

Title/Subject: **AFFIRMATIVE ACTION PROTOCOL**

Applies to: faculty staff students student employees visitors contractors

Effective Date of This Revision: November 8, 1999

Contact for More Information: Affirmative Action Office

Board Policy Administrative Policy Procedure Guideline

EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION PROTOCOL

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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 diverse campus because doing so will benefit its students. Some of these expected benefits include the following:

- * A diverse University community of faculty, staff, and students and a curriculum that deals with diversity issues helps develop important skills such as flexibility, critical thinking, and team work.
- * A diverse University community has a positive effect on academic achievement and on over-all satisfaction with the University experience.
- * Students who learn in a diverse setting are more likely to feel comfortable interacting with people different from themselves, to be more aware of racial and other cultural issues, and to promote tolerance in other aspects of their lives beyond the University.

Creating such a community involves recruiting and retaining students, faculty, and staff from all backgrounds and providing them 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 to eliminate discrimination and provide equal opportunity in compliance with applicable laws and regulations and because it is in accord with our educational mission. On December 5, 1997, the Board of Trustees 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, gender, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight. Limitations are appropriate if they are directly related to a legitimate university purpose, are required by law, are lawfully required by a grant or contract between the university and the state or federal government, or address domestic partner benefits.

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 Central Michigan University Equal Opportunity and Affirmative Action Protocol.

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ARTICLE II: PROHIBITED DISCRIMINATION

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 faculty, staff, and students of the University, University organizations, and contractors in connection with their agreements with the University (herein "University Community"), are prohibited from engaging in unlawful acts of discrimination. Unlawful discrimination is defined by the statutes and regulations of the United States and State of Michigan and includes discrimination in employment, education, housing, and services based upon the following criteria:

Employment:

Age, citizenship or intending citizenship, color, disability, disabled veteran and/or Vietnam-era veteran, height, marital status, national origin, race, religion, sex, weight.

Housing:

Age, color, disability, disabled veteran and/or Vietnam-era veteran, familial status, marital status, national origin, race, religion, sex.

Education:

Age, color, disability, disabled veteran and/or Vietnam-era veteran, national origin, race, religion, sex.

Services:

Age, color, disability, disabled veteran and/or Vietnam-era veteran, marital status, national origin, race, religion, sex.

The University will interpret and apply this policy of prohibited discrimination 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, not to regulate the content of speech. 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 adopted by the Board of Trustees dated December 5, 1997, or (b) Article II.B.1., the following conduct constitutes a violation of the Protocol and is prohibited:

a. Discrimination on the basis of sexual orientation or perceived sexual orientation in employment, education, housing, programs, activities, and services. For the purposes of employment or access to educational services, housing, programs, activities and other services, University faculty or staff are prohibited from inquiring about an individual's sexual orientation.

b. Discrimination on the basis of political persuasion in employment, education, housing, programs, activities, and services.

c. Unwelcome conduct or communication by an employee of the University in that individual's role as an employee of the University that is based upon sexual orientation when:

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(1) Submission to such conduct or communication is made a term or a condition of an individual's education, employment, housing, or participation in University activities; or,

(2) Submission to or rejection of such conduct by an individual is used as a factor in decisions affecting an individual's education, employment, housing, or participation in University activities.

d. Unwelcome conduct or communication by an employee of the University in that individual's role as an employee of the University that is based upon color, ethnicity, national origin, race or sexual orientation when:

Such conduct or communication has the effect of creating an intimidating, hostile, or offensive environment for an individual's education, employment, housing, or participation in University activities. The University recognizes that the offensiveness of 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 this Article II.B.2.d.

e. Threats or abusive or contemptuous statements made by an employee of the University in that individual's role as an employee of the University directed toward another individual based upon that other individual's actual or perceived color, ethnicity, national origin, race, religion, sex, or sexual orientation.

f. 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 color, national origin, race, religion, sex, or sexual orientation 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.

g. Retaliation of any nature taken by anyone in the University Community against a member of the University Community as a result of his or her seeking redress under the Protocol, cooperating in an investigation, or otherwise participating in proceedings brought under the Protocol. This 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 illegal discrimination under the civil rights laws of the United States and/or State of Michigan 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 pursuant to the employee's contract or collective bargaining agreement.

