



UNIVERSITY OF WISCONSIN-LA CROSSE

DISCRIMINATION, HARASSMENT, AND RETALIATION POLICY

Effective February 2020

1.0 Introduction.

- 1.1. The mission of University of Wisconsin-La Crosse is to provide a challenging, dynamic, and diverse learning environment in which the entire university community is fully engaged in supporting student success. To fulfill this mission, UW-La Crosse is committed to creating and maintaining a community environment that is equitable, inclusive and free of discrimination, discriminatory harassment, and retaliation.
- 1.2. This policy implements the requirements of University of Wisconsin System policies including Regent Policy Document (RPD) 14-6 and other relevant federal and state laws.
- 1.3. Specific incidents of alleged misconduct under this policy will be reviewed on a case-by-case basis in accordance with this policy and related procedures. Due consideration will be given to freedom of expression and academic freedom in accordance with RPD 4-21 and related policies.
- 1.4. Sexual violence and sexual harassment are addressed separately in the UWL [Sexual Violence and Sexual Harassment Policy](#), pursuant to RPD 14-2.¹

2.0 Purpose and Scope of Policy.

- 2.1. This policy prohibits acts of discrimination, harassment, and retaliation on university property, at university-sanctioned or university-affiliated events, and where off-campus conduct affects a member of the university community. This policy applies to all university students, employees, officers, and agents, and to all programs and activities of the university. The university is committed to educating its community and shall promptly and effectively respond to and redress conduct that violates this policy. These efforts support the mission of UW-La Crosse and the UW System.

3.0 Policy Statement. (Based on RPD 14-6.)

- 3.1. It is the policy of the University of Wisconsin-La Crosse to maintain an academic and work environment free of discrimination, discriminatory harassment, or retaliation for all students and employees. Discrimination is inconsistent with the efforts of the University of Wisconsin-La Crosse to foster an environment of respect for the dignity and worth of all members of the University community and to eliminate all manifestations of discrimination within the University. The University is also committed to the protection of individual rights under the First Amendment (and related principles of academic freedom) and in preserving the widest possible dialogue within its educational environment.
- 3.2. Discrimination or discriminatory harassment that is based upon an individual's characteristics which are protected under institution policy, state law or federal law

¹ This policy, along with its companion policy (the Sexual Violence and Sexual Harassment Policy) together replace the UWL "Policy Against Discrimination, Discriminatory Harassment, Sexual Misconduct, and Retaliation" which was a combined policy most recently updated in March 2016.

(“protected status”) is prohibited. Harassment is a form of discrimination and is prohibited. In addition, any form of retaliation against students or employees will not be tolerated. Federal and State law as well as this policy prohibit retaliation against students or employees for engaging in a protected activity. Any person who believes they have been subject to this type of prohibited activity should immediately report it to their supervisor, the Office of Equity and Affirmative Action or the Student Life Office.

- 3.3. Students: No student may be denied admission to, or participation in or the benefits of, or be discriminated against in any service, program, course or facility of the system or its institutions on the basis of race, color, creed, religion, age, sex, sexual orientation, gender identity or expression, national origin, ethnicity, ancestry, disability, pregnancy, marital or parental status, or any other category protected by law, including physical condition or developmental disability as defined in Wisconsin Statutes §51.01(5).
- 3.4. Employees: No employee may be discriminated against on the basis of race, color, creed, religion, age, sex, sexual orientation, gender identity or expression, national origin, ethnicity, ancestry, disability, 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 political matters, or any other category protected by law. This provision includes employment-related actions, such as recruitment, interviewing, testing, screening, selection, placement, classification, evaluation, transfer, promotion, training, compensation, fringe benefits, layoffs, and/or dismissal.
- 3.5. The use of institution technology (computers, e-mail systems, voice mail system, and webpages) in any manner that would violate this policy is prohibited.

4.0 Definitions. (Based on RPD 14-6.)

- 4.1. Discrimination is 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.
- 4.2. Discriminatory Harassment is a form of discrimination consisting of unwelcome verbal, written, graphic or physical conduct that:
 - (a) 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
 - (b) 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 harassment, the conduct must be both objectively and subjectively harassing in nature. 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. 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 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.

- 4.3. Retaliation is adverse action taken against an individual in response to, motivated by or in connection with an individual's having engaged in a protected activity, which includes, but is not limited to, filing a complaint of discrimination or discriminatory harassment, participation in an investigation of such complaint, and/or opposition to discrimination or discriminatory harassment in the educational or workplace setting. An "adverse action" is one that negatively affects significant terms or conditions of employment, or substantially impedes one's educational progress. A valid complaint of retaliation will specify (1) the protected conduct, (2) the alleged adverse action taken, and (3) the reasons why the complainant believes the adverse action was taken because of the protected conduct.
- 4.4. Reporting party shall refer to any individual who is reported to have been subjected to discrimination, harassment, and/or retaliation as defined in this policy.
- 4.5. Responding party shall refer to any person accused of violating this policy.

