

**Procedural Guidelines for Responding to Allegations Implicating:
WSU Executive Policy #15,
The Policy Prohibiting Discrimination, Sexual Harassment, and Sexual Misconduct
Updated: February 20, 2017**

I. Purpose

The Office for Equal Opportunity (OEO) is WSU's central authority for intake, investigation, and response to allegations that implicate the [WSU Policy Prohibiting Discrimination, Sexual Harassment, and Sexual Misconduct, 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. Scope

Consistent with Executive Policy #26, OEO has the sole jurisdiction to investigate matters concerning EP 15, unless specifically delegated or assigned to another office or individual by the President or the Executive Director for Compliance/Director of the Office for Equal Opportunity. Generally, these processes will apply to matters implicating any policy within the purview of OEO. For a complete list of OEO policies, visit oeo.wsu.edu/publications-and-policies/.

If a complaint extends beyond OEO's jurisdiction, OEO may refer the complaint to another WSU office and/or collaborate with that office to complete the investigation. 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 and consistent with applicable privacy laws. WSU community members may include, but are not limited to, employees, students, volunteers, vendors, contractors, affiliates, visitors, and any other person connected to the university.

III. Complaints

- A. For purposes of this document, a Complaint is an allegation of conduct that implicates EP 15, or another a policy within the purview of OEO.
- B. Complaints, or third party reports, may be made in person, by phone, by email, in writing, or by using OEO's online complaint form, which allows for anonymous reporting. See [File a Complaint](#).
- C. All WSU employees are responsible for knowing their employee reporting requirements regarding complaints or information related to EP 15. See *Employee Reporting Requirements*.
- D. Generally, OEO will assess the complaint and review response options with the complainant.
- E. OEO promotes the prompt and effective resolution of complaints. When appropriate, OEO will work with the appropriate WSU unit to respond to and resolve a complaint at the unit level. OEO may facilitate an informal resolution process in lieu of, or simultaneously with, a formal investigation. See *Informal Resolution Process below*.

- F. OEO may collaborate with supervisors, academic units, Human Resource Services (HRS), the Office of the Dean of Students (DOS), and/or other appropriate offices or individuals to facilitate the implementation of interim measures to ensure safety and mitigate the effects of the alleged conduct. Any interim measures will be carefully crafted to ensure, to the extent possible, that the needs and concerns of all persons involved are met.
- G. WSU's policies in these matters are not designed to hamper educational discussions or academic freedom, including topics which may be deemed sensitive or controversial to some.
- H. Malicious or Frivolous reporting is prohibited and may constitute a violation of EP 15. A complaint will not be considered malicious or frivolous solely because it cannot be corroborated.

IV. Complaint Processing

- A. **Intake:** Generally, upon receipt of a complaint, OEO will attempt to schedule an initial intake meeting with the Complainant(s). During this meeting, the OEO investigator will generally do the following:
 - 1. Obtain identification and contact information from the Complainant. However, the Complainant(s) may request to remain anonymous during an initial intake interview. *See Anonymous Complaints below.*
 - 2. Explain the role of OEO as a neutral fact-finder and/or facilitator for a resolution process, which may include an investigation. When OEO conducts an investigation, OEO seeks to determine the facts surrounding the allegation and whether those facts constitute a violation of EP 15, or other policies within the purview of OEO. *See Investigation Process below.*
 - 3. Explain alternative options, including confidential resources available on-campus and within the community that may provide counseling and support to the complainant.
 - 4. Explain the processes OEO may use for responding to the allegation, which may include the steps involved in pursuing an informal resolution or a formal investigation, among other options.
 - 5. Explain that OEO takes the complainant's privacy seriously, but limitations exist on confidentiality. Those limitations include:
 - a. Notice: When conducting a formal investigation, OEO will provide the Respondent(s) with notice of the allegations and an opportunity to respond. This notice may include the identity of the Complainant and/or witnesses.
 - b. Public Records: Because WSU is a state agency, OEO's files may be subject to public records requests. The WSU Public Records Office will review all documents submitted under a public records request and will redact information where legally permissible, such as student identifying information.
 - c. Mandatory Reporting to Law Enforcement: OEO is required to report suspected child abuse, elder abuse, or abuse of persons with

diminished capacity to law enforcement agencies. If the Complainant(s) is under the age of 18, OEO may be required to report information to law enforcement.

