

Investigations of Employees for Sexual Harassment & Sexual & Interpersonal Violence

Personnel – General Provisions

EWU Policy 402-04

Effective: June 30, 2017

Authority: University President

Proponent: President's Office

Summary: This policy describes the standards and related processes for investigating complaints against a university employee of sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking.

History: This policy revises EWU policy 402-04, dated June 26, 2015. The EWU Board of Trustees adopted it on June 30, 2017.

1. INTRODUCTION

1-1. General

a. Purpose: This policy establishes standards for conducting university administrative investigations into allegations against a university employee of sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking. Deviations from this policy shall not constitute a basis for challenging the sufficiency of the investigation. From the initial investigation to the final result, the university shall follow a prompt, fair, and impartial process.

b. Scope: This policy applies to administrative investigations conducted by the university of such allegations, including, but not limited to, investigations conducted by the Title IX Coordinator or designee. Designees may include the; Director of Equal Opportunity/Affirmative Action/ADA Compliance; the Human Resources Investigator/Mediator or an external investigator retained by the University. This policy does not apply to external agencies having regulatory authority or to criminal investigations conducted by University Police or other law enforcement agencies. This policy applies to investigations of allegations against students only when the student is also a university employee.

c. Related Policies and Guidelines: This policy must be read in conjunction with EWU Policy 402-01 Discrimination, Sexual Harassment & Sexual & Interpersonal Violence, EWU Policy 603-01 Campus Safety, Security, and Crime Prevention , and EWU Guideline 401-01, Investigations.

1-2. Function of Investigations

The primary function of any investigation is to ascertain facts and to report them. It is the responsibility of the investigator to ascertain and consider the evidence on all sides of each issue. The investigator does not determine whether conduct results in a policy violation or whether discipline will be imposed.

1-3. Definitions

a. Complainant. A person who submits a verbal or written complaint against a university employee alleging sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking.

b. Investigator. Person designated by the university to review and, if appropriate, investigate allegations of sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking.

c. Respondent. A person who is the subject of an allegation of sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking.

d. Sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking. For a definition of these terms, refer to EWU Policy 402-01.

e. Victim. Person who is the victim of the alleged sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking. In many cases, the victim and the complainant may be the same person. However, there may also be circumstances where the complainant is a witness to behavior towards another person who is the

victim. Additionally, a complainant may identify other victims of the same alleged conduct.

1-4. Expectations

Complainants, respondents and witnesses are expected to cooperate with investigators, including: providing truthful statements, not providing false or misleading information, and not omitting material facts. It is anticipated and expected that the parties to the investigation will not contact other witnesses about the allegations until the investigation is complete to help ensure the integrity of the investigation. Witnesses also should be aware that failure to respect the confidential nature of an investigation may lead to allegations of retaliation.

1-5. Confidentiality

All information obtained by the investigator during the course of an investigation will be maintained in a confidential manner fully permitted by law. During an investigation, complaint information will be disseminated only on a need-to-know basis. If the complainant/victim wishes to remain anonymous, the university will take reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law and contractual obligations. If the complainant/victim or any witness wishes to remain anonymous, the university shall inform him or her that its ability to investigate and respond to the allegation will be limited and that any type of retaliation is prohibited. The university will notify the person of the steps it will take to prevent and respond to any retaliation to help alleviate the person's concerns. However, the university cannot ensure confidentiality, as its legal and contractual obligations may require disclosure of the complainant/victim's or witnesses' names.

Reports of crimes to the campus community, timely warnings, and the university's annual security report shall not include the names of the complainants or victims. The university will maintain as confidential, to the extent permitted by law, any accommodations or protective measures provided to a victim, to the extent that maintaining such confidentiality would not impair the ability of the university to provide accommodations or protective measures.

All files are considered public records and will be released when required by the Public Records Act, Chapter 42.56 RCW.

1-6. Conflict of Interest

The investigation and decision making processes outlined in this policy shall be done by university officials who do not have a conflict of interest or bias against the complainant, victim, or respondent. If a complainant, victim or respondent believes the investigator or supervisor has a conflict of interest or bias, he or she should immediately notify the Title IX Coordinator. If the Title IX Coordinator is the person alleged to have a conflict of interest or bias, the Associate Vice President of Human Resources should be notified immediately.

1-7. Retaliation

Retaliation against any person for submitting a complaint, assisting or participating in an investigation/resolution of a report or complaint, and/or enforcing applicable rules, regulations, and policies is strictly prohibited. Individuals who engage in retaliatory actions may be subject to disciplinary action up to and including termination.

