

Procedural Guidelines for Responding to Allegations of Violation of the WSU Policy Prohibiting Discrimination and Sexual Harassment (Executive Policy #15)

I. Purpose

The Office for Equal Opportunity (OEO) investigates allegations arising under Executive Policy 15 (EP 15). These procedural guidelines are flexible and may be adapted on a case-by-case basis to promote a prompt, impartial, thorough and effective process.

II. Complaints

- A. A complaint is an allegation of conduct that implicates EP 15 which may include an allegation of discrimination, discriminatory harassment, sexual harassment or sexual misconduct.
- B. Complaints alleging discrimination, discriminatory harassment, sexual harassment, or sexual misconduct may be made orally or in writing, to the OEO, a supervisor/manager, or a WSU officer.
- C. Complaints received by a supervisor/manager, officer, faculty member or other WSU employee or agent must be reported to OEO, which will either process the complaint or assist the WSU unit in its response. When appropriate, WSU may take interim measures to ensure safety and mitigate the effects of the alleged conduct.
- D. OEO promotes prompt and effective resolution of complaints. When appropriate, OEO will work with a WSU-unit to respond to and resolve a complaint at the unit level. OEO may facilitate a resolution process in lieu of, or simultaneously with, its investigation.
- E. OEO's jurisdiction is limited to matters concerning EP 15. If a complaint extends beyond OEO's jurisdiction under EP 15, the complaint may be referred to another University office. If the complaint does not involve WSU community members or have sufficient nexus to WSU's operation, activities and mission, OEO may refer the matter to an outside entity or agency, as appropriate. WSU community members may include, but are not limited to, employees, students, volunteer, vendors, contractors, affiliates and any other person connected to the university.

III. Complaint Processing

- A. Intake: Upon receipt of a complaint, OEO conducts an initial intake with the complainant, which generally includes the following:
 - 1. Obtain identification and contact information from the complainant.

2. Explain the role of OEO as a neutral fact-finder and/or facilitator for a resolution process. When OEO conducts an investigation, OEO seeks to determine the facts surrounding the allegation and whether those facts constitute a violation of EP 15.
 3. Explain the process OEO may use for responding to the allegation.
 4. Explain that OEO takes the complainant's confidentiality seriously, but limitations exist on confidentiality. Those limitations include providing the respondent with notice of the allegation and that the investigation file is a public record and may be subject to requests for public records. OEO also will provide information concerning EP 15, including the complainant's right to report alleged discrimination to OEO without retaliation. Retaliation includes any tangible action or threat of action that negatively affects another's employment, education, reputation or other interest or that could dissuade a reasonable person from making a complaint. Retaliation is a separate distinct policy violation.
 5. Obtain as much initial information as possible from the complainant, which may include other possible sources of information, including individuals from whom OEO may obtain additional information.
 6. Confirm basis of complaint in writing (which may be an email message) to complainant, within a reasonable time after receipt of the complaint, usually five business days.
- B. **Safety Assessment:** After the initial intake and as necessary throughout an investigation, OEO will assess whether immediate action must be taken for the safety or security of any person involved--OEO will immediately contact the appropriate office at WSU or in the community, which may include but is not limited to law enforcement, WSU Human Resource Services, Office of the Provost, crises centers, and/or counseling centers.
- C. **Conflict Review:** An OEO investigator will not participate in an investigation in which he or she has a conflict of interest. If the Director of OEO determines that he or she has a conflict of interest, the allegation will be referred to WSU Human Resource Services, or other appropriate office, for investigation. A conflict of interest means the existence of an interest which may reasonably be determined to affect or appear to affect the impartiality of the investigator.
- D. **Determination to Proceed:** After the initial intake and as needed thereafter based on additional information, OEO will assess whether the complaint, if true, would constitute a violation of EP 15 and warrants further inquiry.

If at any time OEO determines that no basis for a policy violation exists, it may decline to proceed further. If the complaint presents other potential issues, it may be referred to the appropriate office.

When appropriate, and after informing the complainant of its investigation procedures, OEO will seek the consent from the complainant to proceed with an investigation. OEO also will inform all complainants that OEO may determine there is a need to investigate a complaint whether the complainant grant consent or not.

- E. Notice: OEO will generally provide notice and information to the following persons, subject to a compelling basis for confidentiality. Others may be notified on an as needed basis.
1. Relevant supervisor(s): Will be notified of the complaint, and requested to inform the respondent and others involved, if any, that they are expected to cooperate with the OEO investigation and conduct themselves in a professional manner during the OEO process, to be truthful and that they must refrain from retaliating against anyone involved in the process.
 2. Respondent: Unless a compelling reason exists not to do so, the respondent will be notified of the complaint with sufficient detail to enable the respondent to fully respond to the allegation(s). A respondent cannot be held in violation of the policy without notice and opportunity to respond to the allegations.