C. Applicable Laws: Nondiscrimination

Central Michigan University as an equal opportunity and affirmative action institution complies with federal and state laws prohibiting discrimination. The significant laws of the United States and the State of Michigan affording protection from discrimination to employees and students are as follows:

1. Federal Law:

* The Civil Rights Act of 1964 as amended and expanded

* The Equal Employment Act of 1972

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- * The Civil Rights Act of 1991
- * The Immigration Reform and Control Act of 1986 as amended by the Immigration Act of 1990
- * The Americans with Disabilities Act of 1990
- * The Rehabilitation Act of 1973
- * Veterans' Readjustment Assistance Act of 1974 as amended
- * The Age Discrimination in Employment Act
- * The Age Discrimination Act of 1975
- * Title IX of the Education Amendments of 1972, as amended by the Civil Rights Restoration Act of 1987

2. State Laws of Michigan:

- * The Elliott-Larsen Civil Rights Act
- * The Michigan Persons With Disabilities Civil Rights Act

3. Sexual Harassment Laws:

a. The laws of the United States and State of Michigan define and prohibit sexual harassment as a form of sex discrimination. Sexual harassment is defined in the Michigan Elliott Larsen Civil Rights Act (MCLA 37.2103) as ". . . unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when:

- (1) Submission to such conduct or communication is made a term or condition either explicitly or implicitly to obtain employment, public accommodations or public services, education, or housing.
- (2) Submission to or rejection of such conduct or communication by an individual is used as a factor in decisions affecting such individual's employment, public accommodations or public services, education, or housing.
- (3) Such conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment."

b. In order to provide guidance for the University Community, the following definitions or standards apply to Articles II.B.2. and II.C.3.:

- (1) Unwelcome: Conduct or communication is "unwelcome" if the complainant did not solicit or incite the conduct or communication, and the complainant regards the conduct or communication as undesirable or offensive. Conduct or communication is also "unwelcome" if made after the complainant has clearly notified the alleged harasser that the conduct or communication is undesirable or offensive.
- (2) Sexual Harassment will be regarded as encompassing otherwise covered conduct or communication from a male to a female, a male to a male, a female to a male, or a female to a female.

c. The following factors will be considered when determining if conduct or communication constitutes sexual harassment:

- (1) Relationships Which Impair Choice: The University will give special scrutiny to situations where a charge of sexual harassment is made in which freedom of choice is impaired because one person has authority to make decisions or to affect recommendations which may have an impact over the employment, education, housing, programs, activities, or services of the person complaining.
- (2) The University recognizes that the offensiveness of a particular expression as perceived by some members of the University Community, standing alone, is not a legally sufficient basis to establish sexual harassment.

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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 Act of 1974
- * Veterans Assistance Act of 1972

Executive Order 11246 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 specified minority groups and women (the "protected classes"), and (2) to set goals and timetables 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 60-2.10). CMU's utilization analysis, goals and timetables constitute its Affirmative Action Plan. The contents of that Plan change annually. The current version shall be deemed part of this Protocol and is available in the Affirmative Action Office and other campus locations.

The University also maintains an affirmative action program for disabled veterans and veterans of the Vietnam era. This program is described in the document, Affirmative Action Program of Central Michigan University for Disabled Veterans and Veterans of the Vietnam Era, which shall also be deemed part of this Protocol and is available in the Affirmative Action Office.

E. Summary of Applicable Law

The University also maintains a brochure/chart titled Federal Laws and Regulations: Equal Opportunity/Affirmative Action in Employment and Education, which is available in the University's Affirmative Action Office.

