STATE OF CONNECTICUT
Department of Mental Health & Addiction Services

dmhas
A Healthcare Service Agency

Commissioner's Policy Statement and Implementing Procedures

SUBJECT:	Internal Discrimination Complaint Policy and Procedure
P & P NUMBER:	Chapter 2.19
APPROVED:	Miriam Delphin-Rittmon, Ph.D., Commissioner Date: 10/15/2015
EFFECTIVE DATE:	October 15, 2015 Miriam Delphin-Rittmon
REVISED:	3/1/2014, 9/20/2010, 4/10/2002
REFERENCES:	Affirmative Action Regulations of CT State Agencies Sec. 46a-68-89, Connecticut General Statutes (C.G.S.) Secs. 46a-60, 46a-68
FORMS AND ATTACHMENTS:	Affirmative Action Complaint Form AA-100

STATEMENT OF PURPOSE: The Department of Mental Health and Addiction Services (DMHAS) and the Affirmative Action Office establishes these procedures to assist it in carrying out its responsibilities in administering and enforcing applicable federal and state law and the DMHAS policies related to non-discrimination. The Affirmative Action Office may, from time to time, amend these procedures as necessary.

POLICY: Jurisdiction of the Affirmative Action Office: In carrying out the applicable policies set forth by the DMHAS and to conform to Section 46a-68-89 of the Regulations of Connecticut State Agencies, and consistent with federal and state law, as well as DMHAS policies related to non-discrimination, the Affirmative Action Office mitigates, investigates, and reports all findings and recommendations to the executive head of the agency or department, for complaints of alleged unlawful discriminatory action(s).

DEFINITIONS:

Equal Employment Opportunity Officer. The term associated with anyone who is employed or contracted by DMHAS, who may hold the title Equal Employment Opportunity Specialist (EEO Specialist), Equal Employment Opportunity Manager (EEO Manager), or Equal Employment Opportunity Director (EEO Director), and who is designated to mitigate any discriminatory conduct within the agency, to investigate such conduct, and to report all findings and recommendations to the executive head of the agency or department, per federal and state

law and DMHAS policy.

Complaint. A charge filed in accordance with either these procedures that alleges a violation of federal or state law or DMHAS policies related to unlawful discrimination.

Complainant. An employee or applicant who files a complaint alleging that s/he has been the subject of discriminatory action(s) as listed below in Discriminatory Action(s).

Respondent or Alleged Violator. A person or entity against whom a discrimination complaint is filed.

Discriminatory Action(s). Any unlawful action(s) that is taken because of an individual's race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, intellectual disability, physical disability (including blindness), present or past history of mental disability, learning disability, sexual orientation, genetic information, or criminal record, unless the provisions of C.G.S. Secs. 46a-60(b), 46a-80(b), or 46a-81c are controlling or there is a bona fide occupational qualification excluding persons in one of the above protected groups.

Finding. A determination made by an Equal Employment Opportunity Officer regarding whether sufficient evidence exists to conclude that a violation of federal or state law or DMHAS policies occurred relating to unlawful discrimination as defined in the above definition of Discriminatory Action(s).

Retaliation. It is unlawful to fire, demote, harass, or otherwise "retaliate" against any DMHAS employee or applicant for employment because they filed a charge of discrimination, because they complained to their employer or other covered entity about discrimination on the job, or because they participated in an employment discrimination proceeding (such as, but not limited to, an investigation or lawsuit). Retaliation or reprisal is a separate violation of anti-discrimination laws actionable under this procedure by jurisdiction of the DMHAS Affirmative Action Office.

PROCEDURE:

1. **Who May File a Discrimination Complaint.** Employees and applicants for employment may file a complaint alleging discrimination with the Affirmative Action Office in accordance with these complaint procedures.

2. **Time for Filing a Discrimination Complaint.** Discrimination complaints should be submitted within sixty (60) calendar days of the alleged discriminatory action(s), to the facility Equal Employment Opportunity Officer or directly to the Affirmative Action Office. The EEO Director or his/her designee may extend the deadline based on extenuating circumstances.

3. **Requirements of a Complaint.** Although not required to be written to be accepted for filing, whenever possible the complaint should be on the **Affirmative Action Complaint Form AA-100 (see attachment)**. Complaints can be made in person, by telephone, electronic mail, a letter, written report, or union grievance.

