

October 2011

# 4.619 Discrimination Action and Discipline Procedure

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<div style="border: 1px solid black; padding: 5px;">           Type of Policy  <input checked="" type="checkbox"/> <b>University</b>  <input type="checkbox"/> <i>Campus</i>  <input type="checkbox"/> <i>Department/Unit</i>  <input type="checkbox"/> <b>Interim</b> </div>		<b>Discrimination Complaint Procedure</b>  <b>Policy 4.619</b>	
<b>Human Resource Policies</b>		Effective date: <b>October 11, 2011</b>	
<b>Policy History:</b>	<b>Approved by:</b>	<b>Resolution #</b>	<b>Date:</b>
Approved	Chancellor	N/A	October 11, 2011
Revised	Chancellor	N/A	November 15, 2013
Revised	Chancellor	N/A	June 20, 2016
Revised (Non-substantive)	Office of University Counsel	N/A	November 6, 2017
Personnel Last Updated	Office of University Counsel	N/A	March 3, 2019
<b>Responsible Office:</b>	<b>Responsible Administrator:</b>	<b>Contact information:</b>	<b>Applies to:</b>
Office of Human Resources	Director of University Human Resources	937-769-1375	All Employees, Except those whose terms and conditions of work are governed by a collective bargaining agreement.

## I. Introduction

Antioch University (“AU” or the “University”) does not discriminate on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, military and veteran status, or any other protected classification in employment practices, including, but not limited to, recruitment selection, promotion, transfer, compensation, training and development, demotion, and separation as in accordance with our Affirmative Action and Equal Opportunity Employment Policy # 4.005. The University-wide Affirmative Action/Equal Opportunity Employment Officer (“AA/EO Officer”) or Deputy Affirmative Action/Equal Opportunity Employment Officer (“Deputy AA/EO Officer”) for each campus is responsible for enforcement and investigation of any matter relating to Affirmative Action and Equal Employment Opportunity.

Consistent with the University’s Affirmative Action and Equal Employment Opportunity Policy #4.005, supervisors, department chairs, deans and administrators are responsible for encouraging an environment that is free from discrimination. As such, the aforementioned individuals should forward reports of alleged discrimination to the AA/EEO Officer or Deputy AA/EEO Officer of their respective campus or program, and are expected to maintain documentation sufficient to demonstrate a timely, appropriate, and adequate response.

**II. Purpose**

The purpose of this policy is to establish procedures to investigate and resolve allegations of unlawful discrimination internally at the lowest possible level. This policy is intended to be consistent with the provisions of applicable state and federal laws and University policies.

**III. Designation of AA/EEO Officers**

**A. University AA/EEO Officer**

The University’s Vice Chancellor Finance / CFO shall be the University’s AA/EEO Officer and among other responsibilities, shall have ultimate and overall responsibility for the implementation of equal employment opportunity and the affirmative action programs. He/she has the authority and the resources to ensure effective implementation. He/she reports to and has access to and the support of top management. He/she is accountable for compliance with all federal and state equal employment opportunity laws and policies, and all University policies, procedures and practices with respect to affirmative recruitment, non-discriminatory selection, record-keeping, and reporting on compliance activities to the campus Provosts and / or University Chancellor.

Any student, employee or other individual who believes a violation of the **Affirmative Action and Equal Employment Opportunity Policy #4.005** has occurred shall file a complaint in accordance with this policy using **Form # 4.619:01 Discrimination Complaint Form AA/EEO Discrimination**.

University AA/EEO Officer	Name	Telephone Number	Mailing Address	E-mail Address
University-wide	Iris Weisman	937-769-1890	Antioch University 900 Dayton Street Yellow Springs, OH 45387	<a href="mailto:iweisman@antioch.edu">iweisman@antioch.edu</a>

**B. Deputy AA/EEO Officers**

By delegation, the Deputy Affirmative Action/Equal Employment Opportunity Officers (“Deputy AA/EEO Officers”) are responsible for the AU campuses as indicated in the table below. Therefore, violations of the Affirmative Action and Equal Employment Opportunity Policy #4.005 may also be brought to the attention of the appropriate campus Deputy AA/EEO Officer for investigation and remediation by filing a complaint in accordance with this policy using Form # 4.619:01 Discrimination Complaint Form.

