



**Washington State University**  
Office for Equal Opportunity

Issues Related to  
Discrimination, Sexual  
Harassment, Sexual  
Misconduct

Kimberly Anderson | Executive Director  
Office for Equal Opportunity

February 2018

---

---

---


---

---

---

---

---



**OEO Primary Responsibilities**

- Central intake and investigation office for student and employee complaints of:
  - Discrimination,
  - Discriminatory harassment, and
  - Sexual misconduct
- Central resource for compliance recommendations and work relating to:
  - Equal Employment Opportunity / Affirmative Action compliance
  - Title IX compliance
  - ADA compliance
  - Education and training

---

---

---


---

---

---

---

---



**Applicable WSU Policies**

**WSU's Policy Prohibiting Discrimination,  
Sexual Harassment, and Sexual Misconduct  
(Executive Policy 15)**

Applies to all WSU Employees, Students, and  
others having an association with WSU.

*Discrimination in all its forms destroys mutual  
respect and a trusting environment, can bring  
substantial personal harm to individuals, and  
violates individual rights.*

---

---

---

---

---

---

---

---

### Other Relevant WSU Policies

- EP 28 Policy on Faculty-Student and Supervisor-Subordinate Relationships
- EP 7 - University Web Accessibility Policy
- EP 12 - EEO/AA Policy
- EP 26 - Internal Investigations, Training, and Policy
- Reasonable Accommodation (BPPM 60.21.1)
- Bullying Prevention and Reporting (BPPM 50.31.1)
- Workplace Violence (BPPM 50.30.1)
- WSU's Standards of Conduct for Students  
([Washington Administrative Code \(WAC\) Chapter 504-526](#))

---

---

---

---

---

---

---

---

### Discrimination Prohibited

WSU policy prohibits discrimination on the basis of:

- Race	- National or ethnic origin
- Sex/Gender	- Physical, mental or sensory disability
- Sexual orientation	- Marital status
- Gender identity/expression	- Genetic information
- Religion	- Status as an honorably discharged veteran or member of the military
- Age	
- Color	
- Creed	

WSU policy prohibits behavior on the basis of a protected class that is sufficiently severe, persistent, or pervasive that it has the purpose or effect of creating an intimidating, hostile, or offensive environment; or unreasonably interfering with work, or academic performance.

---

---

---

---

---

---

---

---

### Discrimination = Behavior (Prejudice = Attitude)

Selective, unjustified negative behavior toward a group or member of a group. Demonstrated by...

**Disparate Treatment:**

- Treating individual(s) differently/adversely because of protected category.
- Can be shown by direct evidence or inferred through statistics, anecdotes or comparative evidence. **Intent is a necessary element**

**Disparate/Adverse Impact**

- Practice/policy which results in selection of members of a protected group at a rate lower than that of other groups.
- Can be facially neutral practice – but still discriminatory in its application
- Intent is not a necessary element

---

---

---

---

---

---

---

---

**Discrimination = Behavior**

**Harassment**  
 A form of discrimination that unreasonably interferes with an individual's performance or adversely affects an individual's employment opportunity.  
 (Verbal – Written – Physical)

*Behavior that is sufficiently **severe, persistent, or pervasive** that it has the purpose or effect of:*

- Creating an intimidating, hostile, or offensive environment; or
- Unreasonably interfering with work, academic performance, living environment, personal security, or participation in any WSU activity.