5.0 Reporting Procedures.

5.1. Procedures for Students.

- (a) A student who believes that they are the target of discrimination, discriminatory harassment, or retaliation may choose to directly tell the person engaged in the conduct to stop.
- (b) Students may contact the Student Life Office to discuss the matter or file a complaint at any time, and they are encouraged to do so if the above steps are not successful in resolving the matter.
- (c) Complaints against students will be received, evaluated, investigated and resolved by the Student Life Office on a case-by-case basis through the procedures outlined in UWS Chapter 17, with potential disciplinary sanctions up to and including expulsion.
- (d) Complaints against student employees may result in a combination of responses based on the individual's dual status as a student and an employee.
- (e) Complaints by students against non-students will be referred to the office of Equity & Affirmative Action (EAA), which shall be responsible for any further review and investigation. In such cases, the Student Life Office will remain involved in the process, as it deems appropriate.
- (f) Students who file a complaint under this policy have the right to appeal a chancellor's or dean's decision to the Board of Regents, as permitted under Section 36.12(2)(b), Wis. Stats.

5.2. Procedures for Employees.

- (a) An employee who believes that they are the target of discrimination, discriminatory harassment, or retaliation may choose to directly tell the person engaged in the conduct to stop. They may also choose to discuss the matter with their immediate supervisor, or if the immediate supervisor is the source of the behavior, their supervisor's supervisor.

- (b) Employees may contact EAA to discuss the matter or file a complaint at any time, and they are encouraged to do so if the above steps are not successful in resolving the matter.
- (c) Complaints against employees will be received, evaluated, investigated, and resolved by EAA, in collaboration with Human Resources and other relevant offices, according to the procedures described below.

5.3. Procedures for Other Individuals.

- (a) A guest, volunteer, contractor, or any other person providing or accessing University programs, services, and activities who believes they have experienced or witnessed conduct prohibited by this policy should contact EAA, which will evaluate the information to determine what action, if any, should be taken in response to the report.

5.4. Responsibilities of Supervisors and Department Chairs.

- (a) Supervisors and/or department chairs who receive a complaint of discrimination, discriminatory harassment, or retaliation, or who become aware of conduct that may meet any of these definitions, should notify EAA, and should notify the reporting party of their right to contact EAA (and the Student Life Office, if the matter involves a student).
- (b) Supervisors and/or department chairs should: encourage employees to disclose any and all instances of discrimination, discriminatory harassment, or retaliation that they experience or become aware of; proactively and explicitly affirm to employees that no retaliation will result from such disclosure; and take any and all necessary measures to ensure that no such retaliation occurs; report any behaviors which may constitute retaliation to EAA.

5.5. Responsibilities of Other Individuals.

- (a) Any member of the campus community who experiences, witnesses or otherwise becomes aware of discrimination, discriminatory harassment, or retaliation, or has any concern regarding any related issue, should inform EAA. EAA, in conjunction with other relevant offices, will evaluate the information to determine what action should be taken in response to the report.

6.0 Informal resolution

- 6.1. The university supports the resolution of disputes between members of the campus community via informal means whenever appropriate and feasible. Informal resolution is intended to stop the offending behavior and resolve the matter as efficiently as possible.
- 6.2. Employees and students may at any time seek advice and assistance on informal resolution from EAA, which will coordinate with (or refer the matter to) Human Resources, Student Life, and/or other appropriate offices based on the nature of the complaint.
- 6.3. The decision to seek or participate in an informal resolution process does not restrict the right of any person to later decline to further participate in such a process and/or to initiate a formal process.

7.0 Formal Complaint

- 7.1. If the parties do not agree to seek an informal resolution, or if informal processes are not successful in resolving the complaint, a formal complaint may be filed with EAA. Formal

complaints should include the names of the parties and witnesses, a description of the alleged misconduct, a description of any actions or measures already attempted to address the matter, and the reporting party's desired outcome.

- 7.2. The university may initiate an investigation in the absence of a formal complaint based on an evaluation of the available information by EAA in light of the university's legal obligations and the safety of the campus community.
- 7.3. Complaints against students will be received, evaluated, investigated and resolved by the Student Life Office on a case-by-case basis through the procedures outlined in UWS Chapter 17, with potential disciplinary sanctions up to and including expulsion.
- 7.4. Complaints against employees will be received, evaluated, investigated, and resolved by EAA, in collaboration with Human Resources and other relevant offices, according to the procedures described in Section 8 below.

8.0 Complaint Review, Investigation and Resolution

- 8.1. Initial Review. EAA will review the complaint and notify the reporting party whether the complaint will be investigated, referred to another office or individual, or dismissed for any of the reasons stated in 8.3 below.
- 8.2. Appointment of investigator. The Director of Equity & Affirmative Action may serve as the investigator of the complaint or may, upon consultation with other relevant offices, designate one or more additional or alternate investigator(s).
- 8.3. Dismissal of Complaint. EAA may dismiss a complaint at any time by documenting the grounds for the dismissal and informing the parties. Grounds for dismissal include:
 - (a) The complaint is determined to not warrant further investigation;
 - (b) The conduct described in the complaint is not a violation of applicable policy;
 - (c) The complainant and respondent have agreed to a resolution of the matter, which makes further investigation unnecessary;
 - (d) The complainant requests that the complaint be dismissed; or
 - (e) The complainant fails to cooperate with the investigation to an extent that renders it impossible for the investigator to continue with the investigation.
- 8.4. Investigation
 - (a) The investigator will gather and evaluate evidence relevant to the allegations of the complaint, including interviews with the parties and witnesses; written statements and communications; and documents such as personnel or academic files policies and procedures. Although different investigative approaches may be used on a case-by case basis, every investigation will be prompt, thorough and procedurally fair.
 - (b) The investigator will prepare a written report of the investigation. The Director of EAA will review the report and append a written determination, based on the preponderance of the evidence, whether a violation of university policy occurred.
 - (c) If no violation is found, the complaint will be dismissed and notice thereof will be provided to the parties.

