

**DISCRIMINATORY CONDUCT POLICY
(INCLUDING SEXUAL HARASSMENT AND SEXUAL VIOLENCE)**

No: S-47

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Authority: Titles I and II of the Americans with Disabilities Act of 1990
Age Discrimination in Employment Act of 1967, (29 U.S.C. Sec. 621-634)
Age Discrimination Act of 1975, (42 U.S.C. Sections 6101-6107)
Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq. and
§2000e et seq.
Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq.
Title II of the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C.
§2000ff et seq
Violence Against Women Reauthorization Act of 2013 (Reauthorizes Violence
Against Women Act of 1994)
Wisconsin Fair Employment Act, Wis. Stat. §111.31 et seq.
Wis. Stat. §36.12 (re Student Discrimination)
Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 701 et seq.
UW System Board of Regents Policy 14-2: Sexual Harassment Policy Statement
and Implementation
UW System Board of Regents Policy 14-3: Equal Opportunities in Education
UW System Board of Regents Policy 14-6: Racist and Other Discriminatory
Conduct Policy
UW System Board of Regents Policy 14-7: Implementation of Statue on
Discrimination Against Students
UW System Board of Regents Policy 14-8: Consensual Relationship Policy
UW System Board of Regents Policy 14-9: Discriminatory Harassment
UWM Faculty Document 1605

I. PURPOSE

UWM is committed to building and maintaining a campus environment that recognizes the inherent worth and dignity of every person, fosters tolerance, sensitivity, understanding, and mutual respect, and encourages the members of its community to strive to reach their full potential. UWM remains steadfastly committed to the principles of academic freedom and to the ideal that the "fearless sifting and winnowing by which alone the truth can be found" is the core feature of an institution of higher education. This steadfast commitment

requires an equally strong obligation to foster respect for the dignity and worth of each person. Without this respect, the principles of academic freedom become meaningless. Moreover, relationships such as student-faculty and employee-supervisor have inherent power differences that compromise the ability of some people to protect their own rights. Therefore, UWM must provide an environment that respects the value of each person and that does not tolerate discriminatory conduct of any kind. For the instructional environment, the American Association of University Professors' Statements are particularly relevant (see <http://www.aaup.org> & Public Expression of Opinion). The entire university community must work together to promote an environment free of discrimination. To that end, all administrators, faculty, staff, students, and visitors are responsible for complying with the policies outlined herein.

UWM prohibits and does not tolerate discrimination, harassment or retaliation, and has established the procedures listed below for the investigation and remedy of such conduct. Any encouragement of others to discriminate, harass, or retaliate also violates this policy. These procedures include a voluntary process for facilitating a mutually satisfactory resolution without formal findings.

II. DEFINITIONS

A. **Discrimination.** UWM defines discrimination as conduct that (1) adversely affects any aspect of an individual's employment, education, or participation in activities or programs at UWM; and (2) is based on one or more characteristics of the individual that are protected under federal or state laws. Characteristics that are protected under federal or state ("protected statuses") may include:

- age
- ancestry
- arrest or conviction record
- color
- disability
- gender identity/expression¹
- genetic information
- identity as a veteran, disabled veteran, or Vietnam veteran
- marital status
- membership in the national guard, state defense force or any other reserve component of the military forces of the United States or this state
- national origin
- pregnancy
- political affiliation
- race

¹ Gender identity/expression is not presently protected under federal or state laws; however, it is included as a protected status under this policy. Gender identity/expression is defined as having, or being perceived as having, a gender-related identity, appearance, behavior, or expression whether or not that characteristic is stereotypically associated with a person's assigned sex at birth.