1-8. Timeline for Completing an Investigation

All complaints of sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking must be investigated in a prompt, thorough, and impartial manner. In the absence of extenuating circumstances, an investigation should be completed within 60 days from the date the complaint is received by the university. An investigation should not be delayed merely because of an ongoing criminal investigation or proceeding.

Both the complainant and the respondent will be periodically updated on the status of the investigation. If the investigation will take more than 60 days to complete, the investigator must inform the complainant and respondent in writing of the reason for the delay and provide an estimated date for the completion of the investigation.

1-9. Investigator and Supervisor Training

Complaints of sexual harassment, sexual misconduct, domestic violence, relationship

violence, or stalking should be investigated by an individual who has received annual training on the issues related to sexual harassment, sexual misconduct, domestic violence, relationship violence, and stalking and how to conduct an investigation that protects the safety of victims and promotes accountability. Similar training should be provided to all supervisors or decision-makers who would be making a determination on behalf of the university as to whether sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking has occurred.

2. COMPLAINT PROCEDURES

2-1. Reporting

Allegations of sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking may be filed with the Human Resources Office:

MAIL:

Human Resources Office
Attn: Complaints, Investigations and Resolutions
Eastern Washington University
314 Showalter Hall
Cheney, WA 99004
FAX: (509) 359-2874
EMAIL: cir@ewu.edu

If assistance is required for filing a complaint, complainants are encouraged to contact the Title IX Coordinator; the Director of Equal Opportunity, Affirmative Action, ADA compliance; the Human Resources Investigator/Mediator; or Human Resources. . The university should document any verbal allegations. University employees who receive a complaint, or are aware of an incident involving sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking shall report the incident by filing a complaint with the Human Resources Office as previously described. .

2-2. Initial Contact with Complainant/Victim

After receiving a complaint, the Title IX Coordinator or designee shall meet with the complainant/victim to review the complaint and evaluate the nature of the allegations.

a. If the university official determines that the complaint could possibly be of the nature of sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking, the official shall:

- (1) Determine whether immediate, interim measures are necessary to protect the complainant/victim from further harassment or danger. Interim measures may include, but are not limited to, separating the respondent from the complainant/victim, adjusting schedules, placing an employee on administrative leave, providing counseling, and similar actions.
- (2) Inform the complainant and or respondent of their rights, policies and options, including options to avoid contact with the respondent, available resources to assist them, and possible protective measures they can take.
- (3) If requested, assist the complainant/victim with contacting medical, police, and/or related resources.
- (4) Make a preliminary determination as to whether the alleged conduct has created a hostile work or learning environment. If so, the university will take immediate action to stop the harassment, prevent its recurrence, and address its effects.
- (5) Initiate an investigation under this policy. The university is obligated to initiate an investigation as soon as it receives a complaint of this nature.

b. If the university official determines that the complaint could not possibly meet the definitions of sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking as set forth in EWU Policy 402-01, then the official shall take the following actions:

- (1) Conclude the matter and draft a summary report documenting the information provided and describing how the complaint is not of the nature of sexual harassment, sexual misconduct, domestic violence,

relationship violence, or stalking as set forth in EWU Policy 402-01.

- (2) Debrief the complainant on the fact that no further action will be taken toward investigating the matter as a possible violation of sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking as described in EWU Policy 402-01. If the complainant continues to believe an investigation should be conducted, he/she may submit a request to the Title IX Coordinator explaining why further investigation is warranted. The Title IX Coordinator will review the request and provide a written response to the complainant.
- (3) If the alleged conduct could constitute general misconduct or a violation of other laws, regulations, or policies, the university official should ensure that the complaint is handled pursuant to those alternative laws, regulations or policies.

and the university's policy against retaliation, during the investigative and discipline processes.

- a. Notice to respondent. The investigator shall notify the respondent and the respondent's supervisor of the complaint. Notification shall include a generalized summary of the allegations, the name of the assigned investigator and a copy of this policy.

- b. Notice to complainant/victim(s). The investigator, Title IX Coordinator, and/or Associate Vice President of Human Resources shall notify the complainant and any named victims that a complaint has been received. Notification shall include the name of the assigned investigator and a copy of this policy.