- d. CLERY Act Reporting: OEO is required to report statistical information related to certain types of crimes occurring on campus for inclusion in the WSU Annual Fire and Security Report. These reports do not include the names of the involved parties.
6. OEO will provide information concerning EP 15 and/or other OEO policies, including information about the provision prohibiting retaliation and/or interference with an investigation, and explain that retaliation and/or interference is prohibited and may be considered a separate and distinct violation of university policy. Retaliatory and interfering conduct should be reported immediately to OEO and will be addressed promptly, effectively, and equitably. See *EP 15*.
7. OEO will provide information on resources and services that are available to the Complainant(s). Discuss whether interim safety measures are applicable. Resources and interim measures may be available whether or not a Complainant(s) wishes to participate in an investigation.
8. After the Complainant(s) indicates that they understand OEO's process and confidentiality measures, OEO will ask whether or not they would like to provide information for investigative purposes.
9. OEO will request information from the Complainant(s), which may include identifying other possible sources of information, such as the names and contact information for witnesses and/or individuals from whom OEO may obtain additional information.
10. OEO will request and consider the Complainant(s) input when determining the appropriate resolution path.

B. Safety Assessment: After the initial intake and as necessary throughout an investigation, OEO will assess whether action must be taken to protect the safety or security of any person involved, or of the university community. Consistent with this assessment, OEO may share limited information with relevant offices or individuals at WSU or in the community, which may include but is not limited to law enforcement, HRS, the WSU Office of the Provost, the Office of the Dean of Students, crisis centers, and/or counseling centers, as appropriate to address the safety concern.

C. Conflict Review:

1. A conflict of interest is defined as a personal interest, financial, familial, professional, or otherwise, that might impair or reasonably appear to an objective, outside observer to impair an investigator's independent, unbiased judgment in reviewing the matter.
2. An OEO investigator will not participate in an investigation in which he or she has a conflict of interest. If the conflict cannot be managed internally to OEO, the allegation may be referred to HRS, or another appropriate office, to supervise the investigation or to conduct an independent investigation as appropriate.

D. Determination to Proceed:

In assessing whether a formal investigation is warranted, OEO will consider relevant factors, which may include, but are not limited to the following:

1. The availability of information to support the allegations;
2. The totality of the information available to OEO; and
3. Would the alleged conduct constitute a violation of EP 15, or another policy within the purview of OEO, if found to have occurred?

If at any time OEO determines that the basis for proceeding with a formal investigation no longer exists, OEO may decline to proceed further. If the complaint presents other potential issues outside the purview of OEO, OEO may refer the matter to other appropriate office.

Proceeding with participation by the Complainant - After informing the Complainant(s) of its investigation procedures and discussing options, if OEO determines that further investigation is warranted, OEO will request input from the Complainant(s) on how they would like to proceed.

Proceeding without participation by the Complainant - In limited circumstances, the Title IX Coordinator may determine that it is necessary to proceed with an investigation even where the Complainant does not wish to participate, particularly where there is an ongoing safety threat to the campus or local community. In cases where OEO proceeds with an investigation without participation by the Complainant(s), OEO will notify the complainant in advance of issuing notice, and will take great care to address the Complainant(s)' concerns, if any.

E. Anonymous Complaints –

If a Complainant(s) requests to remain anonymous, the Title IX Coordinator will consider how to proceed, taking into account the following:

1. The wishes of the Complainant(s),
2. WSU's commitment to provide a non-discriminatory environment,
3. Individual and campus safety, and
4. The right of the Respondent(s) to have sufficient notice of the allegations.