- religion
- sex
- sexual orientation

- B. **Harassment.** Harassment is a form of prohibited discrimination. UWM defines harassment as conduct that (1) is of any type (oral, written including electronic, graphic, or physical); (2) is directed towards or against a person because of the person's protected status (see the list of protected statuses above); and (3) unreasonably interferes with the individual's work, education or participation in activities or programs at UWM or creates a working or learning environment that a reasonable person would find threatening or intimidating. **Sexual Harassment** is one type of prohibited harassment and includes unwanted conduct of a sexual nature.
- C. **Instructional Setting.** An instructional setting is one in which a faculty member or instructor is communicating with student(s) regarding specific academic or curricular matters the instructor or faculty member is responsible for teaching. Speech or expressive behavior (e.g., use of visual, recorded, or written materials) occurring in an instructional setting will not constitute prohibited harassment if it is reasonably appropriate and germane to the subject matter and the instructional setting. A complaint lodged against speech of a discriminatory nature used in the context of instructional setting, may be found to constitute harassment, only if the speech is persistent, pervasive and not germane to the subject matter, or so singularly severe as to create a hostile environment. Protected Expressive Behavior in an instructional situation is explained in UWM Selected Academic & Administrative Policies No. S-44, Public Expression of Opinion.
- D. **Retaliation.** UWM defines retaliation as an adverse action made as a result of an individual's complaint about conduct prohibited under this Policy or participation in enforcement of this Policy. Retaliation is action taken because an individual has engaged in protected activities and that negatively impacts any of the following: terms or conditions of employment (such as salary, demotion, termination, non-renewal); educational progress (such as grades, entry into or advancement through an educational program, suspension, expulsion); and the work/learning environment (such as harassment, undesirable conditions). Protected activities include reporting discrimination or serving as a witness in an investigation under this Policy.

Elements of Retaliation:

- Protected Activity - The victim must have opposed discrimination prohibited by this Policy or have participated in the complaint/investigation process (for example, filed a complaint, provided statements) under this Policy.
- Adverse Action- The conduct or treatment must be shown to be intimidating, threatening, coercive, or likely to deter protected activity.

- Causal Connection - The adverse action must have occurred because the victim engaged in the protected activity.

Retaliation is specifically prohibited under this Policy and constitutes a separate and distinct violation of it. If an individual believes that s/he has been subjected to retaliation, s/he should report such conduct to EDS immediately.

- E. **Sexual Violence.** Sexual violence is a form of prohibited discrimination, and UWM defines sexual violence as physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Sexual violence includes, for example, rape, sexual assault, and sexual battery. Nothing in this Policy is intended to supplant any criminal statutes, and individuals are encouraged to report criminal conduct to the police in addition to reporting under this Policy.

III. **Consensual Relationships within the University Community**

UWM acknowledges its responsibility to provide clear direction to the university community about the professional risks associated with consensual amorous and/or sexual relationships in which a definite power differential between the parties exists. In as much as UWM is committed to fostering the development of learning and work environments characterized by professional and ethical behavior and free of discriminatory behavior, it discourages consensual amorous and/or sexual relationships in which there is a power differential, e.g. between instructor and student or supervisor and employee. UWM recognized that it cannot regulate such personal decisions but views them with concern for two reasons:

1. Abuse of Power: Individuals entering into consensual amorous and/or sexual relationships involving a power differential must recognize that: (i) the reasons for entering such a relationship may be a function of the power differential; (ii) where power differentials exist, even in seemingly consensual relationship, consent shall not be considered a defense if a complaint of sexual harassment or retaliation is brought; and (iii) the individual in the relationship with greater power will bear the burden of accountability.
2. Conflict of Interest: Conflicts of interest may arise in connection with consensual amorous and/or sexual relationships between faculty or other instructional staff and students, or between supervisors and subordinates. University policy and more general ethical principles preclude individuals from evaluating the work or academic performance of those with whom they have familial relationships, or from making hiring, salary or similar decisions that have a financial impact on such persons. The same principles apply to consensual amorous and/or sexual relationships and require that appropriate alternate arrangements be made for objective decision-making with regard to the student, subordinate or prospective employee.

Reporting Requirements. UWM recognizes that the conflict of interest inherent in a consensual amorous and/or sexual relationship where there is a power differential affects

the university's obligation to provide equal employment and educational opportunity. Therefore, UWM requires:

1. Participants in such a relationship must act immediately to remove the conflict of interest.
2. The person in the more powerful position in such a relationship shall notify in writing the relevant authority (Chair and Dean, Provost/Division Head) that appropriate action is being taken to remove the conflict of interest. All such notification shall be confidential and archived in a sealed envelope in the official personnel file.
3. Records are to be confidential but available as evidence in the processing of possible related sexual harassment complaints in the future.