Additionally, the complainant, respondent and any named victims shall be informed of their rights and options, including, at a minimum, the following:

- (1) Medical / Police Assistance

- (a) How to seek medical treatment, the importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protective order, and the procedures to follow to preserve such evidence; and,

- (b) His or her right to file a criminal complaint with the University Police or outside law enforcement. If the victim wishes to report the conduct to outside law enforcement, the university should assist him or her in doing so. The university will also notify the victim that he or she is not required to file a report with a law enforcement agency.

- (2) Resources

- (a) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

- (b) A list of existing on and off campus counseling, health care services, mental health services, victim advocacy, legal assistance, visa and immigration

3. INVESTIGATIONS

3-1. Investigator Designation

- a. The university shall determine who will conduct the investigation per EWU policies 402-01 and 603-01. The investigator may be the Title IX Coordinator;, Director of Equal Opportunity, Affirmative Action/ADA Compliance; the Human Resource Investigator/Mediator, their designees, , or an outside investigator.

- b. Challenges: The complainant or respondent may request a different investigator by submitting a request, within 3 calendar days of notification of the investigator assignment, to the Title IX Coordinator or designee specifying the reason the investigator should be replaced. If the Title IX Coordinator is the investigator, the request shall be made to the Associate Vice President of Human Resources. A written decision will be provided to the requestor.

3-2. Notice of Investigation & Rights

The investigator shall notify the complainant/victim and the respondent of the investigation, their rights,

assistance, and other services for victims; and,

(c) A list of options and resources available to assist the complainant/victim regarding academic, living, transportation and working situations.

(3) Investigation

(a) The procedures the university will follow when determining if discipline is appropriate;

(b) Who will receive a report of the complaint;

(c) Steps the university will take to ensure confidentiality and limits this may place on the university's ability to investigate and respond; and,

(d) Information regarding the university's policy against retaliation and how the complainant should report retaliation or new incidents.

3-3. Elements of an Investigation

The elements of investigation described herein are common to most investigations. However, the formality, scope, and process of an investigation may vary based on the complexity and seriousness of the issue being investigated. The designated investigator has discretion in determining the formality, scope, and process of the investigation.

a. Gathering Information:

- Contact complainant: The investigator will contact the complainant to review the complaint, and to identify relevant witnesses and relevant evidence (e-mails, memos, photos, etc.). If necessary, the investigator may contact the complainant on more than one occasion during the course of the investigation to obtain additional information and clarification.
- Contact respondent: The investigator will contact the respondent and schedule a meeting. At the initial meeting, the investigator will explain the investigative process, provide the respondent with a copy of this policy, and provide the

respondent with a copy of the written complaint, if any. If there is not a written complaint, the respondent will be provided with a written statement of the specific behavior/incident being investigated. The respondent will be provided an opportunity to respond to the allegations, either at the first meeting and/or at subsequent meetings. The respondent will be provided an opportunity to respond to the allegations, identify relevant witnesses, and identify/provide relevant evidence (emails, memos, photos, etc.). The response may be verbal and/or in writing.

- Witness Interviews: The investigator will determine whether there are any witnesses who have firsthand knowledge of the alleged behavior based on the information provided by the complainant and the respondent. The investigator has discretion in determining which witnesses to interview and how such interviews will be conducted. If necessary, the investigator may contact identified witnesses on more than one occasion during the course of the investigation to obtain additional information and clarification.
 - Restriction in Questioning: In conducting an investigation into issues of sexual harassment or sexual misconduct, the investigator should not inquire into or consider evidence about the alleged victim's prior sexual conduct with anyone other than the respondent.
- b. Informal resolution. If, at any time during the investigation of a complaint other than sexual misconduct, the investigator believes informal resolution is appropriate, the investigator may offer the parties the option of engaging in some form of informal resolution process. If the parties agree and reach a resolution, the investigator will prepare a written summary documenting the informal resolution. The complaints and resolution summaries will be filed in a separate complaint resolution file. Informal resolution, including mediation, is never appropriate for complaints of sexual misconduct. If the parties do not agree to

informal resolution or if the investigator determines a full investigation is warranted, the investigator will proceed with the investigation.

c. Presence of Representatives/Advisors. Both the respondent and the complainant may have an union representative or advisor of his or her choice present during any meeting or interview governed by this policy. The representative/advisor may not interfere with the interview or answer questions on the complainant/victim's or respondent's behalf.

d. Report: After completing the interviews and gathering evidence, the investigator will draft a report. The report will document the relevant information gathered and analyze the factual support for each of the allegations. The investigator may conclude there is sufficient evidence to substantiate the allegations or there is insufficient evidence to substantiate the allegations. The final report will not include legal conclusions or determinations as to whether University policy has been violated.

