



## UNIVERSITY ETHICS AND COMPLIANCE INVESTIGATIVE PROCESS

Once an allegation or complaint is determined to fall to University Ethics and Compliance for review, UEC shall initiate the investigative process. The process includes three steps: Initial Analysis, Investigation, and Reporting the Findings as summarized below. Additional information can be found following the process in sections noted as Definitions, Investigative Groups, and Authority.

### I. INITIAL ANALYSIS

Upon receiving a complaint, UEC's Investigative Group Lead or designee shall review the allegation(s) within **3 business days** of receiving the complaint. The initial review and analysis will include a determination of the types of issues alleged, regulations and policies implicated, whether further investigation is warranted, referrals to other Investigative Groups or the Responsible Party for resolution, and any additional required notifications. Once the initial analysis is complete, the Investigative Group Lead or designee will assign the matter to an Investigator, refer the matter to another Investigate Group or Responsible Party, or determine that no further action is necessary and close the case. The Investigative Group Lead will ensure that any reported allegation(s) of the Requirements are entered into the UEC Incident Reporting System within **3 business days** of receipt of the complaint.

1. **Assign matters** to an Investigator or Department Investigator **no later than one week** after receiving the initial report. Investigations shall commence as soon as possible following assignment, cases will be prioritized and pursued based on the Investigative Group Lead or Responsible Party's discretion.
2. **Refer matters** no later than one week to the appropriate Investigative Group which administers relevant policies at the University or to the Responsible Party whose school or department is identified in the complaint as appropriate. The Investigative Group or Responsible Party shall review the referred matter and advise the Investigative Group Lead at the **earliest possible time** if their unit will conduct an investigation.
3. **Case closure** is warranted when insufficient evidence is received in the complaint and the Investigative Group Lead or designee or the Responsible Party has made a reasonable attempt to gather additional information relevant to the allegation, or when the allegations, even if accurate, would not constitute a violation of the Requirements.

Any party conducting an initial analysis or investigation should take immediate action if warranted to prevent injury or hazard to people or property or to avoid any continuing non-compliance.

### II. INVESTIGATION

Specific investigative steps and responsibilities may be dependent on the specific nature or circumstances of the allegation and may be conducted by UEC, a Departmental Investigator, or an external third-party investigator retained by the University for that purpose. It is paramount that matters are reviewed thoroughly, fairly, objectively, and timely to ensure the investigation's effectiveness. Upon being assigned a matter, Investigators should ensure that they conduct each of the following phases of the investigation: (1) Investigative Assessment & Planning, (2) Fact Finding Phase, (3) Evidence Analysis, and (4) Reporting the Findings.



## 1. Investigative Assessment & Planning

Upon assignment, an investigator shall conduct a preliminary inquiry into the allegations made and facts reported in the complaint to determine whether further investigation is warranted. In general, additional investigation is warranted if the allegation is supported by specific and sufficient information to conclude that if the allegation were true, a violation of the Requirements has occurred. During the preliminary inquiry, investigators should consider:

- What are the Requirements alleged to have been violated?
- Which school(s), unit(s), or department(s) are involved?
- Who are the Respondent(s) and who might be considered Investigative Participant(s)?
- What are the major questions that need to be answered to determine whether a violation of the Requirements has occurred?
- What immediate action(s) should take place to preserve relevant evidence?
- Are there collective bargaining process requirements that must be followed relative to the Respondent? May Weingarten rights be implicated during the interview process?
- What is the scope of the investigation as understood relative to the allegation and/or behavior giving rise to the investigation?
- Who will be interviewed?
- Is it likely that additional investigators or subject matter experts will be required?
- If the complainant is anonymous, what evidence can be collected to corroborate the allegations?
- What electronic, documentary, or witness evidence may exist to corroborate the allegations?
- Which University employee(s) need to know about the complaint, and who will make the appropriate notifications? If notifying a University employee may compromise aspects of the investigation, the investigator shall notify the next higher-level officer of the school/department.
- Do external State, federal, or other agencies need to be notified?
- What broader risks do the allegation(s) have on the University?
- What process and mechanism will be used to notify the complainant, respondent, and senior management of the investigation, as appropriate.