IV. OPTIONS FOR REPORTING COMPLAINTS

- A. **For Employees.** An employee who believes that he or she is the subject of discrimination, harassment, or retaliation (the "complainant") that is prohibited by this policy is encouraged to clearly tell the person engaged in the conduct (the "respondent") to stop. If a complainant is uncomfortable confronting the respondent, or complainant's efforts to stop the conduct have been unsuccessful, the complainant may discuss the conduct with his or her supervisor or department chair. The supervisor or department chair may be able to quickly resolve the matter and should inform the complainant in writing of the option of consulting with the Office of Equity/Diversity Services (EDS). If a supervisor or department chair learns of an alleged violation of this policy, but is unable to quickly resolve the matter or believes that the matter warrants further investigation prior to taking action, he or she should refer the complainant to EDS.²

An employee is encouraged to file a complaint with EDS if he or she has confronted the person responsible for the behavior, or has discussed the matter with his or her supervisor or department chair, and the employee believes these steps have not been successful in resolving the matter. At any time, an employee who believes that he or she is the subject of discrimination, harassment, or retaliation may contact EDS to file a complaint. An employee can also file a complaint with the U.S. Equal Employment Opportunity Commission or the Wisconsin Equal Rights Division.

- B. **For Students.** A student who believes that he or she is the subject of discrimination, harassment, or retaliation prohibited by this policy may discuss the matter with the person responsible for the behavior. If the student wishes to pursue

² This is the official name for UWM's office for enforcing equal opportunities for employees and students at the time the policy is being issued. EDS is presently located in Mitchell Hall, Room 359, and can be reached at telephone number 414/229-5923. Should either the name or campus location change in the future, the policy will remain in effect. Corrections will be made as soon as is practicable.

the matter but for any reason feels uncomfortable confronting or does not want to discuss the matter with the person responsible for the behavior, the University strongly encourages the student to contact EDS. If a student discusses the matter with the Dean of Students, the Dean of Students will consult with the Director of EDS to determine how to proceed. A student can also file a complaint with the U.S. Department of Education Office for Civil Rights.

- C. **For Visitors and Guests.** This Policy also protects third parties from discrimination or harassment in UWM's education programs and activities--for example, a high school student participating in a UWM recruitment program, a visiting student athlete, or a visitor in a UWM residence hall. If a third party visitor or guest believes that he or she is the subject of discrimination, harassment, or retaliation prohibited by this policy, he or she may discuss the matter with the person responsible for the behavior. If he or she wishes to pursue the matter but for any reason feels uncomfortable confronting or does not want to discuss the matter with the person responsible for the behavior, the University strongly encourages him or her to contact EDS.
- D. **For Third-Party Complaints.** In some instances, employees or students may not be direct victims of alleged discriminatory action or conduct, but may have credible knowledge of such conduct. If such conduct or action is reported to EDS, EDS will evaluate the information to determine whether a full investigation will be undertaken in accordance with this Policy.

V. EDS COMPLAINT PROCESS

A. Filing a Complaint

1. Any individual who believes that he or she is being subjected to discrimination, harassment, or retaliation prohibited by the University's policies may file a complaint with EDS. The complaint must be in writing, on a form provided by EDS, and must be filed within 300 calendar days of the most recent alleged prohibited act. EDS at its own discretion may accept complaints that are not in writing or that are filed outside of the 300-day limitation for good cause.
2. Filing deadlines for state or federal agencies or courts are administered by those agencies and courts and not extended by the filing of a complaint with EDS.
3. The complaint must contain, to the extent known by the complainant: (a) the basis of the charge (i.e., the type of discrimination alleged); (b) the name(s) of the person(s) alleged to have violated this policy; (c) the date of each alleged discriminatory act; (d) the specific facts of each allegation stated in the complaint; (e) the complainant's signature; and (f) the date the complaint was submitted to EDS.

