

Missouri Western State University
**Nondiscrimination / Equal Opportunity Policy Procedures for
Reporting and Investigating Complaints**
University Policies
Approved: 09/07/2016

The Missouri Western State University is committed to creating and maintaining a learning community dedicated to the advancement and transmission of knowledge and creative endeavors, where all individuals who participate in University programs and activities can work and learn together in an atmosphere of respect, tolerance, and freedom. The University is further committed to addressing and eliminating all forms of discrimination and harassment. Complete copies of the "Nondiscrimination/Equal Opportunity Statement" may be found in the University's Policy Guide online, the Student Handbook, and the University Catalog.

The procedures outlined in the following policy pertain to reports of unfair treatment on the basis of age, race, color, ethnicity, religion, national origin, marital status, veteran status, handicap/disability or genetic information related to employment, education or public accommodation. These procedures, which are governed by university policy, apply to all university administrators, faculty, staff and students and are to be used in support of university nondiscrimination policies. Should there be a conflict of interest between an investigator and a respondent the next level of administrative supervision will designate an appropriate investigator.

Reporting and Investigation procedures for Title IX or Sexual Misconduct types of complaints will follow the procedures detailed in the University's *Sexual Misconduct Policy*. Please reference <https://www.missouriwestern.edu/titleix/> for more information.

In effort to provide a better understanding of terminology related to these procedures the following definitions are provided:

DEFINITIONS

Business Days: Business Days are those days on which university offices are officially open for business.

Complainant: A person who brings a complaint alleging that another person(s) has engaged in discriminatory conduct.

Discrimination: Any unfair treatment based on age, race, color, ethnicity, religion, sex, national origin, sexual orientation, marital status, veteran status, handicap/disability or genetic information as it relates to employment, education or public accommodation.

Aspects of employment or education that may be adversely affected by discrimination, include, but are not limited to:

- hiring and firing
- compensation, assignment, or classification of employees or students
- transfer, promotion, layoff or recall
- recruitment
- testing
- use of university facilities
- training and appointment programs
- fringe benefits
- pay, retirement plans and disability leave

- access to courses, advising, and mentoring
- grades
- scholarship, assistantships and tuition waivers
- participation in intercollegiate and intramural sports
- other terms and conditions of employment
- other terms and conditions of admission to or full enjoyment of university programs

Harassment: Unwelcome verbal, nonverbal or physical conduct based on age, race, color, ethnicity, religion, sex, national origin, sexual orientation, marital status, veteran status, handicap/disability or genetic information that has the purpose or effect of creating a hostile campus environment. Harassment may include, but is not limited to:

- offensive jokes
- slurs
- epithets
- name calling
- physical assaults or threats
- offensive touching
- intimidation
- ridicule
- mockery
- insults or put-downs
- offensive objects or pictures
- graffiti
- subjecting a person or persons of a protected class to repeated criticism or verbal abuse but not doing so to similarly situated non-class members.

Harassment can occur in a variety of circumstances, including, but not limited to:

- the harasser can be the victim's supervisor, a supervisor in another area, an agent of Missouri Western, a co-worker, non-employee, faculty/staff member or student;
- the victim does not have to be the person harassed, but can be anyone affected by the offensive conduct; or
- unlawful harassment may occur without economic injury to, or discharge of, the victim.

Investigator: The person designated by the Equal Opportunity Officer responsible for gathering facts and data related to the case.

Respondent: A person who is alleged to have engaged in discriminatory conduct that is the subject of a discrimination complaint.

Retaliation: Taking adverse action, including but not limited to firing, demoting, harassing, lowering a grade or otherwise "retaliating" against a person because he or she filed a complaint of discrimination, because he or she complained about discrimination or because he or she participated in a discrimination proceeding (such as an investigation or lawsuit).

Sexual Harassment: Sexual advances, requests for sexual favors, and other verbal, physical, or visual conduct of a sexual nature constitute sexual harassment when:

- Submission to such conduct is made or threatened to be made, either explicitly or implicitly, a term or condition of an individual's employment or education
- Submission to or rejection of such conduct by an individual is used or threatened to be used as the basis for academic or employment decisions affecting that individual, or

- Such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating what a reasonable person would perceive as an intimidating, hostile, or offensive employment, education, or living environment.

Examples of Sexual Harassment include:

- Pressure for a dating, romantic, or intimate relationship
- Unwelcome touching, kissing, hugging, rubbing, or massaging
- Pressure for sexual activity
- Unnecessary references to parts of the body
- Sexual innuendos, jokes, or humor
- Making sexual gestures
- Displaying sexual graffiti, pictures, videos or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- E-mail and Internet use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails or text messages
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as flowers, chocolates, or lingerie that suggest the desire for a romantic relationship
- Commenting on a person's body, gender, sexual relationships, or sexual activities
- Sexual violence (as defined in the University's *Sexual Misconduct Policy*)

Please refer to Missouri Western's *Sexual Misconduct Policy* for more information on sexual harassment, sexual violence, domestic violence, stalking and like issues.

