

Discrimination/Sexual Harassment Policy

Section I. Policy Statement

The University of Wisconsin-Superior will not tolerate discriminatory conduct or sexual harassment by university employees, including administrators, faculty, staff, or by students. To the extent that demeaning or intimidating conduct increases the likelihood for physical violence or breach of the peace, it is contrary to the basic purpose of the university. Employees who engage in discriminatory or sexually harassing conduct as defined in this policy or who retaliate against those filing or assisting in the filing of complaints of discriminatory conduct or sexual harassment, or students who engage in conduct prohibited under chs. UWS 17 or 18, Wis. Adm. Code, will be subject to appropriate disciplinary actions.

Section II: Definitions

- A. "Discriminatory Conduct" means intentional conduct by university employees or students, including physical conduct or expressive behavior, that explicitly demeans the race, sex, religion, color, creed, disability, sexual orientation, national origin, ancestry, age or other legally protected characteristic of an individual or individuals and (a) has the purpose or effect of interfering with the education, university-related work, or other university authorized activity of a university student, employee, official or guest; or (b) creates an intimidating, hostile or demeaning environment for education, university-related work, or other university authorized activity.
- B. "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other physical conduct and expressive behavior of a sexual nature where: (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education; (b) submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting that individual; or (c) such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating an intimidating, hostile or demeaning employment or educational environment.

Section III. Informal options for addressing allegations of discrimination and sexual harassment at UW-Superior. Individuals who believe they have been subjected to discriminatory conduct or sexually harassed may go directly to the formal process in section IV or strive for satisfactory resolution through the following informal options in a timely manner. Individuals who are on campus outside of normal work/class hours should contact their immediate supervisor, a member of the administration, or the Affirmative Action Officer.

Option 1: Approach the individual allegedly responsible for the discriminatory acts or sexual harassment for the purpose of discussing and clarifying the offensive experience. It is recommended that this discussion be a private opportunity for persons involved to share their points of view and potentially reach a satisfactory resolution.

Option 2: Write a confidential letter to the individual allegedly responsible for the discrimination or sexual harassment, identifying what happened and when; sharing the feelings experienced; and stating the desired resolution.

Option 3: Consult in a strictly confidential manner with the Affirmative Action Officer appointed by the Chancellor.

1. Responsibilities of the Affirmative Action Officer include:

- a. Helping individuals who claim discriminatory acts or sexual harassment to clarify their perceptions of the offensive behavior/act;
- b. Delineating the various courses of action available to individuals who may have been discriminated against or sexually harassed; or

- c. Referring individuals to professional counseling for additional guidance/support;
 - d. Assisting individuals who claim discriminatory act or sexual harassment in communicating with the individual allegedly responsible for the discriminatory acts or sexually harassing act(s), either in writing or in person, where either one or both seems warranted OR act as an intermediary in cases where the complainant wishes to remain anonymous;
 - e. Providing follow-up with individual who claims discriminatory acts or sexual harassment if the individual has taken the initiative in attempting resolution of the incident(s); and
 - f. Maintaining communication with the Affirmative Action office so a developing pattern may be recognized and so record-keeping can be maintained.
2. No sanctions or disciplinary action against the accused may be established by the Affirmative Action Officer.

Option 4: Bring an allegation of discrimination or sexual harassment to the Affirmative Action office for investigation and review. The Affirmative Action Officer will investigate the allegation within the following limits:

