

Title/Subject: **EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION PROTOCOL**

Applies to:  faculty  staff  students  student employees  visitors  contractors

Effective Date of This Revision: January 23, 2017

Contact for More Information: Office of Civil Rights & Institutional Equity

Board Policy  Administrative Policy  Procedure  Guideline

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# CENTRAL MICHIGAN UNIVERSITY EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION PROTOCOL

## ARTICLE I INTRODUCTION

Central Michigan University affirms its continued commitment to equal educational and employment opportunity and to the elimination of prohibited discrimination within the institution. The University recognizes that nondiscrimination and equal opportunity are legally, socially and morally necessary and that it must take affirmative action to ensure that these concepts are realized. The University is especially committed to creating and supporting a campus composed of diverse and multicultural faculty, staff and students because doing so will benefit its faculty, staff and students. Some of these expected benefits include the following:

- An educational curriculum that deals with diversity issues and thereby helps develop important skills such as flexibility, understanding, critical thinking, and team work.
- A diverse University community which has a positive effect on academic achievement and on over-all satisfaction with the University experience.
- A diverse learning environment where students are more likely to feel comfortable interacting with people different from themselves, to become more aware of racial, ethnic and other cultural issues, and to promote tolerance in other aspects of their lives beyond the University.

The creating of such a community involves the recruiting and retaining of students, faculty, and staff from all backgrounds and the provision of a working environment free from discrimination. The policies and procedures set forth in this Protocol support human and civil rights and are one part of the University's efforts to create such a community.

Central Michigan University is committed to implementing systematic affirmative action efforts

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to eliminate discrimination and provide equal opportunity in compliance with applicable laws and regulations. The University also supports affirmative action and equal employment opportunity because these concepts are in accord with our educational mission. As amended on September 22, 2016, the Central Michigan University Board of Trustees has adopted the following resolution:

*Nondiscrimination Policy:*

Central Michigan University is an affirmative action/equal opportunity institution. It encourages diversity and provides equal opportunity in education, employment, all of its programs, and the use of its facilities. It is committed to protecting the constitutional and statutory civil rights of persons connected with the university.

Unlawful acts of discrimination or harassment by members of the campus community are prohibited.

In addition, even if not illegal, acts are prohibited if they discriminate against any university community member(s) through inappropriate limitation of access to, or participation in, educational, employment, athletic, social, cultural, or other university activities on the basis of age, color, disability, ethnicity, gender, gender expression, gender identity, genetic information, height, marital status, national origin, political persuasion, pregnancy, childbirth, or related medical conditions, race, religion, sex, sex-based stereotypes, sexual orientation, transgender status, veteran status, or weight. Furthermore, even if not illegal, acts are prohibited if they discriminate against any university community member(s) through inappropriate limitation of access to, or participation in, educational, employment, athletic, social, cultural, or other university activities because they inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant.

Limitations are appropriate if they are directly related to a legitimate university purpose, are required by law or rules of associations to which the Board of Trustees has determined the university will belong, are lawfully required by a grant or contract between the university and the state or federal government.

The president is directed to promulgate practices and procedures to realize this policy. The procedures shall include the identification of an office to which persons are encouraged to report instances of discrimination and a process for the investigation and resolution of these reports/complaints.

In accordance with this directive the President places into effect this revised **Central Michigan University Equal Opportunity and Affirmative Action Protocol**.

## ARTICLE II

### PROHIBITED DISCRIMINATION AND HARASSMENT

#### A. Statutory and Regulatory Standards

Central Michigan University declares all conduct that violates a nondiscrimination statute or regulation of the United States or the State of Michigan a violation of this Protocol. All CMU students, faculty, staff, and certain third parties including, but not limited to, guests, contractors, consultants, and their employees (herein "University Community"), are prohibited from engaging in unlawful acts of discrimination or harassment. Unlawful discrimination and harassment are defined by the statutes and regulations of the United States and State of Michigan and include discrimination or harassment in employment, education, housing, public accommodations, public services, and telecommunications.

The University will interpret and apply this policy of prohibited discrimination and harassment in a manner that is consistent with relevant constitutions, statutes, regulations, and guidelines of the United States and the State of Michigan.

#### B. Additional University Standards

1. The Protocol is intended to protect members of the University Community from unlawful discrimination and harassment, not to regulate the content of speech. This Policy does not prohibit anything protected under the First Amendment to the U.S. Constitution. For example, generally, it is not a violation of this Protocol to express ideas, words, gestures, or pictorials that constitute a comment upon matters of public concern, are an expression of art or culture, or are part of an exchange of ideas, ideology, or philosophy. Furthermore, this Protocol does not regulate verbal expressions or written materials that are relevant and appropriately related to course subject matter or curriculum.
2. To the extent not already prohibited by the laws and regulations of the United States or the State of Michigan, and subject to the limitations contained in: (a) the Nondiscrimination Policy amended by the Board of Trustees on September 22, 2016; or (b) Article II.B.1 of this document.; the following conduct constitutes a violation of the Protocol and is prohibited:
  - a. Discrimination and harassment on the basis of actual or perceived sexual orientation, gender identity, gender expression, transgender status in employment, education, housing, programs, activities, and services. University faculty and staff are prohibited from inquiring about an individual's sexual orientation, gender identity, gender expression or transgender status, unless such inquiry serves a compelling interest of the University and is related to a bona fide

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- occupational qualification.
- b. Discrimination or harassment on the basis of political persuasion in employment, education, housing, programs, activities, and services.
  - c. Unwelcome conduct or communication by a University Community member in that individual's role as a University Community member that is based upon, real or perceived, age, color, disability, ethnicity, familial status, gender, gender identity, gender expression, genetic information, height, marital status, national origin, political persuasion, pregnancy, childbirth, or related medical conditions, race, religion, sex, sex-based stereotypes, sexual orientation, transgender status, veteran status, or weight when:

Such conduct or communication has the effect of creating an intimidating environment injurious to the education, employment, housing, or participation in University activities of an individual.

