

## OHSU Discrimination Claim Investigation Protocol

### I. Scope and Purpose

This protocol is provided to OHSU personnel who, as part of their job descriptions or as assigned by OHSU, conduct investigations into claims of misconduct under OHSU's policies prohibiting protected status discrimination, specifically, AAEO discrimination, harassment, retaliation and Title IX claims. The word "discrimination" includes claims of harassment based on protected status and includes sexual assault or other forms of gender-based violence and retaliation addressed by OHSU policy.

OHSU takes seriously complaints of violations of its policies prohibiting discrimination and the need to protect parties from retaliation. OHSU also takes the rights of individuals accused of prohibited discrimination seriously. Accused individuals will be provided with a fair, thorough and impartial investigation process that includes notice of a charge of discrimination and an opportunity to be heard throughout the process.

### II. Intake

Upon receipt of a complaint, which may be in the form of a report from a reporting party or a person concerned about possible discrimination toward another, the investigator will:

- Triage the complaint to determine whether the matter should be prioritized as a “high level” matter more appropriate for investigators who have significant experience, in-depth Title IX or civil rights training and expertise to address the more complex and high risk matters.
- Advise the reporting party that confidentiality will be maintained to the maximum extent feasible, but cannot guarantee confidentiality.
- Ask the reporting party to provide a written summary of the complaint on the complaint form, identifying:
  - The alleged discriminatory act or acts.
  - Information that the reporting party states relate to the asserted discrimination.
  - Names of any witnesses that the reporting party believes may have information about the alleged act or acts of discrimination/retaliation.

(If a reporting party does not write out the complaint, the investigator may obtain complete information during an interview or from other sources, and will provide it to the reporting party to verify it for accuracy.)

- Notify the reporting party that the responding party is entitled to a copy of the complaint and to factual information about the incident or incidents demonstrating the alleged discrimination. The reporting party will also be informed that the responding party will be directed to (a) not retaliate, and (b) keep information confidential except as necessary to gather and present information related to the complaint. Both parties can request and receive a copy of the investigative report and will receive a closure letter outlining the investigative findings.

- If the person making the complaint is not the subject of the alleged discrimination, clarify that the complaint is made on behalf of another person. If so, the investigator, will communicate with the subject of the alleged discrimination, and inform him or her of the right to have the complaint investigated and of any other resources to address any concerns of the individual. If the reporting party does not want to pursue a complaint, the investigator will evaluate any obligations of OHSU.

### **III. Interviewing and Obtaining Information from Reporting party**

In most cases, the investigator will interview the reporting party first. Intake may be separate from a reporting party's initial interview; however, in some circumstances, an interview in the same setting as intake may be appropriate.

The reporting party will be interviewed in a private location. The reporting party may have an adviser (including an attorney) of his or her choice present. The adviser's role is to provide support and, in a manner deemed appropriate by the investigator, ask clarifying questions but not otherwise participate or interfere with the investigator's interview.

- At the outset of the interview, the investigator will:
  - Explain the policy or policies at issue.
  - Explain the investigation process.
  - Obtain consent to use the reporting party's name as necessary; if consent is not provided, (a) explain the commitment of OHSU to its policies, including prohibitions against retaliation, and (b) explain that because the responding party has rights, if the responding party does not learn of the reporting party's name, OHSU's ability to take specific action is limited and hindered. Do not commit to complete confidentiality.
- The reporting party will be asked to provide any documentation or electronic information that he or she believes supports the complaint and identification of any potential witnesses.

After the interview, the investigator will send an interview memorandum, with a description and potentially a chronology of the alleged facts, to the reporting party for accuracy and have the reporting party acknowledge, correct, or add information.

### **IV. Assessing Next Steps**

After interviewing the reporting party, the investigator will assess where information is located and develop a plan for obtaining it, including:

- Text and e-mail messages and other electronic information.
- Campus offices, such as Public Safety, academic offices, student life offices.
- Witnesses.

