



DISCRIMINATORY CONDUCT AND CONSENSUAL RELATIONSHIPS POLICY

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. §2000, 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 Violence and Sexual Harassment
UW System Board of Regents Policy 14-3: Equal Opportunities in Education
UW System Board of Regents Policy 14-6: Discrimination, Harassment, and Retaliation
UW System Board of Regents Policy 14-7: Implementation of Statute on Discrimination Against Students
UW System Board of Regents Policy 14-8: Consensual Relationships
UW System Board of Regents Policy 14-10: Nondiscrimination on Basis of Disability
UWM Faculty Document 1605

Initiator: Chancellor

Responsible Party: Office of Equity/Diversity Services

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. **Affiliated Individuals.** Affiliated individuals include, but are not limited to, volunteers, vendors, contractors, and research/community collaborators. In this policy, all references to employees should also be considered references to affiliated individuals.
- B. **Complaint.** A complaint is a formal request that the Office of Equity/Diversity Services investigate an allegation of discrimination. Individuals may also report alleged discrimination to the Office of Equity/Diversity Services to discuss their options to proceed without filing a complaint.
- C. **Conflict of Interest.** A conflict of interest exists when there is incompatibility between private/personal interests and official/professional responsibilities.
- D. **Consensual Relationships.** A consensual relationship refers to any relationship, either past or present, which is romantic, physically intimate, or sexual in nature, and to which the parties consent or consented. This includes marriage.
- E. **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") law may include:
 - age
 - ancestry
 - arrest or conviction record

- color
- disability
- gender identity/expression
- 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
- religion
- sex
- sexual orientation

- F. **Employees.** Employees include, but are not limited to, administrators, faculty, academic staff, university staff, student staff, graduate assistants, and interns.
- G. **Harassment.** Harassment is a form of prohibited discrimination. UWM defines harassment as conduct that (1) is of any type (oral, written, 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 defined in the Sexual Violence and Sexual Harassment Policy, Appendix A.
- H. **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.
- I. **Instructor.** An instructor includes faculty and academic staff members who serve in instructional roles in relation to students. The instructional context includes: academic instruction, advising, direct or indirect evaluation of a student's work, research collaborations or assistantships, and coaching.

- J. **Power Differential.** A power differential exists when individuals possess different degrees of power or influence due to their professional or student standing.
- K. **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 they have been subjected to retaliation, they should report such conduct to EDS immediately.

- L. **Sexual Violence.** See Appendix A of the Sexual Violence and Sexual Harassment Policy (SAAP 78).
- M. **Student.** Student means any person who is registered for study in a University of Wisconsin System institution for the academic period in which the alleged act of discrimination occurred, or between academic periods for continuing students.

III. CONSENSUAL RELATIONSHIPS

UWM is governed by Board of Regents Policy Document 14-8 (Consensual Relationships): <https://www.wisconsin.edu/regents/policies/consensual-relationships/>. UWM employees, students, and affiliated individuals must abide by this policy, which describes the Board of Regents' expectations with respect to consensual romantic or sexual relationships where a power differential exists.

IV. OPTIONS FOR FILING COMPLAINTS

- A. **For Employees.** An employee who believes that they are 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 their 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, they should refer the complainant to EDS.¹

An employee is encouraged to file a complaint with EDS if they have confronted the person responsible for the behavior, or has discussed the matter with their 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 they are 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 they are 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 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.** 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 visitor believes that they are the subject of discrimination, harassment, or retaliation prohibited by this policy, they may discuss the matter with the person responsible for the behavior. If they wish 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 them 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

¹ This is the official name for the UWM office charged with 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.

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.

- E. **Criminal Conduct.** Nothing in this Policy is intended to supplant any criminal statutes, and individuals are encouraged, but are not required, to report criminal conduct to the police in addition to reporting under this Policy.

V. EDS COMPLAINT PROCESS

A. Filing a Complaint

1. Any individual who believes that they are being subjected to discrimination, harassment, or retaliation prohibited by the University's policies may file a formal complaint with EDS. EDS will review the complaint before it is filed to ensure that a sufficient basis exists to warrant an investigation. 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 and reduce them to 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 are 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 allegation (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) sufficient and specific facts for 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 with an investigation. If any necessary information is missing, EDS will request the complainant to provide that information.
2. 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 section V.C. below.
3. If EDS determines that the matter involves the alleged misconduct of a student, EDS will work with the Dean of Students Office on that aspect of

the matter for possible investigation and/or action under UWS Chapters 14 and 17.²