---

---

---

---

---

---

---

---

**Discrimination and Protected Speech**

Justice Brandeis:  
 "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, **the remedy to be applied is more speech, not enforced silence.**"  
 Whitney v. California, 274 U.S. 357, 377 (1927)

Justice Kennedy (Concurring):  
**A law that can be directed against speech found offensive to some portion of the public can be turned against minority and dissenting views to the detriment of all.** The First Amendment does not entrust that power to the government's benevolence. Instead, our reliance must be on the substantial safeguards of free and open discussion in a democratic society.  
 Matal v. Tam, 582 U.S. \_\_\_\_ (2017) (the "Slants" case)

---

---

---

---

---

---

---

---

**Discrimination and Protected Speech**

Not protected (students or employees):

- Discriminatory harassment (severe, persistent, or pervasive)
- Obscenity (e.g. child pornography)
- Defamation/libel
- True threats: Statements in which the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.
- Fighting words
  - Words which are likely to provoke an immediate violent reaction

---

---

---

---

---

---

---

---

### Discrimination and Protected Speech

- Academic Freedom/Free Speech vs. Discrimination
- Pedagogical Purpose? Related to Scholarship or Teaching?
- Protection of Faculty/Employee Speech vs. Student Speech

---

---

---

---

---

---

---

---

### Sexual Harassment Prohibited

WSU policy prohibits sexual harassment, which is a form of discrimination on the basis of sex or gender.

Sexual harassment encompasses:

- unwelcome sexual advances,
- Quid pro quo harassment, and/or
- unwelcome **verbal or physical conduct** of a sexual nature, including sexual assault.

Behavior that is sufficiently **severe, persistent, or pervasive** to interfere with an individual's educational performance or environment.

---

---

---

---

---

---

---

---

WASHINGTON STATE UNIVERSITY

### Sex and Gender Based Violence

WSU policy prohibits sexual misconduct and other forms of sex and gender based violence as forms of sexual harassment, including:

- Non-consensual sexual contact;
- Sexual exploitation;
- Intimate partner violence (dating violence); and
- Stalking

One instance of sexual misconduct will be considered **sufficiently severe, persistent, or pervasive** to rise to the level of sexual harassment.

WSU will address student allegations of sexual harassment **regardless of where the conduct occurred (on or off campus)** if it may interfere with the educational pursuits of the parties involved.

WSU's processes are separate from the criminal process and **can be pursued simultaneously**.

---

---

---

---


---

---

---

---

WASHINGTON STATE UNIVERSITY



## Reporting Requirements

February 2018

---

---

---

---

---

---

---

---

WASHINGTON STATE UNIVERSITY

## Employee Reporting Obligations

- All WSU employees\*, including student employees, who have information regarding incidents of **sexual harassment** or **sexual misconduct** must *promptly* report that to OEO or the WSU Title IX Coordinator.
- All supervisors, who have information regarding incidents of **discrimination** or **discriminatory harassment** report that to OEO

*\*Limited exceptions for health care providers or staff, mental health care providers or staff, preventative education providers, or employees who have no authority to take action or who are not viewed by students as having authority*