<b>Deputy AA / EEO Officers</b>	<b>Name</b>	<b>Telephone Number</b>	<b>Mailing Address</b>	<b>E-mail Address</b>
<b>AU Los Angeles; and AU Santa Barbara</b>	Sandy Lee	310-578-1080 x 447	Antioch University Los Angeles  400 Corporate Pointe, Los Angeles, CA 90230-7615	<a href="mailto:slee2@antioch.edu">slee2@antioch.edu</a>
<b>AU Midwest; GSLC (Graduate School of Leadership &amp; Change); and AU Online</b>	Karen Crist	937-769-1335	Antioch University Midwest  900 Dayton Street Yellow Springs, OH 45387	<a href="mailto:kcrist@antioch.edu">kcrist@antioch.edu</a>
<b>AU New England</b>	Will Dooley	603-283-2362	Antioch University New England  40 Avon Street Keene, New Hampshire 03431	<a href="mailto:wdooley@antioch.edu">wdooley@antioch.edu</a>
<b>AU Seattle</b>	Mensima Biney	206-441-5352	Antioch University Seattle  2400 3rd Avenue, Suite 200 Seattle, WA 98121	<a href="mailto:mbiney@antioch.edu">mbiney@antioch.edu</a>

### C. Other Reporting Avenues

Sometimes it's not practical to report a violation to the University AA/EEO Officer or Deputy AA/EEO Officer of a particular campus when, for example, the alleged incident involves that administrator or when it is perceived that the designated AA/EEO Officer or Deputy AA/EEO Officer may not be impartial or would have a conflict of interest. Regardless of the reason, a student or employee may alternatively report a violation of this policy to either of the individuals named below by filing a complaint in accordance with this policy using Form # 4.619:01 Discrimination Complaint Form.

	Name	Telephone Number	Mailing Address	E-mail address
University-wide	Suzette Castonguay, Director Of University Human Resources	937-769-1375	Antioch University 900 Dayton Street Yellow Springs, OH 45387	<a href="mailto:scastonguay@antioch.edu">scastonguay@antioch.edu</a>
University-wide	Rebecca Todd, University Counsel	603-277-0131	Antioch University 900 Dayton Street Yellow Springs, OH 45387	<a href="mailto:rtodd@antioch.edu">rtodd@antioch.edu</a>

### IV. Definitions

A. **Complainant.** Persons who allege that they have suffered an act of unlawful discrimination committed by an employee of the University and who has made an informal or formal complaint to that effect under these procedures.

B. **Respondent.** Person who is alleged in a complaint to have committed an act of unlawful discrimination.

C. **Investigator.** Person who is responsible for investigating formal complaints and making determinations regarding its merits.

D. **Discriminatory Practice.** Means any adverse employment action based upon race, color, national origin, religion, sex, sexual orientation, gender identity, age, disability, veteran status, or any other protected classification.

### V. Who May File a Complaint

This procedure is available to all employees of the University except those whose terms and conditions of work are governed by a collective bargaining agreement. Eligibility for use of the

discrimination complaint procedure ceases on the effective date of the termination of employment, except that an employee who is involuntarily terminated from employment who claims that the termination was based on a discriminatory motive may initiate a discrimination complaint regarding their termination within 30 days of the effective date the termination. AU employees who are working off-campus (e.g., semester abroad) or are on a leave of absence (e.g., medical leave, sabbatical) remain covered by this policy.

## **VI. What May Be Complained Of**

### **A. Inclusions**

1. This policy will apply to situations in which both the person alleging discrimination or harassment (the “complainant”) and the person accused of discrimination or harassment (the “respondent”) are employees of the University and the complainant alleges adverse employment actions based upon discriminatory motives prohibited under the University’s Affirmative Action and Equal Opportunity Policy # 4.005,
2. Sexual harassment or sexual violence allegations shall be investigated and resolved through the University’s Title IX, Sexual Harassment and Sexual Violence Policy # 4.607.
3. Employee discrimination or harassment allegations brought by individuals who are not current employees of AU (e.g., applicants for employment, independent contractors, vendors, recruiters) will be addressed on a case-by-case basis using an appropriate procedure as determined by the AA/EEO Officer or Deputy AA/EEO Officer.

### **B. Exclusions**

1. Harassment other than on the basis of a protected classification may be the subject of a complaint under the Grievance and Conflict Resolution Process Policy #4.625, but is not the proper subject of a complaint under this policy.
2. Discrimination or harassment allegations made against students in their capacity as students will be resolved through the Student Conduct Policy # 6.103, rather than under this policy.

## **VII. Pre-Complaint Resolution Strategies**

Employees are encouraged to first bring their concerns to the person allegedly responsible for the behavior or action. In many cases, self-corrective measures may be taken when those persons alleged to have committed inappropriate conduct become aware of how their actions or behaviors are being perceived. The matter may be concluded by mutual consent at this point. However, the University recognizes that such a strategy may be inappropriate or ill-advised, especially when the conduct is severe or when the person responsible for the alleged behavior holds a position of authority

over the complainant. Thus, if satisfactory resolution does not occur, the individual should file a complaint of discrimination with the University AA/EEO Officer, or Deputy AA/EEO Officer, or Human Resources.

