

Diversity & Nondiscrimination

Civil Rights

EWU Policy 402-02

Effective: May 17, 2024

Authority: EWU Board of Trustees

Proponents: Vice President for Diversity & Inclusion and Vice President for Business and Finance

Purpose: This policy prescribes university standards relative to diversity, nondiscrimination, equal opportunity, and affirmative action.

History: This policy revises the previous version of this policy adopted on May 19, 2023, with housekeeping edits from September 7, 2023. It was approved by the Board of Trustees on May 17, 2024.

Scope: This policy applies to all students, employees, vendors, volunteers, and contractors. Discrimination in the form of sexual harassment or sexual misconduct is addressed in EWU Policy 402-01 (Sexual Misconduct and Title IX Responsibilities). Bullying is addressed in EWU Policy 901-04 (Bullying Prevention and Response).

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1. COMMITMENTS

1-1. Commitment to Diversity and Inclusion

Eastern Washington University is committed to promoting respect for the rights and privileges of others by creating an inclusive environment in which students, faculty and staff value and understand each individual's race, gender, ethnicity and other dimensions of difference. A diverse educational environment is essential in order to achieve our mission to prepare students to make contributions to a diverse society and to function in an increasingly diverse workforce.

Our university has a compelling interest in attaining a diverse student body. "Student body diversity promotes learning outcomes and better prepares students for an increasingly diverse workforce and society. . . ." A diverse educational environment promotes understanding of others, invigorates classroom discussion and helps break down stereotypes. A diverse working environment will naturally enable all participants to contribute to their full potential in pursuit of the University's mission.

The university encourages all members of its community to constructively and responsibly express

their opinions and feelings about diversity so that all may benefit from honest, open and equitable dialogue. When any member of the educational community is threatened by discriminatory acts, everyone's fundamental freedoms are threatened. No form of violence, intimidation or harassment will be tolerated.

The University's efforts to promote a diverse and inclusive university environment are guided by the leadership of the Office of Diversity and Inclusion.

1-2 Commitment to Equal Opportunity

Eastern Washington University is committed to equal opportunity, fair treatment, and taking affirmative action to increase the number and retention of students and employees from historically underrepresented groups. The Director of Civil Rights Investigations & Accessibility prepares an updated affirmative action plan each year in accordance with federal requirements.

1-3 Commitment to Nondiscrimination

EWU does not discriminate in its programs and activities on the basis of race, color, creed, religion, national origin, citizenship or immigration status, sex, pregnancy, sexual orientation, gender

identity/expression, genetic information, age, marital status, families with children, protected veteran or military status, HIV or hepatitis C, status as a mother breastfeeding her child, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability, as provided for and to the extent required by state and federal laws. The university may consider a student's gender, marital status, or the existence of dependent children in making assignments to residence halls and other university housing in accordance with RCW 49.60.222. The university may consider citizenship or immigration status when required to do so by state or federal law, regulation, or a government contract.

No person may discriminate against another person on any of the grounds listed above when acting or speaking on behalf of EWU. While discrimination is prohibited on the protected statuses listed above, certain conduct that is not based on protected status may still meet the definition of bullying defined in EWU Policy 901-04.

2. RESPONSIBILITIES

2-1. University President

The university president is responsible for overall compliance with federal and state nondiscrimination laws. The president will ensure development and implementation of university affirmative action, equal opportunity, and nondiscrimination policies and programs. The president will promote those programs and policies.

2-2. Associate Vice President for Civil Rights, Compliance & Enterprise Risk Management

The president delegates to the associate vice president for civil rights, compliance and enterprise risk management the responsibility for promoting and monitoring the university's compliance with federal and state nondiscrimination laws. The associate vice president is responsible for responding to any external investigations by the Human Rights Commission, Equal Employment Opportunity Commission, and/or Office of Civil Rights.

Any concerns about the university's failure to comply with federal or state nondiscrimination laws may be directed to the associate vice president at (509) 359-6724; 211 Tawanka Hall or online at <https://inside.ewu.edu/civilrights/>.

2-3. Director of Civil Rights

a. Contact Information

Director of Civil Rights Investigations & Accessibility
211 Tawanka Hall
(509) 359-7496
eoaa@ewu.edu

b. Duties

The Director of Civil Rights Investigations & Accessibility is responsible for all training and compliance efforts with respect to this policy.

