

# PROCEDURE

Effective Date: April 12, 1996  
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See Also: [POL-U1600.02](#) Ensuring Equal Opportunity and Prohibiting Discrimination and Retaliation  
[POL-U1600.03](#) Accommodating Persons with Disabilities  
[POL-U1600.04](#) Preventing and Responding to Sex Discrimination, including Sexual Misconduct

## PRO-U1600.02A DISCRIMINATION COMPLAINT PROCEDURE

### I. Introduction

The university is committed to resolving complaints alleging illegal discrimination, including harassment, at the earliest and most informal level, depending on the nature of the complaint. It is also committed to conducting investigations in a timely and effective manner, adhering to the principles of due process in all investigations, and providing prompt corrective action if discrimination is found to have occurred. No individual shall be penalized, or retaliated against in any way by a member of the university community for their participation in this complaint procedure.

### II. Definitions

- a. Complainant: Aggrieved individual who alleges they have experienced illegal discrimination
- b. Respondent: Individual alleged to have participated in illegal discrimination
- c. Preponderance of the Evidence: The standard of evidence used in formal investigations of alleged discrimination. The standard is used to determine whether it is “more likely than not” that the allegation(s) occurred.

### III. Purpose and Jurisdiction

This procedure is limited to complaints which allege discrimination on the basis of legally protected characteristics: race, color, creed, religion, national origin, sex (including sexual harassment and sexual violence), sexual orientation, gender identity, gender expression, age, marital status, disability (including failure to provide reasonable accommodation), veteran status, or genetic information. Aggrieved parties will be referred to as complainants. Persons alleged to have engaged in illegal discrimination will be referred to as respondents.

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This procedure is internal to the university. It applies to incidents that take place at the university, and to incidents occurring off campus between members of the university community, where the off-campus behavior is alleged to have a negative impact on the learning or work environment. Individuals who may use this procedure include, but are not limited to:

- Staff
- Faculty
- Students (any person who):
  - (a) Has been formally admitted to the university;
  - (b) Is enrolled in one or more classes at the university, including non-matriculated international students attending language institutes or foreign study programs;
  - (c) Is participating in a certificate, degree, distance learning, or professional enrichment program, through extended education and summer programs;
  - (d) Is participating in a university-sponsored study abroad program;
  - (e) Was enrolled in a prior quarter or summer session at the university and is eligible to continue enrollment in the quarter or summer session that immediately follows; or
  - (f) Withdrew from the university after an alleged violation of the code, for conduct that occurred while they were enrolled in or participating in a program offered by the university [WAC 516-21-020]
- Individuals applying for enrollment or employment to the university
- Users of university services

There is no specific timeframe in which a complaint must be made. However, to facilitate a prompt and timely investigation, complaints should be brought forward to the Equal Opportunity Office (EOO) as soon as possible after the alleged act of discrimination. All incidents of illegal discrimination should be reported regardless of the amount of time that has passed since the alleged violation. Delay in reporting may inhibit the EOO's ability to conduct an investigation or the university's ability to provide prompt corrective action.

#### **IV. Responsibility for Implementation**

- a. **The Vice Provost for Equal Opportunity and Employment Diversity, Title IX and ADA Coordinator (Vice Provost)** has overall responsibility for assuring university compliance with nondiscrimination laws and regulations.

The EOO provides advice on addressing discrimination concerns, provides an avenue for informal resolution, and conducts formal investigations.

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- b. **The Vice President for Enrollment and Student Services (VPESS) or their designee** has responsibility for administering the student conduct system as outlined in the Student Rights and Responsibilities Code (Code) [[Washington Administrative Code, Chapter 516-21-240](#)]. VPESS or their designee determines if violation(s) of the Code have occurred and administers sanctions in the case of a substantiated complaint of student misconduct. This includes discrimination complaints, including complaints of sexual misconduct.
- c. **The Vice Presidents or their designee** have responsibility for administering disciplinary measures to staff, in the case of a substantiated complaint of discrimination.
- d. **The Vice President of Academic Affairs/Provost or their designee** has the responsibility for administering disciplinary measures to faculty, in the case of a substantiated complaint of discrimination.