The discrimination complaint process consists of informal and formal investigation processes for alleged acts of discrimination as described below:

**A. Informal Discrimination Complaint Procedure**

1. The informal discrimination complaint should be initiated within 30 working days of the date of the adverse action or the date the complainant became aware of the adverse action by contacting the University AA/EEO Officer, the campus Deputy AA/EEO Officer or the University-wide Director of Human Resources or University Counsel.
2. In the informal complaint process, the University AA/EEO Officer or the campus Deputy AA/EEO Officer may mediate or conduct an informal investigation at their discretion. The informal investigation may be delegated to the Director of the Office of Human Resources (“HR”), and if so, HR will report the informal findings to the AA/EEO Officer.
  - a) AA/EEO Officers may attempt to negotiate a resolution to the informal complaint of alleged discrimination or issue a written determination when attempts at mediation are unsuccessful.
  - b) If a complaint is not resolved during the informal process, the complainant may file a formal complaint.

**B. Formal Discrimination Complaint Procedure**

1. The formal discrimination complaint should be submitted within 30 working days of the date of the adverse action or the date the complainant became aware of the adverse action. In cases of unresolved informal complaints, submission should be not more than 30 days after termination of an unsatisfactory informal resolution process.
2. An internal **Discrimination Complaint Form # 4.619:01** should be completed and submitted to either the University AA/EEO Officer, the campus Deputy AA/EEO Officer or the University-wide Director of Human Resources or Associate University Counsel. Specific allegations should be listed along with an indication of the action the complainant is seeking.
3. The respondent will be given a copy of the Discrimination Complaint Form and a description of these procedures. The respondent is strongly encouraged to provide the investigator with a written response to the complaint within one week of receiving Discrimination Complaint Form. However, even if the respondent fails to or chooses not to answer a complaint or participate in an investigation, this will not prevent the process from proceeding.

4. All complaints will be promptly and thoroughly investigated by the appropriate AA/EEO Officer unless it is delegated to HR for investigation and recommendations via written report. Employees have an obligation to cooperate in the investigation of any such complaint.

5. If an internal investigation cannot be concluded within 30 days, the appropriate parties will be advised and a projected conclusion date will be announced. Complaint investigations handled by the AA/EEO Officer or HR will include notification to all appropriate parties of the findings and recommendations for corrective action, if warranted and shall include notice to employees of their right to appeal the matter to the next level if not satisfied.

a) Management at every level has an affirmative responsibility to ensure that recommendations for corrective action are promptly implemented.

6. The findings and recommendation of the investigator, after any applicable review has been completed, shall be the final unless the complainant is not satisfied and appeals the determination and recommendation of the AA/EEO Officer to the next level.

7. If the AA/EEO Officer's response is unsatisfactory, employees may appeal the matter to the Provost or Vice Chancellor/CFO (non-campus employees) by submission in writing within 5 working days of receipt of the AA/EEO Officer's response. The written appeal should state why the AA/EEO Officer's response is unsatisfactory and should include a copy of the Discrimination Complaint Form, and all correspondence with the AA/EEO Officer and HR on the matter. The Provost or the Vice Chancellor/CFO shall consider the facts and circumstances of the allegations and shall, in writing, grant, deny, or propose a modification to the requested remedy within 5 working days following receipt of the employee's written appeal. Responses shall include notice of the employee's right to move the appeal forward to the next and final level.

8. If the response to the employee's written appeal is unsatisfactory, employees may make a final appeal by submission in writing to the Vice Chancellor/CFO within 5 working days of receipt of the initial appeal response. In cases where the Vice Chancellor/CFO reviewed the matter previously or is the original decision maker in the underlying personnel action which is the subject of the allegations, the final appeal should be submitted to the University Counsel. The final appeal must state why the written appeal response is unsatisfactory and should include a copy of the Discrimination Complaint Form, and all correspondence with the AA/EEO Office, HR, and the Campus Provost or the Vice Chancellor/CFO on the matter. During this final review, the Vice Chancellor/CFO or University Counsel will have access to all information pertinent to the case and may meet with any individual possessing information related to the case. Upon conclusion of the review, the Vice Chancellor/CFO or the University Counsel shall present a written determination in most cases within 10 business days. The determination rendered shall then be final.



## VIII. General Guidelines

A. Time limits set forth for filing formal complaints and appeals in the process must be strictly followed by employees. Extensions to time standards contained herein may be adjusted at the discretion of the AA/EEO Officer due in rare circumstances to allow for a more thorough review. Unless the time limits are extended in writing by the AA/EEO Officer, a formal discrimination complaint is considered settled on the basis of the last answer if employees fail to meet time requirements herein. Employees may withdraw formal discrimination complaints at any time in writing, but forfeit rights to reinstate the formal discrimination complaint at some later time.

