



USM Board of Regents
Committee on Governance and Compensation
November 19, 2019
Board Room
UMB – Saratoga Building

AGENDA FOR OPEN SESSION

8:30 a.m.

Call to Order

Regent Rauch

1. [Draft Board of Regents Policy VI-1.00 – Policy on Non-Discrimination and Equal Opportunity \(action\)](#)
2. Board of Regents Committee Charges
3. [Convene to Closed Session \(action\)](#)



BOARD OF REGENTS

SUMMARY OF ITEM FOR ACTION,
INFORMATION, OR DISCUSSION

TOPIC: Amendment of USM Policy on Affirmative Action and Equal Opportunity (VI-1.00) and Rescission of USM Policies on Non-Discrimination on the Basis of Sexual Orientation and Gender Identity or Expression (VI-1.05) and Acts of Violence and Extremism (VI-1.10)

COMMITTEE: Governance and Compensation

DATE OF COMMITTEE MEETING: Tuesday, November 19, 2019

SUMMARY: In consultation with the Office of the Attorney General regarding applicable legal requirements, the USM staff proposes to update the current Policy on Affirmative Action and Equal Opportunity (VI-1.00) and rescind two related policies to establish a comprehensive, streamlined policy on nondiscrimination. The new proposed policy, the Policy on Non-Discrimination and Equal Opportunity, is consistent with current law, which has been amended over time to expand the prohibitions against discrimination and abolish the requirement to maintain the statewide affirmative action plan. The proposed, amended non-discrimination policy prohibits discrimination against members of all legally protected classes of individuals and incorporates important provisions of the USM Policies on Non-Discrimination on the Basis of Sexual Orientation and Gender Identity or Expression (VI-1.05) and Acts of Violence and Extremism (VI-1.10). As a result, those two policies would be rescinded.

The original proposed policy (attached as “Original Proposal”) was reviewed through the shared governance process and supported by USM’s presidents, provosts, vice presidents for student affairs, human resources professionals, and members of the Inclusion and Diversity Council. Two revised proposals are presented today. “Option A” is a revision based on certain concerns expressed during the September committee meeting. The presidents reviewed Option A, but did not support it as written. Instead, they expressed a preference for the original policy with the addition of a footnote referencing the USM Freedom of Speech and Expression Value Statement and Guidelines. Following the review by the presidents, staff considered additional feedback provided during the September Committee meeting suggesting that concepts from the current USM Policy on Acts of Violence and Extremism should be retained. Thus, “Option B” is a revision of the Original Proposal that includes the footnote regarding freedom of speech suggested by the presidents and incorporates concepts from prior policy specifically prohibiting acts of harassment and violence. Today, USM staff will present both proposals and engage the committee in a discussion of the pros and cons of each.

ALTERNATIVE(S): Regents could accept or reject the proposed action(s) or request additional information.

FISCAL IMPACT: There is no fiscal impact associated with these policy actions.

CHANCELLOR’S RECOMMENDATION: That the Committee on Governance and Compensation recommend that the Board of Regents (1) amend the Policy on Affirmative Action and Equal Opportunity (VI-1.00) to reflect option A or B (renaming it the Policy on Non-Discrimination and Equal Opportunity), (2) rescind the Policy on Non-Discrimination on the Basis of Sexual Orientation and Gender Identity or Expression (VI-1.05), and (3) rescind the Policy on Acts of Violence and Extremism (VI-1.10).

COMMITTEE RECOMMENDATION: DATE: November 19, 2019

BOARD ACTION: DATE:

SUBMITTED BY: Joann Boughman 301-445-1992 jboughman@usmd.edu

Original Proposal

USM Bylaws, Policies and Procedures of the Board of Regents



VI-1.00 – POLICY ON NON-DISCRIMINATION AND EQUAL OPPORTUNITY

(Approved by the Board of Regents on October 19, 1989, Amended (_____))

I. PURPOSE

This policy affirms the commitment of the University System of Maryland (USM) to diversity, equality of opportunity, human dignity and to fostering a learning and working environment that is that is grounded in respect, civility, and inclusion. These principles require that the treatment of USM students, faculty, staff, and applicants for admission or employment, be based on individual abilities and qualifications and be free from illegal discrimination in any form.