e. Copies of Final Report: After the report is finalized, a copy of the final report shall be simultaneously provided to the complainant/victim, respondent, and respondent's supervisor. Neither the complainant nor the respondent may appeal an investigative finding.

f. Forwarding of Report to Title IX Coordinator. A copy of the final investigative report should also be forwarded within ten business days to the University's Title IX Coordinator.

g. Investigative File. The investigator will confirm the final investigative file is organized and complete with a copy of the final investigative report and copies of any evidence (e.g. written statements, notes, documents, photos, etc.) gathered in the course of the investigation. The investigative file should be retained in accordance with the university's records retention schedule.

3-4. Supervisor Review and Action

a. Contact Human Resources: If the final report has substantiated findings, the supervisor shall contact HR, within 10 calendar days, to discuss the university's response.

b. Notice of Intent to Discipline. Whether a respondent is entitled to notice of the university's

intent to impose discipline on him/her is determined under the applicable collective bargaining agreement. If the respondent is entitled to such notice, a copy of the notice shall be simultaneously provided to the complainant/respondent.

c. Pre-disciplinary Meeting. If the respondent is entitled under an applicable collective bargaining agreement to meet with his or her supervisor to provide additional information before a disciplinary decision is made, the complainant/victim must be notified in advance of the time and place of such meeting. The complainant/victim and the respondent shall have an equal opportunity to provide additional information for the supervisor's consideration at the pre-disciplinary meeting. If the respondent is afforded the opportunity to provide additional information in writing, the same opportunity must be afforded to the complainant/victim.

d. Supervisor's Decision. After the pre-disciplinary meeting, the supervisor will consider the investigative report, the complaint/victim's response, the respondent's response, and any other relevant information in consultation with the Labor Relations Manager and the Associate Vice President of HR to determine whether discipline is warranted and if so, the appropriate level. For allegations of sexual harassment, sexual misconduct, domestic violence, relationship violence, and stalking the supervisor must determine whether it is more likely than not that the respondent violated EWU Policy 402-01.

e. Disciplinary Decision. A copy of the university's written disciplinary decision shall be provided simultaneously to the complainant/victim and the respondent. The decision shall include the rationale for the result and the discipline imposed. The complainant/victim and the respondent shall be simultaneously informed in writing of any changes made to the disciplinary action and when the results become final.

f. Right to be Present. During any disciplinary meeting where the respondent has a right to be present, the complainant/victim also has the right to be present as required by federal law. If the respondent has the right to have an advisor accompany him/her to a disciplinary meeting, the

complainant/victim shall also be entitled to bring an advisor.

g. Access to Information. The complainant/victim and respondent will, upon request, be provided with access to any information reviewed by the supervisor in determining whether to impose discipline.

h. Notice to Title IX Coordinator. The results of any investigations conducted under this policy and the resulting disciplinary determinations shall be reported to the Title IX Coordinator within 30 days of the final disciplinary determination.

i. Nondisclosure Agreements Prohibited. The university will not require a complainant/victim or respondent to abide by a nondisclosure agreement that would prevent the redisclosure of information related to an investigation or disciplinary action under this policy.

3-5. Types of Discipline and Protective Measures

An employee who is determined by the university to have committed sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking will be subject to discipline or corrective action in accordance with the applicable collective bargaining agreement and/or university policies. Discipline or corrective action may include letters of expectation, verbal or written reprimand, temporary suspension, demotion, reassignment, mandatory training, and/or termination.

In addition to discipline, the university may offer temporary or permanent protective measures. Such protective measures may include, but are not limited to, placing an employee on administrative leave, restricting an employee from contacting the victim, reassignment, alternative work or learning arrangements, police escorts on campus, and/or additional supervision.

3-6. Limitations of Appeals / Grievances

Neither the complaint/victim nor the respondent has the right to appeal or challenge a factual finding in an investigation. If the respondent has the right to challenge any discipline imposed under the applicable collective bargaining agreement by filing a grievance, the complainant/victim has an analogous right to timely challenge the level of

discipline imposed by filing a request for reconsideration with the respondent's supervisor.

If a grievance is filed challenging discipline imposed for sexual harassment, sexual misconduct, domestic violence, relationship violence, or stalking, the complainant/victim has the right to be present and participate to the same extent as the respondent in any subsequent institutional disciplinary proceedings