

# University of Missouri Equity Investigator Training

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University of Missouri System

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# Agenda

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- Scope of Discussion
- Early Issues
- Gathering Information – Best Practices (and quick case study!)
- Report Writing – Best Practices
- Case Studies



# **Scope of Discussion**

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# Nondiscrimination Policy (Equity Investigations)

600.010 Equal Employment/Educational Opportunity and Nondiscrimination Policy - for matters involving conduct alleged to have occurred on or after August 14, 2020

600.040 Equity Resolution Process for Resolving Complaints of Discrimination and Harassment against a Faculty Member or Student or Student Organization - for matters involving conduct alleged to have occurred on or after August 14, 2020

600.050 Equity Resolution Process for Resolving Complaints of Discrimination and Harassment against a Staff Member or the University of Missouri - for matters involving conduct alleged to have occurred on or after August 14, 2020



# Broader Scope. . .

Further, if a Complainant simultaneously alleges or the investigation suggests that violations of the University's Anti-Discrimination Policies and disagreements arising from working relationships, working conditions, employment practices, or differences of interpretation of a policy, the University shall have the authority to investigate and take appropriate action regarding each of the Complainant's allegations pursuant to this Equity Resolution Process. In conducting such investigations, the Equity HR Officer or Equity Officer, and/or the Investigator may consult with and/or seek guidance from Human Resources staff or appropriate administrators as necessary.



# Early Issues

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E. **Preliminary Contact and Inquiry.** Upon receiving a report, the Equity Officer shall promptly contact the Complainant to discuss the availability of supportive measures as defined herein, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of availability of supportive measures with or without the filing of a Complaint, and explain to the Complainant the process for filing a Complaint. If the identity of the Complainant is unknown, the Equity Officer may **conduct a limited investigation** sufficient to identify the Complainant to the extent possible.

In addition to making preliminary contact, the Equity Officer shall conduct a **preliminary inquiry** to gather enough information to make a threshold decision regarding whether the report describes a possible violation of the University's anti-discrimination policies.

If the report describes a possible violation, the Equity Officer will refer the matter to the appropriate procedural process and provide appropriate supportive measures. If the report does not describe a possible violation, the matter will be referred to the appropriate non-Equity process. Under those circumstances, the Equity Officer may counsel and suggest monitoring or training opportunities to correct for inappropriate behavior that does not rise to the level of a violation.

The preliminary inquiry shall be conducted promptly (typically within 7-10 business days) of receiving the report.





- What is a “limited investigation”?
- What is a “preliminary inquiry”?
- What if the complaint is anonymous? Or indirect?



# Considerations

- Once an allegation is reported, regardless of the source, the first task is to determine – **WHAT IS BEING ALLEGED?**
  - Is it a discrete issue? (e.g., promotion question, single comment, etc.)
  - Is it a pattern of behavior?
- **WHO** is alleged to have engaged in the behavior?
  - Is it an individual?
  - A group decision/recommendation?
  - An organizational decision?
  - The University?
- **WOULD** the alleged behavior violate policy?



# Considerations

- Once you understand the allegations, then consider - ***is there information that might support the allegations beyond the complaint/report itself?***
- If so, ***what type of information*** would be necessary to determine whether a potential policy violation has occurred –
  - Is the information publicly available (e.g., available on the University’s website, subject to a Sunshine Act request, etc.)?
  - Would gathering information require interviews or other methods that would necessarily make more individuals aware of the allegations?



# Tips and Tools

- Be aware of the information publicly available on the University's websites; some examples include –
  - Pay matrices:  
[https://www.umssystem.edu/totalrewards/compensation/pay\\_matrices](https://www.umssystem.edu/totalrewards/compensation/pay_matrices)
  - Salary information:  
<https://collaborate.umssystem.edu/sites/hrpublic/documents/GEN/CURRENT/annual-salary-report.pdf>
  - Job codes and position descriptions:  
<https://compsearch.umssystem.edu/>



# **Gathering Information – Best Practices**

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# Develop Plan of Investigation

- **Who** will you interview?
- **What** questions will you ask?
- **What** documents do you need to review?
- **Where** will you interview each person?
- **When** will you interview each person?
- **Why** will each person be important to your investigation?
- **How** will you order your interviews?