## 2. Fact Finding Phase

Conducting a comprehensive investigation requires judging the credibility of each Investigative Participant's testimony, gathering and methodically reviewing and interpreting physical or electronic evidence, and understanding subject area expert analysis. Investigators must ensure they see the entire picture of the investigation by gathering and assessing all the facts. Some best practices may include:

- Comprehending the unit or department culture
- Understanding the unit's reporting process and internal policies and procedures
- Considering the relevance of all documents, images, and devices
- Identifying all potential witnesses
- Identifying any potential experts who may be able to provide important context



- Creating a chronology of relevant events

Preservation of evidence is integral to the integrity of an investigation, and failure to preserve evidence immediately may hamper the investigation. Best practices for preserving original records include:

- Not marking or altering original physical/electronic records in any way
- Creating an inventory of records received, when and from whom they were obtained
- Notifying relevant University staff of documents which need to be preserved
- Ceasing automated data destruction and deletion processes
- Utilizing working copies of physical or electronic files to re-perform any analysis
- Utilizing a chain of custody form for any sequestered devices
- Storing sequestered documents and electronic devices in a secure location

One of the most critical aspects of any investigation is what the parties or other investigative participant say during an interview. Therefore, interview notes should be accurate and complete. In conducting interviews, the investigator should:

- Have a general list of Investigative Participants that need to be interviewed and the documents the interviewee will need to reference during the interview
- Be familiar with relevant documents, policies and procedures, or regulations relevant to the allegation
- Consider whether another investigator should be present as a witness
- If feasible, obtain background information on the individual being interviewed
- Know what verbal or physical information you need from the interviewee
- Not be afraid to ask the questions that need to be answered
- Be cognizant of the interviewee's demeanor
- Document any emotional reactions, specific language used, and other descriptive language relayed during the interview
- Probe key issues in multiple ways and don't accept vague answers to questions
- Schedule additional interviews if necessary

### **3. Evidence Analysis**

Investigators utilize various tools to analyze facts relevant to the reported allegations in order to provide management with a sufficient information to determine whether the evidence warrants additional management action. These tools or procedures include inquiring, confirming, observing, inspecting, and re-performing steps in a process to help ensure the investigator's assessment is reasonably accurate. To provide management with the information they need, investigators should:

- Ensure all relevant information has been reviewed, analyzed, and compared with other evidence, identifying any inconsistencies
- Ensure that any conflicts have been identified and reconciled or disclosed
- Consider the credibility and quality of the evidence, from whom it was obtained, and under what conditions
- Determine whether sufficient due-diligence was performed on the matter before drawing any conclusions



#### 4. Reporting the Findings

The final report is the investigator's opportunity to accurately document factual issues, evidence gathered, analysis performed, authoritative policy, and conclusion(s) reached on the allegations. Senior management will utilize the final report to understand key facts that were uncovered during the investigation to determine whether the conduct warrants disciplinary action and to implement additional procedures that may be needed to mitigate future risks. The structure of the investigator's final report will depend on whether the allegations were unsubstantiated or substantiated.

- **Unsubstantiated Matters**

The UEC investigator may document the reasons for the determination in a Memorandum to the File, rather than preparing a case report, when the investigative findings do not substantiate wrongdoing. It is at the discretion of the Investigative Group Lead to determine whether the assigned investigator should prepare a formal report to be shared with the Responsible Party, if the matter warrants.

- **Substantiated Matters**

At the conclusion of the investigation, the investigator shall submit a final report to the Investigative Group Lead detailing the allegations reported, investigative findings, relevant regulations and/or policies, and the conclusion(s) reached. The Investigative Group Lead will provide a copy of the final report to the Responsible Party. Any additional related reports or communications drafted by the Responsible Party or their designee must also be forwarded to UEC.

The Investigative Group Lead will ensure that the Responsible Party's final report and/or management responses are reviewed and used to document the case outcome and mitigation steps taken in the Incident Management System. Responsible Party(s) who are issued a report which includes substantiated allegations will advise University Ethics and Compliance in writing within 30 business days of any actions taken to remediate the substantiated allegations.