### V. **Rights of Complainants & Respondents**

- a. **Right to an Advisor or Support Person.** In all proceedings under this Procedure, complainants and respondents have the right to and will be provided with the same opportunities to have other individuals present. This includes the right to be accompanied to any meeting under this Procedure by an advisor or support person of the individual's choice. For unionized employees, this includes the right to have a union representative present. During proceedings under this Procedure, advisors and support people may communicate with the individual they are present to support, but may not directly address the investigator.
- b. **Amnesty for Students in cases of sexual misconduct.** Complainants and witnesses who in good faith report sexual violence will not be subject to alcohol or drug violations of the Code occurring at or near the time of the sexual violence unless their own conduct placed another person's health or safety at risk. Without imposing sanctions, Western may initiate educational remedies regarding alcohol or drug use. (WAC 516-21-055).

### VI. **Interim Measures: Safety Concerns and Resource Referrals**

During and after EOO's initial meeting with the complainant, EOO will assess whether immediate action should be taken, including interim measures, to protect the safety of the parties involved and/or other members of the university community. Other university offices, including University Police, Office of Student Life, University Residences, and Human Resources, may be contacted in

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the event of a safety concern, or to coordinate an interim measure. EOO may facilitate interim measures to ensure safety and limit the impacts of alleged discrimination while an investigation or informal resolution is ongoing.

EOO will share information with the parties involved about available resources that may be helpful, including the Counseling Center, Consultation and Sexual Assault Support (CASAS), Domestic Violence and Sexual Assault Services (DVSAS), and the Employee Assistance Program (EAP).

EOO will also seek to mitigate any negative impact that a complainant may be experiencing with respect to their education and/or in the employment setting, due to the alleged discrimination. This may include speaking with faculty to extend assignment dates or delay the taking of an exam or in the case of employment, may work to ensure the complainant and respondent are not working in close proximity to one another during the course of an investigation or informal resolution.

### **VII. Confidentiality and its Limitations**

Discretion in the sharing of information is essential in matters involving allegations of illegal discrimination. Improper disclosure of information by the parties involved may be the basis for claims of unprofessional conduct, student conduct code violations, or charges of slander and retaliation. This does not limit the right of complainants or respondents to access support resources, consult with advisors, or participate in related investigations (such as a criminal, or external agency investigation).

The EOO utilizes discretion in sharing information regarding matters under this Procedure. However, complete confidentiality cannot be guaranteed. Information provided to the EOO may be shared with leadership and other individuals in order to investigate and resolve the matter, and as necessary to keep members of the campus community safe. By law, EOO records may be subject to release following a public records request, request from an external agency, or court order. In addition, the number of sexual assaults (without any personalizing information) will be provided for the university's Annual Security Report, as required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act or other applicable law.

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## VIII. **Procedure** (see [The World of Discrimination Complaints Flowchart](#) and [Discrimination Complaint Procedure Flowchart](#))

EOO facilitates informal resolutions and formal complaints. Complaints of sexual violence (sexual assault, dating violence, domestic violence, and stalking) must be handled through a formal investigation.

### a. Initial Meeting with EOO

During EOO's initial independent meetings with the complainant and the respondent, the following is reviewed:

- Support resources and services;
- EOO's role as a neutral, impartial investigator and/or facilitator of a resolution;
- The importance of discretion in sharing information about discrimination allegations, and limits on confidentiality;
- Rights to an advisor and/or support person, including a union representative; and
- The prohibition on retaliation.

During EOO's initial meeting with the complainant, the following information is also provided:

- Review of options available and appropriate to resolve the complaint under this Procedure, including informal resolution or formal investigation;
- Safety concerns and referrals for safety plans;
- Interim measures that can be taken to mitigate adverse impacts from the alleged discrimination, including but not limited to, those that can affect academic success, financial aid, housing, and workplace performance.

### b. Informal Resolution

**Facilitation by Equal Opportunity Office.** The EOO seeks to resolve concerns of discrimination at the earliest and lowest level possible, as appropriate. Individuals may contact the EOO for assistance in informally resolving concerns of discrimination. The EOO will discuss options for resolving the concern and may make referrals to appropriate resources and support services.

During an informal resolution, the EOO will meet separately with the parties and with relevant leadership to facilitate an appropriate resolution. Concerns are resolved through negotiation, mediation, and conflict resolution techniques.

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The individual seeking an informal resolution does not have to meet with the individual whom the concern is about, although in some cases, both parties may agree such a meeting is useful to resolve the concern.