University Representative

The University Representative is the university employee who is informed by the complainant of an incident that may be a violation of the University Nondiscrimination Policy. The University Representative is typically:

- 1) The Complainant's or reporting individual's appropriate supervisor, director, department head, department chair, dean, university director or vice president
- 2) The Vice President for Student Affairs is an additional University Representative available to students.

REPORTING AND INVESTIGATION PROCEDURES

If a student, faculty member, staff member or visitor believes that he or she has been discriminated against based on age, race, color, ethnicity, religion, sex, national origin, sexual orientation, marital status, veteran status, disability/handicap or genetic information or harassed; or if he or she has witnessed such discrimination or harassment, that person should promptly report it using one or both of the following methods. Complainants are encouraged to use the Informal Procedure outlined below prior to initiating the Formal Procedure, but are not required to do so.

Informal Procedure

A. Any student, faculty member, staff member or visitor is encouraged to discuss the matter with the appropriate University Representative as defined above and/or with the Equal Opportunity Officer or Title IX Coordinator.

1. If the appropriate University Representative is the person being complained about or if the Complainant believes that the appropriate University Representative has a potential conflict of interest or bias in the matter, he or she should contact the immediate supervisor of the University Representative, the Equal Opportunity Officer.

2. University employees who are not in a supervisory position but become aware of or have discrimination or harassment reported to them must contact the Equal Opportunity Officer as soon as practicable.

B. The University Representative who receives the report shall forward the complaint to the Equal Opportunity Officer no more than three (3) Business Days after receiving the complaint. The report should include the nature of the conduct reported, the persons involved, the alleged facts reported and a suggested/requested solution, if communicated by the complainant.

C. The Equal Opportunity Officer shall obtain a written statement from the Complainant and attempt to arrive at an informal resolution through appropriate manners, being guided by the concern for fairness to all parties involved. The respondent should be notified of the complaint filed against him or her within five (5) business days and should submit in writing his/her statement of the incident. The Equal Opportunity Officer will provide a written response to the Complainant and the Respondent and will include the proposed resolution and the time frame for implementation of any needed action. The entire process should be completed within ten (10) Business Days of receipt of the complaint. If it is not possible to complete the process within ten (10) Business Days, during that time period, an explanation for the delay will be communicated to all appropriate parties.

D. If a complaint involves alleged conduct on the part of the University's President, the Equal Opportunity Officer or Title IX Coordinator shall obtain a written statement from the Complainant and the Respondent and submit those statements to the Chairperson of the University's Board of Governors. If the Chairperson of the University's Board of Governors finds sufficient evidence that a violation of policy occurred, he/she will work with the Equal Opportunity Officer in an attempt to arrive at an informal resolution through appropriate manners, being guided by the concern for fairness to all parties involved.

E. To the extent possible and except as otherwise provided by law, complaints, information gathered during the informal process and the Equal Opportunity Officer's written response shall remain **CONFIDENTIAL**. The informal report should be discussed only among the University Representative receiving the report, the Equal Opportunity Officer or Title IX Coordinator and others on a need-to-know basis.

F. The Equal Opportunity Officer or Title IX Coordinator shall provide a warning to the Respondent that federal and state law and Missouri Western policy prohibits Retaliation against persons who have filed complaints or persons who participate in the complaint process.

G. If the Complainant or the Respondent does not agree to the proposed resolution, the Complainant or the Respondent may initiate the Formal Procedure as indicated below.

Formal Procedure

A. To initiate the formal complaint procedure, the Complainant should submit a complaint in writing, signed and dated, to the Equal Opportunity Officer as soon as possible after the alleged conduct or after the attempt to use the Informal Procedure proves to be unsatisfactory. The written complaint should contain the date of the event, the general nature of the event, the words or conduct involved, the name(s) of the Respondent(s), the names of any witnesses, and a description of any similar incidents involving the same parties in the past. The Equal Opportunity Officer shall maintain documents for the purpose of making such complaints, but use of a particular form is not required.

Likewise, the Respondent may request use of the Formal Procedure by submitting the request in writing to the Equal Opportunity Officer. This request must be made within 5 Business Days after notification of a complaint where he/she is the Respondent or within 15 Business Days after notification of the proposed resolution to a complaint where he/she is the Respondent.

B. The Equal Opportunity Officer shall notify the Respondent within five (5) Business Days that a complaint has been filed and provide a warning to the Respondent that federal and state law and Missouri Western policy prohibits retaliation against persons who have filed complaints or whom he or she believes to have filed complaints, or who have participated in an investigation, even if those complaints are ultimately proven to be false. The Respondent shall acknowledge receipt of this information in writing.

C. The Equal Opportunity Officer or their designee will investigate the incident.

D. The Respondent shall provide the Investigator a written statement responding to the allegations within five (5) Business Days of receiving notification of the specifics of the complaint. The written statement may be supplemented as necessary at any time during the investigation. The Investigator may interview the Complainant, the Respondent and any other persons believed to have relevant information about the alleged conduct or similar conduct by the Respondent. Both the Complainant and the Respondent are encouraged to bring all relevant evidence and potential witnesses to the attention of the Investigator.