- 1. The Affirmative Action Officer will be present, at the request of the individual making the allegation, in all meetings involving that individual.
- 2. At the option of the individual making the allegation, his/her identity will be kept confidential to the extent possible in an investigation.
- 3. In the attempt to achieve resolution, the Affirmative Action Officer may talk to the individual against whom the allegation is made. The purpose of this discussion will be to allow the individual to respond to the allegation. Should he/she respond that the allegation is based on fact, the Affirmative Action Officer will inform him/her of the implications of the behavior and attempt to resolve the issue to the mutual satisfaction of both parties and to the university.
- 4. If a resolution has not been effected and the merits of the issue warrant further consideration, the Affirmative Action Officer will serve as a mediator in attempting to achieve resolution, which may include discussions with the complainant, the alleged harasser, his/her supervisor, other line supervisors, the Chancellor, System Legal Counsel and, depending upon the department housing the complainant and the alleged perpetrator, the Vice Chancellor, the Assistant Vice Chancellor, and the Dean of Students. At this point, strict confidentiality will no longer be possible.
- 5. If the matter has been resolved, a written, signed, record of the resolution will be show to both parties and kept in a confidential file in the Affirmative Action Office for five years commencing on the date the form is filed. The content of the confidential file will be available only to the Affirmative Action Officer, Chancellor, complainant, alleged perpetrator, and, depending upon the department housing the grievant and respondent, the Vice Chancellor, Assistant Vice Chancellor, or Dean of Students.
- 6. If no informal resolution is agreed upon, the complainant has the option of withdrawing the complaint or filing a formal complain as follows.

Section IV: Formal complaint procedures for addressing allegations of discrimination and sexual harassment at UW-Superior. If a satisfactory resolution cannot be achieved using the informal procedures listed or if anyone involved in a discriminatory or sexual harassment situation wishes to bypass the informal procedures, the following formal procedures are available.

A. A written complaint can be filed up to five years from the date of the alleged incident. In cases of ongoing or repeated discrimination/harassment, the 5 years can be counted from the last incident. Nevertheless, it is recommended that a complaint be filed as close to the date of the alleged incident as possible. Complaints may be accepted beyond this period at the discretion of the Affirmative Action Officer, with the concurrence of the Chancellor, if the complainant can demonstrate a compelling reason for the delay in bringing forward the complaint. Complainants should be aware that separate deadlines exist, usually 180 or 300 days, for filing complaints with agencies outside the University.

- 1. If the complainant pursues a complaint with the assistance of a Department Chair,

Dean, Director, or immediate supervisor, (hereafter referred to as University agent), the following procedure will be employed:

At the time the complainant initially contacts the University agent, he or she will be informed of the availability of a resource person.

- a. At the time the complainant initially contacts the University agent, he or she will be informed of the agent of the University's responsibility to act once knowledge of allegations of discrimination/harassment are in that agent's possession and of the possible limitation on confidentiality that may thus result once those allegations have been made.
 - b. The University agent will inform the office of Affirmative Action of the complaint in no more than five (5) working days from the initial contact for the purpose of maintaining statistics, providing assistance to the parties involved, and avoiding needless duplication or complicating initiatives should the circumstances of the complaint have come to the attention of the Office of Affirmative Action as well.
 - c. The University agent shall investigate and attempt to resolve the case in no more than twenty (20) working days from initial contact. In the event that the investigation cannot be completed within the time frame, the University agent, with substantial reasons, may request an extension of 20 working days from the Chancellor. The request can be repeated once more for a total of 60 days, if necessary.
 - d. In no more than three (3) working days from the resolution of the complaint, the University agent shall inform the Office of Affirmative Action of the outcome. This information shall be kept in confidential files in the Office of Affirmative Action for the purpose of tracking complaint patterns
 - e. The complainant need not exhaust this resolution procedure before filing a complaint with the Office of Affirmative Action.
 - f. Written notice must be provided to all parties of any departure from these procedures.
2. If the complainant pursues the complaint with the assistance of the Office of Affirmative Action and the matter is not resolved informally, the following procedure will be employed:
- a. At the time the complainant contacts the Office, he or she will be informed of the availability of a resource person and of psychological services through either the Student Health Service or the Employee Assistance Plan.
 - b. Within three (3) working days of the filing of the complaint, a copy of that complaint will be forwarded to the complainant, the respondent and the Chancellor. Other University agents will be included on a need to know basis only at the discretion of the Affirmative Action Officer. This copy is for informational purposes only and is not to become part of any permanent personnel files. The office, through the following appropriate committee, will complete an Investigation within ninety (90) working days of the date the complaint is filed. Only permanent employees who hold at least a 50% appointment with UW-Superior may serve on any of the committees.