ARTICLE III: EXECUTIVE RESPONSIBILITY AND IMPLEMENTATION

A. Affirmative Action Officer

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 Affirmative Action Office administered by the Affirmative Action Officer. The Affirmative Action Officer reports directly to the University Counsel. The Affirmative Action Officer shall:

1. Advocate for the University's equal opportunity and affirmative action objectives.
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 with the related appropriate authority and supervise the preparation and implementation of the University's Affirmative Action Plan.

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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 employees and students concerning alleged discriminatory behavior by the University, any office or unit of the University, or any member of the University Community.
7. Assist in 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 Dean of Students, 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. Review the recruitment process and documentation and give written approval in all faculty and senior officer searches. The Affirmative Action Officer will, at a minimum, approve (1) vacancy announcements and their placements, (2) the designation of the final pool of candidates to be interviewed, and (3) the final selection. The Affirmative Action Officer 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 Affirmative Action Officer does not give approval of the posting and advertising stage, the interview stage, and the final selection stage, the position may be filled 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 the Staff Equal Opportunity Officer (see Article III.B) and coordinate the implementation of equal opportunity and affirmative action policies in the hiring of non-faculty, non-senior officer 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 University Counsel 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.
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.

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B. Staff Equal Employment Opportunity Officer

Certain affirmative action and equal opportunity responsibilities related to employee groups other than faculty and senior officers shall be carried out by the member of the staff of Human Resources/Staff who has primary responsibility for the hiring process and will be designated as the Staff Equal Opportunity Officer. The Staff Equal Opportunity Officer will be under the policy direction of the Affirmative Action Officer only for matters relating to equal opportunity and affirmative action.

The Staff Equal Opportunity Officer shall support the Affirmative Action Officer by:

1. Monitoring all Human Resources/Staff 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 written approval in all searches other than those for faculty and senior officers. The Staff Equal Employment Officer will, at a minimum, approve (1) vacancy announcements and their placements and (2) the final selection. The Equal Employment Officer 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 Staff Equal Opportunity Officer does not give approval of the posting and advertising stage and the final selection stage, the position may be filled only with the President's approval.
3. Serving as an assistant and resource to the Affirmative Action Office on all equal opportunity and affirmative action matters relating to staff employment including employment policies, practices, and obligations of the University.
4. Providing technical and research assistance to the Affirmative Action Office and assisting in conducting studies such as utilization studies of University employee groups and salary equity studies related to nondiscrimination policies and assisting in monitoring the goals and timetables of the Affirmative Action Plan for University employees other than faculty and senior officers.
5. Assisting in providing training for employees on equal opportunity and affirmative action topics.
6. Advising and assisting offices in interpreting equal opportunity and affirmative action requirements.
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 the Affirmative Action Officer 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: Provost, Vice Presidents, Assistant/Associate Vice Presidents, Deans, Directors, Department Chairpersons, and all other employees who have equal opportunity and affirmative action responsibilities.

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

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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 the 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, citizenship or intending citizenship, color, disability, disabled veteran status, Vietnam veteran status, height, marital status, national origin, race, religion, sex, sexual orientation, 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.
- 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. Unit Affirmative Action Coordinators

1. A Unit Affirmative Action Coordinator will be designated for the Business and Finance Division, the University Advancement Division, the President's Division, and the Academic Affairs Division and at least the following units within the Academic Affairs Division: each academic college, the Library, College of Extended Learning, College of Graduate Studies, Dean of Students, Information Technology, and Institutional Diversity. The Unit Affirmative Action Coordinators shall assist in carrying out equal opportunity and affirmative action responsibilities in their respective areas. The Unit Affirmative Action Coordinators, the Affirmative Action Officer, and the Staff Equal Opportunity Officer will meet at least once a year to discuss relevant regulations, laws, University policies, guidelines, and programs regarding equal opportunity and affirmative action.

2. After consultation with the Affirmative Action Officer the administrative head of a division and/or unit shall select the Unit Affirmative Action Coordinator for that division and/or unit.