### III. TIMELY RESOLUTION

UEC and relevant Responsible Parties will work to complete investigations and determinations as timely as possible. However, in no case should pressure to meet a particular deadline be allowed to influence the objectivity, impartiality, or thoroughness of the investigation.

### IV. DEFINITIONS

**Complainant/Complaining Party** – Any individual who files a complaint pursuant to policies, rules, laws, or university guidelines and expectations.

**Departmental Investigator** – Any individual designated by the University to conduct an internal investigation on behalf of a department, school, or unit.

**Incident Management System** – Complaint reporting system(s) utilized by UEC.



**Investigator** – Any individual conducting an internal investigation on behalf of the University through UEC.

**Investigative Groups** – Any Rutgers department listed in Section IV of these Guidelines which is conducting investigations throughout the University and who have responsibility pursuant to Section III for investigating allegations of a violation of the Requirements (as defined).

**Investigative Group Lead** – Any Rutgers employee whose job description includes overseeing UEC investigative activities.

**Investigative Participant** – individual other than the respondent(s) or investigator(s) who plays a role either directly or indirectly in an investigation (e.g., complainant, witness, or subject matter expert).

**Non-retaliation statement** – A statement advising the Responding Party of Rutgers' prohibition on taking adverse action against any Investigative Participant who in good faith reports wrongful conduct or participates in an investigation.

**Respondent/Responding Party** – Any individual who has had a complaint filed against them.

**Responsible Party** – Dean, Unit Leader, or Vice President or other designated University employee who has authority over a particular school or department and who is responsible for reviewing allegations and implementing disciplinary and/or corrective action plans.

**Requirements** – Federal and State laws and regulations, University Code of Ethics, University-wide and departmental policies and procedures, industry-specific professional standards, or other requirements or clear expectations of conduct for which a violation will form the basis for an independent and objective investigation by UEC.

**University Review** – An investigation undertaken by UEC for which a formal complaint has not been filed by an individual related to a potential violation of federal or State law, University or school/department policy, or the University's Code of Ethics. Generally, a University Review is initiated at the request of a member of the University's senior leadership in response to specific concerns or questions.

**University Personnel** – Any University employees, student employees, interns, or volunteers.

## V. SELECT INVESTIGATIVE GROUPS AT RUTGERS

**Audit and Advisory Services** investigates complaints of misuse/misappropriation of University resources.

**Office of Employment Equity** investigates complaints alleging violations by University employees or other third parties of the following University's Policies:

- Policy 60.1.12 Policy Prohibiting Discrimination and Harassment,
- Policy 60.1.13 Workplace Violence Policy,
- Policy 60.1.16 Conscientious Employee Protection Policy,
- Policy 60.1.33 Title IX Policy and Grievance Procedures.



**Title IX Coordinators** investigate alleged violations which implicate Title IX of the Education Amendments, University Policy 60.1.33 Title IX Policy and Grievance Procedures, and parts of Policy 10.2.11 Code of Student Conduct.

**Division of Intercollegiate Athletics: Office of Athletic Compliance** investigates allegations of violations of NCAA, Big Ten, and University rules regarding intercollegiate athletics at Rutgers University-New Brunswick.

**University Ethics and Compliance** investigates allegations of suspected violations of University policies, as well as federal and state laws and regulations, including, but not limited to, allegations of conflicts of interest, misuse/misappropriation of University resources, fraud, falsification/destruction of records, disclosure of personal data, clinical coding concerns, employee misconduct, and retaliation.

## VI. AUTHORITY

The University and the Board of Governors has established University Ethics and Compliance as one of the University's Investigative Groups with authority to conduct internal investigations into allegations of violations of University policies, rules or requirements, and/or certain violations of State and federal ethics laws and regulations. Depending on the needs of a specific investigation, employees from UEC may assist other Investigative Groups in conducting an investigation and UEC may ask members of other Investigative Groups to assist in UEC investigations. In circumstances in which alleged behavior falls fully within a unit's operational or management responsibility, UEC may refer the matter to a Responsible Party (i.e., unit leadership) to conduct a departmental investigation. The University, after evaluating initial allegations and facts related to an allegation or matter referred to UEC, may also recommend that the University engage an external investigator in some circumstances.