[1] If the complaint is against a faculty member, the complaint shall be sent to the Faculty Personnel Council.

[2] If the complaint is against an academic staff member, the committee shall consist of at least two academic staff members appointed by the Academic Staff Senate and one Academic Staff member or Administrator appointed by the Chancellor at the beginning of each academic year and ratified at the Academic Staff Senate general meeting. [3] If the complaint is against a member of the classified staff, the committee shall consist of members appointed by the Chancellor and

shall be composed of 3 members including one faculty and one classified staff member appointed by the appropriate union. [4] If the complaint is against a student, the committee shall consist of members appointed by the Chancellor and shall be composed of at least 3 members including the Dean of Students and one faculty member.

- d. The committees will follow the University of Wisconsin-Superior Investigating Guidelines for Formal Complaints of Discrimination/Sexual Harassment

[1] Within three (3) working days of the conclusion of the investigation, the Committee/office shall transmit the findings and recommendations of the investigation to the complainant and the respondent, to those individuals initially informed of the formal complaint, and to any other University agents involved in the resolution of the case. If the resolution involves recommendations that affect employees' conditions of employment or remuneration, the office shall transmit the findings and recommendations of the investigation together with supporting documentation to the Chancellor or the Chancellor's designee within three (3) working days. If the resolution involves recommendations that affect students' conditions of enrollment or conduct on campus, the office shall transmit the findings and recommendations of the investigation together with supporting documentation to the Dean of Students. The Chancellor (or designee) or the Dean of Students will make a decision with regard to the recommendation and inform the complainant, respondent and Office of Affirmative Action within twenty (20) working days.

[2] Decisions of the Chancellor or Chancellor's designee may be appealed. Procedures governing appeals and requisite time lines vary with a person's employment status and with whether or not dismissal is the discipline being recommended. Employees are referred to UW-S Faculty and Academic Staff Polices and Procedures Handbook, The Wisconsin Administrative Code and relevant collective bargaining agreements. Students are referred to Chapters 17 and 18, The Wisconsin Administrative Code.

[3] Except in cases of dismissal where extant procedures may dictate differently, the Chancellor will make a final disposition within ten (10) working days of receipt of the findings and recommendations of the body hearing the appeal. A summary of that disposition will be forwarded to the hearing body, the complainant, the respondent, the Office of Affirmative Action and the University agents notified at the initiation of the complaint.

[4] Written notice must be provided to all parties, including the resource person of any departure from these procedures and/or time lines.

[5] The Office of Affirmative Action is responsible for keeping the involved parties, including third parties with standing in the case, of the status of the complaint throughout the entire process from the initial filing to its resolution.

- B. External redress:** Complainants may choose to consult with or pursue external redress with state/federal agencies dealing with these issues or with the judiciary system. The Office of Affirmative Action will provide information for pursuit of external redress upon request.

Section V. Implementation and evaluation of the UW-S Discrimination/sexual harassment policy

- A. Publicity/education:** All students, faculty, staff, and other employees will be informed of campus policy and procedures regarding discrimination/sexual harassment. The Office

of Affirmative Action and the Affirmative Action/Equal Opportunity Committee share the duty of coordinating and supporting these activities.