The Director will:

1. Clearly communicate to employees and students that EWU will not tolerate any form of discrimination;
2. Inform employees and students that discriminatory behaviors may subject the respondent to disciplinary action under this policy;
3. Provide training on discrimination as required or requested;
4. Implement preventative education programs for students and employee. Such training shall include federal and state laws, university policies, and general information as to what constitutes discriminatory conduct and retaliation. At a minimum, awareness training will include:
 - a) University prohibitions against discrimination;
 - b) How to recognize forms of discrimination; and
 - c) How to report violations.
5. Facilitate resources;
6. Establish and maintain an effective complaint process;
7. Investigate complaints of discrimination, and other types of complaints when delegated by the Associate Vice President for Human Resources or designee, in accordance with university guidelines and polices in a prompt, thorough, and impartial manner. In the absences of extenuating circumstances, a discrimination investigation should be completed within ninety (90) days from the

date the complaint is received by the university.

The Title IX Coordinator is responsible for compliance with nondiscrimination laws with respect to sexual harassment and sexual misconduct. The Title IX Coordinator's responsibilities are further delineated in EWU Policy 402-01.

2-4. Supervisors and Faculty

Supervisors and faculty members play a key role in both preventing and responding to discriminatory acts or behaviors.

- a. **Prevention:** Prevention is the best method for eliminating discrimination in the workplace. Supervisors and faculty members can help prevent discrimination by modeling appropriate behaviors and by arranging discrimination prevention training when necessary.
- b. **Response:** When supervisors and faculty members become aware of incidents of discrimination harassment, they will take appropriate action based on the situation. In all cases, the supervisor or faculty member will report the incident or behavior to Civil Rights and Compliance as outlined in section 4-1.
- c. Faculty members have the additional responsibility to monitor student activities in the classroom and to take appropriate action when discriminatory or harassing behaviors or incidents occur.
- d. Supervisors and faculty who are, or should be, aware of discriminatory practices within their department, area, or classroom will be held responsible for their actions in response to such circumstances. In determining such responsibility, the supervisor's or faculty member's extent of control over the circumstances and any corrective actions they have taken will be considered.

3. DISCRIMINATORY CONDUCT

3-1. Scope

As a public institution of higher education, the university has a special responsibility to create and maintain an academic environment that promotes freedom of inquiry and expression while protecting the rights, opportunities, and welfare of employees,

students, visitors, and contractors. EWU will not tolerate any form of discrimination as defined in this policy or retaliation and will take appropriate action against a university employee or student who violates any part of this policy. Enforcement of this policy is subject to constitutional protections related to freedom of speech, association, and the press.

The goal of this policy is to promote an environment that is free of discrimination and retaliation. To facilitate this goal, the university retains authority to discipline or take other appropriate action for any conduct that is deemed unacceptable or inappropriate, regardless of whether the conduct rises to the level of unlawful discrimination or retaliation.

All persons, including students, employees, visitors, and contractors are required to comply with this policy while on campus or participating in university programs or activities. EWU students and employees are also required to comply with this policy while conducting university business, participating in university activities, or using university resources. Students and employees are also responsible for violations of this policy off-campus when the conduct in question has an impact on the person's duties or responsibilities as a university student or employee or results in a hostile educational or working environment.

3-2. Discrimination

No person may discriminate against another person when acting or speaking on behalf of EWU. Discrimination is defined as adverse treatment of an individual based on the person's protected status.

***Protected Status:** Throughout this policy, the term protected status includes race, color, creed, religion, national origin, citizenship or immigration status, sex, pregnancy, sexual orientation, gender identity/expression, genetic information, age, marital status, families with children, protected veteran or military status, HIV or hepatitis C, status as a mother breastfeeding her child, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability.

Note: Discrimination on the basis of sex, sexual orientation, gender identity, or gender expression may also constitute sexual harassment under EWU Policy 402-01 (Sexual Misconduct & Title IX Responsibilities).

3-3. Discriminatory Harassment

All members of the university community, including students, employees, visitors, volunteers, and contractors, are prohibited from engaging in discriminatory harassment. Discriminatory harassment is physical, verbal, electronic, or other conduct based on an individual's protected status when:

- a. Submission to, or rejection of such conduct is implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any university program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or
- b. Such conduct creates a hostile environment. A hostile environment is created when the conduct is sufficiently severe or pervasive and objectively offensive, that it unreasonably interferes with an individual's academic or work performance, ability to participate in or benefit from the university's programs, services, opportunities, or activities. Unreasonable interference is viewed from both a subjective and objective standard.

Examples of behaviors that may constitute discrimination or discriminatory harassment include, but are not limited to:

- Denying someone an employment or educational opportunity or benefit because of their gender, race, or disability;
- Treating individuals differently because of their national origin or age;
- Severe or pervasive name calling, jokes, or other verbal or physical behavior towards a person based on their protected status;
- Deliberate misuse of an individual's preferred name, form of address, or gender-related pronoun (except on legally mandated documentation, if an individual has not officially obtained a name change).

3-4. Retaliation

Any intimidation, threat, coercion, or discrimination against a person for the purpose of interfering with a person's rights under this policy or a civil rights law or because a person has made a report, complaint, testified, assisted, participated, or refused to

participate in an investigation under this policy is considered retaliation. Retaliation is prohibited and will be treated as a separate violation of this chapter.