The University recognizes that a particular expression as perceived by some members of the University Community, standing alone, is not a legally sufficient basis to establish a violation of Article II.B.2.c.

- d. Threats or abusive statements made by a member of the University Community in that individual's role as a member of the University Community directed toward another individual based upon that other individual's actual or perceived age, color, disability, ethnicity, familial status, gender, gender identity, gender expression, genetic information, height, marital status, national origin, political persuasion, pregnancy, childbirth, or related medical conditions, race, religion, sex, sex-based stereotypes, sexual orientation, transgender status, veteran status, or weight.
- e. Conduct by a member of the University Community which maliciously and with specific intent to intimidate or harass another person because of that person's age, color, disability, ethnicity, familial status, gender, gender identity, gender expression, genetic information, height, marital status, national origin, political persuasion, pregnancy, childbirth, or related medical conditions, race, religion, sex, sex-based stereotypes, sexual orientation, transgender status, veteran status, or weight and which:
  - (1) Makes physical contact with another person; or
  - (2) Damages or defaces any property of another person; or
  - (3) Threatens by word or act to do one of the above if there is a reasonable cause to believe that such an act will occur.

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- f. Retaliation of any nature taken by anyone in the University Community against another member of the University Community as a result of their seeking redress under the Protocol, cooperating in an investigation, or otherwise participating in proceedings brought under the Protocol. Retaliation will be considered a separate violation of this Protocol.
3. The University is authorized to direct in writing that an individual, while in that individual's role as a member of the University Community, discontinue behavior which, if continued or accumulated, would constitute prohibited discrimination or harassment under the civil rights laws of the United States, State of Michigan, and/or this Protocol.
4. Members of the University Community are reminded that threats, abusive or contemptuous statements, conduct, or behavior, even if not prohibited by this Protocol, may violate other University regulations or cause an employee to be subject to discipline.

C. Applicable Laws: Nondiscrimination

Central Michigan University as an equal opportunity and affirmative action institution complies with federal and state laws prohibiting discrimination.

D. Applicable Laws: Affirmative Action

In addition to the legal requirements for non-discrimination, some federal statutes and regulations require CMU to undertake affirmative action, a term used to include a number of different measures taken to overcome the effects of past discrimination. The following are the major sources of the mandate for affirmative action:

- Executive Order 11246, as amended.
- The Rehabilitation Act Amendment of 1973, Sec. 503.
- The Veterans Readjustment Assistance Act of 1974, as amended.
- The Veterans Assistance Act of 1972.

Executive Order 11246, as amended, requires certain federal contractors to develop an affirmative action program, "a set of specific and result-oriented procedures to which a contractor commits itself to apply every good faith effort." The objective of this program is equal employment opportunity. Contractors are required (among other things) (1) to undertake an analysis of areas of its own workforce to locate any deficiencies in the utilization of minorities, women, individuals with disabilities, and covered veterans (the "protected classes"), and (2) to set goals to which the contractor's good faith effort must be directed. The purpose of these efforts is to achieve "prompt and full utilization of minorities and women, at all levels and in all segments of its workforce where deficiencies exist." (41 CFR 60-

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2.10). CMU's Affirmative Action Plan is in accordance with these regulations. The contents of that Plan change annually. The current version is available in the Office of Civil Rights and Institutional Equity (OCRIE).

The University also maintains an affirmative action program for individuals with disabilities and qualified protected veterans. This program is described in the document, Affirmative Action Program of Central Michigan University for Individuals with Disabilities and Qualified Protected Veterans, which is available in OCRIE.

### **ARTICLE III**

#### **EXECUTIVE RESPONSIBILITY AND IMPLEMENTATION**

##### **A. Affirmative Action Officer and/or designee**

For the purpose of coordinating and implementing the University's equal opportunity and affirmative action programs, including those programs set forth in this Protocol, the University has created the Office of Civil Rights and Institutional Equity administered by the Department Executive Director, who serves as the University's Affirmative Action Officer. The Executive Director/Affirmative Action Officer reports directly to the President's Office. The Executive Director/Affirmative Action Officer shall:

1. Advocate for the University's equal opportunity and affirmative action objectives; including the publication of this Protocol to the University Community.
2. Exercise general management of the University's equal opportunity and affirmative action programs.
3. Work closely with campus administrative officers to assure compliance by all University divisions with the applicable federal and state laws, regulations, and guidelines, and the University policies regarding equal opportunity and affirmative action.
4. Be designated as the director of equal opportunity programs for purposes of Executive Order 11246, as amended, with the related appropriate authority and supervise the preparation and implementation of the University's Affirmative Action Plan.
5. Supervise the maintenance of reports and records required by federal and state regulations.
6. Thoroughly and fairly investigate and attempt to resolve complaints from University Community members concerning alleged violations of this Protocol by the University, any office or unit of the University, or any other