3. The Unit Affirmative Action Coordinators will assist the Affirmative Action Officer and other University personnel in carrying out the following responsibilities:

- a. Serving as liaison among the Unit Affirmative Action Coordinator's division, its unit(s) and the Affirmative Action Office.
- b. Promoting an environment free of conduct which violates this Protocol.
- c. Implementing the Plan for Affirmative Action.
- d. Assisting the division and units in the goal setting process.
- e. Monitoring recruitment methods of the division and its units.
- f. Maintaining files of appropriate recruitment resources and potential candidates.

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g. Monitoring University records to assure that applicants are given consideration for vacant positions and/or promotions without regard to the applicant's age, citizenship or intending citizenship, color, disability, disabled veteran status, Vietnam veteran status, height, marital status, national origin, race, religion, sex, sexual orientation, or weight.

h. Keeping the division and its units informed of the University's equal opportunity and affirmative action objectives.

ARTICLE IV: COMPLAINT PROCEDURES

A. Purpose

1. These Complaint Procedures are established in the hope that their accessibility and speed will encourage all members of the University Community to seek redress for prohibited discrimination as identified in Article II.
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 the Affirmative Action Office is the primary location to which members of the University Community are encouraged to report allegations and concerns of discrimination.
 - d. Establish mediation and investigation vehicles within the campus community to receive and resolve complaints of alleged prohibited discrimination.

B. Coverage and Application

1. Any member of the University Community who believes that he or she has been discriminated against in ways prohibited by Article II of the 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 the 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 the Protocol.
 - d. External applicants for admission or employment, potential students or visitors. However, all such individuals who allege discrimination by any part of the University are encouraged to submit the relevant facts of such allegations to the Affirmative Action Office for review.
3. A University employee who files a complaint with the Affirmative Action Office involving the same matters as those involved in a procedure initiated at any time by that employee under the terms of:

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-- 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. (The Affirmative Action Officer 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 ten (10) working 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), the Affirmative Action Officer, after consultation with the appropriate personnel office, shall decide whether to consider the claims of a violation of the Protocol under these Complaint Procedures. (A factor to be considered by the Affirmative Action Officer in making this decision is whether the substance of the alleged violation of the Protocol will be addressed in the Alternative Employee Procedure.) Relevant parties shall be provided written notice of this decision. The Affirmative Action Officer 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 the Affirmative Action Office.

4. A student who files a complaint with the Affirmative Action Office 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. (The Affirmative Action Officer 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 ten (10) working 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), the Affirmative Action Officer, 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 the Affirmative Action Officer 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. The Affirmative Action Officer 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 the Affirmative Action Office.

5. In order for a complaint to be considered under these Complaint Procedures, the complaint must be submitted to the Affirmative Action Office 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 time the alleged(s) act of discrimination became known or should have become known to the complainant. For good cause shown, the Affirmative Action Officer 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 terminate or postpone these Complaint Procedures for any reason that in his or her judgment is warranted by administrative considerations. Notification of postponement or termination of the proceedings under these conditions shall be made in writing to the complainant, the respondent, the Affirmative Action Office, and other relevant parties.

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8. If a person files a complaint against the Affirmative Action Officer or an employee of the Affirmative Action Office alleging that he or she has discriminated against the Complainant in ways prohibited by Article II of the Protocol, the University Counsel, or designee, will perform the duties of the Affirmative Action Officer.

C. General Principles

1. The University will give special scrutiny to situations where a charge of discrimination 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. The Affirmative Action Officer shall advise each complainant of his or her 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 from time to time by the Affirmative Action Office.

3. The complainant shall be responsible for establishing that a violation of the Protocol has occurred 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 the Affirmative Action Office will be accorded the utmost respect. However, information received by the Affirmative Action Office may be disclosed by the Affirmative Action Officer in the following situations:

a. To the extent provided by the 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 Federal Education 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.

