

METROPOLITAN STATE UNIVERSITY OF DENVER

EQUAL OPPORTUNITY GRIEVANCE PROCEDURE



**OFFICE OF EQUAL OPPORTUNITY
OFFICE OF THE PRESIDENT**

REVISED 5.2017

METROPOLITAN STATE UNIVERSITY OF DENVER

Equal Opportunity Grievance Procedure

I. GENERAL POLICIES.

A. Purposes of the Metropolitan State University of Denver Equal Opportunity Grievance Procedure.

1. To provide a mechanism for prompt and fair internal resolution of complaints alleging unlawful discrimination, harassment, or retaliation; and
2. To satisfy MSU Denver's Equal Opportunity obligations to the University community.

B. Protection of the Parties.

1. Complaint investigations shall be treated with discretion to protect the privacy of those involved, as permitted by law.
2. Participants in Equal Opportunity grievance proceedings shall treat all information as confidential and shall not discuss the matter with, or provide documents to, anyone except those involved in the process and others as necessary for support and guidance, except as otherwise required by law.
3. Grievant shall not be required during the investigation to confront respondents except as provided in this grievance procedure.
4. The intimidation of a grievant, respondent, or witness during the pendency of an investigation shall constitute a violation of University policies.
5. Neither the respondent nor her or his representatives shall contact the grievant regarding allegations in the grievance unless such contact is arranged by the Equal Opportunity (EO) Office with the permission of the grievant.

C. Records and Documents.

1. Records of all discrimination, harassment, or retaliation complaints shall be maintained and stored for a minimum of three years in the EO office.
2. All information contained in the complaint file is classified as confidential to the extent permitted by law.
3. The EO Director shall provide each party with all documents filed by the other party.

D. Resort to Other Procedures.

1. Those who believe they are victims of unlawful discrimination, harassment, or retaliation, may also initiate outside legal action through private sources or the appropriate state or federal enforcement agencies. It is recommended that where time allows (before applicable statutes of limitations have run out) the internal grievance procedures of the University be used prior to using a grievance system outside the University.

2. The grievant may choose to file a complaint externally at any point before, during, or after the internal University proceedings.

3. If a charge or grievance arising out of the same incident(s) and making similar allegations of unlawful discrimination, harassment, or retaliation has been or is, at any time while an internal grievance is pending, filed outside the institution with an outside Equal Opportunity enforcement agency or in state or federal court, the President may, in her/his discretion, dismiss the internal complaint, refuse to accept an internal grievance, or discontinue any internal grievance proceeding already underway.

E. Retaliation.

1. Retaliation against any person who opposes a practice which is forbidden by the University Equal Opportunity Policy, or has filed a complaint, testified, assisted or participated in any manner in an investigative proceeding or hearing under the University Equal Opportunity Policy is prohibited, and may be the subject of a grievance filed under these procedures.

2. Individuals determined to have engaged in retaliation may face disciplinary action up to and including termination of employment or expulsion from the University.

F. Consolidation of Grievances.

1. Multiple grievances, whether filed by the same or different grievants, or naming the same or different respondents, may be consolidated if:

a) The grievances arise from a common nucleus of legally significant facts or one grievance alleges retaliation for filing an earlier, still-pending grievance; and

b) Consolidation would not substantially prejudice any grievant or respondent.

2. Grievances may be consolidated at the request of either party or on the initiative of and in the discretion of the EO Director, or the chair of the hearing committee, depending on what stage the grievances have reached.

G. Representation.

1. Legal counsel may not act as representatives or advocates of either party except as specifically provided in these procedures.

2. The parties may represent themselves or choose other persons to act as their representatives.

3. The parties may also choose an advocate to provide support and advice during the grievance procedures.

4. The parties may at their own expense retain legal counsel to assist them in preparing their cases, but legal counsel retained by the parties may not participate in or attend any prehearing or post hearing proceedings or participate in the hearing. Legal counsel may, however, attend the hearing for the sole purpose of conferring with and advising the parties during the hearing.

5. The EO Director and the hearing committee may be advised by the University attorney, or by an Assistant Attorney General.