- B. Maintenance of data:** The Office of Affirmative Action will maintain confidential records of the number of complaints, the nature of complaints, the general demographic characteristics of those filing complaints, and the disposition of complaints. An annual summary report of these data will be submitted to the Chancellor and reported by the Chancellor or his or her designee to the University community including the Affirmative Action/Educational Opportunity Committee, the Faculty Senate, the Academic Staff Council, the Graduate Council, the Student Senate and WSEU Local 42 by the beginning of each fall semester.
- C. Confidentiality:** Due to the sensitive nature of discrimination/sexual harassment cases, all parties involved are expected to strive to maintain confidentiality and to share information relevant to a case on a "need to know basis" only. Absolute confidentiality cannot be guaranteed.
- D. Sanctions:** The range of sanctions invoked in cases of discrimination/sexual harassment, depending on the nature of the complaint and whether or not the respondent has been warned or disciplined in the past, may include but are not limited to: verbal or written reprimand, change in teaching or work responsibilities, change in class attendance or contact, suspension with or without pay for a specified period of time, suspension from University classes, or dismissal. Disciplinary action for repeated harassment will become progressively more severe and may lead to dismissal. This provision does not preclude a severe sanction for a first offense, however, if justified by the circumstances.
- E. Evaluation:** UW-S's Policies and Procedures relating to discrimination/sexual harassment will be reviewed annually and redrafted if necessary by the Affirmative Action/Educational Opportunity Committee for presentation to the Chancellor for approval if there are minor changes. Substantial changes will be made through the usual approval forums.

APPROVED BY CHANCELLOR ON OCTOBER 29, 2001

APPENDIX: Definitions

A. Discriminatory conduct

1. Discriminatory conduct is defined as:
 - a. conduct, either verbal or physical by a member of the faculty, staff or student body, which occurs on property under the jurisdiction of the Regents or under circumstances where an affiliation with UW-Superior significant in the occurrence; and
 - b. is predicated on considerations of any of the following: race, color, national origin, creed, ancestry, sex, sexual orientation, age, religion, disability, or other status protected under law; and
 - c. which has the purpose and effect of adversely affecting any aspect or condition of an individual's education, employment, housing or participation in a university activity.
2. Discriminatory conduct may include:
 - a. intimidating physical contact or attacks for discriminatory reasons.
 - b. intimidation for discriminatory reasons through threat of force or violence on an individual's body, possessions, or residence.
 - c. patterns of expressive behavior as defined in the following:
 - (1) demeaning verbal and other expressive behavior in noninstructional settings:
 - (a) addresses or directs to a university employee(s) or student(s) epithets, comments or gestures that explicitly demean the gender, race, cultural background, ethnicity, sexual orientation, or handicap of a specific person(s), if:
 - [1] the gestures, comments, or epithets would be commonly considered demeaning to members of that group, and [2] repetition of such conduct either [i] interferes with the work or study performance of person(s) to whom the conduct is addressed or directed, or [ii] creates an environment that would be commonly considered hostile, intimidating, or demeaning to members of the targeted group.
 - (b) displays visual materials, alters visual material displayed by others or makes statements if:
 - [1] the intent of the actor is to interfere with the work or study performance of a University employee or student or to make the work or study environment hostile, intimidating, or demeaning to persons of a particular gender, race, cultural background, ethnicity, sexual orientation, or handicap,
 - [2] such displays, alterations, or statements are commonly considered to be demeaning to members of that group,
 - [3] the person making the display, alteration or statement had previously been asked not to engage in such conduct or conduct of substantially the same kind,
 - [4] the display, alteration, or statement either
 - [i] seriously interferes with the work or study performance of a University employee or student, or
 - [ii] creates an environment that would be commonly considered hostile, intimidating, or demeaning to member of the targeted group.
 - (2) demeaning verbal and other expressive behavior in instructional settings.

Definitions used in above explanation.

[1] An "instructional setting" is a situation in which an instructor is communicating with a student(s) concerning matters the instructor is responsible for teaching to the student(s). These situations include, but are not limited to, such communication in a classroom, in a laboratory, during a field trip, and in the instructor's office; advising and counseling situations are not included.

[2] "Expressive behavior" is conduct in an instructional setting through which an instructor seeks to communicate with students. It includes, but

is not limited to, the use of visual materials, oral or written statements, and assignment of visual materials, oral or written statements, and assignment of visual, recorded, or written materials.