4. Within ten working days of the filing of the complaint, the Director of EDS (or her or his designee) will provide the person(s) alleged to have violated this policy (the respondent), with a written notice of the complaint and a copy of the complaint. The Dean or Division Head of the complainant and respondent, the Provost, the Associate Vice Chancellor for Global Inclusion and Engagement, and the Vice Chancellor for Global Inclusion and Engagement will also be provided with copies. In the event that a conflict of interest exists for anyone involved in processing the complaint, a substitute will be appointed accordingly.
5. 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 determines that the circumstances are appropriate for doing so. In such a case, the individuals identified in section V(D) would be notified, in writing, of the dismissal and the basis for it. Such circumstances may include, but are not limited to, the following:
 - a. Part or all of the complaint would be handled more appropriately by another department or individual at UWM.
 - b. The complainant and respondent have agreed to a mutually acceptable resolution of the matter, which makes further investigation unnecessary.
 - c. The complainant requests in writing that the complaint be dismissed.
 - d. The complainant fails or refuses to cooperate with the investigation.
6. EDS, in conjunction with the Title IX Coordinator, will assist student complainants in cases involving sexual violence with requested changes in academic, living, and/or work situations. Such changes could include adjusting academic schedules, reassigning rooms/work stations, and or allowing a student to break a University Housing contract or withdraw from a class without financial penalty.
7. EDS will initiate an impartial investigation of the complaint within ten working days of receipt of the written complaint, and will endeavor to resolve the matter in a prompt and equitable manner in accordance with applicable federal guidance and taking into consideration the nature and

² Investigations of student misconduct and imposition of sanctions must conform with the procedures described in UWS Chapters 14 and 17.

complexity of the complaint. The complainant and respondent will be advised of any significant delays occurring during the investigatory process.

8. The investigatory process includes, but is not limited to:
 - a. meetings with the complainant and the respondent. The complainant and the respondent may be accompanied by an advisor of their choosing at such meetings;
 - b. meetings with other persons who may have relevant information;
 - c. reviewing relevant documents and information such as records, files, emails, text messages, charts and reports;
 - d. comparing the treatment of the complainant to that of others who are in similar situations in that person's department or unit;
 - e. reviewing applicable policies and practices; and
 - f. preparing a written report containing EDS's findings and remedial recommendations.

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 conducting a full investigation and 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 to be conducted by a neutral third party. 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 violence.
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 45 additional days during the negotiated resolution process. However, if the negotiated resolution is discontinued by EDS or does not result in a resolution within 45 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.

- D. Findings by EDS, Responses and Implementation.** At the conclusion of its investigation, EDS will provide a written report documenting its findings and remedial recommendations to the Provost, with copies to the complainant, respondent, the complainant's Dean or Division Head, the respondent's Dean or Division Head, the Associate Vice Chancellor for Global Inclusion and Engagement, the Vice Chancellor for Global Inclusion and Engagement, and, in cases involving sex discrimination or sexual violence and/or sexual harassment, the Title IX Coordinator. At the conclusion of an investigation involving faculty members as respondents, the Director of EDS also will notify the University Committee of factual findings and remedial recommendations. EDS will also report to the University Committee on the disposition of complaints involving faculty at least annually.

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 appeal the factual findings and remedial recommendations. The appeal must be in writing and sent to the Provost. The Provost will provide copies of any such appeals to the other party, to the Director of EDS, the Dean or Division Head of both the complainant and the respondent, and the Title IX Coordinator (for sex discrimination, sexual violence and/or sexual harassment complaints). Appeals 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 appeal the factual findings and remedial recommendations, even if neither party filed such an appeal, the Provost³ 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 Dean or Division Head of the complainant and the respondent, the Director of EDS, the Associate Vice Chancellor for Global Inclusion and Engagement, the Vice Chancellor for Global Inclusion and Engagement, the Title IX Coordinator (for sex discrimination, sexual violence and/or sexual harassment complaints) and the University Committee (for faculty) or the Academic Staff Committee (for academic staff).

³ 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.

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.
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. University Staff and Graduate Assistants: The Provost shall refer the decision to the employee's immediate supervisor for implementation consistent with UWM policies and procedures.
 3. Faculty: In no case shall discipline less than dismissal 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 seq. or, in the case of dismissal, to the Chancellor pursuant to UWM Faculty Policies and Procedures 5.23.
 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. University Staff and Graduate Assistants: The Provost shall refer the decision to the employee's supervisor for implementation consistent with 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 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

To protect the integrity of any investigation, 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. Individuals involved in an investigation may discuss the matter with individuals who are not UWM staff or students nor potential witnesses to such an investigation.

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
3202 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.