

## UNIVERSITY OF WISCONSIN – SUPERIOR

Policy Subject: **Discrimination, Discriminatory Harassment and Retaliation Policy**  
Cabinet Division: **Chancellor (Affirmative Action)**  
Policy History: Replaces **Discrimination/Sexual Harassment Policy approved on 05-01-2014**  
Effective Date: 04-01-2020

Chancellor Approval/Date: \_\_\_\_\_ *Renie M. Waack* \_\_\_\_\_ 8/11/2020

### I. Background and Purpose

**I.1. Purpose and Scope.** The University of Wisconsin-Superior (UW-Superior) is committed providing an environment free of discrimination, harassment, and retaliation. Toward this end, UW-Superior will not tolerate discrimination by any university employees, students, student organizations, academic departments, governance organizations, visitors, volunteers, contractors, subcontractors, and others who do business with or for the university. This policy applies to all programs, activities, employment practices and operations.

**I.2. Policy Statement.** The UW-Superior subscribes to the policies of the Board of Regents of the University of Wisconsin System that maintain an academic and work environment free from discrimination, discriminatory harassment and retaliation for all students and employees (Regent Policy Document 14-6-formerly UPS Operational Policy EEO 5).

The UW-Superior pledges itself to continue its commitment to the achievement of equal opportunity within the University by maintaining a working and learning environment that is free from discrimination, discriminatory harassment and retaliation. In this regard, the UW-Superior will recruit, hire, promote, educate, and provide services to persons based upon their individual qualifications. UW-Superior also prohibits using institutional technology (i.e. computers, e-mail systems, voicemail systems, or webpages) in any manner that would violate this policy.

Because the protected status categories applicable to the educational setting are different than the employment setting, Regent Policy Document 14-6 separates the categories accordingly.

In the **educational setting**, a student may not be discriminated on the basis of, but not limited to, race, color, creed, religion, sex, sexual orientation, gender identity or expression, national origin, ancestry, disability, age, pregnancy, marital or parental status, military service, veteran status, or any other category protected by law. This policy protects students from discrimination, discriminatory harassment and retaliation in admission and enrollment, educational environment, course work, student services, programs, activities and facilities.

In the **employment setting**, an employee may not be discriminated against on the basis of race, color, creed, religion, sex, sexual orientation, gender identity or expression, national origin, ancestry, disability, age, pregnancy, marital or parental status, genetic information, arrest record, conviction record, military service, veteran status, use or nonuse of lawful products off the employer's premises during nonworking hours, declining to attend a meeting or participate in any communication about religious matters, or any other category protected by law. This policy protects employees from discrimination, discriminatory harassment, and retaliation in employment-related actions such as recruitment, interviewing, testing, screening, selection, placement, classification, evaluation, transfer, promotion, training, compensation, fringe benefits, layoffs and/or dismissal.

Specific incidents of alleged discrimination or discriminatory harassment will be reviewed on a case-by-case basis in accordance with the procedures set forth. Due consideration will be given to the protection of individual First Amendment rights to freedom of speech, expression, and [academic freedom](#) (see RPD 4-21.) Some instances require investigation and remedy even if the complainant does not wish to proceed. Some instances require investigation and remedy even if the complainant does not wish to proceed; these instances may include but are not limited to situations where the university is aware of a pattern of behaviors by the respondent, where the situation is severe and pervasive, etc.

As required by Title IX of the Education Amendments of 1972, the UW-Superior does not discriminate on the basis of sex in its educational programs and activities, including employment and admission. Questions specific to Title IX may be referred to the University Title IX Coordinator or Sex Discrimination and Sexual Harassment (Title IX) Policy. (NOTE: Acts of sexual violence, sexual harassment, and sex discrimination is addressed through UW-Superior's policy found at <https://www.uwsuper.edu/dos/titleix/index.cfm>.)

Individuals who engage in discriminatory or harassing conduct as defined in the policy or who retaliate against those filing or assisting in the process of complaints of discrimination or discriminatory harassment will be subject to appropriate disciplinary actions.

## **II. Definitions**

**II.1. Affirmative action.** Action that is positive and extraordinary which re-addresses the behaviors that are the discrimination and/or discriminatory harassment.

**II.2. Discrimination.** Conduct that adversely affects any aspect of an individual's employment, education, or participation in an institution's activities or programs, or has the effect of denying equal privileges or treatment to an individual on the basis of one or more characteristics of that individual's protected status or category as defined herein.

**II.3. Discriminatory Harassment.** A form of discrimination consisting of unwelcome verbal, written, graphic or physical conduct that:

**II.3.1.** Is directed at an individual or group of individuals on the basis of the individual or group of individuals' actual or perceived protected status, or affiliation or association with person(s) within a protected status (as defined herein above); and

**II.3.2.** Is sufficiently severe or pervasive so as to interfere with an individual's employment, education or academic environment or participation in institution programs or activities and creates a working, learning, program or activity environment that a reasonable person would find intimidating, offensive or hostile.

