

Investigations

Personnel – General Provisions

EWU Guideline 401-01

Effective: August 10, 2020

Authority: University President

Proponent: Vice President for Business & Finance

1. INTRODUCTION

1-1. General

a. Purpose and Scope: This document establishes guidelines for conducting university administrative investigations into allegations of misconduct and/or violation of laws, regulations, or policies; and investigations of issues when the university is informed or observes an issue of misconduct or an issue regarding performance. In some cases, additional investigative requirements may be contained in other university policies for particular types of allegations.

These guidelines do not apply to criminal investigations conducted by university police or other law enforcement. These guidelines do not apply to investigations of formal Title IX complaints as detailed in EWU Policy 402-05 (Title IX Investigations & Hearings). For other investigations of sexual misconduct and interpersonal violence, additions and exceptions to these guidelines are contained in EWU Policy 402-01 (Sexual Misconduct, Interpersonal Violence & Title IX Responsibilities).

These guidelines also do not apply to external agencies having regulatory authority.

Finally, these guidelines do not apply to investigations of allegations of misconduct in research, as such investigations are governed by EWU Policy 302-05, Ethics in Research.

Since these are guidelines, they are intended to provide guidance only. Actual investigations may deviate from the guidelines. Such deviations shall not constitute a basis for challenging the sufficiency of the investigation. The formality and scope of investigations may vary based on the complexity and seriousness of the issue subject to review.

b. Collective Bargaining Agreements (“CBA”): This document merely establishes guidelines for the conduct of investigations. In some circumstances, provisions contained in the

‘Discipline’ articles of CBAs with unions certified to represent designated employee groups may apply to a particular investigation. If so, the provisions of the appropriate CBA must be followed. In the event of any discrepancy between this guideline and the CBA, the CBA will govern.

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. Timeline for Filing Complaints

All complaints must be filed within three years of the date of the alleged misconduct. The university may waive this deadline if there are extenuating circumstances or a continuing pattern of conduct.

1-4. Retaliation & Obstruction

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. Retaliation may be a separate violation. Individuals who engage in retaliatory actions may be subject to disciplinary action up to and including termination.

During an investigation, parties are prohibited from obstructing the investigative process or tampering with witnesses or evidence.

1-5. Confidentiality & Public Records Act

All information obtained by the investigator during the course of an investigation will be maintained in a confidential manner to the extent permitted by law. All investigative files are considered public records and will be released when required by the

Public Records Act, chapter 42.56 RCW. Investigations into complaints of discrimination or harassment are exempt from disclosure while the investigation is active and ongoing. Once the investigation is complete and the complainant has been notified of the outcome, the names of the complainant, other accuser, and witnesses will be redacted if the university receives a public records request for the investigative report unless such persons consent to the disclosure of their names.

1-6. Definitions

a. Complainant. A person who submits a verbal or written complaint alleging misconduct, a violation of laws, regulations or policies relevant to the university and its constituents, and/or performance problem(s). EWU, at its discretion, may also serve as the complainant.

b. Respondent. A person who is alleged to have engaged in misconduct, a violation of law, regulations or policies, or performance problem(s).

c. Investigator. Person designated by the university to review and, if appropriate, investigate allegations of misconduct and/or a violation of laws, regulations or policies relevant to the university and its constituents or observed/reported misconduct or performance problem(s).

1-7. Expectations for Cooperation

Complainants, respondents and witnesses are required to cooperate with investigators, including: providing truthful statements, not providing false or misleading information, and not omitting material facts. If a complainant, respondent, or witness is a university employee, such employee must make him or herself available for an investigative interview during university business hours within a reasonable period of time. If the person is not on paid status when the investigation is being conducted, the employee still must make him or herself available within a reasonable period of time either in person or telephonically; such employee will be compensated for time spent in the actual interview. Failure to cooperate and/or failure to provide truthful information may be a separate violation. An employee who fails to cooperate with the investigative process may be subject to disciplinary action up to and including termination.

If the alleged conduct could result in a potential criminal charge, respondents have the option of

remaining silent. In such circumstances, the university will proceed with the investigation without the respondent's statement.

2. PRELIMINARY PROCEDURES

2-1. Complaints

The university may receive notice of allegations of misconduct and/or violations of laws, regulations or policies through verbal reports, observation, or written complaints. Complaint forms are available on the university's website or in-person. Complaints may be filed with Human Resources (Showalter 314) or Civil Rights, Compliance & Risk Management (Tawanka 211).