D. Procedure

1. Precomplaint Efforts at Resolution

a. A University employee or student may discuss that individual's concerns with the person engaging in the conduct or communication which is alleged to violate Article II. The University also encourages a University employee who believes that he or she has been discriminated against in ways prohibited by Article II to discuss the concern with his or her supervisor or the supervisor of the area where the discrimination is alleged to have taken place. Similarly, the University encourages a student to discuss his or her concern with the appropriate authority of the relevant area, such as the Department Chair or Residence Hall Director.

b. Any member of the University Community may confer informally with the Affirmative Action Officer about conduct that might be a violation of this Protocol. Even if an individual determines not to file a complaint, the Affirmative Action Officer may conclude that it is necessary to investigate the allegations.

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2. Inquiry Stage

- a. A University employee or student may, at any time, file a complaint with the Affirmative Action Office alleging that he or she has been discriminated against in a way prohibited by the Protocol. This complaint may be given verbally or in writing. The complainant will be requested to file a written complaint, but will not be required to do so.
- b. The President, a Vice President, a Dean, or the administrative head of either personnel office may file a complaint with the Affirmative Action Office asking the Affirmative Action Office to investigate certain conduct within the University Community that that individual believes may be violating the provisions of the Protocol. This complaint must be given in writing.
- c. The Affirmative Action Officer may on his/her initiative undertake an inquiry of certain conduct within the University Community that the Affirmative Action Officer believes may be violating the provisions of the Protocol. The Affirmative Action Officer shall notify the University Counsel in writing of the commencement of such an inquiry.
- d. When a complaint has been received, the Affirmative Action Officer will interview the complainant. The interview(s) shall be conducted in private unless the Affirmative Action Officer and the complainant agree otherwise. After the interview(s) with the complainant the Affirmative Action Officer will prepare a written summary of the complaint.
- e. The complainant will be given an opportunity to review the written summary of the complaint. If the complainant believes additional information is necessary, the complainant may provide that additional information in writing.
- f. The Affirmative Action Officer will have twenty-one (21) calendar days after the filing of a written complaint or after the Affirmative Action Officer has completed the interview(s) of the complainant as to the relevant facts, whichever is earlier, to evaluate the complaint and to attempt to resolve the complaint. If the complaint alleges discrimination resulting from a University policy, procedure or regulation, the Affirmative Action Officer shall follow the procedures set forth in Article IV.D. 4.
- g. At any point during the Inquiry Stage the Affirmative Action Officer 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. Either decision shall be placed in writing and a copy shall be provided to the complainant and to the respondent if the respondent has been notified of the complaint. A copy of this decision shall also be provided to the administrative head of the appropriate personnel office or to the Director of the Office of Student Life, if one of those individuals has been notified of the complaint.
- h. At any point during the Inquiry Stage the Affirmative Action Officer may conclude that no violation of the Protocol has taken place. The Affirmative Action Officer shall notify the complainant and the respondent, if the respondent has been notified of the complaint, of this decision. In addition, notice of this decision shall be provided to the administrative head of the appropriate personnel office or to the Director of the Office of Student Life, if one of those individuals has been notified of the complaint.
- i. At any point during the Inquiry Stage, and so long as the Affirmative Action Officer has not yet referred the complaint to another department of the University or concluded that no violation of the Protocol has taken place, either the complainant or respondent may request in writing that the Investigation Stage begin.
- j. During this Inquiry Stage the Affirmative Action Officer may review the substance of the complaint with the respondent and may interview the respondent and other individuals as the Affirmative Action Officer may deem appropriate. Each interview shall be conducted in private unless the Affirmative Action Officer and interviewee agree otherwise or unless required by an applicable collective bargaining agreement. The Affirmative Action Officer may review the physical evidence that the Affirmative Action Officer deems appropriate.