# Always remember the “why”

- There is an allegation.
- A decision-maker will have to fairly and objectively review information to determine whether –
  - Alleged behavior occurred;
  - A policy violation occurred.
- An investigation is the vehicle to **identify** and **gather** the information that allows for a fair, unbiased, and objective determination.



# Items to consider early and often

- Clarify allegations – they may change over time as more information is available
- Understand the complexity – how many decisions, individuals, etc. are involved?
- Identify and understand factual disputes – are those disputes material?
- Ask yourself – what information would assist a decision-maker?
  - Consider if comparator data exists.





# If a discrete decision is at issue. . .

- Gather information about how the decision was made –
  - Who was/were the decision-maker(s)?
  - What information was available to them?
  - What is the stated reason for the decision?
  - What information is available to document the response to each of these questions?



# Comparator Evidence

- From the EEOC:

## **C. General Investigative Requirements**

The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred; the treatment of members of the complainant's group as compared with the treatment of other similarly situated employees, if any;<sup>[2]</sup> and any policies and/or practices that may constitute or appear to constitute discrimination, even though they have not been expressly cited by the complainant.



# Comparator Evidence

- Requires identifying whether there are others who are “similarly situated” (comparators).
  - This is a very fact-intensive inquiry.
  - Some courts have identified the following criteria to consider:
    - Engaging in the similar conduct (or misconduct);
    - Being subject to the same employment requirements, policies, procedures, or rule;
    - Same reporting structure;
    - Similar employment or disciplinary history.



# Other sources of information

- As parties or witnesses identify potential information, consider how you might obtain it –
  - Ask the person identifying the information if it is in their possession; if so, will they share it?
  - Do they know who might have the information?
- Don't forget about information the University makes publicly available.
- Work to understand how the University (departments, units, etc.) maintain information. (Where does the information live?)



# Interviews – the parties

- Acknowledge the difficulty of the situation and explain that your goal is to understand what happened
- Let the party give a statement in his/her own words without interruption before asking follow-up questions
- Ask for clarification; don't interrogate
  - Stress that you want to get it right
  - Seek clarification for inconsistencies and explanations that don't make sense



# Interviews – the parties

- For complainants, ensure you have up to date understanding of allegations;
- For respondents, ensure the respondent has the most up to date notice and consider whether the notice needs to be updated –
  - Make sure to fully understand the complaint so that the individual has opportunity to address all allegations
- Give both parties opportunities to identify potentially relevant information – including other witnesses, documents, electronic data, etc.



# Reminders for conducting interviews

- Be objective and do not prejudge
- Make those being interviewed as comfortable as possible
  - Consider appropriate location, time, etc.
  - Avoid group interviews
  - Provide adequate notice of interviews
- Be respectful – always.
- Remember how stressful this experience of being interviewed may be to the person with whom you are speaking.



# Reminders for conducting interviews

- Be Thorough

- If a party or witness uses vague terminology (e.g., some, many, a lot), ask for more detail
- If a party or witness uses subjective terms (e.g., acted strange, seemed upset), ask for more detail
- If relevant, ask for detailed information about dates, times, location, injuries, acts committed, witnesses, etc.





# Reminders for conducting interviews

- Handling sensitive issues
  - Make the meeting space as private and as comfortable as possible.
  - Be respectful; allow the witness to take the time they need to share the information.
  - Consider whether follow-up questions should be asked in a later meeting but be certain to address any fact issues or disputes.



# Reminders for conducting interviews – Garrity Warnings

- Most relevant in situations where the University is investigating conduct that may also be criminal.
- Not necessary for most investigations, unless the investigator is aware of a concurrent criminal investigation.
- In situations where the University intends to compel a response and the employee being questioned indicates they are not comfortable answering, the investigator should provide a Garrity Warning.



# Quick Case Study

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# **Report Writing – Best Practices**

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# Preparing the report

- Plan as you investigate
  - Compile information as you go – don't be left to draft everything at the end of your interviews
- Drafting as you go helps to identify gaps in information
- As you consider the report, decide –
  - How will you organize the information?
    - Follow the report template
  - Will you include an overall chronology or summary at the end?
  - What are some key sections that you should include?



# Preparing the report

- The report should include a detailed summary of the investigation, including:
  - Summary of the procedural steps in the investigation;
  - Summary of all interviews; and
  - Summary of any physical or documentary evidence.
    - Photographs, logs, emails, text messages, police reports, forensic evidence, etc.
- Attach copies of statements and documents to the report.