It is also a violation of this policy to retaliate against a whistleblower as defined by RCW 42.40.020 or a person assisting with a fraud or accountability investigation.

4. REPORTING AND INVESTIGATIONS

4-1. Reporting Options

Individuals who believe they have been subjected to discrimination or retaliation are encouraged to report such incidents to the university and seek advice and assistance as soon as possible. Employees, except licensed professionals in Counseling and Wellness Services, who become aware of an employee or student experiencing discrimination or discriminatory harassment by an EWU employee, student, or the institution itself are mandated to report such incidents as outlined below.

Concerns or complaints of discrimination may be filed online at: <https://inside.ewu.edu/civilrights/>, by emailing eoaa@ewu.edu, or by calling (509) 359-7496.

A complainant or witness who is threatened in any way should immediately report these concerns to the University Police or Director of Civil Rights Investigations.

4-2. Good Faith

Complaints must be made in good faith. Knowingly making a false or frivolous allegation may be considered an act of misconduct.

4-3. Investigations and Resolutions

- a. Investigative process when the respondent is a student:

Reports of discrimination or related retaliation that only involve students will be handled by the Office of Student Rights & Responsibilities in accordance with the provisions of the Student Conduct Code, Chapter 172-121, WAC. If a student has status as both a student and as an employee, the student may be subject to discipline both under the Student Conduct Code and University policies governing employees. Student Rights & Responsibilities shall coordinate with the Director of Civil Rights Investigations as appropriate.

- b. Investigative process when the respondent is an employee, visitor, volunteer, or contractor:

Reports of discrimination or related retaliation where the respondent is an employee, student employee, visitor, or contractor will be handled by the Director of Civil Rights Investigations or designee. Investigations will be conducted in accordance with EWU Guideline 401-01 (Investigations). In cases where the complainant is a student, the Director of Civil Rights Investigations may coordinate with Student Rights & Responsibilities as needed.

- c. In lieu of filing a complaint, employees and students may attempt to resolve issues of discrimination by:

1. Directly addressing the matter with the respondent;
2. Asking a supervisor to intervene;
3. Engaging in an informal meeting with the respondent and his/her supervisor or manager;
4. Requesting mediation with the respondent (mediation will be performed by the Director or designee); or,
5. Reporting the matter to the Director of Civil Rights Investigations.

- d. Use of the university informal process does not restrict the complainant from the external or formal complaint process. If the informal process is unsuccessful or no longer an option, a person may file a complaint under this policy. Concurrent Investigations

Any pending or ongoing investigation by the university will not be suspended or terminated if a person also files a complaint with an agency identified in chapter 7, unless it would interfere with a criminal investigation.

- e. Confidentiality

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. During an investigation, involved parties are expected to avoid contacting witnesses or other participating parties about the

investigation. Failure to respect the confidential nature of an investigation may lead to allegations of retaliation. All investigative files are considered public records and will be released when required by the Public Records Act, Chapter 42.56 RCW.

4-4. Interim Measures

Upon receipt of a complaint, the university may take immediate, interim measures, as deemed necessary, to protect the complainant or respondent prior to completion of the investigation and resolution of the complaint. Appropriate measures may include, but are not limited to, ordering no contact between the complainant and respondent, adjusting schedules, placing an employee on administrative leave, providing counseling, and/or taking other action per WAC 172-121-140. If the university makes a preliminary determination that conduct in violation of this chapter has created a hostile work or learning environment, the university will take immediate action to stop the harassment, prevent its recurrence, and address its affects.

4-5. Discipline

University employees who engage in discrimination may be subject to corrective or disciplinary action, including, but not limited to, termination of employment. Student behavior is addressed in the Student Conduct Code, Chapter 172-121, WAC. Visitors or contractors who engage in discrimination may have their prior license or privilege to be on University property revoked, in addition to other possible contractual implications.

5. SEGREGATED FACILITIES

5-1. Restroom, Locker Room & Dressing Room Use

Consistent with Chapter 162-32, WAC, the University allows individuals the use of gender segregated facilities, such as restrooms, locker rooms and dressing rooms that are consistent with that individual's gender identity. In facilities where undressing in the presence of others occurs, the University shall allow the use of a facility consistent with that individual's gender expression or gender identity.

The University shall not request that an individual use a gender-segregated facility that is inconsistent with that individual's gender expression or gender identity, or require that individual use a separate or gender-neutral facility. If another person expresses

concern or discomfort about a person using a facility that is inconsistent with the person's gender expression or identity, the person expressing discomfort shall be directed to a separate facility, if available.

Any action taken against a person using a restroom or other gender-segregated facility should be taken due to that person's actions or behavior in the facility not due to their gender expression or gender identity. The same standards of conduct and behavior must be consistently applied to all facility users, regardless of gender expression or identity.