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k. If the respondent is an employee of the University, the Affirmative Action Officer may discuss the complaint and any possible resolution with the administrative head, or designee, of the appropriate personnel office. If the respondent is a student, the Affirmative Action Officer may discuss the complaint and any possible resolution with the Director, or designee, of the Office of Student Life.

l. The Affirmative Action Officer, complainant and respondent 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 the Affirmative Action Officer, the complainant and the respondent. This Consent Resolution may include a statement that a violation of the Protocol has taken place, 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. 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. This Consent Resolution does not preclude discipline or a change in working conditions, but those steps may only be taken in accordance with an applicable collective bargaining agreement or employment agreement.

m. If at any point during the Inquiry Stage a complainant files a complaint under an Alternative Employee Procedure or Alternative Student Procedure, the provisions of Article IV.B.3 and 4 apply. If the Affirmative Action Officer determines to resolve the claims under these Complaint Procedures, the Investigation Stage procedures shall be used.

n. If approved in writing by the Affirmative Action Officer, the complainant and the respondent, the Inquiry Stage may be extended (as many times as the parties agree) beyond the initial twenty-one calendar day period. Each written extension must specify the estimated date the Inquiry Stage will terminate.

3. Investigation Stage

a. The Investigation Stage will start at the termination of the Inquiry Stage or at the time that the Affirmative Action Officer, the complainant or the respondent requests in writing that the Investigation Stage begins.

b. If the Affirmative Action Officer and the complainant have not completed the preparation and review of the written summary as required by Article IV.D.2.d and e, those steps will now be completed.

c. Within ten (10) working days after the Investigation Stage begins, the Affirmative Action Officer shall send written notice that a complaint has been received to the complainant and the respondent. In addition, if the respondent is an employee of the University, a copy of the written notice shall 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 is a senior officer or an employee in the President's Division, a copy of the written notice shall be sent to the President. If the respondent is the President, a copy of the written notice shall be sent to the Chair of the Board of Trustees. If the respondent is a student, a copy of the written notice shall be sent to the Office of Student Life and other appropriate persons. This notice shall include the following information:

- 1) The name of the complainant.
- 2) The name of the respondent.
- 3) The type of the alleged discrimination.
- 4) The date(s) of the alleged discrimination.
- 5) The date of the start of the Investigation Stage.

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d. If the respondent is an employee of the University, the Affirmative Action Officer shall discuss with the administrative head of the appropriate personnel office, or designee, the appropriateness of conducting a joint investigation. The Affirmative Action Officer 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 the Affirmative Action Office.

e. If the respondent is a student, the Affirmative Action Officer shall discuss with the Director of the Office of Student Life, or designee, the appropriateness of conducting a joint investigation. The Affirmative Action Officer is entitled to participate in a joint investigation with the Office of Student Life or the office in charge of the Alternative Student Procedure, and these offices are entitled to participate in a joint investigation with the Affirmative Action Office.

f. If not done during the Inquiry Stage, the Affirmative Action Officer shall review the substance of the complaint with the respondent and interview the respondent. The respondent will be entitled to review a copy of any written complaint filed by the complainant with the Affirmative Action Office. The respondent will be requested to file a written response but will not be required to do so.

g. During the Investigation Stage the Affirmative Action Officer may review physical evidence and may interview those individuals that the Affirmative Action Officer deems appropriate. The Affirmative Action Officer may, but is not required to, interview individuals whose names are provided by the complainant or the respondent. Each interview shall be conducted in private unless the Affirmative Action Officer and interviewee agree otherwise.

h. If the Investigation Stage is not completed within forty-two (42) calendar days, the Affirmative Action Officer will notify the complainant and respondent of the reasons for the delay and give an estimated date for completing the investigation.

i. At any point during the Investigation Stage, the Affirmative Action Officer, the complainant and the respondent may agree to a Consent Resolution. The Consent Resolution must be placed in writing and signed by the Affirmative Action Officer, complainant and respondent. If agreed upon by all parties, this Consent Resolution may include a statement that a violation of the Protocol has taken place, 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. 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 Resolution includes the discipline of a student, the Office of Student Life must agree in writing.

j. Unless the complaint is otherwise resolved, when the Affirmative Action Officer has completed the investigation, the Affirmative Action Officer shall prepare a written report which will include the Affirmative Action Officer's (1) findings of fact and (2) conclusions. A copy of this report shall be provided to the complainant and the respondent and may be provided to all other persons initially notified of the complaint.

