BALL STATE UNIVERSITY

Equal Opportunity
Complaint Investigation Procedure and Appeal Process

I. The Equal Opportunity Policy at Ball State University

Ball State University ("University") is committed to the principles of nondiscrimination and equal opportunity in education and employment. Ball State University is committed to the principles of nondiscrimination and equal opportunity in education and employment. Further, the University is committed to the pursuit of excellence by prohibiting unlawful discrimination and providing equal opportunity to individuals without regard to race, religion, color, sex (including pregnancy), sexual orientation, gender identity or gender expression, disability, genetic information, ethnicity, national origin or ancestry, age, protected veteran status, or any other legally protected status. This commitment enables the University to provide qualified individuals access to all academic and employment programs on the basis of demonstrated ability without regard to personal factors that are irrelevant to the programs or job requirements involved.

The University assigns a high priority to the implementation of this equal opportunity policy and , seeks to expand its efforts to guarantee equality of opportunity in employment. In accordance with *Section 503 of the Rehabilitation Act of 1973* and the *Vietnam Era Veterans' Readjustment Assistance Act,* Affirmative action is taken to attract and recruit protected veterans, and qualified persons with disabilities. The University will hire, transfer, recruit, train, promote, assign work, compensate, layoff and/or terminate based upon the tenets of this policy.

The University President affirms the commitment to equal opportunity and accepts responsibility for the implementation of applicable affirmative action programs along with the vice presidents, deans, directors, and heads of units. All persons involved in the decision making process, including members of faculty and other employee committees, shall act in a nondiscriminatory manner. The Director of Employee Relations has been specifically designated to be responsible for overall compliance with all federal and state laws and regulations regarding nondiscrimination and for implementation and coordination of the University's affirmative action program. Information concerning the University's affirmative action program can be obtained from the Director of Employee Relations

The University maintains an audit and reporting system to determine overall compliance with its equal employment opportunity mandates. As a part of this system, the President will review the University's equal opportunity policy and program at least once each year, measure progress against the objectives stated in the affirmative action program, and report findings and conclusions to the Board of Trustees.

To ensure equal opportunity and nondiscrimination, each member of the University community must understand the importance of this policy and their responsibilities to contribute to its success. This policy seeks to encourage the reporting of incidents so they may be addressed. Any individual or group found to have violated this policy will be subject to disciplinary or remedial action, up to and including termination of employment or expulsion from the University.

Employees and job applicants, as well as students and applicants for admission to the University, shall not be subjected to harassment, intimidation, threats, coercion, discrimination, or retaliation because they have engaged or may engage in any of the following: 1) filing a complaint; 2) assisting or participating in an investigation, compliance review, hearing, or any other activity related to the administration of any federal, state, or local law requiring equal employment opportunity; 3) opposing an act or practice deemed unlawful by a federal, state, or local law requiring equal employment opportunity; or 4) exercising any right according to this policy.

II. Informal Resolution Process

Individuals who believe that discrimination negatively affects their educational or work experience should feel free to discuss the matter with a faculty member, department chair, dean, or supervisor. In such situations, the complaining party may also request that the person consulted speak informally with the alleged offender(s), informing them of the details of the alleged discrimination in an attempt to resolve the matter. If this process does not resolve the matter to the individual's satisfaction, or if the individual does not wish to pursue informal resolution, they may file a formal complaint pursuant to the procedure set forth below.

III. Definitions

A. "Complainant" refers to an employee or job applicant who alleges that employment discrimination has been practiced against him/her in violation of University policy.

"Complainant" also refers to a student or applicant for admission who alleges that discrimination under an educational program or activity has been practiced against him/her in violation of University policy.

B. "Respondent" refers to a University employee, student, or agent who the Complainant alleges engaged in a discriminatory practice.

C. "Complaint" refers to a written complaint form filed by a Complainant alleging that an act or incident by a Respondent in their capacity as an employee, student, or agent of the University violated the *University's Equal Opportunity Policy* and/or federal or state law.

D. "Assistant Director" refers to the Assistant Director of Equal Opportunity and ADA Coordinator of the University or their designee.

lV. Complaint Filing, Investigation, and Resolution Procedure

A. General Overview

The Complaint filing, investigation, and resolution procedure is intended to provide a vehicle within the University community for resolving claims of discrimination promptly and equitably. With this goal in mind, the Assistant Director is free to modify this procedure to the extent that they deem appropriate for a particular situation, e.g., by adding or bypassing steps and/or by including other University officials at any stage in the process.