- (d) If a violation is found, the Director of EAA will, in collaboration with other appropriate university officials, formulate a recommendation for corrective or disciplinary action, which will be submitted to the Chancellor for consideration and decision. The Chancellor may delegate the decision and the implementation thereof to other university officials. Documentation of the violation and any corrective or disciplinary action will be placed in the employee's personnel file in accordance with the provisions of UWL and UW System policies concerning personnel files.
- (e) When appropriate, procedures pursuant to Wisconsin Administrative Code Chapters UWS 4, 6, and 7 (for faculty members), UWS 11 and 13 (for academic staff), and the *Workplace Expectations and Disciplinary Guidelines* (<https://www.uwlax.edu/human-resources/workplace-expectation-and-disciplinary-guidelines-policy/>) (for university staff), will be utilized.
- (f) Individuals disciplined as a result of this procedure retain applicable rights and procedures with regard to the disciplinary action.

9.0 Confidentiality.

- 9.1. All complaints will be treated with consideration to their sensitive nature. However, certain disclosures may be necessary for the University to conduct a thorough investigation, provide responding parties with a fair opportunity to respond to allegations, comply with state and federal law, and comply with its own procedures and regulations.
- 9.2. Where a reporting party requests anonymity or confidentiality, EAA will evaluate the request and determine whether the request can be granted and what effect that will have on the process. Factors to be considered include: the nature and severity of the allegations, the existence of a pattern of repeated behavior, the risks to the campus community, the ability of the university to provide the responding party with a fair opportunity to respond to allegations, and the potential for informal resolution.
- 9.3. All records maintained by the University are potentially subject to the provisions of the Wisconsin Public Records Law. Records pertaining to students may also be subject to the Family Educational Rights and Privacy Act (FERPA).

10.0 Additional Provisions.

- 10.1. University Action. The University reserves the right to initiate or pursue a report or complaint, either informally or formally. The University may respond to complaints or reports by individuals external to the University community about alleged misconduct by University employees or students.
- 10.2. Interim Measures. While a complaint is pending, the University reserves the right to take interim measures on a case-by-case basis to ensure the safety, well-being, and legal rights of any member(s) of the campus community. Examples of potential interim measures include: changes to housing, dining, or work locations; academic accommodations; or no-contact orders. The availability and scope of potential interim measures will be disclosed to, and discussed with, all parties.
- 10.3. Conflict of interest. If the Director of Equity & Affirmative Action has an actual or reasonably perceived conflict of interest, the Chancellor, Dean of Students, and/or the Director of Human Resources may be contacted in lieu of the Director of Equity & Affirmative Action for the purposes of any provision of this policy.
- 10.4. Conflict of policies. In the event that any provision of this policy is found to be in conflict with any policy of the University of Wisconsin System or the Board of Regents, or with any state or federal law, the latter policy or law shall govern. In the event that any

provision of this policy is found to be in conflict with any other University of Wisconsin-La Crosse policy and such conflict is not explicitly addressed herein, this policy shall govern.

11.0 Campus Education and Notification.

- 11.1. The University, through its relevant offices, shall notify prospective and current students, student organizations, job applicants and employees of institutional policies and procedures regarding discrimination, discriminatory harassment, and retaliation.

12.0 Conduct Not Covered by This Policy

- 12.1. Offensive or biased language or conduct that does not meet the criteria of discrimination, discriminatory harassment, or retaliation, and/or is not directed at a person or group on the basis of a protected status, may not be covered by this policy. However, such conduct may be covered by other policies, code(s) of conduct, or handbooks.
- 12.2. Regardless of whether or not disciplinary or punitive measures are available, the University may employ non-punitive measures to address such incidents, including voluntary dialogue, education, and conflict resolution efforts, with the goal of maintaining an inclusive educational and workplace environment while also respecting individual rights to freedom of speech and expression.
- 12.3. Individuals seeking assistance regarding offensive or biased language or conduct that is not covered by this policy are encouraged to contact Equity & Affirmative Action or Campus Climate.

13.0 Additional Venues

- 13.1. Information about discrimination or harassment complaints in other venues is available from:
- (a) U.S. Equal Employment Opportunity Commission: www.eeoc.gov
 - (b) Wisconsin Department of Workforce Development, Equal Rights Division: <http://dwd.wisconsin.gov/er/>
 - (c) U.S. Department of Education: www.ed.gov