E. The Investigator will prepare a written report, making relevant findings of fact, within fifteen (15) Business Days of receiving the complaint. Additional time may be taken for extenuating circumstances such as the unavailability of a key witness. If additional time is needed, the Complainant and the Respondent shall be informed. The Investigator will provide the report to the Respondent's vice president or university director.

F. The appropriate vice president or university director will review the report and confer with the Equal Opportunity Officer. The vice president or university director will render a determination. The vice president or university director will convey this determination in writing to the Complainant and to the Respondent, with copies to the Equal Opportunity Officer within fifteen (15) business days of receiving the investigator's report. Information released in the determination must be limited so as to not compromise confidential personnel information.

G. The Complainant and/or the Respondent may appeal the decision of the vice president or university director by directing a letter of appeal to the university president within five (5) Business Days of receiving the vice president's or university director's decision.

If no appeal is made, the vice president or university director will notify all parties that the complaint is closed.

H. If the matter is appealed to the university president he or she will review the report and may confer with the vice president or university director and Equal Opportunity Officer.

1. If the university president concurs with the decision of the vice president or university director, his or her decision will be final. The university president will affirm the vice president's or university director's determination in writing to the Complainant, the Respondent, the vice president or university director and the Equal Opportunity Officer as soon as possible, usually within ten (10) days of receipt of the appeal.

2. If the university president does not concur with the decision of the vice president or university director he or she may:

a. Reverse the determination of the vice president or university director and convey his or her decision in writing to the Complainant, the Respondent, the vice president or university director and the Equal Opportunity Officer as soon as possible and the complaint is closed; or

b. Send the matter back to the vice president or university director with instructions to amend the determination. The university president's decision will be conveyed in writing to the Complainant, the Respondent, the vice president or university director and the Equal Opportunity Officer as soon as reasonably possible and the complaint is closed.

I. If a complaint involves alleged conduct on the part of the University's President, the Chairperson of the University's Board of Governors will designate the Investigating Officer. Based on the information gathered by the investigation, the Board of Governors will prepare and issue the written report determining the complaint. The determination of the Board of Governors is final and not subject to appeal.

J. If a complaint involves alleged conduct on the part of the Equal Opportunity Officer or any administrator ranked higher than the Equal Opportunity Officer, the University's President will designate the Investigating Officer. Based on the information gathered by the investigation, the President will prepare and issue the written report determining the complaint. The determination of the President is final and not subject to appeal.

Protection of Complainants, Respondents and Witnesses

Retaliation against someone for reporting or participating in an investigation and related processes is prohibited. It is a violation of this policy to retaliate against any member of the University Community who reports or assists in making a complaint of sexual misconduct or who participates in the investigation of a complaint in any way. Persons who believe they have been retaliated against in violation of this policy should make a complaint in the manner set forth in this section. Retaliation includes threats, intimidation, reprisals and/or adverse employment or educational actions against a person based on his/her claim of discrimination or participation in the investigation, report, remedial or disciplinary processes provided for in the policy.

Rights of the Complainant

1. To be treated with respect by University officials.
2. To be free from retaliation.
3. To have access to campus support resources (counseling and mental health services; University health services).
4. To have an advisor of his/her choice accompany him/her to all interviews, meetings and proceedings.
5. To use either the Informal Procedure or the Formal Procedure to resolve an allegation.
6. To have an opportunity to present a list of potential witnesses and to provide evidence to the investigator.

7. When the complainant is not the reporting party, the complainant has full rights to participate in the process for resolution.
8. To be informed in writing of the findings and resolution within a reasonable amount of time, normally within thirty (30) business days. If the situation requires a longer timeframe, both the complainant and the respondent should be notified in writing, including an estimate of the extension of time that is necessary.
9. To report the matter to law enforcement (if applicable) and to have assistance in making that report.
10. To have an opportunity to appeal the findings and sanctions.
11. To receive notice of witnesses to be interviewed, if the Formal Procedure is used.

Rights of the Respondent/Accused

1. To be treated with respect by University officials.
2. To have access to campus support resources (counseling and mental health services; University health services), unless suspended from campus pending the completion of the process.
3. To have an advisor of his/her choice accompany him/her to all interviews, meetings and proceedings.
4. To have an opportunity to present a list of potential witnesses and to provide evidence to the investigator.
5. To receive in writing, notice of the policies alleged to have been violated within five (5) business days of the filing of the complaint.
6. To have complaints heard in accordance with these procedures.
7. To be informed in writing of the findings and resolution within a reasonable amount of time, normally within thirty (30) business days. If the situation requires a longer timeframe, both the complainant and the respondent should be notified in writing, including an estimate of the extension of time that will be necessary.
8. To have an opportunity to appeal the findings and sanctions.
9. To receive notice of witnesses to be interviewed if the Formal Procedure is used.

Timelines

Timelines are provided within this document as guidelines. If the Investigator and/or Equal Opportunity Officer need more time to complete necessary tasks at any stage in the procedure, they will communicate to both parties as appropriate.

False Complaints

Any complaints of discrimination, including harassment, that the Complainant knew to be false, may result in corrective or disciplinary action, up to and including dismissal or suspension, against the Complainant.