[3]Protected Expressive Behavior

[a] An instructor's selection of instructional materials and teaching techniques shall not be a basis for discipline unless an authorized hearing body finds clearly unreasonable the instructor's claim that the materials or techniques are germane to the subject of the course. [b] If an instructor claims that expressive behavior constituted an opinion or statement germane to the subject matter of the course in which the behavior occurred, the behavior shall not be basis for disciplinary action unless an authorized hearing body finds the instructor's claim clearly unreasonable.

(4) Unprotected Expressive Behavior Subject to Discipline

An instructor's expressive behavior in an instructional setting may be the basis for discipline if any claims that the behavior is protected under III, B, 2, have been rejected, and [1] the behavior is commonly considered to be demeaning to persons of a particular gender, race, cultural background, ethnicity, sexual orientation, or handicap group, [2] the person engaging in such conduct has previously been asked not to engage in such conduct or conduct of substantially the same kind, [3] the conduct either [i] interferes with the academic work of a student(s) in the course, or [ii] creates an instructional setting that would be commonly considered hostile, intimidating, or demeaning to members of the targeted group.

B. Sexual harassment is defined in two different ways. First, there is what is most commonly thought of as the legal definition: what the law, courts and federal enforcement agencies define as illegal sexual discrimination. Second, there is the behavioral definition

1. Legal definition:

The definition developed by the Equal Employment Opportunity Commission in its 1984 guidelines, is relied upon by many courts in making their decisions. The EEOC definition follows, with additional wording to reflect coverage of students under Title IX of the Education Amendments of 1972: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- a. submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment or academic advancement;
- b. submission to or rejection of such conduct by an individual is used as the basis for decisions affecting an individual's employment *or academic standing*; or
- c. such conduct has the purpose or effect of unreasonably interfering with a person's work or *academic performance* or creating an intimidating, hostile or offensive work, *learning or social environment*.

Courts have called the first two conditions *quid pro quo* harassment and the third condition *hostile environment* harassment. Federal regulations set a broad scope of liability which purports to make employers absolutely responsible for the actions of supervisors and, in some cases, for the actions of employees and non-employees as well. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of sexual nature will be considered harassment within two major categories:

Quid Pro Quo - When a faculty member or supervisor's behavior creates the perception in the mind of a student or subordinate that the granting or withholding of tangible academic or job benefits shall be based on the granting of sexual favors.

Hostile Work or Learning Environment--includes four levels.

Level One: Sex Role Stereotyping - Includes gender discriminatory assignments of roles, functions or duties of a demeaning nature. Examples include the assignment of non-job or non-class related duties such as errand running, coffee making, or a female supervisor required to take staff minutes.

Level Two: Generalized Gender Harassment - Includes intentional behavior that is directed at a specific gender, which may be visual or verbal. Examples include negative or sexual comments, jokes, suggestions or gestures about gender, sex, nudity, or pornography.

Level Three: Individualized Targeted Harassment - Includes intentional behavior predicated on gender which is targeted at an individual or a specific group adversely affecting the work or learning environment. Examples include negative or offensive comments, jokes, suggestions, OR gestures directed to an individual's or group's gender or sex; or unwanted physical touching of a non-criminal nature.

Level Four. Criminal Touching - Is behavior of a criminal sexual nature. Examples include forcible sexual abuse; intentional touching of the buttocks or genitals of a male or female, breasts of a female, or taking indecent liberties with another.

Standards of Liability - Employers will be held liable for acts of supervisors and agents, regardless of whether the acts were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. Thus, an employer may be held liable even if the employer had no knowledge of the actions. Further, the employer may be held liable for actions of other employees and non-employees.

2. Behavioral definition:

The most useful behavioral definition of sexual harassment is "unwanted sexual or gender-based behavior that occurs when one person has formal or informal power over the other."

There are three major elements in this definition:

- (a) the behavior is unwanted or unwelcome
- (b) the behavior is sexual or related to the sex or gender of the harassed person
- (c) the behavior occurs in the context of a relationship when one person has more formal power than the other (such as a supervisor over an employee or a faculty member over a student) or more informal power (such as one peer over another)