Informal resolutions do not result in a finding of whether or not discrimination occurred or whether university policy was violated. At any point in the process, an individual may inform the EOO that the situation is resolved, that no further university action is desired, or that they are not satisfied with the informal resolution and would like to file a formal complaint.

### c. Formal Complaints

1. **Steps Taken with the complainant to file a formal complaint.** In order to file a formal complaint with the EOO, individuals should:
  - a) Contact the EOO to meet with an investigator to discuss their concern, provide written allegations, and complete and sign a Complaint Form. If the complainant so chooses, they may provide their allegations verbally to the investigator who will type them up for the complainant to review, edit if needed, and sign. A completed Complaint Form will include the names of the complainant and the respondent, written allegations describing the alleged discrimination, and the complainant's signature. The EOO investigator also signs the Complaint Form to indicate they have received the complaint.
  - b) Upon receipt of the Complaint Form by the investigator, the complaint shall be marked with the date received and that date shall be referred to as the filing date. The complainant shall be provided a copy of the Complaint Form, with attached allegations, a copy of this Procedure, and relevant EO policies, which could include but may not be limited to: [POL-U1600.02](#), [POL-U1600.03](#), and/or [POL-U1600.04](#).
  - c) The Complainant will be asked to provide the names of any witnesses or individuals who can support their allegations. The complainant may provide this information to the investigator during their initial meeting or may provide it at a later date.
2. **Jurisdiction and Determination of whether Complaint is subject to Procedures.** Within ten (10) working days of the filing date, the Vice Provost or designee shall determine whether the facts alleged in the complaint fall within the jurisdiction of the EOO. If not, the complainant shall be notified in writing. No appeal may be taken internally of this determination. A complainant or respondent who feels that action is

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warranted even though the EOO has found otherwise may make a complaint through other internal procedures, such as the appropriate grievance committee, or externally to an agency such as the Equal Employment Opportunity Commission. EOO will designate this complaint as “dismissed.”

In the case where the complainant and/or respondent is a student, and either party graduates from or leaves the university during an investigation, the EOO shall continue to allow both parties to participate in the complaint process.

- 3. Steps taken to inform the respondent and proceed with complaint.** If it is determined that the complaint falls within the jurisdiction of the EOO, the investigator shall:
- a) Notify the respondent of the formal complaint filed with the EOO and, if possible, schedule an in-person meeting with the respondent to review allegations and explain the investigation process;
  - b) Provide a copy of the Complaint Form with the attached allegations to the respondent, together with a copy of this Procedure, and relevant EO policies;
  - c) Inform the respondent of their right to submit a written response to the allegations no later than ten (10) working days after receiving the allegations (beginning the count on the day after receiving the allegations).

The respondent is encouraged to provide a written response; however, refusal to respond to the complaint or to participate in an investigation will not prevent the process from proceeding. Refusal to respond or participate in an investigation may result in the investigation proceeding solely on the basis of the complainant’s testimony and evidence.

If the respondent so chooses, and within the requisite timeframe, the respondent may meet with the investigator and verbally provide their response which the investigator will type up and ask the respondent to review, edit if needed, and sign;

- d) Ask the respondent for the names of any witnesses or individuals who can support their position on the allegations. The respondent may provide this information to the investigator during their initial meeting or may provide it at a later date.

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4. **Notifying leadership about the complaint proceedings.** The Vice Provost or their designee informs the appropriate Vice President(s) and the complainant(s)' and respondent(s)' Dean or unit head of the complaint.
5. **Investigation and report.** Within sixty (60) working days, beginning on the filing date, the Vice Provost or their designee shall:
  - a) Review respondent(s)' response and conduct an investigation. The investigation may include meeting independently one or more times with the complainant, respondent, and witnesses or individuals whose names have been provided by the parties as having personal knowledge of the alleged incident(s) and who can respectively support their positions. The investigator may choose to interview additional individuals who may have knowledge of the alleged incident, including but not limited to faculty, staff, students and administrators. These individuals will be advised not to disclose information about the allegation outside the complaint process, as will the complainant and respondent. This does not limit the right of complainants or respondents to access support resources, consult with advisors, or participate in related investigations (such as a criminal, or external agency investigation).

