act of 1967, as amended; Family and Medical Leave Act of 1993; Federal Executive Order 11246 of 1965, as amended by Executive Order 11375 of 1967; Federal Executive Order 12900 of 1994; Federal Executive Order 13145 of 2000; Federal Executive Order 13160 of 2000; Federal Executive Order 13166 of 2000; Massachusetts Civil Rights Act; Massachusetts General Laws Chapters 151B, 151C, and Chapter 149; and other applicable local, state and federal constitutions, statutes, regulations and executive orders.

The College will promptly respond to all claims or complaints of discrimination, discriminatory harassment and retaliation, with the intention to fully, quickly and adequately resolve the claim/complaint on an internal basis and to prohibit further occurrences. Individuals have the right to file charges of unlawful discrimination with the appropriate government agency with or without first utilizing these Discrimination Complaint Procedures.

## C. INITIATING THE COMPLAINT PROCEDURE

### 1. Time Limits

This procedure is designed to promote the speedy investigation and resolution of complaints. The various steps of these procedures contain time limits that are measured in “working days.” For purposes of these procedures, the definition of the term “working days” shall be days when the administrative offices of the College are regularly open for business. Holidays, weekends, snow days and other days when the College is closed for any other reasons will not be counted. In making a determination concerning the extension of time limits under these procedures, the Director of Civil Rights Compliance and Diversity or other officer charged with the investigation of complaints under these procedures, the Vice Presidents and/or the President will apply a standard of reasonableness, having regard, when appropriate, to academic recesses and semester breaks.

## 2. Acceptance of Claims/Complaints

Neither the receipt of a claim/complaint nor the written acknowledgment of receipt by the designated office of the College will be deemed to be an admission of any violation of law or policy by any of the named parties or by the institution.

## D. COMPLAINT PROCEDURES

### 1. Informal Complaints

Prior to the filing of a complaint, an individual may seek advice, counsel, investigation and informal resolution by the Director of Affirmative Action and Compliance or other designated officer.

A person wishing to explore the possibility of resolving a complaint or mediating a complaint should request a meeting with the Director of Affirmative Action and Compliance or other designated office within a reasonable time. Because it is beneficial for all parties to resolve complaints promptly, they should ordinarily be brought to the attention of the designated officer within thirty (30) days following the occurrence of the events that are thought to constitute discrimination, discriminatory harassment and/or retaliation. In individual cases, circumstances may make that difficult or impractical. Whenever a claim has been initiated more than thirty (30) days following the occurrence of such events, the Director of Affirmative Action and Compliance or other designated officer will determine whether the claim has been initiated within a reasonable time.

Whenever a complaint of discrimination is brought to the attention of the Director of Affirmative Action and Compliance or other designated officer, he or she will provide assistance in:

- a. explaining the avenues of recourse that are available;
- b. providing information about the applicable federal and state laws and regulations;

- c. informing the complainant of the right to file charges with the appropriate government agency, as well as the need to meet applicable time requirements for such filing;
- d. explaining the College's complaint process;
- e. determining whether the complaint procedures are applicable;
- f. properly completing the Discrimination Complaint Form; and, when requested,
- g. informally investigating and/or mediating the complaint.

If the person filing the complaint does not wish to mediate the complaint, or if the College believes it is appropriate that the Complaint Procedures be initiated without informal investigation, the complaint shall be handled under the process that is described below.

## 2. Formal Complaints

The Formal Complaint Process is provided to allow employees, students and persons having dealings with the institution an avenue to address complaints of discrimination, discriminatory harassment and retaliation as defined by these procedures. The following steps are provided to allow for adequate appeal rights of the parties. Resolution of a complaint, however, is possible at any step of the procedure through the written agreement of the parties and with the approval of the Director of Affirmative Action and Compliance or other designated officer at the institution.

If the Director of Affirmative Action and Compliance or other designated officer, or the President believes that he or she is unable to make an objective judgment when a complaint filed under these procedures comes before him/her, then he or she will so advise the parties and the other institutional officer(s) and will appoint a designee to serve as a replacement.

### a. Step I: Designated Office

The complainant shall file a Discrimination Complaint Form, accompanied by any pertinent supporting documentation, with the Director Affirmative Action and Compliance or other designated officer. The complaint must contain, as essential elements, the signature of the complainant, the date signed, the prohibited basis on which the complaint is filed, and the alleged act(s) of discrimination, discriminatory harassment and/or retaliation. The names of any witnesses and any appropriate documents should be attached to the complaint form. A complaint form can be found at the end of these Procedures.