All complaints should include the following:

- The full name and contact information of Complainant, who must be the individual claiming to be harmed by the discrimination;
- The name of all parties involved;
- A clear and concise statement of the facts, which should be reduced to writing by the Complainant whenever possible, that constitutes the alleged discriminatory action(s), including pertinent dates and sufficient information to identify any other individual(s) who may be able to provide information related to the allegations.
- Information that establishes that both Complainant and Respondent(s) have a sufficient relationship to the DMHAS, and its' policies related to the alleged discriminatory action(s).

Written complaints (Form AA-100) should also include the following:

- A statement by the Complainant verifying that the information supporting the allegations of unlawful discrimination is true and accurate to the best of Complainant's knowledge;
- Complainant's signature;

4. **Intake Interview.** At or after the time a Complainant initiates a complaint, a representative from the Affirmative Action Office should conduct an interview with Complainant.

5. **Receipt of the Complaint.** If the complaint contains all of the elements stated above, a designated staff member in the Affirmative Action Office should log the complaint and provide the Complainant with a copy, if a written complaint was submitted. A complaint will be considered "filed", when it is received by a designated staff member in the Affirmative Action Office.

6. **Complaint Processing**.

   - **Notice to Respondent.** A Respondent should be given reasonable notice of the complaint, generally within five (5) business days, and a general explanation of the allegations contained therein. The Respondent will be given the opportunity to provide information and to be heard concerning the allegations of the complaint.

   - **Right to Representation.** A Respondent that is a member of a union may have rights under their union contract to have a union representative present during investigatory interviews for incidents or actions which may subject them to discipline (including an internal discrimination complaint investigation), provided it does not unreasonably delay completion of the investigatory process. A Respondent that is not a member of a union may have a representative of their choice present during investigatory interviews. Respondents are informed of this right and are responsible for making the necessary arrangements.

   - **Notice to Others Regarding the Complaint**. With the exception of Respondents, who may be given information about the allegations of the discrimination complaint, only those persons with a legitimate need to know will be apprised of the filing of and the final disposition of the complaint. Those persons may include, but are not limited to, appropriate organizational unit administrators who may have an obligation to monitor the

workplace to ensure that retaliation does not occur during or after the investigation process, or who may be required to implement recommendations of the Affirmative Action Office when it completes its investigation (e.g. Commissioner, Deputy Commissioner, Associate Commissioner, Chief Executive Officer, Chief Operating Officer, Division Director, Human Resource Manager, etc.).

7. **Access to Information Regarding the Investigation**. Complainants and Respondents, upon inquiry and during the course of an investigation, should be advised of the status of the investigation.

8. **Amending a Complaint.** If, during the course of an investigation, the Equal Employment Opportunity Officer determines that more information is required to enable a meaningful investigation, the Complainant may be asked to clarify allegations in the complaint. The Complainant may also be allowed to add a new Respondent or a new charge of discrimination related to the original complaint, so long as such additions fall within the sixty (60) calendar day time limit applicable to the filing of a discrimination complaint.

9. **Dismissal Based Upon Insufficiency of a Complaint.** If a Complainant alleges conduct that, if true, would not constitute a violation of federal or state law or DMHAS policies related to unlawful discrimination, as defined in the section regarding the definition of discriminatory action(s), the matter may be dismissed without further investigation by the Affirmative Action Office. Also, if a complaint is not filed within the sixty (60) calendar day time limit; fails to identify a protected class; or does not contain sufficient evidence, such as but not limited to the name of the Respondent(s); the complaint may be dismissed.

10. **Investigation of Complaint Allegations.** Following receipt of a complaint, the Affirmative Action Office will act as a neutral fact-finder.

    - **Conciliation/Mediation**
      When appropriate, the Affirmative Action Office should endeavor to resolve the internal discrimination complaint through conciliation/mediation. Conciliation/ Mediation would involve meeting informally with the employee and/or the Respondent(s), or person(s) against whom the allegations have been directed, and obtaining a mutual agreement for satisfactory resolution. Conciliation/mediation may occur at any time after a compliant has been filed with the Affirmative Action Office.

    - **Formal Investigation**
      The Equal Employment Opportunity Officer should assemble statements, documents, and other relevant evidence from Complainant, Respondent, witnesses, and any other individuals who the Equal Employment Opportunity Officer believes may have pertinent information concerning the allegations set forth in the discrimination complaint.

11. **Findings and Recommendations.**

    - When assessing credibility, the Equal Employment Opportunity Officer should determine from its records whether a person claimed to have violated this procedure has been identified in past complaints regarding the same, and what findings or corrective action(s) were taken by the DMHAS.

- The DMHAS will make every effort to comply with the Affirmative Action Regulations of CT State Agencies Sec. 46a-68-89, entitled "Discrimination Complaint Process", that requires resolution of grievances within ninety (90) calendar days.