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- member of the University Community.
7. Assist with investigations carried out by (or conduct joint investigations with) personnel offices when issues related to the Affirmative Action Officer's responsibilities are involved; consult with the administrative head of the appropriate personnel office or the Associate Vice President of Student Affairs, or designees, concerning appropriate discipline in cases involving issues related to the Affirmative Action Officer's responsibilities.
  8. Identify and coordinate programs of information and training designed to promote equal opportunity and affirmative action.
  9. Continually review University policies and procedures and recommend changes to the President as necessary to ensure that their effect is nondiscriminatory and in compliance with the equal opportunity and affirmative action commitments of the University.
  10. Monitor the good-faith efforts of units toward achieving affirmative action goals, including the review of employment and recruitment practices and procedures to assure compliance with federal and state law and University policies.
  11. Establish and coordinate the implementation of appropriate equal opportunity and affirmative action search procedures for the recruitment and hiring of faculty and staff.
  12. Provide written approvals as required by the University's Senior Officer Search and Selection Procedures/Guidelines, as approved by the President. The Affirmative Action Officer may review other aspects of the University's recruitment and selection processes at any time. The purpose of these reviews is to insure good-faith compliance with applicable laws, regulations, and policies, taking into consideration any existing goals related to the position to be filled. If the necessary approvals of the Affirmative Action Officer are not properly obtained in a senior officer search, recruitment and selection processes may continue only with the President's approval.
  13. Authorize any exceptions or waivers of normal equal opportunity or affirmative action processes when deemed necessary.
  14. Consult with Faculty and Staff Equal Opportunity Officers (see Article III.B., below) to coordinate the implementation of equal opportunity and affirmative action policies in the hiring of employees.
  15. Serve as the liaison between the University and government agencies, advocacy groups, and others regarding the University's equal opportunity and affirmative action programs, policies, and commitments, except that the Affirmative Action Officer shall assist the University's General Counsel, or designee, with this communication in those settings where litigation is pending or threatened.
  16. Coordinate the dissemination of information regarding the University's equal opportunity and affirmative action policies to all applicants, employees, and students of the University.

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17. Fulfill such other responsibilities as may be necessary and appropriate from time to time to coordinate and implement the University's equal opportunity and affirmative action programs.

**B. Faculty and Staff Equal Opportunity Officers**

Certain affirmative action and equal opportunity responsibilities related to employee groups other than senior officers shall be carried out by staff members of the Faculty Personnel Services and Human Resources Departments who have primary responsibility for the hiring process and will be designated as Faculty or Staff Equal Opportunity Officers. The Faculty and Staff Equal Opportunity Officers will conduct their responsibilities in accord with the provisions of this Protocol.

The Faculty and Staff Equal Opportunity Officers shall support OCRIE by:

1. Monitoring all employment operations, activities and procedures to certify compliance with the University's equal employment and affirmative action opportunity policies and commitments.
2. Reviewing the recruitment process and documentation and giving approval in all searches other than those for senior officers. The Staff Equal Employment Officer will, at a minimum, approve staff (1) vacancy announcements and their recruitment placements, (2) the pool of candidates to be interviewed, and (3) the final selection. The Faculty Equal Employment Officer will, at a minimum, approve faculty (1) vacancy announcements and recruitment placements, (2) the pool of candidates to be interviewed, and (3) the final selection. Both the Faculty and Staff Equal Employment Officers may review other aspects of the recruitment process at any time. The purpose of these reviews is to insure good-faith compliance with applicable laws, regulations, and policies, taking into consideration any existing goals related to the position to be filled. If the necessary approvals are not properly obtained, recruitment and selection processes may continue only with the President's approval, in conjunction with the Affirmative Action Officer.
3. Serving as an assistant and resource to OCRIE on all equal opportunity and affirmative action matters relating to faculty and staff employment including employment policies, practices, and obligations of the University.
4. Providing technical and research assistance to OCRIE and assisting in conducting studies such as utilization studies of University employee groups and periodic salary equity studies related to nondiscrimination policies and assisting in monitoring the goals of the Affirmative Action Plan for University employees.
5. Assisting in providing training for employees on equal opportunity and

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affirmative action topics.

6. Advising and assisting offices in interpreting equal opportunity and affirmative action requirements; to include making this Protocol accessible to members of the University Community.
7. Referring instances of alleged discriminatory employment practices or procedures, or violations of the University's equal opportunity and affirmative action policies and guidelines to OCRIE and recommending appropriate actions.