II. DEFINITIONS.

A. Day means calendar day.

B. Grievance means a dispute which:

1. Is filed by a grievant on a form set forth in Appendix 1 to this EO Grievance Procedure; and
2. Alleges that a respondent engaged in discrimination, harassment, or retaliation based upon race, color, religion, national origin, sex, age, disability/handicap, Vietnam-era or disabled veteran status, sexual orientation, gender identity and expressions or on any other basis proscribed by University policies concerning equal opportunity in employment and education.

C. Grievant means.

1. Any employee or student of the University and any applicant for employment or admission who alleges unlawful discrimination or harassment by an employee or student of the University; or
2. Any person who has been threatened with or subjected to retaliation by an employee or student of the University as a result of:
 - a) opposing any unlawful discrimination or harassment;
 - b) filing a grievance or charge under this procedure;
 - c) representing a grievant under this procedure; or
 - d) testifying, assisting, or participating in any manner in an investigation, proceeding, hearing, or lawsuit alleging unlawful discrimination or harassment; and who has filed a grievance under these procedures.

D. Party means a grievant or respondent.

E. Respondent means any student or employee who is alleged to have engaged in unlawful discrimination, harassment, or retaliation.

F. Unlawful means in violation of University policies, which include a requirement that University employees and students comply with federal and state laws prohibiting discrimination in employment and education.

G. Working Day means a day on which the University holds regular class sessions or exams, and excludes Saturdays, Sundays, and University holidays.

III. TIME LIMITS.

A. Grievances should be filed as soon as possible after the event(s) which gives rise to the grievance, but in no event later than 300 days following the earlier of the date of the act or omission giving rise to the grievance or the date on which the grievant knew or reasonably should have known of such act or omission.

B. A grievance alleging acts of discrimination, harassment, or retaliation that began before the 300-day time limit may be filed if the acts are a continuing violation.

1. A continuing violation may exist if at least one of a series of closely related acts that began more than 300 days before a grievance was filed satisfies the time limit; or pervasive, institutionalized, or systemic discriminatory practices or procedures result in at least one discriminatory act that comes within the 300 days.
2. Generally, the present effects or consequences of past discrimination do not constitute a continuing violation.
3. Court decisions interpreting Title VII and other civil rights laws shall guide the EO Director, University Attorney, and Director of Legal Affairs in determining whether a grievance properly alleges a continuing violation.

C. Because jurisdiction under this procedure is restricted to grievances alleging unlawful discrimination, harassment, or retaliation, complaints alleging other infractions of Trustee or University policy or other types of unfair or inequitable treatment will be dismissed and returned to the grievant for disposition under the appropriate grievance or complaint procedure. However, any limitation periods established by those procedures shall be counted as tolled from the date the grievance is incorrectly filed with the Equal Opportunity Office until the date the grievant is notified of its dismissal.

D. In computing any period of time, the day of the act or event from which the designated period begins to run shall not be included in the period. The last day of the period shall be included, unless it is a Saturday, Sunday, legal holiday, vacation day or other nonworking day, in which event the period shall run until the next day which is a working day.

E. When an act must be done by a certain day, it shall be done by the 5:00 p.m. on that day.

F. The EO Director or the Hearing Committee, as appropriate, may extend or shorten the time periods prescribed herein except that provided for the initial filing of a grievance.

IV. INFORMAL RESOLUTION.

A. The EO Director shall designate individual(s), who shall not serve on the hearing committee, to attempt to resolve the grievance through mediation.

B. Mediation is essential to this grievance process, and every effort shall be made to resolve the grievance in this manner.

C. The grievant and respondent may be required by the EO Director to attend a mediation conference.

D. At the mediation conference, the grievant and respondent will be encouraged to explain their positions to one another, clarify any misunderstandings or misconceptions which may have played a part in the matters complained of, and formulate a mutually acceptable resolution.

E. Mediation may begin at any time and may continue after the mediation conference until such time as the President provides a final decision on the matter.

F. If an informal resolution is agreed to by the parties, it shall be reduced to writing, signed by the parties, and forwarded to the EO Director for approval. If approved, the grievance shall be dismissed. If not approved, the parties shall continue informal resolution and the grievance process shall continue.

