



OFFICE OF THE CHANCELLOR

EQUAL OPPORTUNITY



COMPLAINT RESOLUTION PROGRAM

MAY 29, 2009

**EQUAL OPPORTUNITY  
COMPLAINT PROCESS**

## **I. INTRODUCTION**

Students, staff, and faculty are strongly encouraged to report allegations of discrimination, harassment, and/or retaliation covered under the University's Diversity and Equal Opportunity Policy #0-007, Sexual Harassment Policy #0-008, and the ADA Policy #0-008A. The three equal opportunity policies of the University will be referred to as "Policy" within this document. Delaying the immediate reporting of an allegation often hinder a proper investigation and can also unnecessarily subject the Complainant to continued discrimination, harassment, and/or retaliation.

The following Complaint Process ("Process") will be used by the Manager of Equal Opportunity (MEO) or qualified designee to address and investigate all matters related to allegations of discrimination, harassment, and/or retaliation that are covered under the Policy.

For purposes of this Process, all references to allegations or investigations of violations of Policy may also refer to allegations or investigations of retaliation.

The standard of review used by MEO for determinations of "cause" is whether it is more likely than not that a violation of Policy has occurred.

Upon appeal, the standard of review used by the Associate Vice Chancellor or his/her designee will be a consideration of all information gathered by MEO during the investigation.

The confidentiality and privacy of all parties involved during the MEO Process will be maintained to the fullest extent possible. Information will be shared in accordance with state law with only those who have a legitimate business need to know.

MEO offers mediation prior to and during the Intake Review and Investigation Process. The Complainant and/or Respondent may submit a proposal for resolving the allegation at any point during the Process.

MEO reserves the right to depart from the MEO Process as necessary based on the facts and circumstances of each allegation or complaint.

The Complainant may, at any time, withdraw an allegation or complaint by notifying MEO in writing. However, MEO reserves the right to continue an investigation if it is considered to be in the best interests of the University.

To ensure that our University community is free from discrimination, harassment, and retaliation, all faculty, staff, and students are expected to follow the University's equal opportunity policies. The University's equal opportunity policies are not federal or state law.

## II. INTAKE REVIEW

### 1. Filing Deadlines

The *Initial Intake Form* must be filed with MEO within 120 calendar days of the alleged discrimination, harassment, and/or retaliation.

### 2. Initial Contact

A complaint can be filed using the following methods:

- a. Direct contact from the Complainant(s), or
- b. The completion of an *Incident Report Form*, or
- c. The completion of the Initial Intake Form.

### Incident Report Form

This form should be completed by any employee or student who would like to notify MEO that an incident has occurred that is covered under the Policy. This form is found on MEO's website or may be requested from MEO. Upon MEO's receipt of the *Incident Report Form*, MEO will contact the appropriate individuals for further information. MEO will evaluate the information provided and will determine if further processing is needed. This form may be mailed or hand delivered to MEO.

### Complainant

1. A person who files a complaint of discrimination, harassment, and/or retaliation that is covered under the Policy.

2. If an allegation of discrimination, harassment, and/or retaliation is received from a Complainant, he/she will be offered an appointment for an interview within three (3) business days. This is an Initial Contact interview. If he/she informs MEO that it is an emergency, an appointment will be offered as soon as possible. MEO will provide the Complainant with an Intake Packet which includes the MEO Process, the Policies, and *Initial Intake Form*. During this interview, the documents contained in the Intake Packet will be reviewed with the Complainant. Any questions or concerns that the Complainant has regarding the Process will be addressed.

3. MEO staff will inform the Complainant that he/she may for employment issues contact the Florida Commission on Human Relations, the Equal Employment Opportunity Commission, or the union representative for grievance rights under an applicable collective bargaining agreement. *Refer to the Intake Packet for the names of additional offices and telephone numbers.* For student issues, he/she may contact the Department of Education-Office of Civil Rights (federal agency) and the Dean's Office of the appropriate college. *Refer to the Intake Packet for the names of additional offices and telephone numbers.* This list is not exhaustive. MEO staff will inform the Complainant that filing a complaint with MEO will not extend the time for filing with any

external agency. After the Initial Contact interview or the return of the Intake Form, if the allegation is not covered under the Policy, MEO may refer the Complainant to the appropriate University administrative or academic area.