### **C. Administrative Officers**

1. The President, as chief executive officer of the University, is ultimately responsible for achieving the University's equal opportunity and affirmative action goals. However, implementation of a successful equal opportunity and affirmative action program also depends heavily on all individuals who are involved with employment decisions and/or recommendations or who address student needs at the University. The following individuals have a specific responsibility to encourage and oversee the implementation of the equal opportunity and affirmative action program: Executive Vice President/Provost, Vice Presidents/Provosts, Assistant/Associate Vice Presidents/Provosts, Deans, Directors, Department Chairpersons, and all other employees who have supervisory authority and therefore the capacity to impact equal opportunity and affirmative action measures.
2. The following regulation has been adopted by the Federal Government and applies to the University:

"Supervisors should be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results, as well as other criteria." 41 CFR 60-2.22(b)(8)
3. Supervisors, to the extent permitted by their respective employment contracts and/or collective bargaining agreements, have the following responsibilities:
  - a. To promote a work and/or educational environment free from conduct which violates this Protocol.
  - b. To help achieve a unit's equal employment and affirmative action objectives.
  - c. To recruit individuals from all reasonably available sources so that the University may meet its equal opportunity and affirmative action objectives.
  - d. To hire and promote qualified individuals, without regard to the individual's age, color, disability, ethnicity, familial status, gender, gender identity, gender expression, genetic information, height, marital status, national origin, political persuasion, pregnancy, childbirth, or related medical conditions, race, religion, sex, sex-based

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- stereotypes, sexual orientation, transgender status, veteran status, or weight.
- e. To disseminate information to a unit's employees about applicable civil rights laws and regulations as well as the University's equal opportunity and affirmative action objectives; including where to access this Protocol and the Complaint Procedures contained therein.
  - f. To coordinate the review and analysis of the unit's employment practices and procedures in order to prevent policy violations and to assure consistency with the University's equal opportunity and affirmative action objectives.
  - g. To assist in the maintenance of sufficient records to monitor compliance with equal opportunity and affirmative action objectives.

**D. Responsible Employees.** All responsible employees, as defined by the University's Sexual Misconduct Policy, shall report all allegations of harassment or discrimination on the basis of gender, gender expression, gender identity, pregnancy, childbirth, or related medical conditions, sex, sex-based stereotypes, pregnancy, childbirth, or related medical conditions sexual orientation, transgender status, to the University's Title IX Coordinator, the Executive Director of the Office of Civil Rights and Institutional Equity.

## **ARTICLE IV COMPLAINT PROCEDURES**

### **A. Purpose**

- 1. These Complaint Procedures are established to encourage all members of the University Community to seek redress for prohibited discrimination and harassment, as identified in Article II of this Protocol.
- 2. Accordingly, these Complaint Procedures:
  - a. Establish procedures to eliminate prohibited discrimination within the University.
  - b. Establish that the Affirmative Action Officer is the University official charged with the implementation of these Complaint Procedures.
  - c. Establish that OCRIE is the primary location to which members of the University Community are encouraged to report allegations and concerns of discrimination and harassment, as prohibited by Article II of this Protocol.
  - d. Establish a mediation and investigation vehicle within the campus community to receive and resolve complaints of alleged prohibited discrimination and harassment, as prohibited by Article II of this

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- e. Require all supervisors to assure that these Complaint Procedures are made accessible to members of the University Community.

**B. Coverage and Application**

1. Any member of the University Community who believes that they have been discriminated against or harassed in ways prohibited by Article II of this Protocol by the action of another member of the University Community or by a University policy, procedure or regulation may file a complaint under the University's Complaint Procedures, except as set forth in this Article IV.B.
2. The provisions of these Complaint Procedures do not apply to:
  - a. Any complaint which is not related to conduct prohibited by this Protocol.
  - b. Matters relating to judgments concerning grades, matriculation and academic discipline or performance. (These matters are subject to separate University or college complaint procedures.)
  - c. Matters concerning the general administration of this Protocol.
  - d. Matters which are subject to coverage or application by the University's Sexual Misconduct Policy. Such matters will be considered under the Sexual Misconduct Policy.
3. A University employee who files a complaint with OCRIE involving the same matters as those involved in a complaint or procedure initiated at any time by that employee under the terms of:

- a collective bargaining agreement with the University;
- the Procedures for Handling Questions of Professional Concern Involving One or More Members of the Teaching Faculty; or
- the Professional Administrative Handbook

(Herein "Alternative Employee Procedure"), is not entitled to proceed under these Complaint Procedures if the employee is proceeding under the Alternative Employee Procedure. (OCRIE does not have the right to terminate the Alternative Employee Procedure or the consideration of any issue(s) brought through the Alternative Employee Procedure.) Within fourteen (14) calendar days after receipt of knowledge that an employee is proceeding under both these Complaint Procedures and the Alternative Employee Procedure (in a factual setting in which the Alternative Employee Procedure permits a resolution of the claims raised under these Complaint Procedures), OCRIE, after consultation with the appropriate personnel office, shall decide whether to consider the claims of a violation of this Protocol under these Complaint Procedures. (A factor to be considered by OCRIE in making this decision is whether the substance of the alleged

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violation of this Protocol will be addressed in the Alternative Employee Procedure.) Relevant parties shall be provided written notice of this decision. OCRIE is entitled to participate in a joint investigation with the appropriate personnel office and that office is entitled to participate in a joint investigation with OCRIE.