A complaint shall normally be filed within forty (40) working days from the date upon which the complainant had knowledge or should have had knowledge of the alleged act(s) of discrimination, discriminatory harassment or retaliation, or twenty (20) days following the completion of the informal mediation process, if utilized. Where, however, the act complained of is one of a continuing nature, has a continuing effect, or, in the

judgment of the designated person warrants proceeding, the time limit may be reasonably extended.

The Director of Affirmative Action and Compliance or other designated officer will promptly consider the complaint and will, within thirty (30) working days of the filing thereof:

1. Determine whether the complaint has been filed in accordance with the provisions of these procedures;
2. Determine whether the complaint alleges discrimination or harassment on the basis of race, color, creed, religion, national origin, gender, sexual orientation, gender identity, age, disability, veteran status, marital status, political affiliation, or alleges retaliation;
3. Investigate the complaint by taking at minimum the following steps:
  - a. Providing a copy of the formal complaint to the person accused;
  - b. Requesting and considering the response to the person accused;
  - c. Reviewing relevant documents and, at the discretion of the designated officer, interviewing of the persons identified by either party as ones having information pertinent to the allegations;
  - d. Collecting further evidence relevant to the investigation;
  - e. Presenting the evidence to each party and considering and rebuttal;
  - f. Such other steps as designated officer believes are necessary
4. Attempt to mediate the complaint to the mutual agreement of the parties and the designated officer. If such agreement is reached, it will be reduced to writing and the designated officer will notify the parties, the Senior Administrator and the President of the closure of the complaint file.
5. If a mediated resolution is not reached, the designated person will provide a Statement of Findings and Recommendations to the parties, the Senior Administrator and the President.

If the Director Affirmative Action and Compliance or other designated officer determines that more than thirty (30) days are needed, he or she will notify the parties of the anticipated completion date of this Step.

If, upon receipt of the Statement of Findings and Recommendations, either party takes exception, he or she may appeal to Step II, by notifying the Director of Affirmative Action and Compliance or other officer issuing the Statement of Findings and Recommendation in writing and stating the basis of the Appeal within ten (10) working days of her/his receipt of the Finding. In such cases, a copy of the entire Step I record and the Letter of Appeal will be transmitted to the President.

If no appeal has been filed, the Director of Affirmative Action and Compliance or other designated officer will pursue one of the following courses at the end of the ten (10) day period:

If no finding of violation has been made and/or no remedy has been recommended, the designated officer will issue a Statement of Closure to the parties, with a copy to the President.

OR

If a finding of violation has been made, and if a remedy has been requested or recommended which must be effected by the Director of Affirmative Action and Compliance or other designated officer, he/she will issue a Statement of Resolution and a Recommendation to Effect Remedy to the parties, and the President.

OR

If a finding of violation has been made and, if a remedy has been proposed which must be effected by the President, the Director of Affirmative Action and Compliance or other designated officer will issue a Statement of Resolution and a Recommendation to Effect Proposed Remedy to the parties, with a copy to the President.

b. Step II – The Vice President

Unless otherwise determined by the President, the Vice President responsible for hearing appeals at Step II is the person who has overall responsibility for the supervision of the individual accused in the complaint and who reports to the President. If the accused's supervisor is the President, the President will appoint a designee to serve in her/his stead. In some cases, the Vice President may choose to appoint another high level administrator to serve as designee. For complaints arising between students in both the Day College and the Divisions of Graduate Education and Continuing Education and Special Programs, the President will designate the person/persons to serve as the Chief Administrative Officer to hear appeals under Step II of these procedures.

The Vice President or designee will promptly consider the complaint and will, within fifteen (15) working days of the receipt of the Step I record and the appeal:

- (1) Determine whether the complaint and the Step II appeal have been filed in accordance with the provisions of these procedures.
- (2) Take the steps necessary to review the record and the appeal, investigate the complaint further if deemed necessary, make a preliminary determination on the matter and informally discuss it with both parties.
- (3) Offer the non-prevailing party the opportunity for a hearing. Such hearing must be requested within ten (10) days of the offer. If the party requests such hearing, the parties will be accorded the following:
  - (a) The right to receive written charges in advance of the expected response.
  - (b) The right to have a representative present to serve in an advisory role only.

- (c) The right to have a response heard and considered.
- (d) The right to present documentary and testimonial evidence.
- (e) The right to question the opposing party and persons giving testimonial evidence.
- (f) The right to rebut documentary and testimonial evidence.
- (g) The right to receive a written decision.

If the Vice President determines that more than fifteen (15) days are necessary, he or she will notify the parties of the anticipated completion date.