G. At such time as the EO Director determines that the grievant remedies have been provided, or the issue has otherwise become moot, the EO Director may dismiss the grievance.

V. INITIAL PROCEDURES.

A. Filing.

1. All EO grievances shall be filed on the EO grievance form set forth in Appendix 1 of this document and shall be filed in the Office of Equal Opportunity.

a) Complaints that are not related to discrimination, retaliation, or harassment should be filed in accordance with the appropriate procedures provided in the Student Handbook, the Trustee's Handbook for Professional Personnel, or the MSU Denver Handbook for Professional Personnel.

b) Classified personnel may file a complaint under this grievance procedure or the State Personnel grievance procedure. Classified personnel may also contact the Classified Advocacy Program for assistance.

2. The grievance form shall:

a) be signed by the grievant;

b) describe in detail the specific incident(s), occurrence(s), decision(s), and other factual matters believed to constitute unlawful discrimination, harassment, or retaliation;

c) name as the respondent(s) the individual, department, committee, or other body whom the grievant believes to have engaged in prohibited behavior; and

d) include a brief statement describing the resolution, relief or action requested by the grievant.

B. Jurisdiction.

1. Jurisdiction under these procedures is met when:

a) the allegations of the grievance meet the definition of a grievance as defined in the EO Grievance Procedure; and

b) the grievance was timely filed; and

c) grievant has complied with section A above.

2. Upon receipt of a signed EO grievance form, the Director of EO in consultation with the University Attorney, or an Assistant Attorney General shall determine whether the jurisdictional requirements have been met, but may defer the timeliness issue to the hearing committee when appropriate.

3. The grievance shall be dismissed if the EO Director determines that the EO Office does not have jurisdiction over the grievance.

4. There shall be no appeal of the Director's jurisdiction determination; provided, however, that either party may request the Director to reconsider the decision, and the grievant may pursue the matter in other forums outside the University.

C. EO Office Investigation.

1. If the EO Office assumes jurisdiction over the grievance, the Director shall provide a copy of the grievance to the respondent and the respondent's vice president, and shall investigate the grievance as soon as practicable. The investigation should include an interview with the grievant, the respondent, and other persons who may have relevant information.

2. If the EO Director determines that there is no substantial factual basis for the grievance, the grievance shall be dismissed.

3. If the EO Director determines that there is a substantial factual but not legal basis for the grievance, the grievance shall be dismissed. An example of such includes a finding that an adverse action was taken for reasons other than prohibited discrimination. However, in such case the Director may provide the parties and the supervisor of the respondent with recommendations regarding resolution of the underlying dispute.

4. If the EO Director determines that there is a substantial factual and legal basis for the grievance, but that the allegations do not warrant disciplinary action, the Director shall forward to the supervisor of the respondent the findings, conclusions, and recommendations of the Director.

a) The supervisor shall take such corrective action as the supervisor in consultation with the EO Director determines appropriate under the circumstances, but such action shall not be disciplinary.

b) If the EO Director approves the corrective action taken, the grievance shall be dismissed.

c) If the EO Director does not approve the corrective action taken, the grievance shall proceed as provided in paragraph 5 below.

5. If the EO Director determines that there is a substantial factual and legal basis for the grievance, and that disciplinary action may be warranted if the allegations are determined to be true,

a) The parties shall be notified that the grievance may be forwarded to the President for decision and/or a hearing committee;

b) The respondent shall have fifteen (15) days to file a response to the grievance decision; and

c) Temporary action may be taken by the University (e.g., a student may be removed from one class and placed in another). Such action may not be used as evidence in this or any subsequent proceeding.

6. Neither party may appeal the decision of the Director to dismiss a grievance under this Section C; provided, however, that either party may request the Director to reconsider the decision, the grievant may pursue other avenues of redress outside the University, and respondent may file a grievance or complaint under other University or Trustee procedures to contest any corrective action taken under paragraph

D. Response to Grievance Decision.

1. The response to the grievance decision shall be filed with the EO Office within said fifteen (15) days of decision being rendered by the EO Director and shall admit or deny each of the factual allegations of the grievance, or state that the respondent has insufficient knowledge or information to admit or deny the allegation.