k. After the investigation, if the Affirmative Action Officer (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 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, the respondent and all other persons initially notified of the complaint.

l. After the investigation, if the Affirmative Action Officer has concluded that a violation of the Protocol has taken place, the Affirmative Action Officer shall report this conclusion in writing to the complainant, the respondent and all other persons initially notified of the complaint.

m. If the Affirmative Action Officer has concluded that a violation of the Protocol has taken place and if the respondent is an employee of the University, the respondent may be subject to sanction pursuant to an applicable

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collective bargaining agreement, employment contract or University procedures. The appropriate personnel office shall consult with the Affirmative Action Officer as to an appropriate sanction.

n. If the Affirmative Action Officer has concluded that a violation of the Protocol has taken place and if the respondent is a student, the respondent may be subject to sanction by the Office of Student Life pursuant to the Code of Student Conduct. The Office of Student Life shall consult with the Affirmative Action Officer 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 the Affirmative Action Officer 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. The Affirmative Action Officer shall send written notification of the complaint to the complainant, the appropriate Vice President, the University Counsel and other appropriate persons. This notification shall include the following information:

- 1) The name of the complainant.
- 2) The type of the alleged discrimination.
- 3) The date of the alleged discrimination.
- 4) A summary of the University policy, procedure or regulation which is alleged to have caused the discrimination.
- 5) The date of the start of this review.

b. The Affirmative Action Officer may review physical evidence and may interview those individuals that the Affirmative Action Officer deems appropriate. The Affirmative Action Officer may, but is not required to, interview individuals whose names are provided by the complainant or the Vice President. Each interview shall be conducted in private unless the Affirmative Action Officer and interviewee agree otherwise.

c. If this review process is not completed within forty-two (42) calendar days, the Affirmative Action Officer will notify the complainant and the Vice President of the reasons for delay and give an estimated date for completing the review process.

d. At any point the Affirmative Action Officer, the complainant and the Vice President may agree to a Consent Resolution. The Consent Resolution must be placed in writing and signed by the Affirmative Action Officer, the complainant, and the appropriate Vice President.

e. Unless the complaint is otherwise resolved, when the Affirmative Action Officer has completed this review process, the Affirmative Action Officer shall prepare a written report which will include the Affirmative Action Officer's (1) findings of fact and (2) conclusions. A copy of this report shall be provided to the complainant, the appropriate Vice President and all other persons initially notified of the complaint.

f. After the review process has been completed, if the Affirmative Action Officer (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, the Vice President and all other persons initially notified of the complaint.

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g. After the review process has been completed, if the Affirmative Action Officer concludes that a University policy, procedure or regulation has been the cause of a violation of the Protocol, the Affirmative Action Officer will report this conclusion in writing to the complainant, the President and all other persons initially notified of the complaint.

5. Appeal Procedure

a. Either the complainant or respondent may file an appeal of the findings and/or conclusions of the Affirmative Action Officer reached pursuant to Article IV.D.3.j., except that there is no right to appeal a conclusion of the Affirmative Action Officer that a complaint should be dismissed because the conduct or communication complained of is protected by the First Amendment of the United States Constitution. 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 five (5) business days of receipt of the notice of the conclusion reached by the Affirmative Action Officer which is being appealed.

b. The written appeal must state in detail the reason(s) for the appeal and shall address one or more of the following:

(1) If the appeal alleges procedural errors, the appeal shall specify each procedural error and why the procedural error caused the Affirmative Action Officer to reach an incorrect finding(s) and/or conclusion(s).

(2) If the appeal alleges that the findings of the Affirmative Action Officer include factual errors, the appeal shall specify each factual error and the reason each finding was in error.

(3) If the appeal alleges that the conclusion(s) of the Affirmative Action Officer is/are wrong, the appeal shall state the reason(s).