University Ethics and Compliance may, at its discretion, refer alleged violations of the New Jersey Conflicts of Interest Law to the State Ethics Commission pursuant to *N.J.S.A 52:13D-12 et seq.*

University Ethics and Compliance will follow the investigative processes established by another Investigative Group when asked to assist that Group with certain matters, such as:

- Complaints investigated on behalf of the Title IX Coordinators or the Office of Employment Equity under University Policy 60.1.33: Title IX Policy and Grievance Procedures.
- Complaints investigated under other University policies administered by the Office of Employment Equity.
- Complaints reported or referred to Rutgers University Police Department (RUPD).
- Matters in which the Office of General Counsel retains outside counsel to conduct an investigation independently or in consultation with an Investigative Group.

In any particular investigation, the unique facts and circumstances of a particular investigation may require modifications to the process. For example, the need to preserve evidence under Policy



100.4.1 Preservation of and Access to University Data and Property, Policy 70.1.1 Acceptable Use Policy for Information Technology Resources, and other University policies or the need to protect the privacy or safety of individuals involved in accordance with University policies and State or federal regulations may affect the application of specific elements of these guidelines. These modifications to the investigative approach will be documented by the UEC investigator. These adjustments to the investigative framework shall not create rights in any third party, including respondents of investigations.

In addition, UEC and other Investigative Groups may be asked by members of the University's Senior Leadership Team, Chancellors, and/or Deans to conduct inquiries into other matters of interest. In those circumstances, UEC's work shall be limited to gathering and summarizing relevant facts and providing context related to the specific matter in question.

## **VII. RIGHTS AND OBLIGATIONS OF RESPONDENTS AND OTHER PARTICIPANTS**

- All parties are entitled to an impartial, objective, and thorough investigation.
- All parties are entitled to the highest standards of confidentiality subject to the requirements and expectations of relevant law and policy. All parties will be granted reasonable assistance of an interpreter or other accommodation as needed.
- A Complaining Party has the right to be free from retaliation for filing a good faith Complaint.
- A Complaining or Responding Party or an Investigative Participant who is a member of a collective bargaining unit, may have a support person present to observe during interviews.
- A Responding Party will be provided with written notice advising them that they are the subject of an investigation. The notice will be provided at the earliest possible time and include sufficient information to advise the Responding Party of the allegations without compromising the investigation. No personal identifying information of the Complainant will be provided to the Responding Party. Under certain circumstances and for the legitimate needs of an investigation, a Responding Party may be provided details of the allegation(s) immediately prior to the initial interview.
- A Responding Party will receive verbal or written notice of any new allegations raised during the course of an investigation.
- A Responding Party will be provided the opportunity to explain their actions and to provide any information, documents, and names of other Investigative Participants that may be relevant to the investigation.
- For substantiated complaints, University Ethics and Compliance will issue a formal report to the Responsible Party clearly indicating the allegations which were substantiated. This report will restate the allegations, briefly describe the investigative process, summarize the analysis of relevant interviews, documents, witness statements, and other relevant sources of information, identify Requirements that were violated, and explain how the investigator reached the conclusion that a violation of the relevant policy or standard had occurred.



# RUTGERS

University Ethics and Compliance

- University Ethics and Compliance will not release copies of reports to Respondents, Complainants, Investigative Participants, and/or other interested parties other than the Responsible Party. The Responsible Party may release copies of the report at their discretion and for legitimate University purposes.
- University Ethics and Compliance acts as a neutral fact finder which investigates and reports on allegations of violations of the Requirements. Final determination and disciplinary actions related to substantiated allegations are the responsibility of the Responsible Party and not University Ethics and Compliance.
- Upon the completion of an investigation, the Responsible Party and Respondent(s) will be advised in writing if the complaint was unsubstantiated.

Responding Parties or Investigative Participants shall not influence or intimidate, or attempt to influence or intimidate, the complainant or witnesses, or interfere with an investigation by tampering, destroying, withholding evidence or engaging in any other conduct which may affect an investigation. Responding Parties and Investigative Participants shall not discuss the investigation or their testimony with anyone other than investigators.