---

---

---

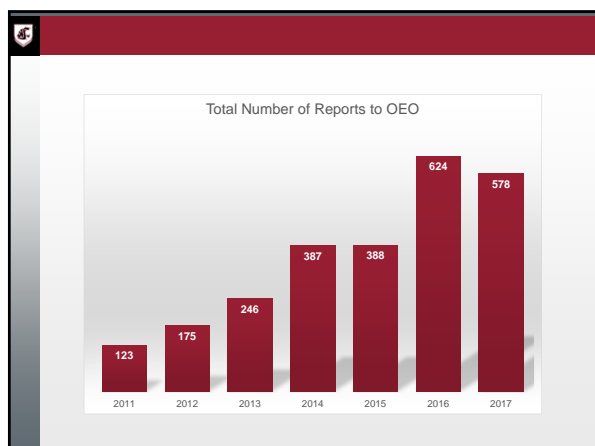
---

---

---

---

---



---

---

---

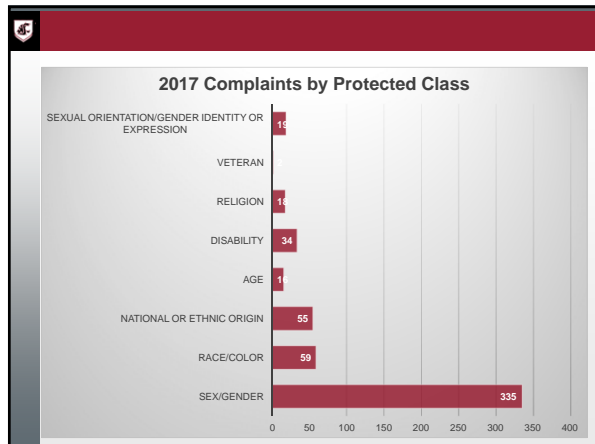
---

---

---

---

---




---

---

---

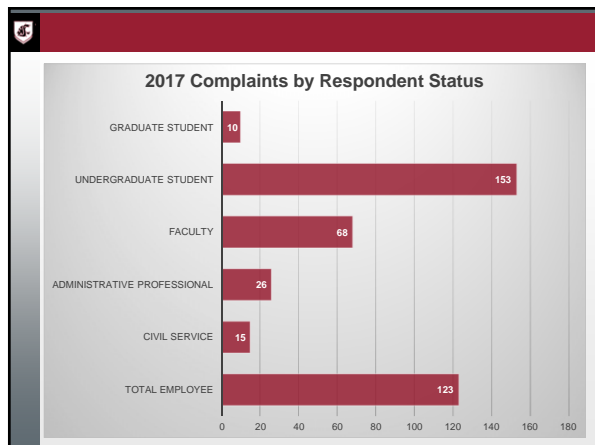
---

---

---

---

---




---

---

---

---

---

---

---

---



WASHINGTON STATE UNIVERSITY

## Interactions with Students and Staff

February 2018

---

---

---


---

---

---

---

---



## Students – Common Triggers

- Domestic Violence
- Sexual Assault
- Stalking
- Instructor discriminated in grading
- *Discriminated, harassed, hostile environment*

---

---

---


---

---

---

---

---



## Students – What to do?

- Let the student know you are not a confidential resource, and you may have to report the information to OEO
- Ask some preliminary questions to assess what type of concern the student has. *Do not investigate.*
- Assess whether the student's concern includes information related to EP 15.
  - If so, report.
  - If not, handle internally or identify other resources.
- Provide resources and reporting options.

---

---

---


---

---

---

---

---



## Students – Resources

**Confidential Resources:**

- WSU Counseling Services – Student Affairs
- WSU Health and Wellness (Pullman)
- Local Hospital
- Local Advocacy Groups (ATVP Pullman)

**University Resources:**

**Dean of Students/Student Affairs:** Can assist with academic and/or residential arrangements

**Office of Student Conduct:** Works with OEO on student conduct cases involving discrimination, sexual harassment and sexual misconduct.

Visit [oao.wsu.edu/resources/](http://oao.wsu.edu/resources/) for information specific to your campus.

---

---

---


---

---

---

---

---



## Common Scenarios - Students

- "I did not complete my homework, because I was assaulted over the weekend."
- "I think my professor has graded me unfairly, because he doesn't like students from XYZ."
- "I can't work in this student group, because the other student is harassing me."

---

---

---

---

---

---

---



## Staff – Common Triggers

- Bullied
- Harassed
- Intimidating
- Hostile
- Stifling my voice
- Treating me differently
- Compensation or work assignments are unfair

---

---


---

---

---

---

---



## What to do?

- Inform employee that you are not confidential and need to report the information
- Ask some preliminary questions to assess what type of concern the student has. *Do not investigate.*
- Provide reporting options
  - HRS, OEO, Ombudsman, police
- Consult with HRS and OEO
- Provide Resources

---

---

---

---

---

---

---

### Employee Resources

These offices will protect employee privacy as far as possible, and will share information only on a need to know basis.