4. Upon completion of the Initial Contact interview, the interviewer will compile a written summary of the Complainant's statement regarding the allegation(s).

5. Upon receipt of a completed *Initial Intake Form*, MEO will review the form to ensure that the information contained in it is complete and includes:

- a. that the allegation is covered under the Policy and/or Rule;
- b. that the filing of the *Initial Intake Form* is within 120 days from the date of the incident;
- c. the name of the person(s) and/or University office(s) alleged to have taken the adverse action;
- d. the type of discrimination, harassment, and retaliation alleged as found in the Diversity and Equal Opportunity Policy;
- e. a detailed account of the conduct, action or incident complained of, when it occurred; and whether the conduct is based on race, color, marital status, gender, sexual orientation, religion, national origin, disability, age, and/or veteran's status;
- f. a detailed account of how the conduct, action or incident has affected the Complainant or the educational or work environment;
- g. whether a complaint has been made in any other setting (e.g., Collective Bargaining Agreement, External Agency, etc.);
- h. the harm suffered and the redress sought; and
- i. the names of witnesses and/or a list of materials and documents that support each allegation.

#### C. Course of Action

1. The *Initial Intake Form* will be reviewed and the Complainant interviewed after which the Respondent will be notified in writing of the allegation and will be requested to respond to the allegation. If after the interview it is determined that the allegation is not covered under the Policy, MEO may refer the Complainant to the appropriate University administrative or academic area. MEO also may inform the administrators of the appropriate area of the information that has come to its attention i.e. Director, Dean, Vice Chancellor, Human Resources, etc.

2. After the Respondent's response is received by MEO, the Complainant will be contacted to review the Respondent's explanation regarding the Complainant's allegation. The Complainant will be given an opportunity to rebut the Respondent's explanation. The investigator will document for the file the Respondent's response.

3. If the Complainant is satisfied with the Respondent's explanation, or MEO is satisfied with the explanation and the Complainant cannot rebut the Respondent's explanation the case will be dismissed. A *Notice of Dismissal* will be issued to the Complainant and the Respondent. The *Notice of Dismissal* will inform the Complainant of his/her right to appeal the dismissal to the respective Associate Vice Chancellor or designee and/or file a complaint with an external agency. If sufficient information is developed during the intake process to find that the Respondent violated the University of South Florida's Diversity and Equal Opportunity policy a *Determination Letter for Cause-Intake Report* will be issued to the Complainant and Respondent. The *Determination Letter for Cause-Intake Report* will inform the Complainant of his/her right to appeal the dismissal to the Chancellor or designee and/or file a complaint with an external agency. MEO also may inform the administrators of the appropriate area of the information that has come to its attention and send a copy of the Intake Report i.e. Director, Dean, Vice Chancellor, Human Resources, and other appropriate offices.

An appeal of the Intake Report Determination must be filed within 15 days upon receipt of the Determination Letter or Notice of Dismissal. Appeals of this conclusion can be made under one or more of the following circumstances:

- Additional information has been discovered;
- Relevant facts, presented during the Intake Review, were not considered;

4. If MEO assesses that the Respondent has not provided a sufficient explanation or if the Complainant can rebut the Respondent's explanation, then MEO will submit an *Intake Report* to the Associate Vice Chancellor or designee for further processing of the allegation.

5. Upon the Associate Vice Chancellor or designee's agreement that further processing of the allegation is needed, then MEO may offer mediation.

6. If both parties agree to mediation, please refer to the section below entitled Mediation for further information regarding the mediation process. If either party declines mediation or if mediation is attempted but unsuccessful, then an investigation will commence.

7. MEO reserves the right to determine if an allegation can appropriately be handled in mediation. If MEO determines that the circumstances of the allegation are not appropriate for mediation, MEO will begin an investigation (See Step IV).