B. EDS Response

1. EDS will review the complaint to ensure that it contains the information necessary to proceed. If any necessary information is missing, EDS will request the complainant to provide that information.
2. Upon the receipt of a complaint where the respondent is a faculty member, EDS will notify the University Committee of the nature of the complaint and report on the disposition of complaints at least annually.
3. At any time after receiving the complaint, EDS may, at its own initiative or at the request of a party, pursue a negotiated resolution of the complaint, pursuant to the section below.
4. If EDS determines that the matter involves the alleged misconduct of a student, EDS will work with the Office of Student Life on that aspect of the matter for possible investigation and/or action under UWS Chapters 14 and 17.³
5. Within ten working days of the filing of the complaint, the Director of EDS (or her or his designee) will provide a copy of the complaint to the person(s) alleged to have violated this policy (the respondent) and the Dean or Division Head of the complainant and respondent. In the event that a conflict of interest exists for anyone involved in processing the complaint, a substitute will be appointed accordingly.
6. EDS will initiate an investigation of the complaint within ten working days. EDS will make every effort to complete the investigatory process within 60 days, as suggested by the U.S. Department of Education Office for Civil Rights guidance. If that is not reasonably feasible, EDS shall complete the investigation within 120 calendar days of receipt of the complaint, unless the Director of EDS approves an extension of the time period, which in most cases will not be later than 180 calendar days from receipt of the complaint. The Director of EDS will grant such an extension only for legitimate and necessary reasons. The investigation may include, but is not limited to: (a) meetings with material persons who may have relevant information; (b) reviewing relevant records and files; (c) comparing the treatment of the complainant to that of others who are in similar situations in that person's department or unit; and (d) reviewing applicable policies and practices.
7. EDS may dismiss a complaint without issuing written factual findings and remedial recommendations if, after considering the totality of the circumstances including any pattern of violations under this Policy, it

³ Investigations of student misconduct and imposition of sanctions must conform with the procedures described in UWS Chapters 14 and 17.

determines that the circumstances are appropriate for doing so. Such circumstances may include, but are not limited to, the following:

- a. Complaint is without sufficient basis to warrant investigation.
- b. Part or all of the complaint would be handled more appropriately by another department or individual at UWM.
- c. The complainant and respondent have agreed to a mutually acceptable resolution of the matter, pursuant to the section below, which makes further investigation unnecessary.
- d. The complainant requests in writing that the complaint be dismissed.
- e. The complainant fails or refuses to cooperate with the investigation.

C. Negotiated Resolution

- 1. Negotiated resolution is a process by which EDS attempts to resolve complaints quickly and to the satisfaction of all parties without reaching any formal findings. EDS may initiate a negotiated resolution at the request of any party or at its own initiative, and EDS will coordinate the negotiations. At any time during the negotiated resolution process, either the complainant or a respondent may elect to terminate their participation in the negotiated resolution process, in which case EDS's investigation will continue. Negotiated resolution will not be used to resolve cases of sexual assault.
- 2. To allow the parties the opportunity to resolve a complaint through a negotiated resolution, EDS may suspend its investigation of the matter. EDS may also extend any or all of the time periods set forth in the previous section, above (if they have not already passed) for up to 30 additional days during the negotiated resolution process. However, if the negotiated resolution is discontinued by EDS or does not result in a resolution within 30 days from the date it is started, EDS will continue its investigation of the matter.
- 3. If the complaint is successfully resolved through a negotiated resolution, each party will sign a "negotiated resolution form" prepared by EDS, which describes the agreed-upon terms. EDS will discard all other documents and notes except for the original complaint and the negotiated resolution form.

D. Findings by EDS, Responses and Implementation. At the conclusion of its investigation, EDS will prepare written findings and remedial recommendations to the Provost, with copies to the complainant, respondent, the complainant's

supervisor or Dean, the respondent's supervisor or dean, and the Associate Vice Chancellor for Diversity and Climate. At the conclusion of the investigation involving faculty members, the Director of EDS also will notify the University Committee of factual findings and remedial recommendations for consideration of review by the Faculty Rights and Responsibilities Committee, with copies to the Chancellor. For investigations involving academic staff, copies of factual findings and remedial recommendations will also be provided to the Chancellor and the Academic Staff Committee.

VI. APPEAL TO PROVOST

- A. Within ten working days of receipt of the Director of EDS's factual findings and remedial recommendations, the complainant or the respondent may respond to the factual findings and remedial recommendations. The response must be in writing and sent to the Chancellor and Provost. The Provost will provide copies of any such responses to the other party, to the Director of EDS, the Dean or Division Head of both the complainant and the respondent, and the University Committee (for faculty) or the Academic Staff Committee (for academic staff). Responses may be based on (1) whether the evidence supports the findings and/or (2) whether the recommended remedial actions are appropriate.
- B. Within twenty working days after the last day that either the complainant or respondent was given to respond to the factual findings and remedial recommendations, even if neither party filed such an appeal, the Provost⁴ will review the Director of EDS's factual findings and remedial recommendations by a) accepting them; b) modifying them; or c) requesting that EDS conduct further investigation of the matter. The Provost may also address conduct described in the factual findings that violates university policy other than the Equal Employment Opportunity Policy or Discriminatory Conduct Policy. A copy of the decision will be provided to the complainant, respondent, the Chancellor, the Dean or Division Head of the complainant and the respondent, the Director of EDS, and the University Committee (for faculty) or the Academic Staff Committee (for academic staff).