- WSU Employee Assistance Program (Confidential)
- Human Resource Services
- Office of the University Ombudsman

Visit [oeo.wsu.edu/resources](http://oeo.wsu.edu/resources)

---

---

---

---

---

---

---

---

### Common Scenarios - Staff

- "You can't hold me accountable for that task, because you are aware that I have a disability."
- "My coworker hushes me in meetings and laughs when I share my opinion"
- "Work assignments are being distributed unequally."
- "My coworker is harassing and bullying me."
- Tenure related complaints

---

---

---

---

---

---

---

---

### General Departmental Assessment

- Are policies enforced consistently in your department?
- Do you evaluate people on a regular and fair basis?
- Have you ever criticized an employee on matters that are not work related?
- Are your comments and questions strictly work-related when you evaluate job candidates?
- Do you take accurate, objective notes?
- Are those notes about strictly factual information?
- Do you do your best to leave any stereotypes you may have outside the office door?
- Do you strive to make your department a supportive, bias-free environment?
- Do you set an example your employees can follow?

---

---

---


---

---

---

---

---



## Supervisor Liability

### Brown vs. Scott Paper Worldwide Co.

April 5, 2001 WA State Supreme Court

Individual supervisors can be held individually liable for their discriminatory acts under the Washington Law Against Discrimination, RCW 49.60

Supervisor – s/he is the actual wrongdoer

---

---

---

---

---

---

---



## Accessibility Policies/Laws

- Americans with Disabilities Act (ADA)
- Section 503 and 504 of the Rehabilitation Act of 1973
- Fair Housing Act
- Executive Policy #15
- Business Policies and Procedures Manual 60.21.1

<https://access.wsu.edu/>

---

---


---

---

---

---

---



## What is a Disability?

Federal Definition:

- A physical or mental impairment that substantially limits one or more major life activities;
- A record of such an impairment; or
- Being regarded as having such an impairment.

Why Accommodate?

- Ensuring that individuals have the opportunity to reach their full potential.
- Diversity of experience enriches the learning/working environment.
- Resiliency is an incredibly valuable trait.

---

---

---

---

---

---

---

**What is a Reasonable Accommodation?**

<b>Employees</b>	<ul style="list-style-type: none"> <li>Any <b>modification or adjustment to a job or the work environment</b> that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions – <i>US Department of Justice</i></li> </ul>
<b>Students</b>	<ul style="list-style-type: none"> <li>Modifications or adjustments to the tasks, environment, or to the way things are usually done that enable individuals with disabilities to have an <b>equal opportunity to participate in an academic program</b> – <i>US Department of Education</i></li> </ul>

---

---

---

---

---

---

---

---

**Accessibility**

- Review your programs and practices
- Think critically – anticipate challenges
- Plan for visitors
- Encourage faculty, staff to provide supportive and flexible response to requests for accommodations
- Know your resources (HRS, Access Center, ADA Coordinator)
- Web Accessibility

<https://access.wsu.edu/>

---

---

---

---

---

---

---

---

**Process for Addressing Requests for Disability Accommodations**

After an employee [student] requests disability accommodation from supervisor, the supervisor should refer the employee to HRS [Access Center].

- HRS will discuss with the employee, the process for documenting the disability.
- HRS will provide a recommendation to the supervisor regarding a reasonable accommodation.
- The supervisor's role is to ensure that the employee can perform the responsibilities of the job with the accommodation.
  - Supervisors should consult HRS regarding any concerns about the accommodations prior to making any changes to Employee's duties.
- Supervisor's focus is on the job not the disability.
- Supervisors do not need to know what the disability is.

---

---

---

---

---

---

---

---

**Student Advice/Request of Faculty re Accommodations:**

- Patience with students with disabilities is vital. They've had to work twice as hard as their peers to get this far, and they are willing to do it again, it just takes patience.
- When they design their classroom policies, instructors should make note that some students have specific needs and if those needs can be accommodated reasonably then it adds to the learning environment without any inhibiting others.
- When a student approaches you asking for approved accommodations, don't get frustrated. It is difficult for the student to single themselves out from the rest of the class in a way that most would see in a negative light. They don't want to have to ask for the accommodations but they are necessary for the student to succeed. Don't see it as them asking you for a favor, see it as you giving them an equal chance at an education.
- Take a few moments to learn about your student outside of their disability, it will help build a relationship leading to open and honest dialogue which will allow you both to work together throughout the term to make sure their accommodations are effective and relevant to the course.