2. The respondent shall include in the response a narrative:

- a) stating why the respondent denies that the alleged incidents, occurrences, or decisions were unlawfully discriminatory; and
- b) proffering non-discriminatory reasons or explanations thereof.

Again, neither party may appeal the decision of the EO Director to dismiss a grievance under this Section C; provided, however, that either party may request the Director to reconsider the decision, the grievant may pursue other avenues of redress outside the University, and the respondent may file a grievance or complaint under other University or Trustee procedures to contest any corrective action taken.

In cases determined by the EO Office, in conference with the General Counsel (or an Assistant General Counsel), the EO Director may report and/or refer a grievance report to the President for decision. In some cases, a Hearing may be conferred, see the next pages, section VI. Pre-Hearing Procedures through IX. Appeals.

VI. PRE-HEARING PROCEDURES.

A. Selection of the Hearing Committee.

1. A hearing committee shall be selected within 10 days after respondent's response is received by the EO Office.
 - a) The grievant (or group of co-grievants) and the respondent (or group of co-respondents) shall each select two members from the University community to serve on the hearing committee.
 - b) If a committee member is not selected by a party within 5 days, the EO Director may select that committee member.
 - c) Those four members shall select a fifth person from the Council to act as Chair of the hearing committee.
 - d) The EO Director may strike a selection for good cause shown.
2. Consolidated grievances shall be heard by a single hearing committee.
 - a) If grievances are consolidated before a hearing committee has been selected, the committee members shall be chosen in accordance paragraph 1 above.
 - b) If a hearing committee has already been selected to hear a grievance, the committee shall also hear any grievance or grievances which are consolidated with the original grievance.
3. No hearing committee member may be a faculty, staff or student in the same department or program area as any of the parties.
4. If a conflict of interest question is raised about any member of the hearing committee, the EO Director will obtain an opinion on the question from the University attorney, or an Assistant Attorney General.
5. If any individual selected to serve on the hearing committee is unable or unwilling to do so, a substitute shall be selected by the person(s) who selected the member.
6. As soon as practicable after the committee has been selected, the EO Director shall transmit copies of the grievance and response to each committee member.
7. Duties of the Chair. The chair of the hearing committee shall preside over all prehearing and hearing procedures, decide all controversies arising in connection therewith, and write the committees finding, conclusions, and recommendations.
8. The EO Director shall assist the chair in such matters as scheduling rooms, mailing or delivering notices or other papers, arranging for tape recording, etc.

B. Schedule of Proceedings.

1. The chair of the hearing committee shall promptly provide the parties and the EO Director with a Schedule of Proceedings on the form set forth in Appendix 2.

2. Ordinarily the hearing shall be scheduled for a date no later than one hundred twenty (120) days from the date the grievance was filed. If holding the hearing within such time is not practicable, the chair of the hearing committee may schedule the hearing for a later date.
3. Changes to the Schedule of Proceedings may be made by the Chair of the hearing committee or the EO Director for good cause shown.

C. Discovery.

1. Interrogatories.

- a) Parties may serve upon one another one concise set of written interrogatory questions which are calculated to lead to the discovery of evidence relevant to the issues raised by the grievance and response. A second set of interrogatories may be permitted by the chair of the hearing committee upon written request of a party.
- b) Written answers to interrogatory questions shall be served within fifteen (15) days after the interrogatories are served upon a party.
- c) Copies of interrogatories and answers shall be simultaneously filed with the EO Office and delivered to each party to the grievance.
- d) Objections to interrogatories shall be made to the EO Office as soon as practicable but shall not extend the time to answer unless the Chair of the hearing committee or the EO Director so specifies in writing.

2. Documents.

- a) Each party, with notice to the other party, may obtain from the University copies of any non-privileged document or file otherwise open to the public under the Colorado Public Records Act and the Family Educational Rights and Privacy Act relevant to the issues raised by the grievance and response.
- b) The University will deliver to each party to the proceeding copies of the documents or files sought within fifteen (15) days after the request has been received.