(4) If the appeal alleges the existence of new information or evidence that was not reviewed by the Affirmative Action Officer, the appeal shall specify the reasons why that information was not available or provided to the Affirmative Action Officer during the investigation and why the information could not have been provided on a timely basis.

c. No disciplinary or other action based on the findings and conclusions of the Affirmative Action Officer shall be taken against the respondent during the appeal process, although temporary measures may be instituted.

d. The appeal shall be handled by the Affirmative Action Appeal Committee (herein "Appeal Committee"). The Appeal Committee shall:

(1) Be composed of three members.

(2) Be appointed by the President with one appointed as chair.

(3) Be appointed from those individuals who have served as a Unit Affirmative Action Coordinator for at least six months at any time during the past four academic years, including the academic year in which the appeal is taken. Notice of the names of the Appeal Committee members shall be provided to the complainant and the respondent.

e. Within three (3) business days after receipt of the names of the members of the Appeal Committee, both the complainant and the respondent may submit written objections to the President to the appointment of any of the Appeal Committee member(s) on the basis of that member's inability to act impartially. If the President determines that a committee member cannot act impartially, then an alternate appointment shall be made. The President's decision regarding committee appointments is final. The committee shall be appointed in a timely manner considering all relevant circumstances.

f. The Appeal Committee will conduct a hearing and will allow the complainant and the respondent to present information which, in the committee's discretion, is relevant to the appeal. The Appeal Committee shall have sole

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discretion regarding the personal appearance of any witnesses, whether to consider only the parties' statements and/or review only the written record, or any other matter regarding the conduct of the hearing. If a hearing is held, each party shall be entitled to the assistance of one advisor, who may be an attorney. The hearing will not be considered a judicial hearing but rather an internal hearing at which the complainant and the respondent are present. The Appeal Committee hearing shall be audio taped.

g. The Appeal Committee's deliberation shall be closed to all persons other than the Appeal Committee members and shall not be audio taped.

h. The Appeal Committee shall decide whether the respondent violated the Protocol. The appeal shall be conducted and completed in an expeditious manner, considering all circumstances. A decision will be made by a majority vote, shall be placed in writing and delivered to the President. The decision of the Appeal Committee shall be final.

i. The President, or designee, shall send the decision of the Appeal Committee to the complainant, the respondent, the Affirmative Action Officer, and all parties initially notified of the complaint.

The Central Michigan University Equal Opportunity and Affirmative Action Protocol is adopted effective Nov. 8, 1999.

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

[SEE ATTACHMENT BELOW]

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NOTICE OF RIGHTS

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

477 Michigan Avenue, Room 865
Detroit, MI 48226-9704
Telephone: (313) 226-4600
Fax: (313) 226-4610
TDD: (313) 226-7599

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

211 West Fort Street Suite 1320 Detroit, MI 48226 Telephone: (313) 442-3360 Fax: (313) 226-3254	Grand Rapids Trade Center Building 50 Louis Street, NW 2nd Floor Grand Rapids, MI 49503 Telephone: (616) 456-2197 Fax: (616) 456-2197
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Office of Civil Rights Midwest Regional Division, U. S. Department of Education

55 West Monroe, Suite 410
Chicago, IL 60603
Telephone: (312) 353-8311
Fax: (312) 353-8324

Michigan Department of Civil Rights

Michigan Department of Civil Rights
110 West Michigan Avenue
Suite 800
Lansing, MI 48913
Telephone: (517) 335-3165
Fax: (517) 241-0546

Michigan Department of Civil Rights
Michigan Plaza Building
1200 Sixth Avenue
Detroit, MI 48226
Telephone: (313) 256-2663
Fax: (313) 256-2167
TDD: (313) 961-1552

Michigan Department of Civil Rights
125 East Union Street, F17
Flint, MI 48502-2041
Telephone: (810) 760-2805
Fax: (810) 760-7363

Michigan Department of Civil Rights
411 East Genesee, Fourth Floor
Saginaw, MI 48607
Telephone: (989) 758-1686
Fax: (989) 8758-1564
Hours: Mon., Wed., and Fri. only.