### III. MEDIATION

Mediation is a process where the Complainant and Respondent voluntarily choose to negotiate for the resolution of the allegation with the assistance of a neutral third party (“facilitator”). Depending on the circumstances, mediation may be the preferable way to resolve the allegation. However, it is important to remember that there are certain circumstances under which mediation is not appropriate to use, for example, potential egregious violations of the policy.

1. Documents prepared by MEO as part of the mediation effort will not be incorporated into any investigative file except for a written agreement between the parties that resolves the allegation.
2. Mediation efforts will not last more than 30 calendar days, except in extraordinary circumstances where the Associate Vice Chancellor for Administrative and Financial Services Chancellor or designee approves an extension of time.
3. Mediation will be carried out according to MEO rules, policies and procedures. The following elements shall be considered in each mediation:
  - a. fairness;
  - b. procedural flexibility;
  - c. privacy and confidentiality;
  - d. self determination of the participants; and
  - e. the needs and interests of the participants.
4. The Complainant and the Respondent will be provided information about the role of the facilitator, the purpose of mediation, and mediation consent forms.
5. The facilitator will schedule a meeting for the Complainant and Respondent to mediate the allegation after the parties have returned the mediation consent forms signed.
6. At the mediation, the facilitator will:
  - a. engage the parties in a discussion about the issues presented.
  - b. encourage the parties to discuss their disagreement.
  - c. accept and review any materials the parties wish to make available to assist the facilitator prior to or during the mediation.

- d. review any resolution proposal developed by the parties and forward it to the Associate Vice Chancellor for Administrative and Financial Services or designee with his/her recommendations.

7. At the conclusion of the mediation, if successful, the facilitator shall prepare a *Memorandum of Understanding* reflecting any and all agreements reached between the Complainant and the Respondent. The Complainant and Respondent shall both sign the *Memorandum of Understanding*. A copy of the signed *Memorandum of Understanding* will be sent to the Associate Vice Chancellor for Administrative and Financial Services or designee.

8. All notes shall be destroyed upon completion of the mediation process whether the mediation is successful or unsuccessful. If the mediation is successful, only the written and signed agreement should be retained in the MEO file. The documents submitted during the mediation will be returned to the appropriate parties before the conclusion of the mediation process and will not be part of the file.

9. If mediation is not successful or if mediation is declined, then investigation will commence.

#### **IV. INVESTIGATION**

MEO serves as an objective fact-finding body evaluating evidence, information and credibility to make a determination as to whether USF's equal opportunity policies have been followed. The investigator is a neutral fact finder and does not represent the Complainant or the Respondent. The investigation will include the investigator analyzing the data submitted by the parties, interviewing witnesses, gathering any additional information that may be needed, and giving the parties an opportunity to rebut each other's arguments.

1. The investigator will inform the Complainant that it is necessary to draft an *Equal Opportunity Complaint* to include relevant information that describes the nature of the alleged incident(s).

2. A copy of the *Request for Response* and the *Equal Opportunity Complaint* will be sent to the Complainant, the Respondent, and other appropriate individuals, i.e. the Respondent and Complainant's immediate supervisor, the Office of the General Counsel, etc.

4. The Respondent will have 15 calendar days to submit a response to MEO upon receipt of the documents listed in the above paragraph.

5. The Complainant and/or Respondent may request mediation or propose a resolution at any time during the investigation.

6. MEO may request information from individuals other than the Complainant or Respondent during the course of an investigation. If information is requested, the

individual to whom the request was made will be expected to submit the information to MEO within 15 calendar days from the date of the request.

7. Within 120 calendar days from the start of the investigation, the investigator will submit the *Final Investigative Report* to the Associate Vice Chancellor for Administrative and Financial Services or designee. In extraordinary circumstances, the investigator may request and obtain an extension from the Associate Vice Chancellor for Administrative and Financial Services or designee.

8. MEO may use many resources in evaluating the information presented and will consider all available information in preparing its *Final Investigative Report*. The report will outline the findings and indicate a recommendation.

