

# **Guidelines for Initiating and Investigating Complaints of Discrimination/Harassment**

## **I. OVERVIEW**

These guidelines are designed to assist in the implementation of Youngstown State University Policy 3356-2-03, Discrimination/Harassment by providing guidance and a process for the informal and formal resolution of allegations of discrimination or harassment<sup>1</sup>. An individual who is considering bringing a complaint under Policy 3356-2-03 may contact the Office of Equal Opportunity, Policy Development and Title IX in order to receive information regarding these guidelines and applicable University policies.

## **II. JURISDICTION OF THE OFFICE OF EQUAL OPPORTUNITY, POLICY DEVELOPMENT AND TITLE IX**

Any complaint addressed by the Office of Equal Opportunity, Policy Development and Title IX (EOPD), whether informally or formally, must fit within the jurisdiction of EOPD by fulfilling the following criteria:

- (a) The allegations must reasonably involve discrimination/harassment on the basis of sex, race, color, religion, national origin, age, sexual orientation, gender identity and/or expression, disability, or veteran/military status or any other basis protected by law,
- (b) The action must have already occurred and cannot be merely anticipated or speculative, and
- (c) A complaint must be filed within three hundred (300) days of the behavior or latest incident at issue.

If the criteria for jurisdiction of the EOPD are not met, the individual initiating the complaint will be informed of other possible resolution methods.

Please note that the three hundred (300) day time frame for filing an internal complaint with the University does not relieve an individual of the statutory filing requirements applicable to the Ohio Civil Rights Commission, the Equal Employment Opportunity Commission, or any other external agency.

## **III. PRIVACY**

All information received in connection with the filing, investigation, and resolution of allegations will be shared only with those individuals with a need to know in order to assist in

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<sup>1</sup> Investigations involving student complaints of sex/gender discrimination and harassment including sexual misconduct and sexual violence will follow the University's Title IX Grievance Procedures.

the review, investigation or resolution of the allegation. All individuals involved in an investigation should observe discretion and respect for the reputations of everyone involved in the process. The University may in certain circumstances be compelled to release information by law, such as pursuant to the Ohio Open Records Law or by court order.

#### IV. DEFINITIONS

For the purposes of these guidelines the following definitions will be used:

- (a) An individual alleging discrimination, harassment or retaliation shall be known as the complainant.
- (b) The individual who is alleged to have engaged in discrimination, harassment or retaliation shall be known as the respondent.
- (c) Together the complainant and respondent shall be known as the parties.
- (d) A third-party may bring a complaint on behalf of another person and shall be known as a third party complainant.
- (e) The submission of allegations of discrimination, harassment or retaliation shall generally be referred to as a complaint.
- (d) The individual conducting an investigation shall be referred to as the investigator.

#### V. INFORMAL RESOLUTION

The informal resolution process is typically used for behavior that is objectionable but has not resulted in a tangible academic or employment action, or does not involve a pattern of behavior.

##### A. Employee

If an employee is able and feels safe doing so, he or she should inform the person engaged in the objectionable behavior that the behavior is unwelcome and must stop. If the objectionable behavior continues, the employee should contact his/her immediate supervisor and/or the EOPD.

##### B. Supervisor/Manager Responsibilities in Informal Resolution

An employee may also seek to informally resolve a situation with the help of the unit supervisor. If the situation involves behavior of the unit supervisor, an employee may contact the next level supervisor. Any supervisor (including but not limited to directors and executive and administrative officers, chairs, executive directors, or faculty supervisors) who has been contacted by an employee seeking to informally resolve a workplace issue has the responsibility to:

- (a) Address all concerns promptly and thoroughly.
- (b) Respect the privacy of the parties.
- (c) Document within the supervisory file any actions taken regarding the situation.
- (d) If the matter is not successfully resolved or in the supervisor reasonably believes the matter cannot be successfully resolved informally, refer the matter to the EOPC within five (5) working days.

A supervisor may contact the EOPD for information and guidance regarding informal resolution and Human Resources for information regarding University counseling, mediation and conflict resolution resources.

### C. EOPD

An employee may contact EOPD directly regarding informal resolution; however, informal resolution must meet the jurisdictional requirements of EOPD (see Section II. *JURISDICTION OF THE OFFICE OF EQUAL OPPORTUNITY*.) Informal resolution typically involves an EOPD review of the facts of an allegation but does not involve a formal investigation. The EOPD will contact appropriate University units and/or personnel as needed to discuss and review the allegation. If it is determined that the allegation is valid and can be resolved to the satisfaction of the complainant, the complainant and alleged offender will attend separate consultations with appropriate University personnel.

At any point during the informal process, an employee may elect to file a formal complaint with EOPD.

### VI. FILING THE FORMAL COMPLAINT

To begin the formal investigation process, a completed Discrimination/Harassment Complaint Form (Complaint Form) must be submitted to the EOPD by a complainant or third-party complainant. Requests that the University “just keep a record of my concerns” or that “no action be taken at this time” are contrary to the University’s policy of stopping discrimination and harassment; do not foster a healthy working and educational environment; and cannot be used to bypass formal or formal resolution requirements. The University may assume the role of complainant and pursue the matter formally or informally.

### VII. FORMAL INVESTIGATION

The purpose of a formal investigation is to evaluate allegations of discrimination/harassment and to formulate a response that addresses the facts as determined by the investigation. Depending on the facts and circumstances and the investigative conclusion, the EOPC, and/or its designee, may contact and/or collaborate with appropriate University units and/or

personnel as needed to investigate and resolve a complaint including a determination of necessary action steps. The investigation may vary along a continuum from one-on-one conversations to interviews of the parties and those individuals with firsthand knowledge of the events.