II. PROHIBITION AGAINST DISCRIMINATION

All policies, programs, and activities of the USM are and shall be in conformity with all pertinent federal and State laws on non-discrimination regarding race, color, religion, age, national origin, sex, disability, sexual orientation, gender identity, gender expression, marital status, genetic information, veteran’s status, and any other legally-protected characteristic.

This policy prohibits discrimination against students, faculty, staff, and applicants for admission or employment, on the basis of any legally-protected characteristic, in admissions, financial aid, educational services, housing, student programs and activities, recruitment, hiring, employment, appointment, promotion, tenure, demotion, transfer, layoff or termination, compensation, selection for training and professional development, and employee services. This policy also prohibits retaliation against any student, faculty, staff, or applicant for admission or employment who asserts a claim of discrimination under this policy or one who participates in an investigation of a complaint of discrimination.

III. IMPLEMENTATION

The Presidents shall be responsible for ensuring compliance at their respective institutions with all State and federal laws regarding non-discrimination and hiring preferences.

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- Commented [BK2]:** We suggest that this policy incorporate and replace the current USM VI-1.10 Policy on Acts of Violence and Extremism, which appears to address hate crimes, because hate crimes are covered under this Policy as harassment based on protected characteristics.
- Deleted:** or
- Deleted:** harassment.
- Deleted:** is actively committed to providing equal educational and employment opportunity in all of its institutions and programs.
- Deleted:** AND HARASSMENT
- Commented [BK4]:** This policy incorporates the applicable provisions of the current USM VI-1.05 Policy of Non-Discrimination on the Basis of Sexual Orientation and Gender Identity or Expression. These protections are now part of federal and state statutory and case law, which define the terms and set forth the scope of protection.
- Deleted:** and handicap
- Deleted:** including, but not limited to, Title VI of the Civil Rights Act of 1964 as amended, Title IX of the 1972 Education Amendments, and Section 504 of the Rehabilitation Act of 1973....
- Deleted:** and harassment
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- Deleted:** or harassment
- Commented [BK8]:** This language was included in this policy pursuant to Md. Code, Education, §11-105(f) (State Desegregation Plan). It is our understanding that MHEC and the USM completed their obligations under the statute in 2005. While the language was necessary at the time the policy was adopted in 1989, it is no longer necessary.
- Deleted:** It is the goal of the University of Maryland System to assure that women and minorities are equitably represented among the student body, faculty, staff, and administration of the institutions constituting the System, s[1]
- Deleted:** and Directors
- Deleted:** implementing the statewide desegregation and equal opportunity programensuring compliance
- Commented [BK9]:** There are federal and State hiring ... [2]

USM Bylaws, Policies and Procedures of the Board of Regents

Each President shall designate an individual or office to which inquiries may be made regarding compliance with federal and State laws and USM policies, with respect to equal opportunity,

Replaces VI-1.00-Policy on Affirmative Action and Equal Opportunity, VI-1.05 Policy of Non-Discrimination on the Basis of Sexual Orientation and Gender Identity or Expression, and VI-1.10 Policy on Acts of Violence and Extremism.

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Page 1: [1] Deleted **Bainbridge, Katherine** **1/20/17 11:59:00 AM**



Page 1: [2] Commented [BK9] **Bainbridge, Katherine** **1/20/17 12:25:00 PM**

There are federal and State hiring preferences for individuals with disabilities.



USM Bylaws, Policies and Procedures of the Board of Regents

OPTION A



VI-1.00-POLICY ON NON-DISCRIMINATION AND EQUAL OPPORTUNITY
(Approved by the Board of Regents on October 19, 1989, Amended _____)

I. PURPOSE

This policy affirms the commitment of the University System of Maryland (USM) to diversity, equality of opportunity, human dignity and to fostering a learning and working environment that is grounded in respect, civility, and inclusion. These principles require that the treatment of USM students, faculty, staff, and applicants for admission or employment, be based on individual abilities and qualifications and be free from invidious discrimination in any form.