Each person interviewed as part of an investigation shall be provided with a written record of their statement to review for accuracy, and shall be given the opportunity to suggest edits to the statement in order to more accurately reflect what was said during the interview. The EOO investigator shall determine the relevancy of the evidence provided during the interviews.

- b) Gather relevant documentation/information in order to conduct a thorough and impartial investigation of the allegations. Both the complainant and the respondent shall be given equal opportunity to provide relevant evidence to support their positions.
- c) Prepare a written investigative report which explains the investigation process; summarizes all relevant information obtained, including statements, documentation, and any other evidence provided by the complainant, the respondent, and witnesses; and makes findings as appropriate. The preponderance of evidence standard is used in all investigations under this Procedure; the investigator determines, based on the evidence, whether it is "more likely than not" that the allegations occurred as alleged. If the allegations are found more likely than not to have occurred, the investigator then determines whether those

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allegations constitute illegal discrimination and/or a violation of university policy.

- d) Provide a copy of the final written investigative report to the complainant, respondent, the appropriate Vice President(s), and/or the appropriate dean(s) or their designee. Findings of fact and conclusions regarding law and policy contained in the report become final on the date the report is issued and may not be appealed by either party.

**6. Review by Vice President.** Within 15 working days after receiving the investigative report, the appropriate Vice President or designee will determine appropriate actions in response to the findings. The Vice President's determination of discipline or sanctions shall be documented in writing and include the rationale for and the effective date of the discipline or sanctions.

- a) **Student on student discrimination, including sexual harassment and sexual violence (sexual assault, dating violence, domestic violence and stalking).** The VPESS has designated the Assistant Dean of Students or designee to receive discrimination complaint Final Reports for determination of potential sanctions. The Assistant Dean of Students has designated the Student Conduct Officer as responsible for determining if the findings are a violation of the Code, and if so, issue a sanction(s).

Either or both the complainant or the respondent may appeal the sanction, utilizing the procedure contained in the Code ([WAC 516-21-290](#)).

- i) **Student Sanctions.** Student sanctions to be considered by the Student Conduct Officer, as designated by the VPESS, can vary in type, intensity and duration, depending on the specifics of each case. All sanctions, with the exception of expulsion may include mandatory training sessions.

Examples of possible sanctions include but are not limited to:

- Required training
- Required written educational paper
- No trespass order
- No contact order
- Conditional Status
- Termination of University Residence housing contract
- Suspension from the university

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- Expulsion from the university
- b) **When Employee is the Respondent.** The Vice Presidents and/or their designees (Deans) receive discrimination complaint Final Reports. Upon acceptance of the findings, the Vice President, will issue a disciplinary measure(s) against the respondent.

A respondent who is a unionized member may file a grievance through their union. A non-unionized respondent may seek to file a complaint through the Professional Staff Organization.

- i. **Employee Sanctions.** Employee Discipline to be considered by Vice Presidents and/or the designees (Deans), depending on if the respondent is a staff member or faculty member, respectively, can vary in type, intensity and duration, depending on the specifics of each case. All discipline, with the exception of termination, may include mandatory training sessions.

Examples of possible sanctions include but are not limited to:

- Required training
- Letters of reprimand
- Restriction from contacting other part(ies)
- Reduction of job responsibility or demotion
- Denial or postponement of leaves or salary increases
- Suspension from further teaching of and/or involvement with particular classes or programs (e.g., summer, study abroad, etc.)
- Suspension from employment
- Non-renewal of contract for non-tenure track faculty
- Termination of employment

### 7. **Notification of findings and sanctions.**

- a) **Findings.** The EOO provides the complainant and the respondent with a copy of the final investigation report (Final Report) which includes the findings and the analyses leading to those findings. The EOO will provide a copy of the Final Report to be picked up in the EO Office or to be mailed to the respective parties.
- b) **Sanctions for student-on-student discrimination complaints.** The Student Conduct Officer provides written notification of sanctions to both the complainant and respondent, along with a rationale for the

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sanction. If the complaint concerns hostile environment sexual harassment, the Student Conduct Officer also notifies both parties on how the university is going to remediate this environment.