B. In the event that the administration does not respond to a discrimination complaint for any reason, the complaint shall be deemed to be denied and the employee shall have those rights of moving the discrimination complaint forward in the appeal process as described above.

C. The normal progression of complaints described above may be modified by AU where the person making the underlying decision, the department involved, or the content and scope of the allegations makes that progression impractical. In such cases the discrimination complaint may be initiated at a higher level as appropriate.

D. Employees shall have the right of assistance by an individual of their choice employed with the University during all portions of the formal discrimination complaint process, provided that the chosen person is willing to assist in the process. Employees may not be represented by a lawyer or any outside third party in the formal discrimination complaint process.

E. Employees' attendance at a formal discrimination complaint meeting, held during normal working hours shall be with pay, including those offering assistance to other AU employees. Any other time spent in formulating or preparing a formal discrimination complaint shall be done outside of the regular work schedule and shall be without compensation.

F. Decisions made as a result of the formal discrimination complaint process will apply only to the individual(s) who submitted the complaint and will not serve as a precedent for establishing or changing any policy or procedure of the University.

G. As consistent with the investigation and complaint process, all matters handled through the formal discrimination complaint process shall be confidential. The University has an obligation to protect the rights of the respondent and its obligation to promptly investigate the alleged discrimination and take any appropriate remedial action. No formal action will be taken against respondents unless complainants consent to be identified to respondents so that respondents can provide their version of what happened. However, the University reserves the right to take appropriate corrective action regardless of a complainant's actions.

H. Retaliation of employees who exercise their rights under this policy or who assist others in the process is prohibited. Employees who retaliate against other employees for exercising their rights will be subject to disciplinary action.

I. Supervisors who are informed or believe that discrimination is occurring, whether in their area of responsibility or not, must report such activity to the campus AA/EEO Officer. Failure to do so may result in disciplinary action.

J. AU employees shall cooperate with the local AA/EEO Officer and other AU Administrators acting officially to facilitate resolution of the complaint. Failure to do so may result in disciplinary action.

K. AU employees may utilize the services of the local AA/EEO Officer or HR. Employees should notify their direct supervisor that they will be leaving the work area for a definite period of time so that the supervisor may plan for absences if complaints are made during work hours. Employees who do not wish to let their supervisor know that they are consulting with the AA/EEO Officer may arrange for an appointment on their break, or prior to, or following work hours.

L. Filing a complaint under this policy does not preclude an employee from filing a charge of employment discrimination with the EEOC, or State and Local agencies, within the time frames established by those agencies. All complainants have a right to bypass this internal procedure and file with a federal, state, or local agency.

M. Applicants for employment and current or former employees (also referred to as complainants) may file an informal or formal discrimination complaint with the campus AA/EEO Officer.

N. Complainants, respondents, witnesses, and any other parties involved in a complaint of discrimination shall refrain from disclosing information about a complaint of discrimination to anyone who does not have a legitimate, business need or right to know. Violations of this clause of confidentiality are inappropriate and unprofessional and may jeopardize the integrity of the investigation. Violations of this prohibition may result in disciplinary action.

O. The University reserves the right to investigate circumstances that may involve discrimination and/or harassment where no complaint (including withdrawn complaints), formal or informal, has been filed. In such situations, the University may elect to investigate and, if warranted, impose disciplinary sanctions pursuant to these or other established University procedures.

P. The University also reserves the right to take provisional, emergency actions departing from these Procedures; provided, however, that such actions shall be followed as promptly as possible giving Respondents the notice and opportunity to respond as specified in the Formal Discrimination Complaint Process above.

## **IX. Sanctions for Bias Motivated Behavior**

If employees engage in conduct that constitutes discrimination or harassment motivated by bias based on a person's protected status contained herein, discipline may be imposed including possible termination from employment.

## **X. Record Keeping**

Any person conducting an investigation, whether formal or informal, will maintain a written record of witness interviews, consent provided, evidence gathered, and outcome. Records of such investigation will not be maintained in personnel files other than the formal corrective action. HR in coordination with the AA/EO Officer will maintain investigatory records in accordance with record retention policies. If a complaint is filed outside the University, information gathered in the course of the internal investigation may be disclosed to the investigating agency.

### **Policy Cross Reference**

Affirmative Action /Equal Employment Opportunity	Policy # 4.005
Reasonable Accommodation	Policy # 4.107
Personnel Records and Retention Policy	Policy # 4.225
Employee Code of Ethics	Policy # 4.603
Employee Code of Conduct	Policy # 4.601
Corrective Action and Discipline	Policy # 4.617
Grievance and Conflict Resolution Process	Policy # 4.625
Title IX, Sexual Harassment and Sexual Violence Policy	Policy # 4.607

### **Form Cross Reference**

Discrimination Complaint Form	Form 4.619:01
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