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II. PROHIBITION AGAINST DISCRIMINATION

All policies, programs, and activities of the USM are and shall be in conformity with all pertinent federal and State laws concerning non-discrimination on the basis of race, color, religion, age, national origin, sex, disability, sexual orientation, gender identity, gender expression, marital status, genetic information, veteran's status, and any other, legally-protected characteristic.

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This policy prohibits discrimination against students, faculty, staff, and applicants for admission or employment, on the basis of any legally-protected characteristic, in admissions, financial aid, educational services, housing, student programs and activities, recruitment, hiring, employment, appointment, promotion, tenure, demotion, transfer, layoff or termination, compensation, selection for training and professional development, and employee services. This policy also prohibits retaliation against any student, faculty, staff, or applicant for admission or employment who asserts a claim of discrimination under this policy or one who participates in an investigation of a complaint of discrimination.

This policy also prohibits unlawful harassment, including acts of violence, as well as unlawful harassment based on political speech and affiliation, at USM institutions and in connection with USM programs and activities.

III. IMPLEMENTATION

The Presidents shall be responsible for ensuring compliance at their respective institutions with all State and federal laws regarding non-discrimination and hiring preferences. Each President shall designate an individual or office to which inquiries may be made regarding compliance with federal and State laws and USM policies, with respect to equal opportunity.

Replaces VI-1.00-Policy on Affirmative Action and Equal Opportunity, VI-1.05 Policy of Non-Discrimination on the Basis of Sexual Orientation and Gender Identity or Expression, VI-1.10 Policy on Acts of Violence and Extremism.

USM Bylaws, Policies and Procedures of the Board of Regents

OPTION B



**VI-I.00-POLICY ON NON-DISCRIMINATION AND EQUAL OPPORTUNITY
(Approved by the Board of Regents on October 19, 1989, Amended _____)**

I. PURPOSE

This policy affirms the commitment of the University System of Maryland (USM) to diversity, equality of opportunity, human dignity and to fostering a learning and working environment ~~that~~ **is** that is grounded in respect, civility, and inclusion. **These** principles require that the treatment of USM students, faculty, staff, and applicants for admission or employment, be based on individual abilities and qualifications and be free from invidious discrimination in any form.*

II. PROHIBITION AGAINST DISCRIMINATION

All policies, programs, and activities of the USM are and shall be in conformity with all pertinent federal and State laws ~~concerning~~ non-discrimination ~~on the basis of~~ ~~regarding~~ race, color, religion, age, national origin, sex, disability, sexual orientation, gender identity, ~~gender and~~ expression, marital status, genetic information, veteran's status, and ~~any other~~ ~~any other~~ legally-protected characteristic.

This policy prohibits discrimination against students, faculty, staff, and applicants for admission or employment, on the basis of any legally-protected characteristic, in admissions, financial aid, educational services, housing, student programs and activities, recruitment, hiring, employment, appointment, promotion, tenure, demotion, transfer, layoff or termination, compensation, selection for training and professional development, and employee services. [This policy prohibits harassment, including acts of violence, on the basis of any legally-protected characteristic, at USM institutions and in connection with USM programs and activities.](#) This policy also prohibits retaliation against any student, faculty, staff, or applicant for admission or employment who asserts a claim of discrimination under this policy or one who participates in an investigation of a complaint of discrimination.

III. IMPLEMENTATION

The Presidents shall be responsible for ensuring compliance at their respective institutions with all State and federal laws regarding non-discrimination and hiring preferences. Each President shall designate an individual or office to which inquiries may be made regarding compliance with federal and State laws and USM policies, with respect to equal opportunity.

Replaces VI-I.00-Policy on Affirmative Action and Equal Opportunity, VI-I.05 Policy of Non-Discrimination on the Basis of Sexual Orientation and Gender Identity or Expression, VI-I.10 Policy on Acts of Violence and Extremism.

USM Bylaws, Policies and Procedures of the Board of Regents

OPTION B

*These and other principles are also reflected in the USM Freedom of Speech and Expression Value Statement and Guidelines.