D. Prehearing Statement.

1. At least fifteen (15) days before the hearing, each party shall serve a prehearing statement on the other party, and shall file a copy with the EO Office.
2. The prehearing statement shall:
 - a) list the witnesses the party intends to call at the hearing;
 - b) give a brief summary of the matters to which each witness is expected to testify; and
 - c) identify and describe any document(s) or file(s) that party intends to introduce in evidence.
3. Failure to include a witness or document in the prehearing statement will not preclude additional witnesses or documents if new information is uncovered after serving the prehearing statement is filed.

E. Failure to Comply with Prehearing Procedures.

1. The failure to timely comply with requests for discovery, file the prehearing statement, or comply with any other prehearing procedure will subject the individual to sanctions imposed by the hearing committee.
2. Such sanctions may include, but are not limited to, drawing an adverse inference and/or barring the presentation of certain evidence.

VII. HEARING PROCEDURES.

A. Hearings may be closed upon the written request of a party, and shall be electronically recorded.

B. Issue. The principal issue at the hearing shall be whether the unlawful discrimination, harassment, or retaliation alleged in the grievance and denied or otherwise disputed in the response occurred.

C. Opening statements. Each party, beginning with the grievant, may make an opening statement summarizing the grievance or response and stating what the party expects the testimony and other evidence to prove.

D. Witnesses. It is the responsibility of all parties to ensure the attendance of their witnesses at the hearing.

E. Burden of proof and order of presentation.

1. The grievant shall have the burden of proving the alleged discrimination, harassment, or retaliation by a preponderance of the evidence.
2. The grievant shall proceed first and shall present his/her case through the testimony of witnesses and the introduction of documentary evidence.
3. If the committee concludes at the close of the grievant's case that reasonable persons could not infer from the evidence presented that the grievant suffered unlawful discrimination, harassment, or retaliation, the committee may dismiss the grievance before the respondent presents his/her case.
4. If the committee concludes at the close of the grievant's case that a reasonable inference could be made from the evidence presented that the grievant suffered unlawful discrimination, harassment, or retaliation, the burden of producing evidence to the contrary shall shift to the respondent who may present his/her case through witnesses and documentary evidence.
5. At the close of the respondent's case the grievant shall be permitted to present rebuttal testimony and other evidence.

F. Evidence and Objections.

1. Each party shall have the opportunity to cross-examine the witnesses presented by adverse parties.
2. Each party may object to any proffered testimony or other evidence as irrelevant or otherwise inadmissible. The committee Chair shall rule on all objections and reject any testimony or other evidence it deems irrelevant or otherwise inadmissible.
3. The committee may pose questions to any witness at any time, and may call any person or any party as a witness.

G. Closing Argument. After all the evidence has been presented, each party may make a closing argument explaining to the committee why s/he believes that the evidence proves or fails to prove that unlawful discrimination, harassment, or retaliation occurred. The grievant goes first, and the respondent follows.

H. Decision of the Committee.

1. Following the hearing, the committee shall meet in one or more closed sessions to consider the evidence and arguments presented by the parties and to make findings, conclusions, and recommendations.
2. The committee's findings and conclusions shall be based solely on the evidence admitted at the hearing.
3. Within twenty-one (21) days after the hearing, the chair of the hearing committee shall transmit the committee's written findings, conclusions, and recommendations to the President with copies to all parties and the EO Director.
4. The committee shall have no power to make, amend, or repeal any University policy although it may recommend such action to the President.

VIII. DECISION OF THE PRESIDENT.

A. The President shall review the findings and conclusions of the committee and provide a written decision. If the President does not concur with the committee, the decision shall state reasons for modifying, reversing, or remanding the committee's decision. The President's decision shall also give reasons for any corrective action ordered or for any omission to order such action.

B. The President's decision shall be transmitted to each party, the committee, and the EO Director as soon as practicable.

IX. APPEALS.

A. There is no formal appeal from the President's decision, but a party may request reconsideration of the decision.

B. A grievant dissatisfied with the decision has the right to file a charge with an external Equal Opportunity enforcement agency.