#### (A) Investigative Framework

Once a formal complaint has been filed with the EOPC, the investigator will, where appropriate:

- (a) Provide the complainant and respondent with the policy under which the complaint is brought and a copy of these guidelines.
- (b) Notify the respondent, if possible, of the complaint and generally of the issue[s] which gave rise to the complaint.
- (c) Interview the complainant, the respondent, if available, and depending on the circumstances, interview others with relevant knowledge.
- (d) Review documentary materials, and gather and consider information relevant to the complaint. A complainant and respondent may present witness names and other relevant evidence to the investigator.
- (e) Inform the parties and witnesses that University policy and state and federal law prohibit retaliation against an individual for reporting or participating in an investigation of discrimination or harassment and that retaliation is a violation of University policy that can result in sanctions.
- (f) To the extent possible and in accordance with University policy and state and federal law, conduct the investigation in a manner to protect the privacy of the parties, and advise participants that maintaining privacy and not discussing the pending investigation are essential to protect the integrity of the investigation.
- (g) When the complaint involves an employee: Prepare a written report setting forth the allegations, a summary of the information considered, findings and a conclusion, and any actions steps and/or recommendations to be implemented. Prior to the release of the report, the Office of General Counsel shall review the report and discuss with the investigator any procedural issues, the findings, recommendations, and necessary action steps.
- (h) Following the General Counsel review, notify the parties that the investigation has concluded and provide a copy of the report to the parties, the appropriate supervisor[s] and/or administrators, and Human Resources.
- (i) When a complaint involves a student as respondent: Prepare a written investigative report setting forth the allegations, witnesses, evidence and other pertinent information. Said report will be forwarded to the office of Student Conduct for action consistent with the Code of Student Conduct.

## B. Timeline

A formal investigation, including preparation of a written report, should be completed within sixty (60) working days from receipt of the written complaint. However, if the investigation cannot be completed within this timeframe, the investigator will inform the parties of the status of the investigation and an estimated completion date if possible.

## C. Presence of Support Persons

The complainant and respondent may choose one (1) individual to accompany them to an interview[s]. The support person cannot be a potential witness in the matter or a respondent or complainant in the same or a related matter. Because this is an internal University investigation, the support person cannot be an attorney personally retained by a witness, complaint or respondent. Complainants or respondents who are members of a union may have a union representative as a support person. The support person is not provided documentation on the investigation and is not allowed to interject or advocate during an interview.

## D. Standard of Proof and Possible Outcomes

The standard of proof shall be a preponderance of the evidence standard (more likely than not). An investigation will result in one of the following findings:

- (a) A determination that there is sufficient evidence to indicate a violation of University policy.
- (b) A determination that there is insufficient evidence to indicate a violation of University policy.
- (c) A determination that inappropriate behavior has occurred.
- (d) A determination that there is sufficient evidence to indicate that an allegation is false.

A false allegation occurs when an individual intentionally reports information that they know or reasonably should know to be untrue or false.

## VIII. RECOMMENDATIONS

When an employee investigation results in a determination that there is sufficient evidence to indicate a violation of a University Policy or that inappropriate behavior has occurred; the investigative report will include recommendations for appropriate remedial action. Recommendations will take into account the nature and severity of the behavior and any previous behavior of a similar.

nature. Appropriate action, sanctions, and/or discipline will be provided to the appropriate administrator by the Office of Human Resources after consultation with EOPD.

#### VIII. INTERIM MEASURES

During the course of an investigation it may be necessary for the University to take interim measures, such as limitations on contact and alternative living or workplace arrangements. Interim measures are appropriate in order to alleviate the conduct that is the basis of a complaint and/or to protect the campus community, the parties and witnesses. Failure to comply with interim measures could be a violation of University policy that can subject the offender to sanctions and/or discipline independent of the merits of the original complaint.

#### IX. ANONYMOUS COMPLAINTS

If an anonymous complaint contains sufficiently detailed information about conduct that would reasonably constitute a violation of University Policy 3356-2-03, Discrimination/Harassment, EOPD will address the complaint to the extent possible based on the information contained within the complaint. An anonymous complaint that contains sufficiently detailed information about conduct that would constitute a crime will be forwarded to the Youngstown State University Police Department.

#### X. RETALIATION

University policy and state and federal law prohibit retaliation against an individual for reporting discrimination or harassment, or for participating in an investigation. The University will not tolerate retaliation in any form against any individual who files an allegation, serves as a witness, assists a complainant, or participates in an investigation. Retaliation is a serious violation that can subject the offender to sanctions and/or discipline independent of the merits of the original complaint. Allegations of retaliation should be directed to the EOPD.

#### IX. RECORD KEEPING

The EOPC will maintain a written record of investigation paperwork including, where applicable; complaint form, investigative notes, witness interviews, relevant documentation or evidence, case report, the outcome of investigation, and letters of notification of findings, and any other appropriate documentation. Investigation records will be maintained in accordance with the University's record retention schedules. When a complaint is filed outside the University, information gathered in the course of the internal investigation may be disclosed to the investigating agency.

*These Guidelines for Initiating and Investigating Complaints of Discrimination/Harassment replace and supersede all previous guidelines and complaint procedures. January 2024*