2-2. Responsibility to Report

a. Mandatory Reporting: Employees are mandated to promptly report incidents involving sexual misconduct, discrimination, or crimes occurring on campus, in university leased facilities, or during a university sponsored trip or activity.

b. Other Reporting: Employees are strongly encouraged to promptly report incidents of alleged misconduct or violations of university policy or law.

2-3. Investigator Designation

a. Investigators: The investigator may be a supervisor, a contracted investigator, Senior Investigator/Title IX Coordinator, the Director of Equal Opportunity, or any person appointed by the Associate Vice President for Human Resources, the Associate Vice President for Civil Rights, Compliance & Enterprise Risk Management, or Chief Financial Officer.

b. Assignment: Upon receipt of a written complaint, Human Resources and Civil Rights, Compliance & Risk Management will coordinate to determine who will be assigned to investigate the matter. If the complaint involves allegations of fraud or theft of university resources, the complaint will be provided to the Chief Financial Officer for review as to whether the matter will be referred to the Auditor's Office, police department, or investigated under these guidelines.

c. Conflict of Interest or Bias: The investigation and decision-making processes shall be done by university officials who do not have a conflict of interest or bias against the complainant,

respondent, or witnesses. If a complainant or respondent believes the investigator or supervisor has a conflict of interest or bias, the person should notify the Associate Vice President for Human Resources within 5 business days of notification of the investigator assignment. A written decision will be provided to the requestor.

d. All investigations should be completed in a timely and thorough manner. In general, an investigation should take no longer than 90 days, unless there are extenuating circumstances. If an extension is required, the investigator shall notify the party(ies) prior to the 90 days and inform them of the new expected completion date.

2-4. Initial Review

a. The investigator will review the allegations and determine the most appropriate course of action.

b. After reviewing the complaint, the investigator may contact the complainant to review the complaint and review the complaint processes. If mediation is appropriate, as determined by the investigator, and both parties agree to mediation, a mediation will be conducted. If as a result of the mediation, the parties agree to informal resolution, the mediator will prepare a written summary documenting the informal resolution.

c. If both parties are not willing to mediate the complaint or if the investigator determines mediation would not be appropriate, the next step in the initial review process depends on the nature of the alleged behavior:

1. If the complaint alleges behavior that, if found to be true, could be misconduct or a violation of law, policy, or university regulations, the investigator may proceed with an investigation. In lieu of an investigation, the university may take corrective/constructive action under the applicable collective bargaining agreement.

2. If the complaint alleges behavior that, if found to be true, could be a performance problem, the supervisor or designee may proceed with an investigation, or, in lieu of an investigation, take corrective/constructive action under the applicable collective bargaining agreement.

3. If the university declines to investigate a complaint, the investigator will prepare a written summary and explain why the matter will not be investigated. The investigator will meet with the

complainant to debrief them on the fact that no further action will be taken.

3. INVESTIGATIONS

3-1. Investigation Guidelines

This section describes activities that are common to most investigations. However, each investigation is unique and may or may not include all of the tasks described.

a. Contact complainant, if a complaint is filed: If the investigator did not meet with the complainant in the pre-investigation stage, 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.

b. Notice of Investigation. After determining the specific alleged behaviors at issue, the investigator will send a notice of investigation to the respondent and a copy of these guidelines. The notice shall conform to any particular requirements of the applicable collective bargaining agreement.

c. Initial Meeting with Respondent. The investigator will set up an initial meeting with the respondent. At the initial meeting, the investigator will explain the investigative process.

d. Provision of the Complaint. The investigator will provide the respondent with a copy of the written complaint, if any. If there is not a complaint, the respondent will be provided with a written statement of the specific behavior/incident being investigated.

e. Interview Respondent. The respondent will be provided an opportunity to respond to the allegations, either at the first meeting and/or at subsequent meetings. The response may be either verbal and/or in writing. The respondent will have an opportunity to provide relevant information/documents regarding witnesses and evidence (emails, memos, photos, etc.).

f. Interviews: The investigator will determine the order of interviews depending on the nature of the complaint. The investigator will arrange interviews with witnesses having firsthand knowledge of the

alleged behavior and gather evidence relevant to the allegations. 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.

g. Investigative Report: After completing the interviews and gathering evidence supporting or rejecting the allegations, the investigator will draft a report. A template for the investigative report is available in Human Resources. The template may be used as a guide to identify the components of an investigative report, but it is not intended to prescribe mandatory report contents or formats. The final report will assess each of the allegations and may conclude there is sufficient evidence to substantiate the alleged behaviors based on a preponderance of the evidence or there is insufficient evidence to substantiate the alleged behaviors. The final report will not include legal conclusions or determine whether a policy has been violated or misconduct has occurred. There is no appeal of an investigation finding.