In some circumstances, respecting a request for anonymity by the Complainant(s) may mean an investigation cannot occur. In limited circumstances where the Title IX Coordinator determines that further investigation is necessary, the Complainant will be informed, prior to disclosure, that identifying information may be shared as necessary for the investigation process, which may include listing their name in a notification letter to the Respondent(s). See *Notice below*.

F. **Notice:** Where OEO proceeds with a preliminary investigative inquiry or a formal investigation, OEO will generally provide notice and information to the following persons, unless there is a compelling basis for confidentiality. OEO may share information with others, as appropriate, to ensure a prompt and equitable response to concerns.

1. Relevant supervisor(s) (where the Respondent(s) is an employee or volunteer): Will be notified of the complaint, and asked to inform the

Respondent(s) 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 or interfering with the investigation. Supervisors may take steps, after consultation with OEO, HRS, and/or the WSU Division of the Attorney General's Office, to ensure a safe and inclusive working environment throughout the OEO process, to protect the safety of all persons involved in an investigation, and to respond to concerns that implicate other university policies.

2. Human Resource Services (HRS), the Office of Student Conduct (OSC), or relevant individuals on other WSU campuses may be notified of the complaint and may participate in the investigation.
3. Program Administrators: Where the Complainant(s) and or the Respondent(s) participate in programs or activities administered or sponsored by WSU, the appropriate program administrator may be given limited notice in order to consult with OEO and implement interim measures during the OEO process as appropriate.
4. Respondent(s): Upon commencing an investigation, OEO will provide Respondent(s) with notice and opportunity to respond to allegations that they violated university policy under the purview of OEO.

V. Informal Resolution Process

- A. OEO processes seek 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 assess whether an informal resolution is appropriate. Note that mediation is never appropriate for complaints of sexual violence. OEO may participate in the resolution process, and/or may ask others to guide that process, as appropriate. Generally, informal resolution may be appropriate in the following situations:
1. The alleged conduct is not sufficiently severe, persistent, or pervasive to constitute a violation of policies under the purview of OEO;
 2. The Complainant prefers an informal resolution process; or
 3. There is a limited nexus between the alleged conduct and EP 15 or other relevant policies.

VI. Investigation Process

- A. **Determination of Evidence:** If an investigation is warranted, OEO will determine what evidence will be needed to determine whether the allegation(s) is supported, including relevant documents, witnesses to interview, and/or other evidence.
- B. **Advisor/Support Person:** Both the Complainant and the Respondent may bring an advisor or a support person to accompany them to meetings with OEO throughout the process. However, the Complainant(s) and the Respondent(s) are responsible for presenting their own information throughout the OEO process.
- C. **Investigation Timeline:** OEO seeks to balance the need to promptly complete investigations after receipt of a complaint with the need to conduct a thorough investigation. OEO attempts to complete investigations within sixty (60) calendar

days, but the length of an individual investigation varies depending on, but not limited to, the number of witnesses to be interviewed, the extent of documentation to be reviewed, the type of alleged conduct, and length of time over which the alleged conduct has occurred.

D. Investigation Steps. Generally, OEO will take the following steps in its investigation(s):

1. Interview the Complainant(s), the Respondent(s), and witnesses whom OEO determines may have relevant information. Interviews will be conducted in person when practicable. Audio and/or video recording of interviews will generally not be allowed. In matters involving more than one potential complainant, OEO will usually seek to conduct initial intake interviews with each complainant, individually.
2. Request written statements when they may be helpful to the investigation. Complaints are not required to be submitted in writing; however, Complainant(s), Respondent(s), and any witnesses may submit written statements if they so choose.
3. Obtain all reasonably available relevant documentation, which may include, but is not limited to, WSU records, email and text messages, social media messages and postings, correspondence, computer files, and notes.
4. When appropriate, conduct follow-up interviews with the Complainant(s) and the Respondent(s) to respond to additional information or to clarify statements. When appropriate, provide the Complainant(s), the Respondent(s), and supervisors updates regarding the status of the investigation.