To constitute, prohibited discriminatory harassment, the conduct must be both objectively and subjectively harassing in nature. Discriminatory harassment may include but is not limited to verbal or physical attacks, threats, slurs or derogatory or offensive comments that meet the definition set forth herein. Discriminatory harassment does not have to be targeted at a particular individual in order to create a harassing environment, nor must the conduct result in a tangible injury to be considered a violation of this policy. Whether the alleged conduct constitutes prohibited discriminatory harassment depends on the totality of the particular circumstances, including the nature, frequency and duration of the conduct in question, the location and context in which it occurs and the status of the individuals involved. (Note: Sexual harassment is defined and addressed under Regent Policy 14-2 and UW-Superior Sexual Violence and Sexual Harassment policy.)

**II.4. Hostile Environment.** A work, academic, or program-related environment that is created by one or more individuals that would be considered intimidating, hostile, or offensive to a reasonable person.

**II.5. Retaliation.** Adverse action taken against an individual in response to, motivated by or in connection with an individual's complaint of discrimination or discriminatory harassment, participation in an investigation of such complaint and/or opposition of discrimination or discriminatory harassment in the educational or workplace setting.

**III. Options for Resolution.** To the extent practical, efforts should be made to resolve complaints among the parties involved first. The option to file a Report about a Complaint is always available. Employees and students may at any time seek advice and assistance about various ways to resolve complaints with the AAO, who may assist with a negotiated resolution either before or after a complaint report is filed. Options for resolution may include but are not limited to: dialogue among the parties involved, training, mediation, etc. (Note: "Options for Resolution" refer to the "Informal Complaint" process required in RPD 14-6.)

**IV. Reporting a Complaint.** Any individuals who believe they have been subject to activity prohibited by this policy may report the situation to:

- The Dean of Students Office if the conduct is by a student or by a student organization; or
- The Affirmative Action Officer (AAO) if the conduct is by an employee, academic departments, governance organizations, visitors, volunteers, contractors, subcontractors, and others who do business with or for the university.

Complaint Reports will be reviewed on a case-by-case basis with due consideration given to protection for freedom of speech, freedom of expression, and [academic freedom](#) (see RPD 4-21.) (Note: "Complaint Reports" refer to the "Formal Complaint" process required in RPD 14-6.) UWS Chapter 17 will be followed when the complaint reported is against a student.

**4.1 Confidentiality.** Where possible, confidentiality will be maintained. However, disclosures may be necessary to ensure a thorough investigation in compliance with the law and university regulations. In addition, university records may be subject to release under the Wisconsin Public Records Law.

**4.2 Applicability.** This procedure applies to discrimination, harassment, and retaliation complaints by and against UW-Superior employees, students, and affiliates. Retaliation against an individual for filing a complaint of discrimination or harassment or participating in the process is prohibited.

**4.3. Complaint Report Procedures.** Should a resolution (in Section III) be unsuccessful, a report of the complaint can be filed in writing with the Dean of Students Office or AAO within 300 calendar days after the complainant knew, or reasonably should have known, of the occurrence, event, or omission out of which the complaint has arisen. **An individual who does not comply with the time limits in this policy shall be barred from further pursuit of the complaint process.**

**4.3.1. Initial Review of Complaint.** The AAO will review the complaint and will notify the complainant within 20 calendar days of receipt of the complaint whether the complaint will be investigated, referred to another office or individual, or dismissed (if the complaint is untimely or without sufficient basis to warrant investigation).

**4.3.2. Investigation.** The AAO will convene investigator(s) to gather and consider evidence in order to investigate the complaint. Information needed may include interviews with the complainant, respondent, and any witnesses; written statements and communications; and documents such as personnel or academic files policies and procedures. Typically, investigations will be completed within 60 business days.

**4.3.3. Investigative Report.** At the conclusion of the investigation, the AAO will ensure that a report is prepared with written findings and submit them to the Chancellor (or designee) with a copy to relevant supervisory employees, the complainant, and the respondent (if any).

- Where there is insufficient evidence of discrimination or harassment, the complaint will be dismissed.
- Where there is sufficient evidence of discrimination or harassment, the AAO will work with appropriate university officials in formulating a recommendation, which will be submitted to the Chancellor for consideration and decision. The Chancellor's decision, which may include specific actions or recommendations for discipline, is final within the institution.

**4.3.4. Appeal.** A finding of insufficient evidence by the AAO (prior or subsequent to investigation) may be appealed to the Chancellor, by submitting in writing the reasons for the appeal within 15 calendar days of the AAO's dismissal. A student complainant may appeal the Chancellor's ruling to the Board of Regents.

**4.3.5. Rights of Individuals Disciplined.** Individuals disciplined as a result of this procedure retain applicable rights and procedures with regard to the disciplinary action.

## **V. Attachments and Related Information**

**RPD 14-2:** Sexual Harassment Policy Statement and Implementation

**RPD 14-3:** Equal Opportunities in Education: Elimination of Discrimination Based on Gender

**RPD 14-4:** Reserve Officers Training Corps

**RPD 14-5:** Measures to Alleviate Racism

**RPD 14-6:** Discrimination, Harassment and Retaliation

**RPD 14-7:** Implementation of Statute on Discrimination Against Students

**RPD 14-10:** Nondiscrimination on Basis of Disability: Policy Statement

**RPD 4-21:** Commitment to Academic Freedom and Freedom of Expression

**UWS Chapter 17:** Nonacademic Misconduct Procedures

UW-Superior Policy – [Sexual Violence and Sexual Harassment Policy](#)