A copy of the final report will be provided to the respondent's supervisor and respondent to the extent permitted by law. The complainant will be notified of the outcome of the investigation.

h. 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.

i. Final Reports. Upon completion of an investigation, the final investigative report must be provided to the Labor Relations Manager and Decision Maker, as defined below.

3-2. Supervisor Review and Action

All final investigative reports must be reviewed by an individual serving in the capacity of President, Vice President, Vice Provost, Dean, or Associate Vice President ("Decision Maker"). Deans may, at their discretion, delegate decision-making authority to an Associate Dean. The Decision Maker will review the investigative report, determine whether or not the employee has violated a law, policy, or regulation; engaged in misconduct; or has a performance issue. The Decision Maker will also determine the appropriate level of discipline, if any, in consultation with the Labor Relations Manager or designee.

If required by a collective bargaining agreement, the Decision Maker and Labor Relations Manager will hold a pre-disciplinary meeting with the employee and, if requested, union representative before making a final decision.

APPENDIX A - COMPLAINT FORM



COMPLAINT FORM

A. GENERAL INFORMATION

| | | | | |
|----------------------------------|-----------------------------------|----------------------------------|------------------------------------|-------------------------------------|
| I am an EWU: | | | | |
| <input type="checkbox"/> Student | <input type="checkbox"/> Employee | <input type="checkbox"/> Visitor | <input type="checkbox"/> Volunteer | <input type="checkbox"/> Contractor |
| Complainant Name: | | | Today's Date: | |
| Phone: | Email: | | Dept: | |
| Address: | | City: | State: | Zip: |

B. INCIDENT REPORT

| | | | | |
|----------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|--------------------------------------------|------------------------------------|-------------------------------------|
| Alleged respondent is an EWU: | | | | |
| <input type="checkbox"/> Student | <input type="checkbox"/> Employee | <input type="checkbox"/> Visitor | <input type="checkbox"/> Volunteer | <input type="checkbox"/> Contractor |
| Alleged respondent's Name: | | | | |
| This is a complaint based on (Please describe)? | | | | |
| | | | | |
| Did the alleged conduct or behavior occur in the workplace/education setting? <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | |
| Was this a single incident? | | If "No", how many incidents have occurred? | | |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | | | |
| Where did the incident occur? (Building/Facility, etc.) | | | Date(s) of incident(s) | |
| | | | | |

Please provide additional details regarding your complaint and list any witnesses

| | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| Continued on separate page? <input type="checkbox"/> Yes <input type="checkbox"/> No | Are there any attachments? <input type="checkbox"/> Yes <input type="checkbox"/> No |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|



COMPLAINT FORM

C. EMPLOYEES

Have you notified your supervisor? Yes No Name(s):

If "Yes", please describe the outcome and/or actions taken:

D. PLEASE EXPLAIN THE RESOLUTION THAT YOU WOULD LIKE:

INFORMAL – Informal resolution may be in the form of conversation, conciliation or mediation with the alleged offender

OR

FORMAL – Formal resolution requires an official investigation and possible action based on any findings

I affirm all information is accurate and true to the best of my knowledge and that this complaint is made in good faith.

SIGNATURE _____ DATE: _____

Complaints may be filed by mail, email or fax to:

Civil Rights, Compliance and Risk Management
 Eastern Washington University
 211 Tawanka Commons
 Cheney, WA 99004
 FAX: (509) 359-2266

General Complaints: cir@ewu.edu
 Equal Opportunity and Affirmative Action: eoaa@ewu.edu
 Title IX/Sexual Misconduct: titleix@ewu.edu

FILING INSTRUCTIONS: (If you need any assistance in completing this form, please contact one of the following)

| Contact | Phone | Email |
|-------------------------------------------------------------------------------|----------------|------------------------------------------------------------|
| Deborah Danner AVP Human Resources/Ethics Officer | (509) 359-2383 | ddanner2@ewu.edu |
| Ray Rector Director of Equal Opportunity/Affirmative Action/ADA Compliance | (509) 359-6612 | rrector4@ewu.edu |
| Annika Scharosch, J.D. AVP for Civil Rights /Title IX Coordinator | (509) 359-6724 | ascharosch@ewu.edu |