Whenever feasible, the University will provide options for privacy, such as single-use gender neutral bathrooms or private changing areas that are available to any individual desiring privacy.

5-2. Federal Grant & Contract Requirements

In compliance with 48 CFR 52.222-21, the University does not permit its employees to perform services at any location where facilities are segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of policy or employee custom. This does not include separate single-use restrooms or necessary dressing or sleeping areas.

6. ATHLETICS PARTICIPATION

EWU welcomes all students to try out for and participate in intercollegiate athletics. Transgender students who wish to participate in intercollegiate athletics must meet all of the requirements of the National College Athletic Association's Transgender Student-Athlete Participation Policy. Eligibility criteria may vary depending on the sport. Prospective student-athletes who have questions about the eligibility criteria or who wish to submit a transgender student-athlete eligibility review form to the NCAA should contact EWU's Office of Athletic Compliance. Eligibility determinations are made by the NCAA.

Membership and participation in club sports is open to all EWU students. Clubs may elect to compete in intercollegiate leagues or tournaments with unique eligibility criteria. Clubs will refer to the respective league or tournament rules, bylaws, or policies that govern eligibility.

7. EXTERNAL COMPLAINTS

Individuals have a right to file complaints alleging discrimination, harassment, or retaliation with state

or federal agencies within the agencies' prescribed time periods. State and federal agencies have their own processes for responding to and processing such complaints. Filing a complaint with a state or federal agency listed below may be done in lieu of or in addition to the university's complaint process.

Equal Employment Opportunity Commission
909 First Avenue, Suite 400, Seattle, WA 98104
Phone: (800) 669-4000
TTY: (800) 669-6820
www.eeoc.gov

Office of Federal Contract Compliance
Seattle District Office
300 Fifth Avenue, Suite 1100
Seattle, WA 98104
(206) 398-8005
www.dol.gov/ofccp/index.htm

U.S. Department of Labor
Wage and Hour Division
300 Fifth Avenue, Suite 1130
Seattle, WA 98104
(206) 398-8039
www.dol.gov/WHD/index.htm

U.S. Department of Education, Office for Civil Rights
915 Second Avenue, Room 3310, Seattle, WA 98174
(206) 607-1600
OCR.Seattle@ed.gov
<http://www.ed.gov/ocr/complaintprocess.html>

Washington State Human Rights Commission
1330 N. Washington St., Suite 2460
Spokane, WA 99201
(800) 233-3247
www.hum.wa.gov

8. RESOURCES AND REFERENCES

The following resources may be helpful if you have concerns involving discrimination.

8-1. Campus Resources

Civil Rights & Compliance
211 Tawanka Hall
(509) 359-7496

Counseling and Wellness Services
(Confidential)
(509) 359-2366

Dean of Students

300 Pence Union Building
(509) 359-2292

EWU Police
(509) 359-6498

Human Resources
314 Showalter Hall
(509) 359-2381

Student Accommodations and Support Services
(509) 359-7924

Student Rights & Responsibilities
(509) 359-6960

8-2. Local, State, and Federal Resources

Washington State Employee Assistance Program
(877) 313-4455

U.S. Office for Civil Rights
Department of Education
2910 3rd Avenue, Mail Stop 106, Seattle, WA
(206) 442-1636
OCR@ed.gov

Equal Employment Opportunity Commission
1321 2nd Avenue, 7th Floor, Seattle, WA 98101
(206) 442-0968

Victim Rights Response Team- 24 hr crisis line
Help for victims of crimes and/or sexual assault
(509) 624-7273

Washington State Human Rights Commission
Spokane District Office
Rock Point Plaza III
1330 N. Washington Street, suite 2460
Spokane, WA 99201
800-233-3247
<http://www.hum.wa.gov/>

References

1. EWU Policy 402-01, Sexual Misconduct & Title IX Responsibilities
2. EWU Policy 402-03, Accommodating Persons with Disabilities
3. EWU Guideline 402-01, Investigations

4. EWU Policy 603-01, Campus Safety, Security & Crime Prevention
5. EWU Policy 901-04, Bullying
6. Titles VI and VII of the Civil Rights Act of 1964
7. Title IX of the Education Amendments of 1972
8. Sections 503 & 504 of the Rehabilitation Act of 1973
9. Age Discrimination in Employment Act
10. 29 CFR Part 1635, Regulations under the Genetic Information Nondiscrimination Act of 2008
11. Vietnam Era Veteran's Readjustment Asst Act
12. The Americans with Disabilities Act (ADA)
13. The Civil Rights Act of 1991
14. Student Conduct Code, WAC 172-121
15. Washington State Laws on Discrimination, RCW 49.60
16. Collective Bargaining Agreements