---

---

---

---

---

---

---

---

Complaints/Concerns

---

---

---

---

---

---

---

---

**What can the Dept. handle?**

- No bright line rule
- Generally, departments can handle (without involving OEO)
  - Disputes, that do not involve discrimination
  - Venting – where language used is alarming, but descriptions of conduct are low-level
  - Grading concerns through Academic Rule 104
  - Low-level complaints of discrimination
    - *Best practice: always provide complainant with OEO information*

It is *never* a bad idea to call and consult with OEO.

---

---

---

---

---

---

---

---

**Resources**  
https://oeo.wsu.edu/resources

**Resources**

If you or someone you know has experienced discrimination, sexual harassment, or sexual misconduct, there are organizations available to help you. Please see the below resource lists for your community to access information on university offices, legal advocacy, medical services, mental health services, and law enforcement.

- Pullman Resources Page
- Tri-Cities Resources Page
- Spokane Resources Page
- Vancouver Resources Page
- Everett Resources Page

The federal government has also compiled helpful information for students and universities, including information on what to do if you have been sexually assaulted, how to help a friend who has been sexually assaulted, and information about your rights if you share information about a sexual assault with your university.

- Not Alone Home Page

---

---

---

---

---

---

---

---

---

---

WASHINGTON STATE UNIVERSITY

**OEO Investigations**

February 2018

---

---

---

---

---

---

---

---

---

---

**Once WSU learns of a concern:**

- Resources
- Complainant Interview/Intake
- Determine appropriate next steps
- Notice of Investigation
- Impartial Investigation: (Review Documents, Interview Witnesses and Respondent)
  - Preponderance of the Evidence
- OEO will summarize the investigation (Findings of fact; Conclusion; and a recommendation to HRS)
- Appeal
- HRS and/or Supervisor [or OSC] will address any disciplinary action.

---

---

---

---

---

---

---

---

---

---

## Investigations

*Typically*, there is sufficient information to warrant an investigation when:

- Allegations have supporting information
- Allegations are of a very concerning nature
- Allegations describe conduct prohibited by EP 15 (sufficiently, severe, persistent, or pervasive)
- Some indication of credibility
- Investigation is the best resolution path vs. Informal resolution.

**No bright line rule.**  
**Each case assessed individually.**  
**Credibility/Veracity of complaint also assessed.**

---

---

---

---

---

---

---

---

## Examples:

Investigation would likely be triggered if:

- Student alleged that their professor was sexually harassing them, asking them on dates, and sending them inappropriate text messages.
- Student alleged that their lab teaching assistant made statements about their ethnicity, graded them differently, and provided a co-student's test to show how the grading was different.
- Student alleged that another student sexually assaulted them off campus, and the student wants to proceed with an investigation.
- Employee alleged that their negative tenure review was based on intentionally false rumors spread by another employee about their personal sexual choices.

*And, OEO determined that an investigation was the most appropriate resolution path.*

---

---

---

---

---

---

---

---

## Key considerations

- Not every complaint results in an investigation
  - 2017: 578 complaints, 50 investigations
- Many complaints result in other actions
  - Consultation
  - Referrals
  - Performance Expectation Counseling
  - Additional training
  - Mediation

*Many complaints are concurrently assessed by OEO, HRS, or Internal Audit*

---

---

---

---

---

---

---

---

**What is expected of supervisors during an investigation?**

- Collaboration with OEO and HRS
- Assist with identifying appropriate interim measures
- Help deliver notice
- Direct questions to OEO or HRS
- Provide support for all participants (*allegations only at this point*)
- Maintain confidentiality, as appropriate
  - Do not share nature of allegations or OEO involvement with others.
  - If employee is on home assignment, simply say they are working on a special project at home.
- Help limit gossip, if possible
- May ask for help scheduling an employee witness

---

---

---

---

---

---


---

---

**Retaliation and Interference Prohibited**

**Retaliation** includes any act that would dissuade a reasonable person from making or supporting a complaint, or participating in an investigation, under this policy.