4. A student who files a complaint with OCRIE involving the same matters as those involved in another University procedure initiated at any time by that student with another University office (herein "Alternative Student Procedure") is not entitled to proceed under these Complaint Procedures if the student is proceeding under the Alternative Student Procedure. (OCRIE does not have the right to terminate the Alternative Student Procedure or the consideration of any issue(s) brought through the Alternative Student Procedure.). Within fourteen (14) calendar days after receipt of knowledge that a student is proceeding under both these Complaint Procedures and an Alternative Student Procedure (in a factual setting in which the Alternative Student Procedure permits a resolution of the claims raised under these Complaint Procedures), OCRIE, after consultation with the University office in charge of the Alternative Student Procedure, shall decide whether to consider the claims of a violation of the Protocol under these Complaint Procedures. (A factor to be considered by OCRIE in making this decision is whether the substance of the alleged violation of the Protocol will be addressed in the Alternative Student Procedure.) Relevant parties shall be provided written notice of this decision. OCRIE is entitled to participate in a joint investigation with the University office in charge of the Alternative Student Procedure and that office is entitled to participate in a joint investigation with OCRIE.
5. In order for a complaint to be considered under these Complaint Procedures, the complaint must be submitted to OCRIE within ninety (90) calendar days of the occurrence of the alleged act(s) of discrimination or, if it is later, within ninety (90) calendar days of the date the alleged acts of discrimination became known or should have become known to the complainant(s). For good cause shown, OCRIE may extend this time limit.
6. In cases where the coverage or application of these Complaint Procedures is in dispute, the President, or designee, will make the final judgment as to whether or not a particular matter is subject to coverage or application by these Complaint Procedures.
7. The President may postpone these Complaint Procedures for any reason that in their judgment is warranted by administrative considerations. Notification of postponement of the proceedings under these conditions shall be made in writing to the complainant(s), the respondent(s), OCRIE, and other relevant parties.
8. If a person files a complaint against the Executive Director or an employee of OCRIE alleging that such an employee has discriminated against the

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Complainant(s) in ways prohibited by Article II of the Protocol, the University's General Counsel, or designee, will perform the complaint resolution duties of OCRIE.

### **C. General Principles**

1. The University will give special scrutiny to situations where a charge of discrimination or harassment is made in which freedom of choice is impaired because one person has the authority to make decisions or affect recommendations which may have an impact over the employment, education, housing, programs, activities, or services of the person complaining.
2. OCRIE shall advise each complainant(s) of their right to file a complaint with appropriate federal and state agencies. A list of the most commonly contacted agencies (with relevant contact information) is attached to the Protocol and will be updated as necessary by OCRIE (See Attachment 1.)
3. Violations of this Protocol must be established to the satisfaction and in the sole judgment of OCRIE, by a preponderance of the evidence: i.e., it is more likely that a violation did occur than that a violation did not occur.
4. The confidentiality of information provided to OCRIE will be accorded the utmost respect. However, information received by OCRIE may be disclosed by OCRIE in the following situations:
  - a. To the extent provided by this Protocol (e.g., Article IV.D.3.c.).
  - b. To the extent necessary (1) to eliminate discriminatory conduct; or (2) to complete an investigation under these Complaint Procedures, an Alternative Employee Procedure, or an Alternative Student Procedure; or (3) to complete any resulting disciplinary proceeding.
  - c. To the extent required by law, including the Michigan Freedom of Information Act, the Michigan Bullard-Plawecki Employee Right to Know Act, or the Family Educational Rights and Privacy Act, or pursuant to a subpoena, an order to respond to any inquiry or complaint from or filed with any government entity (e.g., the Michigan Employment Relations Commission or the Michigan Department of Civil Rights), or an order of any court or administrative agency.

### **D. Procedure**

1. Pre-Complaint Efforts at Resolution
  - a. A member of the University Community may discuss that individual's concerns directly with the person engaging in the conduct or communication which is alleged to violate Article II of this Protocol.

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- b. The University also encourages a University employee who believes that they have been discriminated against or harassed in ways prohibited by Article II of this Protocol to discuss the concern with their supervisor or the supervisor of the area where the discrimination or harassment is alleged to have taken place. Similarly, the University encourages a student to discuss their concern with the appropriate authority of the relevant area, such as the Department Chair or Residence Hall Director.
- c. Any member of the University Community may confer informally with OCRIE about conduct that might be a violation of this Protocol. Even if an individual determines not to file a complaint, OCRIE may conclude that it is necessary to investigate allegations brought forth informally.

2. Inquiry Stage

- a. A member of the University Community may, at any time, file a complaint with OCRIE alleging that they have been discriminated against or harassed in a way prohibited by Article II of this Protocol. This complaint may be given verbally or in writing. The complainant(s) will be requested to file a written complaint.
- b. The President, a Vice President, a Dean, or the administrative head of either personnel office may file a complaint with OCRIE asking OCRIE to investigate certain conduct within the University Community that that individual believes may be violating the provisions of this Protocol. This complaint must be given in writing.
- c. OCRIE may on its own initiative undertake an inquiry of certain conduct within the University Community that OCRIE believes may be violating the provisions of this Protocol. OCRIE shall notify the University's General Counsel in writing of the commencement of such an inquiry.
- d. When a complaint has been received, OCRIE will interview the complainant(s). The interview(s) shall be conducted in private unless OCRIE and the complainant(s) agree otherwise. After the interview(s) with the complainant(s) OCRIE will request that a written summary of the complaint be constructed by the complainant(s).
- e. At the Inquiry Stage, OCRIE will comply with complaint notification requirements contained in applicable collective bargaining agreements and/or University policies, including any obligation to notify the appropriate personnel office of a complaint filed against a bargaining unit member.
- f. OCRIE will have sixty (60) calendar days after the filing of a written complaint to evaluate the complaint and to attempt to resolve the complaint. If the complaint is not resolved or otherwise concluded

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during this sixty (60) calendar day period, the Inquiry Stage may be extended as set forth in Article IV.D.2.1 or an Investigation may be commenced as set forth in Article IV.D.3. If the complaint alleges discrimination or harassment resulting from a University policy, procedure or regulation, OCRIE shall follow the procedures set forth in Article IV.D.4.