- c) **Sanctions when the respondent is an employee.** The Vice President and/or their designee (Dean) provides written notification of disciplinary measures to both the respondent and the complainant, along with a rationale for the sanction. If the complaint concerns hostile environment sexual harassment, the Vice President or Dean also notifies both parties on how the university is going to remediate this environment.
8. **Time Limit Extensions.** Time limits set forth in this Procedure may be extended for good cause by the Vice Provost. Upon written application to the Vice Provost by the complainant, respondent, the unit Vice President or Dean, the Vice Provost may also extend time limits. The Vice Provost or their designee shall inform the parties in writing of any time limit extensions and the reason for such extensions.
  9. **Complaint initiated by leadership or by EOO.** In the case where an individual alleges they have experienced discrimination but does not wish to sign a complaint form:
    - a) **Complaint initiated by leadership.** The President, Provost, Vice Presidents, Deans, Directors, Supervisors or Chairs, if given sufficient cause, may request that the EOO conduct an investigation. The administrator requesting the investigation will then act as the complainant and must specify the person(s), with their permission, who are alleged to be the subject of the alleged discrimination. The EOO will use the same notification and process guidelines as outlined above in this Procedure. In the event that the investigation indicates that illegal discrimination has occurred, appropriate disciplinary action may be taken. The administrator who initiated the complaint will not be involved in reviewing the findings or determining sanctions. Appeal of any such action may be filed under the appeal process through the Office of Student Life for students, and for employees, through relevant grievance procedures or relevant disciplinary processes.
    - b) **Complaint initiated by Equal Opportunity Office.** If there is reason to believe that discrimination or harassment may have occurred but the person alleging discrimination or harassment and/or administrators do not choose to file a complaint, then the Vice Provost for Equal Opportunity and Employment Diversity may initiate an investigation into the matter or attempt to resolve the matter informally.

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**10. Filing a False Complaint.** Filing a false complaint is considered to be serious misconduct and such offenses will be subject to the full range of sanctions and disciplinary measures. A finding that discrimination did not occur may reflect that there was not sufficient evidence to find that it did occur and will not in itself be the basis for a charge of false complaint.

**11. Retaliation Prohibited in Equal Opportunity Discrimination Investigations.** Retaliating against participants in these proceedings is serious misconduct, and is subject to sanctions and disciplinary measures. An individual retaliating against another individual who has either made a complaint or otherwise participated in an investigation is a violation of university policy and can be considered as a separate cause of action for the filing of a complaint based on retaliation. This Procedure is available to anyone alleging that a false complaint has been filed or that retaliation has taken place.

### **12. Alternative Complaint Process**

- a) **Internal.** A complainant may not elect to use other internal grievance procedures (such as labor agreement grievance procedure) for complaints pertaining to alleged illegal discrimination.

A complainant alleging sexual violence or other forms of discrimination that may constitute criminal behavior may make a report to University Police or any law enforcement agency that has jurisdiction over the respondent, instead of or in addition to making a complaint under this Procedure.

- b) **External.** A person who believes that they have been the subject of discrimination prohibited by state or federal law may choose to file a discrimination complaint by contacting one of the following agencies within their established time limits:

Washington State Human Rights  
Commission 711 S. Capitol Way, #402  
P.O. Box 42490  
Olympia, WA 98504-2490  
Phone: (800) 233-3247  
TTY: (800) 300-7525

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U.S. Equal Employment Opportunity Commission  
Seattle Field Office  
909 First Avenue, Suite 400  
Seattle, WA 98104-1061  
Phone: (800) 669-4000  
TTY: (800) 669-6820

U.S. Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507  
Phone: (202) 663-4900  
TTY: (202) 663-4494

U.S. Department of Education  
Office for Civil Rights  
915 Second Avenue Room 3310  
Seattle, WA 98174-1099  
Phone: (206) 607-1600  
TDD: (206) 607-1647

U.S. Department of Education  
Office for Civil Rights  
Lyndon Baines Johnson Department of Education  
Bldg. 400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Phone: (800) 421-3481  
TDD: (800) 877-8339

U.S. Department of Labor  
Office of Federal Contract Compliance Programs  
Seattle District Office  
300 Fifth Avenue, Suite 1100  
Seattle, WA 98104  
Phone: (206) 398-8005

U.S. Department of Labor  
Office of Federal Contract Compliance Programs  
Frances Perkins Building  
200 Constitution Ave., NW  
Washington, DC 20210  
Phone: (800) 397-6251  
TTY: (877) 889-5627