**Interference:** Actions that dissuade or attempt to dissuade complainants or witnesses from reporting or participating in an investigation, or actions that delay or disrupt, or attempt to delay or disrupt, an investigation




---

---

---

---

---

---

---

---

**What happens when OEO issues a report?**

- Supervisors, HRS, Complainant(s) and Respondent(s) receive a copy
- 15 days to appeal to WSU President's Office
- Appeals Committee convenes with a 30 day review
  - Supports OEO conclusions or
  - Sends back to OEO for additional review/investigation
- Supervisors/HRS review to determine appropriate response

---

---

---

---

---

---

---

---



## Affirmative Action

---

---

---


---

---

---

---

---



## Affirmative Action

- The processes most likely to contribute to the goal of diversifying the workforce are those conducted in the context of an ongoing, institution-wide commitment to diversity.
- Focus building a reputation for being diversity-friendly workplace.
- I-200: The state shall not discriminate against, or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin...

**Not about quotas but about hiring the most qualified person for the job.**

---

---

---


---

---

---

---

---



## Affirmative Action

- The state shall not discriminate against, or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin.
- How do we increase diversity without discriminating in our recruitment activities?
  - Increase the diversity of applicant pools
  - Develop advertising strategies to reach untapped labor markets
  - Foster an environment that is welcoming and inclusive
  - Once the applicant pool is established race, sex, color, ethnicity, or national origin are not considered
  - Search committees are charged with selecting the most qualified person for the job

---

---

---

---

---

---

---

---



### Achieving Diversity Through Recruitment

- **Forming the Committee;**
  - Diverse perspectives; knowledgeable about needs of the position
- **Educating the Committee;**
  - Laws etc.; Best practices – consult with HRS – new trainings available, and in progress
- **Position Description;**
  - Thoughtful; Make sure job trying to fill is the job advertised; Include everything you want to consider as a qualification in the position description; minimum vs. preferred (too narrow vs. too broad)
- **Diversity Experience;**
  - Not about looking for underrepresented candidates, but about looking for people with experience that is diversity related

---

---

---

---

---

---

---

---



### Achieving Diversity Through Recruitment

- **Attracting a diverse candidate pool;**
  - Informal contacts
  - Organizations advocating for underrepresented groups
  - Diversity publications
  - Educational and Governmental Institutions
- **Examining Hiring Biases**
  - Predisposition of committees to look for and favor candidates who are like them in terms of educational background, social skills, values and behaviors and fit the “standard mold” for the field
  - Harvard University ‘Project Implicit’ – Research methodology has not been established; however, the exercise does help you to reflect on where your own implicit biases may be

---

---

---


---

---

---

---

---



### Implicit Bias

- The attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.
- [http://amyopp.com/wp-content/uploads/2013/07/Psychology\\_of\\_Bias\\_May\\_2012.pdf](http://amyopp.com/wp-content/uploads/2013/07/Psychology_of_Bias_May_2012.pdf)
- <https://implicit.harvard.edu/implicit/takeatest.html>

---

---

---


---

---

---

---

---



### Opportunities to Contribute

- Compliance Related Committees – Call/Email OEO if interested in serving (ADA, CCRT, AA/EEO)
- Require Regular Training
  - HRS: <http://hrs.wsu.edu/HRS%20Training%20Home%20Page>
  - OEO will provide trainings customized to your needs.
    - Employee Reporting Requirements
    - Graduate Teaching Assistant Training
- Schedule trainings for your area
  - Diversity Education (Cultural Competency)
  - Green Dot (Bystander Education – Sexual Violence Prevention)
  - GEISORC (Ally Training)
  - Access Center (Student Accommodations)

---

---

---

---

---

---

---



## Questions?

---

---

---

---

---

---

---