# Summaries of Witness Interviews

- When summarizing witness interviews –
  - Explain who the witness is and how he/she is connected to the University and the investigation
  - State when and where you interviewed the witness
  - Identify any other individuals present during the interview (e.g., an advocate)
  - Describe in detail each event or topic discussed during the interview



# Summaries of Witness Interviews

- Identify what information you provided to the witness (if any) about the complaint or your investigation
- Note any discussions about confidentiality, retaliation, next steps, etc.
- Describe in detail how the witness responded to the information provided
  - What did the witness say?
  - Did they have a physical or emotional response?
  - Did they deny having any relevant information?





# Summaries of Witness Interviews

- With respect to each event or topic discussed –
  - Note the date, time, and location
  - Provide a chronology of the event as reported by the witness (who said what and in what order)
  - For any key statements, document verbatim what the witness reported was said
  - Describe in detail any alleged gestures or physical contact
  - Note the name of any other witnesses identified by the witness
  - Describe any documents or other evidence provided by the witness



# Remember tone and voice

- When recounting information from the parties or witnesses, identify the source of the information and avoid conclusory statements
  - Good
    - “Maria reported that Dave called her fifteen times on Tuesday evening after class.”
    - “The following is a summary of the information provided by Maria: . . .”
  - Not so good
    - “Dave called Maria fifteen times after class.”



# Summaries of Witness Interviews

- Note your observations about the witness's behavior, demeanor, and attitude during the interview
- BUT only report factual observations, no conclusions
  - Good
    - Maria cried when talking about X.
    - Dave looked at the floor when talking about Y.
  - Not So Good
    - Maria cried when talking about X, so I believe she was telling the truth.
    - Dave looked at the floor when talking about Y, so I believe he was lying.



# Summaries of Witness Interviews

- Note inconsistencies in the witness's account or discrepancies between what the witness says during the interview and any subsequent communications
- BUT again, avoid conclusions
  - Good
    - During my initial interview with Maria, she said Dave did X. After informing her that Dave denied doing X, she explained that Dave had actually done Y.
  - Not So Good
    - Maria lied during her initial interview when she said Dave did X. She later admitted that Dave had actually done Y.



# Follow-Up Interviews

- Same rules above apply
- Identify the reason for the follow-up interview and what information you provided to the witness
- Describe in detail the witness's response to the information provided



# Other Evidence

- Describe the evidence
- Summarize relevant portions
- Attach to the report if appropriate



# Other Information

- If a witness was not contacted, explain why
  - Were they unavailable?
  - Did they refuse to participate?
- If certain evidence was not obtained, explain why
  - Was it not accessible?
  - Was it deemed irrelevant? Why?
- Consider including an overall, chronological summary of the alleged incidents



# What else should you consider?

- A Good Investigative Report is ... **as specific as possible**
  - Avoid vague terms like “some,” “many,” “a lot”
  - Provide dates, times, locations, when available
  - The more details, the better





# What else should you consider?

- A Good Investigative Report is ... **clear**
  - Err on the side of over-explaining
  - Assume the reader knows nothing about the individuals involved
  - Introduce each individual the first time they are mentioned in the report and provide their title and/or explain their involvement in the complaint and investigation
  - Use consistent terminology throughout



# What else should you consider?

- A Good Investigative Report is ... **objective**
  - Focus on the facts – who, what, when, where, why, how
  - Avoid using subjective terms (e.g., acted strange, seemed upset)
  - Leave your personal feelings or conclusions out
  - This is the information-gathering part of the process



# What else should you consider?

- A Good Investigative Report is ... **helpful to the decision-maker.**
  - What is helpful?
  - What is not helpful?



# The finishing touches

- Review the Report
  - Is it easy to read?
  - Is everything included?
  - Does it look professional?
  - Is it consistent with other similar reports?
  - Will it make sense to someone with no knowledge of the complaint and investigation?
  - Does it contain a full description of how the matter was brought to the University and what was done to investigate the complaint?



# Concluding thoughts

- Treat all individuals involved in this process with respect and courtesy
- Be even handed and impartial – this process is meant to be fair to all involved
- Remember the impact of the process on those involved and be sensitive to those difficulties



# Case Studies

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QUESTIONS?



**THANK YOU**

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