9. Upon completion of the *Final Investigation Report*, MEO will send a copy of the report to the Office of the General Counsel to review for legal sufficiency.

10. Upon completion of the legal sufficiency review, the investigator may go over the *Final Investigative Report* with the Complainant and Respondent.

11. MEO will issue a *Determination Letter*. MEO will provide a copy of the *Final Investigative Report* and *Determination Letter* to the Complainant, Respondent, Chancellor, Regional Vice Chancellor (as appropriate), Office of General Counsel, and the Respondent and Complainant's supervisors (Director/Dean, Vice Chancellor).

## **V. APPEAL**

1. The Complainant or the Respondent electing to appeal the determination must appeal to the Chancellor or designee in writing within thirty (30) calendar days upon receipt of the *Determination Letter*. The appeal must include the reason for the appeal

and be signed. The Chancellor or designee may grant a reasonable extension on a case-by-case basis upon written request by a party.

2. If the determination is appealed, the respective Associate Vice Chancellor or his/her designee:

- a. will review the information presented by the person appealing, and
- b. may conduct or order any further investigation or discussion deemed necessary to reach a final decision on behalf of the University.

3. Within thirty (30) calendar days of receipt of the appeal, the respective Associate Vice Chancellor or his/her designee will inform the Complainant, Respondent, Regional Vice Chancellor (as appropriate), Office of General Counsel, and the Respondent and Complainant's supervisors (Director/Dean, Vice Chancellor) of his/her decision regarding the appeal.

Appeals of the Determination letter issued by the Chancellor can be made under one or more of the following circumstances:

- Additional information has been discovered;
- Relevant facts, presented during the Intake Review, were not considered;
- Witnesses, with relevant information, were not interviewed

4. If there is no appeal, the finding in the *Determination Letter* shall stand. Once the appeal process has concluded, MEO will close its file.

5. If MEO makes a recommendation(s) on the Final Investigative Report, MEO will follow up with the responsible individual in thirty days to ensure that the inappropriate behavior has ceased. If the responsible party has not implemented the recommendation(s) or other appropriate action taken a written statement will be requested explaining the inaction.

MEO will also contact the complainant in thirty days to ensure that the inappropriate behavior has ceased.

## **VI. FALSE ALLEGATION/ACCUSATION AND FALSE STATEMENT**

All employees and students are to cooperate fully with such reviewer(s) during the course of a review. It is a violation of the Diversity and Equal Opportunity Policy for any employee or student to knowingly file a false complaint or to mislead, impede, impair, obstruct, disrupt or delay the progress of such a review or to attempt the same. This type of violation as stated in the Diversity and Equal Opportunity Policy is punishable by appropriate disciplinary action up to and including termination from employment and/or expulsion from the university.

### **1. False Allegation/Accusation**

a. False allegation is an allegation that is not made in good faith or is knowingly false. Perception of the complainant will be evaluated by MEO to make a determination if the complainant had a good faith belief when he or she filed their allegation.

b. False allegation will not be supported by the fact that there was a MEO no cause determination or lack of evidentiary support.

### **2. False Statement**

a. A false statement can be made by complainants, witnesses, or respondents.

b. A false statement has to be proven to have been knowingly false and is a statement that is material. A material statement is a statement which had a significant effect in reaching the determination of the allegation(s) the complainant filed.

A false allegation/accusation complaint or false statement complaint must be made in writing to MEO. MEO will expect the person filing the allegation to provide all supporting information for evaluation. MEO will then review this information and make a determination of whether further processing is necessary.

If further processing is necessary, then the process will commence as stated under Section IV entitled Investigation.

## **VII. Compliance Review**

A review is conducted to determine if a department or unit is in compliance with University procedures or Equal Opportunity policies. MEO will determine if it will conduct a compliance review. A review can be initiated by a request from a department or college, USF administration, a complaint or MEO can decide to conduct a review under its own authority. A compliance review may be broad in scope and review many areas of the employment or academic setting.

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