Sexual Harassment Claims

Depending on the circumstances and individuals involved, some types of sexual harassment claims are subject to a separate set of procedures pursuant to the University's Title IX policy and will be investigated and adjudicated under that policy, when applicable.

B. Filing a Complaint

Complaints regarding unlawful discrimination or retaliation should be filed within 300 calendar days following the alleged act or incident giving rise to the Complaint with the Assistant Director in accordance with the *Ball State University Equal Opportunity Complaint Investigation Procedure and Appeal Process*. The University encourages prompt filing of all complaints. Complaints filed beyond the 300 calendar days period will be deemed untimely unless the Assistant Director determines that the Complainant has shown there is good cause for the late filing.

Complaints should be filed on a *Complaint of Unlawful Discrimination* form. This form may be obtained from the Assistant Director and is also available on the University's website. The Complainant must complete all sections of the Complaint form and should describe the alleged discrimination, in detail, in a narrative statement format, including dates, times, and locations the discrimination allegedly occurred, if known, and identify any witnesses to the described events, as well as provide any corroborating evidence that discrimination occurred such as documents or other communications.

During the pre-investigation evaluation period, the Assistant Director will determine if: the Complaint is timely filed; the situation described in the Complaint arose in the course of a University program or employment activity; the Complaint is directed against a University employee, student or agent; and, if

factually supported, the alleged conduct could constitute unlawful discrimination and/or retaliation. If the Complaint does not meet the above criteria or establish a violation of law or policy enforced by the University, the Assistant Director may close the case. However, the Respondent may still be subject to University action if the alleged conduct violates another University policy or is otherwise inappropriate.

Following the pre-investigation evaluation period, the Assistant Director or their designee may interview the Complainant, if necessary. If the Complainant is an employee, they may bring one other full-time University employee to the interview. If the Complainant is a student, they may bring either a parent, guardian, or a full-time University employee to the interview. At the discretion of the Assistant Director, if an individual files more than one complaint, the complaints may be combined when the best interest of all parties is served.

In the event that allegations involving the same or related circumstances are made through another University process, the Assistant Director may coordinate the investigation with the other University process so as to best utilize resources and to expedite a resolution for all persons involved.

C. Rights of the Respondent

After a Complaint has been filed and reviewed, the Assistant Director will inform the Respondent of the filing and provide them with a copy of the Complaint. In addition, the Assistant Director may request an interview with the Respondent to discuss subjects related to the Complaint's allegations. If the Respondent is an employee, they may bring one other full-time University employee to the interview. If the Respondent is a student, they may bring either a parent, guardian, or a full-time University employee to the interview. The Respondent will be requested by the Assistant Director to present their response to the alleged discriminatory act(s), conduct, or practice in a written narrative statement format. The Respondent will also be provided an opportunity to identify witnesses and present any corroborating evidence to counter the allegations. Under some circumstances, the Assistant Director may initiate other complaint investigatory procedures prior to informing the Respondent of the Complaint.

D. Interim/Remedial Measures

The University offers a wide range of resources for students and employees, whether as Complainants or Respondents, to provide support and guidance throughout the pre-investigation evaluation period, as well as during the investigation and resolution of a Complaint. Upon receipt of a Complaint, the Assistant Director, in their discretion, may consult with other University officials and may initiate interim measures to address concerns regarding safety and well-being, and to facilitate the Complainant's and/or Respondent's continued access to University employment or education programs and activities. These measures

may be remedial or protective, or both. Remedial and protective measures, which may be temporary or permanent, may include no-contact directives, changes in class or work schedules, academic modifications and support, changes in University-owned living arrangements, paid administrative leave, or any other reasonably available measures that the Assistant Director and/or other University officials deem appropriate under the particular circumstances. The University will maintain the privacy of any remedial and protective measures provided to the extent practicable and will promptly address any violation of such measures.

E. Retaliation

The Complainant and Respondent will be advised that any action by them, or any act of a third party on their behalf, for the purpose of retaliating against any person cooperating in the investigation of the Complaint is strictly prohibited under University policy and will result in separate disciplinary action against them up to and including termination.