- g. At any point during the Inquiry Stage OCRIE may (1) refer the complaint and information received to another department because the matter will be more appropriately addressed by another department at the University or (2) direct that the Investigation Stage procedures be used. If OCRIE refers the complaint to another department, a copy of this decision may also be provided to the administrative head of the appropriate personnel office or to the Director of the Office of Student Conduct, if one of those individuals has been notified of the complaint.
- h. At any point during the Inquiry Stage OCRIE may conclude that no violation of the Protocol has taken place. OCRIE shall notify the complainant(s) and the respondent(s), if the respondent(s) has been notified of the complaint, of this decision. In addition, notice of this decision may be provided to the administrative head of the appropriate personnel office or to the Director of the Office of Student Conduct, if one of those individuals has been notified of the complaint.
- i. During this Inquiry Stage OCRIE may review the substance of the complaint with the respondent(s) and may interview the respondent(s) and/or other individuals as OCRIE may deem appropriate. Each interview shall be conducted in private unless OCRIE determines otherwise or unless required by an applicable collective bargaining agreement. OCRIE may review the physical evidence that OCRIE deems appropriate.
- j. If the respondent(s) is an employee of the University, OCRIE may discuss the complaint and any possible resolution with the administrative head, or designee, of the appropriate personnel office. If the respondent(s) is a student, OCRIE may discuss the complaint and any possible resolution with the Director, or designee, of the Office of Student Conduct.
- k. OCRIE, complainant(s) and respondent(s) may agree to a resolution (herein "Consent Resolution") of a complaint during the Inquiry Stage. The Consent Resolution shall be placed in writing and, if appropriate, signed by OCRIE, the complainant(s) and the respondent(s). This Consent Resolution may include a statement that a violation of this Protocol has taken place, that a violation of this Protocol has not taken place, or that there is insufficient evidence to conclude that a violation of this Protocol has taken

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place. At the Inquiry Stage, this Consent Resolution may include remedial action but not discipline or a change in working conditions covered by an applicable collective bargaining agreement or employment agreement. However, at the Inquiry Stage, a Consent Resolution closing a complaint filed with OCRIE does not preclude discipline or a change in working conditions sought by other CMU departments, colleges, or administrators, where conduct of a party also violates or fails to conform with policies or performance requirements other than those contained in this Protocol. In this regard, any discipline sought should only be taken in accordance with an applicable collective bargaining or employment agreements.

- l. If at any point during the Inquiry Stage a complainant(s) files a complaint under an Alternative Employee Procedure or Alternative Student Procedure, the provisions of Article IV.B.3 and 4 apply.
- m. The Inquiry Stage may be extended beyond the initial sixty (60) calendar day period, at the discretion of OCRIE, where good cause is shown for further review. Each written extension shall state the reason good cause necessitates further review and be distributed to the complainant(s), and the respondent(s), if the respondent(s) has been notified of the complaint, and specify the estimated date the Inquiry Stage will terminate.

3. Investigation Stage

- a. If the complaint is not resolved at the Inquiry Stage, the Investigation Stage will commence at the conclusion of the Inquiry time period, including any applicable extensions, or at the time that OCRIE deems that the Investigation Stage shall begin.
- b. If the complainant(s) has not completed the preparation of the written complaint as requested by Article IV.D.2.d, that shall be completed at this time.
- c. The investigatory process conducted under this Protocol is at the discretion of the Executive Director of the Office of Civil Rights and Institutional Equity. As a general guideline however, it may be expected that within twenty-one (21) calendar days after the Investigation Stage begins, OCRIE shall send written notice that a complaint has been received to the respondent(s). In addition, if the respondent(s) is an employee of the University, a copy of the written notice may be provided to the Vice-President for the respondent's division, the administrative head of the appropriate personnel office and other appropriate persons. If the respondent(s) is a senior officer or an employee in the President's Division, a copy of the written notice may be sent to the President. If the respondent is the President, a copy of the written notice may be sent to the Chair of