IV. Early Resolution

The goal of EP 15 is to maintain an environment free from discrimination. The OEO process, therefore, is focused on providing an opportunity to identify and resolve discriminating or potentially discriminating conduct at the earliest possible opportunity and in the most effective manner. At any time after receipt of a complaint, and when appropriate, OEO may initiate an informal resolution process, through which OEO will determine whether the investigation should be stayed or continued simultaneously with the resolution process. OEO may participate in the resolution process or may ask others to guide that process, as it deems best under the circumstance. At any time during an informal resolution process, a complainant may request to end the process and proceed with the formal investigation. Mediation is never appropriate for complaints of sexual assault or sexual misconduct.

V. Investigation Process

- A. Investigation Plan: If an investigation is warranted, OEO will develop an investigation plan, which will include a statement of the allegation(s) and a preliminary statement of evidence that will be needed to determine whether the allegation is supported. The plan may include a preliminary list of witnesses to interview, relevant documents, and other evidence. OEO seeks to complete investigations promptly after receipt of a complaint. An investigation of sexual misconduct, sexual assault or domestic violence will be completed within 60 calendar days unless there is good cause to extend that time limit.
- B. Investigation Steps: Usually, OEO will take the following steps in its investigation:
1. Interview witnesses and the respondent. Interviews should be in person when practicable. Audio recording of interviews will generally not be allowed. Interview notes should include the date, time and place of the interview, the name of the interviewer, and a list of all those present at the interview.
 2. Request written statements when they may be helpful to the investigation.
 3. Obtain all available relevant documentation, which may include but is not limited to WSU records, email and text messages, correspondence, computer files, and notes.
 4. When appropriate, provide the complainant, the respondent, and supervisors updates regarding the status of the investigation.
- C. Completion of Investigation
1. Generally, an investigation will result in an investigation memorandum if the respondent is a student and an investigation report where the respondent is a member of the WSU community who is not a student. If a respondent is a student and an employee, OEO will make a case-by-case determination whether a memorandum or report is appropriate. An investigation that is terminated prior to issuance of an investigation report will be acknowledged with a closing letter.
 2. Findings in an investigation memorandum or investigation report are entered based upon OEO's determination that a fact is more probable than not true (i.e. by a preponderance of the evidence).
 3. The complainant and respondent will receive a copy of the proposed investigation memorandum, investigation report, or closing letter, unless a compelling reason exists to withhold the document, in whole or in part,

from one or both persons. Student names will be redacted where appropriate.

4. On a need-to-know basis, relevant supervisors, administrators and other appropriate members of the WSU community will receive a copy of the closing document.
5. In matters that do not involve the Standards of Conduct for Students (generally those where the respondent is not a student) the complainant and respondent may submit a response to a proposed investigation report or closing letter to OEO. The response must be received within the time specified by OEO. OEO will consider the response(s) and then issue the final investigation report or closing letter within 15 calendar days of the end of the response period. OEO may amend or edit the report or closing letter based on a response, or reopen the investigation. If major revisions are made to a document, or if the investigation is reopened, OEO may issue a second proposed report or letter and allow additional response prior to issuing the final document.
6. In matters where the respondent is a student, the complainant and the respondent may present any response to the OEO investigation memorandum to the appropriate officer of the Office of Student Standards and Accountability, during related meetings with that office or before a WSU Student Conduct Board.

VI. Appeal of a Final Investigation Report

In those matters that do not involve the Standards of Conduct for Students, a limited appeal is available. A complainant or respondent may appeal the final investigation report on the grounds of substantial procedural irregularity or insufficient investigation. A substantial procedural irregularity is defined as an irregularity in these procedures that, more likely than not, could have resulted in a different conclusion in OEO's investigation report regarding a violation of EP 15. Insufficient investigation is defined as a lack of investigation into facts or issues that, more likely than not, could have resulted in a different conclusion in OEO's investigation report regarding a violation of EP 15. The appeal must be received in the Office of the President within 15 calendar days of the issuance of the final investigation report. The President will appoint a committee of not less than three people, to review the appeal. In reviewing the appeal, the committee does not engage in a de novo review. The committee shall give substantial weight to the OEO report and defer to the credibility findings in the report. If the committee finds either substantial procedural irregularity or insufficient investigation, it may require additional investigation. Ordinarily, the committee shall complete its review within 30 calendar days of receipt of the appeal by committee members. The decision of the committee is final with respect to the investigation.

VII. Other Available Process

Any student or employee aggrieved by an OEO report may be entitled to file a complaint outside of WSU.

Before discipline may be imposed based on an investigation memorandum or investigation report, a student or employee may be entitled to further internal process depending upon the employment agreement, rules of student conduct or other University policy.

A list of some other resources for an aggrieved person is included in EP 15.