- In the course of an investigation, the Affirmative Action Office should report to the Division of Safety Services or the appropriate authorities (e.g. the Department of Public Safety) any conduct the Equal Employment Opportunity Officer reasonably believes constitutes criminal conduct, regardless of any mitigating or other circumstances.

- Upon completion of an investigation, the Equal Employment Opportunity Officer will evaluate the evidence in accordance with standards set forth in applicable federal and state law (including case law), and the DMHAS policies related to unlawful discrimination, and will make a finding regarding the complaint allegations, which the Equal Employment Opportunity Officer will usually reduce to a final investigative report.

- Upon completion of the investigation, a final draft report with recommendations will be submitted to the EEO Director or his/her designee to be reviewed for accuracy and completeness. The final written report will be submitted to the facility Chief Executive Officer and/or the DMHAS Commissioner or his/her designee (for discrimination complaints within the Office of the Commissioner) in order to review and discuss the findings and recommendations. The facility Human Resources Director, DMHAS Labor Relations Officer, facility Chief Operating Officer or other appropriate executive staff may also be notified of final investigative findings and recommendations.

- The Equal Employment Opportunity Officer will send a letter to notify the Complainant of the completed investigation and whether the complaint was substantiated along with information necessary to file complaints with external agencies. **See attachment.** The Respondent will also receive a letter stating the status of the completed investigation.

12. **Possible Disciplinary Action.** The EEO Director should report all internal discrimination complaints received that may subject an employee to disciplinary action to the DMHAS Human Resources and/or the DMHAS Labor Relations Divisions for appropriate action in accordance with their procedures.

13. **Closure.** An investigation will be considered complete, and the investigation will be closed, upon review and signature of the EEO Director or his/her designee that the final investigation report has been reviewed for accuracy and completeness. The Complainant and other appropriate parties are then scheduled for notification. According to Sec. 46a-68 (b)(6) of the C.G.S., the Affirmative Action Office shall not represent the DMHAS in any Equal Employment Opportunity Commission (EEOC) or Commission on Human Rights and Opportunities (CHRO) proceedings concerning complaints of discrimination. Such representation shall be assigned by the DMHAS Commissioner to his/her designee.

14. **Discrimination Complaints Against the Executive Head of a State Agency or Department, Any Member of a State Board or Commission or Any Equal Employment Opportunity Officer.** Pursuant to C.G.S. Sec. 46a-68(b)(4)(B), a discrimination complaint

alleging that the executive head of a state agency or department, any member of a state board or commission, or equal employment opportunity officer directly or personally engaged in discriminatory conduct shall be referred to the CHRO for review and, if appropriate, investigation by the Department of Administrative Services, rather than being investigated by the DMHAS Affirmative Action Office.

15. **Withdrawal of Complaints.** When a complaint raising significant claims of discrimination is filed, the Affirmative Action Office has a legal obligation to investigate. In appropriate circumstances, however, and at the discretion and judgment of the EEO Director, upon receiving a written request to do so by the Complainant, the Affirmative Action Office may agree to withdraw a complaint. Such requests made through the use of electronic mail are also acceptable. A Complainant seeking to withdraw a complaint should set forth reasons in the request that support withdrawal. A Complainant may not withdraw a complaint once the EEO Director has determined that there is a violation(s) of federal and/or state law or DMHAS policy related to non-discrimination.

16. **Information Related to Complaints and Investigations**:
Confidentiality. Employees of the Affirmative Action Office will respect confidentiality of information it obtains during the course of an investigation, except where disclosure is required:

- By an obligation imposed on the DMHAS by federal and/or state law;
- To advise Respondent, Complainant, or any individual(s) identified as having a legitimate interest in the outcome of an investigation; or
- To facilitate other legitimate DMHAS processes, on a need to know basis.

17. **File Management**. The complaint file, including all information and documents pertinent to the complaint, will be maintained in the Affirmative Action Office. The Affirmative Action Office has developed necessary procedures for the control and maintenance of these files in accordance with the State's file retention policy for state agencies.

18. **Advisement of the Right to file External Discrimination Complaints:**
Employees have the legal option of filing an external discrimination complaint with the Connecticut Commission on Human Rights and Opportunities (CHRO); the United States Equal Employment Opportunity Commission (EEOC); the United States Department of Labor, Wage and Hour Division; or any other agencies, federal, state, or local, that enforce laws concerning discrimination in employment. The deadline for filing complaints with CHRO is within 180 days of the alleged act of discrimination, and/or with EEOC within 300 days of the alleged discriminatory act.