## **V. Communication With Responding party**

Following an interview with the reporting party, the investigator will provide the responding party with written notice of any asserted policy violations. The notice will specify the policy potentially violated and the basic factual basis for the potential violation. For example: "OHSU is investigating whether by [brief factual description of the alleged conduct] you violated [the policy or policies potentially violated]."

The notice will indicate that the investigator will contact the responding party to set up an interview, and will be sent with a copy of or link to the policy or policies at issue.

The notice will also inform the responding party that he or she may have an adviser of his or her choice (including an attorney) at the interview, and notify the responding party of his or her responsibility not to retaliate against any person, including a reporting party or witness, whom may be involved in the matter.

## **VI. Interviewing and Obtaining Information From Responding party**

The responding party will be permitted enough time under the circumstances to develop and present information that he or she thinks is relevant. Further, if witnesses or documentary evidence later appears critical, the responding party will have a full and fair opportunity to respond to and address the information. The investigator may decide to re-interview a reporting party and responding party or to have follow-up phone or e-mail communication to clarify facts.

A responding party is entitled to have an adviser of his or her choice present (including an attorney). The adviser's role is to provide support and, in a manner as deemed appropriate by the investigator, ask clarifying questions, but not otherwise participate in or interfere with the investigator's interview.

- At the outset of the interview, the investigator will:
  - Explain the allegations asserted and facts asserted in support of the allegations.
  - Explain the policy or policies at issue.
  - Explain the investigation process and timelines.
  - Remind the responding party that he or she must not retaliate against the reporting party or any other person involved in the complaint investigation.
- The responding party will be asked to provide any documentation or electronic information that he or she believes supports the responding party's position and identification of any potential witnesses.

After the interview, the investigator will send an interview summary to the responding party for accuracy and have the responding party acknowledge, correct, or add information.

## **VII. Witness Interviews**

When interviewing a witness, the investigator will determine at the outset what information the witness may have to offer and prepare questions designed to elicit that information. The investigator will remind witnesses that:

- The investigation is to remain confidential because confidentiality helps protect the integrity of the investigation.
- Witnesses (a) may not retaliate against a person they believe is involved; (b) are protected by OHSU policy from retaliation; and (c) will be informed to whom any concerns about retaliation can be made.
- While a witness's identity may initially remain confidential, disclosure of the witness's identity may be required.

Witnesses need only enough information to answer questions about which they have knowledge – they do not need to know all of the alleged facts.

### **VIII. Additional Information-Gathering**

After the witnesses have been interviewed, the investigator will assess and follow up on any additional information that may be necessary to make a final determination of key allegations and potential policy violations or best practices not followed.

### **IX. Following Up With Responding party**

The investigator must let the responding party know of any key evidence that the investigator believes support a finding of a policy violation. The responding party is also entitled to know the source of the evidence and have an opportunity to provide a response to the evidence, and that response will be considered before making a final determination. This section may occur earlier in the process.

### **X. Report and Findings**

At the conclusion of the investigation, the investigator will determine whether a preponderance of the evidence shows that a policy or policies have been violated. The report will include:

- The policies and alleged violations in specific terms, which are consistent with the notice to the responding party.
- Investigation steps.
- Factual findings.
- Conclusions and evidence supporting the findings, framed as follows: A preponderance of the evidence [does/does not] indicate that [responding party] violated [policy/policies] by [brief summary]. This is because

\_\_\_\_\_.

The investigator will provide a summary of the findings and conclusions to both the complainant and the responding party in a closure letter.

**XI. Ongoing Follow-up.** If a policy violation is substantiated, and unless the complainant/recipient requests no-follow up in writing, AAEO will designate a party responsible to conduct follow up with the reporting party once every three months for the calendar year following the date on which the employer received the report of harassment, to determine whether the harassment has stopped or

complainant/subject of the behavior has experienced retaliation.

Implementation date: 12/3/15