E. Completion of Investigation

Standard of Evidence: OEO applies the preponderance of the evidence standard when evaluating allegations of policies under its purview (i.e. “more likely than not”).

Closing Document:

1. Generally, if OEO terminates the review process prior to the issuance of an investigation report or investigation memorandum, OEO will notify the parties with a closing letter or email.
2. An investigation memorandum or an investigation report will generally include a list of the documents reviewed, a list of the witnesses interviewed and/or contacted, a summary of the investigation, findings of fact, and a conclusion as to whether or not a policy under the purview of OEO was violated.
3. The Complainant(s) and Respondent(s) will receive a copy of the closing document, unless a compelling reason exists to withhold the document, in whole or in part, from any of the parties. Student names, and other protected information, will be redacted where appropriate.
4. As appropriate, OEO may share the closing document, or information obtained through OEO’s process with relevant supervisors, administrators, and/or other appropriate members of the WSU community.

VII. Appeals

A. Appeal of an OEO Closing Document (Students)

After OEO issues a final Closing Document in a matter where the Respondent(s) was a WSU student, the Complainant(s) or Respondent(s) may participate in additional process, review, and/or appeal through the WSU Office of Student Conduct. Additional information on these processes is available through the Office of Student Conduct (conduct.wsu.edu/).

In matters where OEO finds no violation of WSU's Executive Policy #15, and the Complainant(s) or Respondent(s) object to the findings or outcome reflected in the OEO Closing Document, feel there is additional information that should be considered, or feel that student conduct charges are otherwise warranted in the matter, they have the opportunity to provide that information in writing to the Office of Student Conduct within (10) calendar days of the notification from the Office of Student Conduct. The Office of Student Conduct will consider this information in determining whether or not to proceed with the conduct process. If the Complainant(s) or Respondent(s) presents information to the Office of Student Conduct that is not reflected in the OEO Investigation Document, the Office of Student Conduct may elect to refer the matter back to the OEO to review for a potential revision to the OEO Investigation Document prior to proceeding with the conduct process.

In limited circumstances, as warranted by the facts and at the discretion of the Executive Director for Compliance, OEO may conduct additional review after the issuance of an OEO Investigation Document. OEO will notify the Office of Student Conduct, the Complainant(s), and the Respondent(s) of the additional review.

B. Appeal of an OEO Closing Document (Employees and WSU Community Members)

After OEO issues a Final Closing Document, the Complainant(s) or Respondent(s) may file for an appeal with WSU Office of the President within 15 calendar days of the date of issuance.

1. OEO Appeals Committee

- i. The WSU President's standing OEO Appeals Committee (the Committee) will consist of the Committee Chair (the Chair), two regular committee members (the Members), one of whom will be the Vice Chair, and two alternate committee members (Alternate Members).
- ii. Committee members will serve for a term of up to three years. Each committee member will receive appropriate training, as determined by OEO, prior to serving on the committee and at least annually thereafter, related to, but not limited to, the following:
 1. Due Process and Investigation Procedures;
 2. Sex and Gender Based Violence;
 3. 1st Amendment Protected Speech;
 4. Discrimination & Sexual Harassment;
 5. Disability Accommodation and Access concerns;
 6. Implicit Bias and Cultural Competency; and
 7. Conflict of Interest.

2. Filing and Contents of an Appeal
 - i. An appeal after an OEO Closing Document must satisfy the following requirements:
 1. It must be timely filed;
 - a. The Complainant(s) or Respondent(s) may request an extension of the 15 calendar day deadline, which the OEO Appeals Committee Chair (the Chair) will grant only for a showing of good cause.
 2. It must be in writing;
 3. It must articulate a basis for the appeal consistent with the following:
 - a. OEO engaged in insufficient investigation, which is defined as a lack of investigation into facts or issues that, more likely than not, could have resulted in a different outcome in the OEO Investigation Document;
 - b. OEO committed a substantial procedural error that, more likely than not, could have resulted in a different outcome in the OEO Investigation Document; and/or
 - c. New information exists that, if it had been available during the OEO investigation, could have resulted in a different outcome in the OEO Investigation Document.