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- the Board of Trustees. If the respondent(s) is a student, a copy of the written notice may be sent to the Office of Student Conduct and other appropriate persons. This notice shall indicate that an investigation under the provisions of this Protocol has commenced, identify the general substantive nature of the investigation, and include a request to meet with the respondent(s).
- d. If the respondent(s) is an employee of the University, OCRIE may discuss with the administrative head of the appropriate personnel office, or designee, the appropriateness of conducting a joint investigation. OCRIE is entitled to participate in a joint investigation with the personnel offices and the personnel offices are entitled to participate in a joint investigation with OCRIE.
  - e. If the respondent(s) is a student, OCRIE may discuss with the Director of the Office of Student Conduct, or designee, the appropriateness of conducting a joint investigation. OCRIE is entitled to participate in a joint investigation with the Office of Student Conduct or the office in charge of the Alternative Student Procedure, and these offices are entitled to participate in a joint investigation with OCRIE.
  - f. If not done during the Inquiry Stage, OCRIE shall review the substance of the complaint with the respondent(s) and interview the respondent(s), consistent with the provisions of any applicable collective bargaining agreements. The respondent(s) will be requested to file a written response but will not be required to do so.
  - g. It is within OCRIE's discretion to determine which evidence it will consider or witnesses to interview. OCRIE, at its discretion, may consider character witness evidence only under exceptional circumstances
  - h. If the Investigation Stage is not completed within sixty (60) calendar days, OCRIE will notify the complainant(s) and respondent(s) of the reasons for the delay and give an estimated date for completing the investigation.
  - i. At any point during the Investigation Stage, OCRIE, the complainant(s) and the respondent(s) may agree to a Consent Resolution. The Consent Resolution must be placed in writing and signed by OCRIE, complainant(s) and respondent(s). If agreed upon by all parties, this Consent Resolution may include a statement that a violation of this Protocol has taken place, that a violation of this Protocol has not taken place, or that there is insufficient evidence to conclude that a violation of this Protocol has taken place. If the Consent Resolution includes the discipline of an employee or a change in working conditions covered by an applicable collective bargaining agreement or employment agreement, the appropriate supervisor and personnel office must agree in writing; if the Consent

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- Resolution includes the discipline of a student, the Office of Student Conduct must agree in writing.
- j. Unless the complaint is otherwise resolved, when OCRIE has completed the investigation, OCRIE shall prepare a written report which will include: (1) an overview of the investigation undertaken; (2) a summary of all evidence and testimony reviewed and considered; (3) findings of fact based on the available evidence and testimony; (4) a conclusion as to whether or not a violation of the Protocol occurred; (5) the rationale and analysis in support of the findings and conclusions; (6) recommended sanctions or other interventions; and (7) notice of any appeal rights.
  - k. Prior to the written report described above being made final, the complainant(s) and the respondent(s) will be given the opportunity to review (1) an overview of the investigation undertaken; and (2) a summary of all evidence and testimony reviewed and considered. OCRIE will provide simultaneous written notice to the complainant(s) and the respondent(s) that this information is available for review. This information will be available for review for at least three (3) days. This information will be reviewed in person and under the supervision of an OCRIE representative. No information reviewed may be removed from OCRIE's office by the complainant(s) or respondent(s). No photocopies, photographs, or other reproductions of the information may be made. The complainant(s) and the respondent(s) will have at least two (2) days after reviewing this information to provide written comments to OCRIE regarding the information to be included in the final report.
  - l. A copy of this final report, signed by the individual who prepared the final report, shall be provided to the complainant(s) and the respondent(s) and may be provided to all other persons initially notified of the complaint. Immediately thereafter, all interview notes will be destroyed as relevant information from these notes will have been incorporated into the report.
  - m. After the investigation, if OCRIE (with respect to some portion or all of the complaint) has concluded that a violation of the Protocol has not taken place or that there is insufficient evidence to conclude that a violation of this Protocol has taken place, that portion of the complaint shall be dismissed. Notice of the dismissal of the complaint shall be reported in writing to the complainant(s) and the respondent(s), and may be reported to all other persons initially notified of the complaint.
  - n. After the investigation, if OCRIE has concluded that a violation of this Protocol has taken place, OCRIE shall report this conclusion in writing to the complainant(s), the respondent(s), and appropriate supervisory or disciplinary offices as necessary. All other persons

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- o. initially notified of the complaint may also be notified.
- o. If OCRIE has concluded that a violation of this Protocol has taken place and if the respondent(s) is an employee of the University, the respondent(s) may be subject to sanction pursuant to an applicable collective bargaining agreement, employment contract or University procedures. The appropriate personnel office shall consult with OCRIE as to an appropriate sanction.
- p. If OCRIE has concluded that a violation of this Protocol has taken place and if the respondent(s) is a student, the respondent(s) may be subject to sanction by the Office of Student Conduct pursuant to the Code of Student Rights, Responsibilities, and Disciplinary Procedures. The Office of Student Conduct shall consult with OCRIE as to an appropriate sanction.

4. Complaint Against a University Policy, Procedure or Regulation

There is the possibility that a member of the University Community may be discriminated against as a result of a University Policy, procedure or regulation. If OCRIE determines, during the Inquiry Stage or Investigation Stage, that the complaint alleges discrimination resulting from a University policy, procedure or regulation (see exception in Article IV.B.2.c.), the following procedures shall apply:

- a. OCRIE shall send written notification of the complaint to the complainant(s), the appropriate Vice President, the University's General Counsel and other appropriate persons. This notification shall indicate that an investigation under the provisions of this Protocol has commenced, identify the general substantive nature of the complaint, and include a request to meet with the appropriate University officials.
- b. OCRIE may review physical evidence and may interview those individuals that OCRIE deems appropriate. OCRIE may, but is not required to, interview individuals whose names are provided by the complainant(s) or the Vice President. Each interview shall be conducted in private unless OCRIE determines otherwise.
- c. If this review process is not completed within sixty (60) calendar days, OCRIE will notify the complainant(s) and the Vice President of the reasons for delay and give an estimated date for completing the review process.
- d. At any point OCRIE, the complainant(s), and the Vice President may agree to a Consent Resolution. The Consent Resolution must be placed in writing and signed by OCRIE, the complainant(s), and the appropriate Vice President.
- e. Unless the complaint is otherwise resolved, when OCRIE has completed this review process, OCRIE shall prepare a written report which will include: (1) findings of fact; (2) recommendations; and