F. Confidentiality

Every effort will be made to keep the investigation as confidential as possible. However, the University cannot promise that the identity of the Complainant, Respondent, or witnesses will be kept confidential. For example, the Respondent has the right to be informed of the Complaint and the material evidence against them, including the name(s) of their accuser(s); and it may also be necessary to identify the parties and to disclose some or all of the circumstances of the alleged discrimination when talking with witnesses during the investigation. In addition, the Assistant Director may inform other University officials and representatives of the identities of the parties and the circumstances of the alleged discrimination on a need-to-know basis. All parties will be advised to maintain the highest degree of confidentiality regarding the Complaint and, except as stated above, communications regarding the Complaint should be avoided with any potential witnesses or other University employees.

Further, when practicable, the Respondent and the Complainant should avoid face-to-face contact. If contact is necessary due to supervisory, reporting, or working relationships, no mention or discussion of the act, conduct, or practice related to the Complaint should occur. The Complainant will be protected against unlawful retaliation. The Complainant or any University employee or student who experiences or witnesses any acts constituting, or believed to constitute, unlawful retaliation must report them to the Assistant Director immediately.

G. Investigation

In conducting an investigation, the Assistant Director will perform various tasks, which may include but are not limited to interviewing potential witnesses and, if necessary, obtaining from them written and signed statements, and reviewing

files, records, and other relevant materials or evidence. Depending upon the nature of the case, it may not be necessary to interview every person whose name has been provided by either the Complainant or the Respondent. Both the Complainant and the Respondent must cooperate fully with the Assistant Director and/or other individual(s) involved in investigating the Complaint. The Assistant Director may establish additional procedures for the conduct of investigations in order to ensure that they are conducted in a fair and orderly manner, provided that such procedures shall not be inconsistent with the procedures stated in this policy. Under no circumstances is audio or other forms of recording allowed during any stage of the investigation.

In the event that allegations involving the same or related circumstances are made through another University process, the Assistant Director may coordinate the investigation with the other University process so as to best utilize resources and to expedite a resolution for all persons involved.

In addition, whenever the Assistant Director, who also acts as the University's ADA Coordinator, receives a Complaint alleging disability discrimination related to their decision making associated with the reasonable accommodation process, or other actions they allegedly engaged in which the Complainant believes are discriminatory in nature, the Complaint will be directed to the Associate Vice President for People and Culture to determine an alternative investigator.

H. Legal Counsel

The Complainant and the Respondent each have the right to hire an attorney to provide legal advice. However, the attorney may not participate in the investigation or in any interviews or meeting(s) involving either of the parties. Under no circumstances will the University pay or reimburse either of the parties for the fees and/or expenses of an attorney hired by one or both of the parties.

I. Findings and Recommendations of Assistant Director

At the conclusion of the investigation, the Assistant Director will issue a written report which contains findings and recommendations regarding the Complaint based on a preponderance of the evidence standard. Copies of the findings and recommendations will be provided to the Complainant and the Respondent (and, where appropriate, their supervisor and/or other University officials), informing them of the results of the investigation. If the Assistant Director recommends that disciplinary or other corrective action be taken against the Respondent, that recommendation will be referred to the Dean of Students (if the Respondent is a student) or the Respondent's supervisor and/or other appropriate University officials (if the Respondent is an employee), who will then determine the action, if any, to be taken. Disciplinary actions may be appealed only through regular University processes.

In the event that the investigation is coordinated through another University process, the regular documentation of that process shall serve as the notification of the findings and recommendations of the investigation.

V. Appeal Procedures

In the event either the Complainant or the Respondent disagrees with the findings and recommendations made by the Assistant Director, they may appeal to the Associate Vice President for People and Culture ("AVP P&C") within 10 working days of receipt of the findings and recommendations.

There are two (2) permissible bases for appeal: (1) a claim of substantial failure by the Assistant Director to follow the above procedures so as to deny a fair review of the Complaint and/or (2) a claim that the Assistant Director's decision is arbitrary, capricious, or wholly unsupported by the evidence. If a request for an appeal is submitted beyond ten (10) working days or without specificity as to the basis for the appeal, it will be dismissed without review.

If a request for an appeal is submitted in a timely manner and with an appropriate claim of a basis for appeal, the AVP P&C will review the request. At the sole discretion of the AVP P&C, a determination will be made regarding the disposition of the request for appeal. The AVP P&C may review the request for appeal, may refer the request for appeal to the University's Complaint/Grievance Appeals Board for review and recommendation, or may select another route of review if necessary. Under all circumstances, the AVP P&C shall make the final determination of the appeal. There are no appeal procedures beyond the appeal to the AVP P&C.

In the event that the investigation is coordinated through another University process, the regular appeal or review mechanism for that process shall serve as the appeal function for the outcome of the investigation.

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