If, upon receipt of the Vice President's Statement of Findings and Proposed Remedy, either party takes exception, he or she may appeal to Step III, stating the basis of the appeal, by notifying the Vice President and the Director of Civil Rights Compliance and Diversity or other designated Step I officer in writing within ten (10) working days. In such cases, the Vice President will transmit a copy of the entire Step I and Step II records, and the Letter of Appeal to the President.

If no appeal has been filed, the Vice President will pursue one of the following courses at the end of the ten (10) day period:

If no finding of violation has been made and/or no remedy has been recommended, the Vice President will issue a Statement of Closure to the parties, with a copy to the designated person and the President.

If a finding of violation has been made and, if a remedy has been proposed which can be effected by the Vice President, he or she will give effect to such remedy and will issue a Statement of Resolution to the parties, with a copy to the Director of Civil Rights Compliance and Diversity or other designated Step I officer.

OR

If a finding of violation has been made and, if a remedy has been proposed which must be effected by the President, the Vice President will issue a Statement of Resolution and a Recommendation to Effect Proposed Remedy to the parties, with a copy to the President and the Director of Civil Rights Compliance and Diversity or other designated Step I officer.

### c. Step III – President

Unless the President is personally charged under these procedures, in which case the procedures under the Complaints Against Institutional Officers section of these procedures will apply, or disqualifies her/himself, the President will be the sole Step III Appeal Officer.

The President will promptly consider the complaint and will, within ten (10) working days of receipt of the Step I and Step II records and the Letter of Appeal:

1. Determine whether the complaint and the Step III appeal have been filed in accordance with these procedures.
2. Take the steps necessary to review the record of the two preceding steps and the appeal.
3. Make a final determination on the complaint of discrimination and take whatever action he or she deems appropriate to the situation. A Notice of Final Resolution will be issued by the President to the parties, the Senior Administrator and the Director of Affirmative Action and Compliance or other designated Step I officer.

If the President determines that more than ten (10) days are necessary, he or she will notify the parties of the anticipated completion date.

The President will be the final adjudicator under these procedures. Her/his decision will be binding with full recognition that, at any time, the complainant has the right to file charges with appropriate local, state and/or federal agencies.

### 3. Application of Time Limits

In the event that a complaint has not been resolved within fifty-five (55) days following its filing at either step, either party may elect to have the matter considered at the next step of these procedures.

## E. COMPLAINTS AGAINST INSTITUTIONAL OFFICERS

If a complaint is directed against a Senior Administrator or the Director of Affirmative Action and Compliance or other designated Step I officer, the functions assigned to that person by these procedures will transfer to the President or her/his designee. Complaints directed against the President will be filed with the Chairperson of the Board of Trustees and will follow the Grievance Procedures with Respect to Presidents established by the Board of Regents, as contained in the Report of the Task Force on Complaint/Grievance Procedures dated September, 1987.

## F. RETALIATORY ACTION PROHIBITED

The College prohibits retaliatory action taken against persons who file claims, complaints or charges under these procedures, or under applicable local, state or federal statute, who are suspected of having filed such claims, complaints or charges, who have assisted or participated in an investigation or resolution of such claims, complaints or charges, or who have protested practices alleged to be violative of the non-discrimination policy of the College, the BHE, or local, state or federal regulation or statute. Such retaliation is recognizable under these procedures as well as under state and federal law. Retaliation, even in the absence of provable discrimination in the original complaint or charge, constitutes a violation as serious as proved discrimination under the original claim, complaint or charge. Any person who believes he or she has been retaliated against in this manner is encouraged to immediately file a claim or complaint under these procedures.

## G. ACTIONS TO REMEDY DISCRIMINATION

Should discriminatory harassment or discrimination in treatment or effect be found to exist in any employment, educational or service decision, action, inaction or practice within the College, all appropriate corrective and/or disciplinary actions will be taken under the direction of the President, subject to any applicable collective bargaining agreement or other policies or procedures of the College.

## H. RECORDKEEPING

A record of any claim or complaint submitted for consideration in accordance with these Discrimination Complaint Procedures will be kept on file in the College's Office of Diversity and Affirmative Action. This record will include a record of all steps of these procedures and will be the only file so maintained. The information contained in such files will be considered confidential and will be accessed/used only for purposes of the enforcement of non-discrimination policies and by appropriate staff.

1. For a claim filed under the Informal Complaint Process, the record will contain at a minimum:

- a. a brief description of the claim, its allegations and the manner in which it was resolved; and
- b. if given, signed authorization to use the complainant's name in the investigation/resolution of the claim.

2. For a complaint filed under the Formal Complaint Process, the record will contain at a minimum:

- a. a copy of the complaint;
- b. copies of all witness statements;
- c. any documentary evidence or written statements presented by the parties; and
- d. a copy of the final disposition/resolution.