BOARD OF REGENTS

SUMMARY OF ITEM FOR ACTION,
INFORMATION OR DISCUSSION

TOPIC: Convening Closed Session

COMMITTEE: Committee on Governance and Compensation

DATE OF MEETING: November 19, 2019

SUMMARY: The Open Meetings Act permits public bodies to close their meetings to the public in special circumstances outlined in §3-305 of the Act and to carry out administrative functions exempted by §3-103 of the Act. The Board of Regents will now vote to reconvene in closed session. As required by law, the vote on the closing of the session will be recorded. A written statement of the reason(s) for closing the meeting, including a citation of the authority under §3-305 and a listing of the topics to be discussed, is available for public review.

It is possible that an issue could arise during a closed session that the Board determines should be discussed in open session or added to the closed session agenda for discussion. In that event, the Board would reconvene in open session to discuss the open session topic or to vote to reconvene in closed session to discuss the additional closed session topic.

ALTERNATIVE(S): No alternative is suggested.

FISCAL IMPACT: There is no fiscal impact

CHANCELLOR'S RECOMMENDATION: The Chancellor recommends that the Committee vote to reconvene in closed session.

COMMITTEE ACTION:

DATE:

BOARD ACTION:

DATE:

SUBMITTED BY: Denise Wilkerson, dwilkerson@usmd.edu, 301-445-1906



STATEMENT REGARDING CLOSING A MEETING
OF THE USM BOARD OF REGENTS
GOVERNANCE AND COMPENSATION COMMITTEE

Date: November 19, 2019
Time: Approximately 9:30 a.m.
Location: Board Room
Saratoga Building
UMB

STATUTORY AUTHORITY TO CLOSE A SESSION

Md. Code, General Provisions Article §3-305(b):

- (1) To discuss:
 - [X] (i) The appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or
 - [X] (ii) Any other personnel matter that affects one or more specific individuals.
- (2) [] To protect the privacy or reputation of individuals with respect to a matter that is not related to public business.
- (3) [] To consider the acquisition of real property for a public purpose and matters directly related thereto.
- (4) [] To consider a preliminary matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State.
- (5) [] To consider the investment of public funds.
- (6) [] To consider the marketing of public securities.
- (7) [X] To consult with counsel to obtain legal advice on a legal matter.
- (8) [] To consult with staff, consultants, or other individuals about pending or potential litigation.
- (9) [X] To conduct collective bargaining negotiations or consider matters that relate to the negotiations.

- (10) [] To discuss public security, if the public body determines that public discussions would constitute a risk to the public or public security, including:
 - (i) the deployment of fire and police services and staff; and
 - (ii) the development and implementation of emergency plans.
- (11) [] To prepare, administer or grade a scholastic, licensing, or qualifying examination.
- (12) [] To conduct or discuss an investigative proceeding on actual or possible criminal conduct.
- (13) [] To comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter.
- (14) [] Before a contract is awarded or bids are opened, to discuss a matter directly related to a negotiation strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.
- (15) [] To discuss cybersecurity, if the public body determines that public discussion would constitute a risk to:
 - (i) security assessments or deployments relating to information resources technology;
 - (ii) network security information, including information that is:
 - 1. related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a governmental entity;
 - 2. collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
 - 3. related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity; or
 - (iii) deployments or implementation of security personnel, critical infrastructure, or security devices.

Md. Code, General Provisions Article §3-103(a)(1)(i):

- [] Administrative Matters

TOPICS TO BE DISCUSSED:

1. Ratification of collective bargaining MOUs at UMCES
2. Update on status of collective bargaining at USM institutions.

3. Information update regarding an athletics and an administrative employment contract at an institution subject to review under BOR VII-10.0 Policy on Board of Regents Review of Certain Contracts and Employment Agreements.
4. Chancellor Appointment Letter; and
5. Chancellor Transition.

REASON FOR CLOSING:

1. To maintain confidentiality regarding collective bargaining negotiations (§3-305(b)(9));
2. To maintain confidentiality of discussion regarding specific employment agreements (§3-305(b)(1)(i) and (ii));
3. To handle an administrative matter involving planning for transition in Chancellor position (§3-103(a)(1)(i));
4. To maintain attorney-client privilege with respect to advice from counsel regarding various employment contracts (§3-305(b)(7)).