3. Review of an Appeal

- i. The Chair will conduct an initial review of all timely filed appeals to determine if they meet the minimum requirements of the appeals process as indicated in section II above.
- ii. If the appeal meets these minimum requirements, the Chair will convene the Committee and send notice to the Complainant(s), Respondent(s), and OEO within seven (7) calendar days of the end of the appeals period. This notice will indicate the following:
 1. The name, official title, and WSU department of each of the Committee members who will be reviewing the appeal;
 2. The scope of the review, which is limited to insufficient investigation, substantial procedural error, and/or new information as defined above;
 3. Any request for supporting documentation or clarifications; and
 4. The timeline for the review
- iii. The Committee shall review any supporting documents submitted by the Complainant(s) and Respondent(s) as part of the appeals process and shall also have access to the OEO investigative file.
- iv. The Committee has the discretion to invite the Complainant(s), the Respondent(s), and/or the OEO lead investigator for an interview.
- v. The Committee shall give substantial deference to the credibility and factual determinations made by the OEO lead investigator.

4. Conflicts of Interest

- i. A conflict of interest is defined as a personal interest, financial, familial, professional, or otherwise, that might impair or reasonably appear to an objective, outside observer to impair a Committee member's independent, unbiased judgment in reviewing the appeal.
- ii. Committee members shall promptly disclose to the Chair any potential conflict of interest. If the Chair has the potential conflict of interest, s/he shall disclose it to the Vice Chair.
- iii. After consultation with the Attorney General's Office, the Chair (or Vice Chair, if applicable) shall determine whether recusal is warranted.
- iv. The Complainant(s) and Respondent(s) may also request recusal by sending the request in writing to the Chair (or Vice Chair, if applicable) within 7 (seven) calendar days of receiving the notice described in Section III (b), above. The request shall explain the why the party believes recusal is warranted.
- v. If a Member is recused, the Chair (or Vice Chair, if applicable) shall select one of the Alternate Members to fill the vacancy.

5. Timeline for Review of an Appeal

- i. The Committee shall issue a decision letter within 30 calendar days of the date of the notice described in Section III (b), above.
- ii. The Chair may extend the decision timeline for good cause of up to 30 days. If an extension is needed, the Chair will send notice of the extension to the Complainant(s), the Respondent(s), and OEO prior to the end of the initial 30-day period.

6. Decision Letter Contents

- i. The decision letter shall include the following:
 1. a short summary of the procedural history and stated grounds for the appeal;
 2. A list of the documents reviewed by the Committee and any interviews conducted by the Committee;
 3. A summary of the Committee's findings; and
 4. A conclusion as to whether the appeal warrants remanding the OEO Final Investigation Report for additional investigation by OEO. A conclusion that remand is warranted shall also include specific recommendations to OEO such as, but not limited to, the following:
 - a. Specific witnesses to be interviewed;
 - b. Specific questions of fact left to be determined; and/or
 - c. Clarifying details sought.

7. Further Action:

The Committee's decision is final with respect to the investigation, unless the Committee determines that additional investigation by OEO is warranted. If the committee concludes that additional investigation is

warranted, at the conclusion of such additional investigation, no further appeal is available.

VIII. Intervention by Title IX Coordinator

In matters that involve sexual harassment and/or sexual misconduct, the WSU Title IX Coordinator has the authority to intervene at any stage of the OEO review and may make revisions to the process on a case-by-case basis in order to ensure a prompt, thorough, and effective resolution of the complaint.

IX. Other Available Process

Any student or employee aggrieved by an OEO report may be entitled to file a complaint outside of WSU with the U.S. Equal Employment Opportunity Commission, the U.S. Department of Education Office of Civil Rights, the Washington State Human Rights Commission, or any other state or federal agency having jurisdiction. See [External Offices](#).

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 applicable employment agreement, standards of conduct for students, or other University policy.