VII. DISCIPLINARY ACTION.

- A. Should the Provost be asked to seek disciplinary action, or independently conclude that disciplinary action is warranted, discipline may not be imposed until additional procedural steps have been invoked. The following briefly describes the appropriate process for each employment classification and status. Each party or body who receives the matter from the Provost shall handle the matter in an efficient manner that, to the extent possible, protects the confidentiality of the involved parties.

⁴ If the Provost's review of the matter creates a conflict of interest, the Chancellor or a designee will issue the decision and implement the steps in this section; for faculty, the designee must be an academic administrator with a concurrent faculty position.

1. Academic Staff: The Provost shall forward the decision to the Dean or Division Head for implementation pursuant to Wis. Admin. Code UWS sections applicable to academic staff and UWM Academic Staff Policies and Procedures.
 2. Classified Employees and Graduate Assistants: The Provost shall refer the decision to the employee's immediate supervisor for implementation consistent with the following authority, as applicable: a collective bargaining agreement; rules of the Secretary of the Department of Employment Relations and Division of Merit Recruitment and Selection; and UWM policies and procedures.
 3. Faculty: In no case, shall discipline be imposed on a faculty member without prior review by the Faculty Rights and Responsibilities Committee. The Provost shall forward the decision to the University Committee in the form of a complaint pursuant to UWM Faculty Policies and Procedures 5.42 et al.
 4. Limited Term Employees and Student Employees: The Provost shall refer the decision to the employee's immediate supervisor for implementation.
 5. Students: The Provost shall refer the decision to the Dean of Students for implementation under UWS 17.
 6. Visitors/Third Parties: The Provost shall consult with the EDS Director and Director of Legal Affairs about possible remedies.
- B. If the Provost's decision includes dismissal of an employee, the dismissal must be considered and implemented through an additional process, depending on the employment classification of the employee. The following briefly describes the appropriate process for each classification. Each party or body who receives the matter from the Provost shall handle the matter in an efficient manner that, to the extent possible, protects the confidentiality of the involved parties.
1. Academic Staff: The Provost shall refer the decision to the employee's Dean or Division Head for implementation pursuant to UWM Academic Staff Policies and Procedures Chapter 109 and UWS 11, Wis. Admin. Code.
 2. Classified Employees and Graduate Assistants: The Provost shall refer the decision to the employee's supervisor for implementation consistent with the following authority, as applicable: a collective bargaining agreement; rules of the Secretary of the Department of Employment Relations and Division of Merit Recruitment and Selection; and UWM policies and procedures.
 3. Faculty: The Provost shall send the decision to the Chancellor, who will initiate dismissal proceedings, pursuant to UWM Faculty Policies and Procedures 5.21 et al and UWS 4, Wis. Admin. Code.

4. Limited Term Employees and Student Employees: The Provost shall refer the decision to the employee's supervisor for implementation.

VIII. CONFIDENTIALITY

All individuals involved in the investigation and resolution of a complaint are expected to maintain the confidentiality of the complaint and resolution to the maximum extent possible under the circumstances. Certain disclosures, however, may be necessary to complete the investigation and/or resolution of the matter. In addition, all documents maintained by UWM are potentially subject to the provisions of the Wisconsin open records law.

IX. QUESTIONS/INQUIRIES

Questions and inquiries concerning this policy, including the application of nondiscrimination laws such as Title VI, VII and Title IX to UWM, may be referred to the UWM's Director of EDS. UWM's EDS Director can be reached at:

Office of Equity/Diversity Services
Mitchell Hall 359
3203 N. Downer Ave.
Milwaukee, WI 53211
(414) 229-5923
diverse@uwm.edu

Students may also contact the U.S. Department of Education Office for Civil Rights, and employees may contact the U.S. Equal Employment Opportunity Commission or the Wisconsin Equal Rights Division.

Issued:

Michael Lovell, Chancellor
University of Wisconsin - Milwaukee

Date