C. A party facing a disciplinary action as a result of this grievance procedure may have the right to contest the action under Trustee policies or in an external administrative or judicial proceeding.

Metropolitan State University of Denver

Office of the President
Office of Equal Opportunity

Discrimination or Harassment Complaint

Date _____

Name _____

900 # (if applicable) _____

Mailing Address _____

City/State/Zip _____

E-mail _____

Phone: _____ Alternate Phone: _____

Go to <https://www.msudenver.edu/eoo/policiesandprocedures/eogrievanceprocedure/> to file electronically
“Discrimination Complaint Forms.”

MSU Denver
Office of the President/Office of Equal Opportunity
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P.O. Box 173362, Campus Box 63
Denver, Colorado 80217.3362
Office: (303) 556.4746 FAX: (303) 556.3912
<https://msudenver.edu/eoo/>

MSU DENVER EO GRIEVANCE FORM

Name: _____ Date: _____

___ Student ___ Faculty ___ Contract Administrator ___ Classified ___ Other _____ (Fill in)

DISCRIMINATION ALLEGED

___ Race	___ Religion	___ Gender
___ Color	___ Disability	___ Sexual Harassment
___ National Origin Retaliation	___ Age	___ Sexual Orientation
___ Retaliation	___ Other	___ Gender Identity & Expressions

SUMMARY OF ALLEGED COMPLAINT

1. Date on which alleged conduct first occurred:

2. Date on which alleged conduct most recently occurred:

3. Names of witnesses (please specify whether employee, student, or other):

4. Name of person(s) who engaged in discrimination (respondent):

5. Describe in detail the specific incidents, occurrences, decisions, and other factual matters believed to constitute unlawful discrimination, harassment, or retaliation (if more space is needed, please attach additional sheets):

6. Harm caused:

7. I request that the following action be taken:

8. I have filed a complaint/ grievance with another agency: Yes___ No___
If yes, name of agency: _____
File/ complaint number: _____

ACKNOWLEDGEMENTS

I understand the following:

- 1. I have the right to be free of retaliation for filing this grievance. I agree to report any conduct which I believe is motivated by retaliation for filing with the University this complaint. I understand, however, that if this statement contains accusations which I know are false, I may be subject to disciplinary action within the University, and/or external legal action from those I have falsely accused.

- 2. The Equal Opportunity Office will try to protect my identity from public exposure. The respondent, however, will be given a copy of this grievance in order to have an opportunity to respond to it.

- 3. I have received a copy of the discrimination policy of the Metropolitan State University of Denver. I may have the right to file a complaint with civil rights agencies or to file legal actions in a court of law. The Equal Opportunity Office will further explain these rights if I request.

- 4. I understand that the Equal Opportunity Office is an advocate for neither the grievant nor the respondent. The role of the Equal Opportunity Office will be to investigate complaints from a neutral position to determine whether violations of the University’s discrimination or harassment policy have occurred.

CERTIFICATION

I CERTIFY THAT THE STATEMENTS MADE IN THIS GRIEVANCE ARE TRUE AND ACCURATE, AND THAT I HAVE READ AND UNDERSTAND THE STATEMENTS MADE IN THE ACKNOWLEDGMENTS SECTION OF THIS GRIEVANCE.

Signature of Grievant Date

MSU DENVER EO PROCEDURAL GUIDELINES

(The following are approximate times)

DAY	ACTION OR EVENT
1	Grievance Filed
10	Jurisdiction Determined
11	Respondent Provided Copy of Grievance (10 – 15 days to respond)
12-25	Witnesses Interviewed if Named by Grievant and/or Respondent
26	Grievant Provided Copy of Respondent's Response (10-15 days to respond)
41	EO Investigation Completed
45	Decision Filed and Parties Notified of Decision
50	Hearing Committee Selected (if applicable or referred)
65	Copies of Grievance and Response to Committee
80	Informal Resolution Conference
95	Interrogatories Due
110	Answers to Interrogatories Due
125	Document Request Due
140	Documents Due
155	Prehearing Statements Due
170	Hearing
185	Committee Report to President
205	President's Decision