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- (3) conclusions. A copy of this report shall be provided to the complainant(s), respondent(s), and all parties deemed appropriate by OCRIE.
- f. After the review process has been completed, if OCRIE (with respect to some portion or all of the complaint) concludes that a violation of the Protocol has not taken place or that there is insufficient evidence to conclude that a violation of the Protocol has taken place, that portion of the complaint shall be dismissed. Notice of the dismissal of the complaint shall be reported in writing to the complainant(s), respondent(s), and all parties deemed appropriate by OCRIE.
- g. After the review process has been completed, if OCRIE concludes that a University policy, procedure or regulation has been the cause of a violation of this Protocol, OCRIE will report this conclusion in writing to the complainant(s), the President, and all parties deemed appropriate by OCRIE.

5. Appeal Procedure

- a. The employees within OCRIE have experience in conducting investigations of complaints related to discrimination based on protected characteristics and expertise in the application of federal and state discrimination laws to factual conclusions based on their investigations of complaints. The written reports prepared by OCRIE following an investigation will generally include findings of facts, recommendations, and conclusions. A complainant or a respondent may only appeal a final determination by OCRIE on the grounds that there has been the discovery of new information or evidence that: i) could materially affect the conclusion as to whether or not a violation of the Protocol occurred; and ii) was not known or could not reasonably have been known during the investigation. Evidence that was known to a complainant or respondent prior to the determination being made available to the parties, but withheld by that individual during the investigation, does not constitute new information. A complainant or a respondent's claim that they did not know about specific evidence contained within the determination or that they did not have an opportunity to respond to certain information within the determination, including the analysis of the evidence, does not constitute the discovery of new information or evidence.
- b. An appeal may not be based on a conclusion of OCRIE that a complaint should be dismissed because the conduct or communication complained of is protected by the First Amendment of the United States Constitution.

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- c. The appeal must be made in writing to the President, directed to the Executive Assistant to the President, and delivered to the office of the President in 106 Warriner Hall within seven (7) calendar days of receipt of notice of the availability of the conclusion reached by OCRIE that is being appealed.
- d. The individual filing an appeal must establish in their written appeal, by a preponderance of the evidence, sufficient information to show that, if taken as true, their appeal satisfies the requirements of the Protocol.
- e. No disciplinary or other action based on the findings and conclusions of the OCRIE shall be taken against the respondent during the appeal process, although temporary measures may be instituted or continued.
- f. Within fourteen (14) days of receiving a written appeal, the President, or designee, shall make an initial determination regarding whether or not the content of the written appeal, if taken as true, establishes by a preponderance of the evidence sufficient grounds for an appeal pursuant to section -- of these Procedures.
  - i. If there are insufficient grounds for an appeal, the President, or designee, shall provide the complainant, the respondent, and OCRIE with concurrent written notice that the appeal has been denied and dismissed.
  - ii. If there are sufficient grounds for an appeal, the President, or designee, shall provide the complainant, the respondent, and OCRIE with concurrent written notice that the appeal has been granted and for OCRIE to re-open and proceed with its investigation in light of the new evidence, which may include additional interviews of the complainant, respondent, or witnesses.

*Central Michigan University reserves the right to make exceptions to, modify or eliminate this policy and or its content. This document supersedes all previous policies, procedures or guidelines relative to this subject.*

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ATTACHMENT 1

In addition to the rights provided by the CMU Equal Opportunity and Affirmative Action Protocol, including the right to file a complaint under Article IV, you may have the right to file a complaint with the Michigan Department of Civil Rights and/or a federal agency. The names and addresses of the most frequently used agencies are as follows:

**United States Equal Employment Opportunity Commission**

Detroit Field Office  
Patrick V. McNamara Building  
477 Michigan Avenue, Room 865  
Detroit, MI 48226  
Telephone: (800) 669-4000  
Fax: (313) 226-4610  
TTY: (800) 669-6820

**Office of Federal Contract Compliance Programs, U.S. Department of Labor**

Detroit District Office  
211 West Fort Street, Suite 1320  
Detroit, MI 48226  
Telephone: (313) 442-3360  
Fax: (313) 226-3254

**Office for Civil Rights, US Department of Education**

Cleveland Office  
Office for Civil Rights  
U.S. Department of Education  
1350 Euclid Avenue, Suite 325  
Cleveland, OH 44115-1812  
Telephone: (216) 522-4970  
Fax: (216) 522-2573  
TDD: (800) 877-8339

**Michigan Department of Civil Rights**

**-Note: MDCR recommends an appointment for all locations**

WATS for all MDCR Locations: (800) 482-3604

**Detroit Executive Office**  
Cadillac Place  
3054 West Grand Boulevard  
Suite 3-600  
Detroit, MI 48202  
Telephone: (313) 456-3700  
Fax: (313) 456-3701

**Grand Rapids Office**  
State Office Building  
4th Floor  
350 Ottawa, NW  
Grand Rapids, MI 49503  
Telephone: (616) 356-0380  
Fax: (616) 356-0399  
TTY: (616) 356-0391

**Lansing Executive Office**  
Capital Tower Building  
110 West Michigan Avenue  
Suite 800  
Lansing, MI 48933  
Telephone: (517) 335-3165  
Fax: (517) 241-0546  
TTY: (517) 241-1965