

UW-L Sexual Harassment Policy Statement

Conduct Subject to Disciplinary Action

I. Sexual harassment is impermissible and unprofessional conduct subject to disciplinary action in accordance with applicable due process requirements including but not limited to reprimand, temporary suspension, expulsion or discharge. Conduct is defined as sexual harassment if:

A. A university employee or student behaves toward another employee or student in any of the following ways:

1. making sexual advances, or
2. requesting sexual favors, or
3. making physical contacts commonly understood to be of a sexual nature, or
4. addressing sexually demeaning comments or gestures to a specific person or group of persons, or
5. attempting to punish or penalize a person or persons for rejection or objecting to such behavior, and if

B. The conduct occurs under the following circumstances:

1. the conduct is unwanted by the person(s) to whom it is directed, and
2. the person responsible for the action knew or a reasonable person would clearly have understood that the conduct was unwanted; and
3. because of its flagrant or repetitious nature, conduct either
 - a. seriously interferes with the work or learning performance of the person(s) to whom the conduct was directed; or
 - b. makes the university work or learning environment intimidating or hostile or demeaning to a person of average sensibilities; or
4. submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
5. submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting the individual.

C. Consensual romantic and/or sexual relationships, where a definite power differential between the parties exists, may constitute sexual harassment if the effect of such a relationship interferes with an individual's academic or professional performance or if it

creates an intimidating environment upon its termination. Thus, it is in the interest of UW-L to provide clear direction and educational opportunities to the university community about the potential risks associated with consensual romantic and/or sexual relationships where a definite power differential between the parties exists.

These relationships are of concern for two primary reasons:

1. Conflicts of interest may arise in connection with consensual romantic and/or sexual relationships between UW-L employees and students, or between supervisors and subordinates. University policy precludes individuals from evaluating the work or academic performance of others with whom they have intimate familial relationships, or from making hiring, salary or similar financial decisions concerning such persons. These same principles apply to consensual romantic and/or sexual relationships, and require, at a minimum, that appropriate arrangements be made and recorded for objective decision-making with regard to the student, subordinate or prospective employee. Individuals in a consensual romantic and/or sexual relationship must remove themselves from a position of evaluating or influencing the evaluation of the consenting or previously consenting partner in terms of grading, recommendations on hiring, retention, promotion or salary.

2. Abuse of power differential in consenting romantic and/or sexual relationships has the potential for serious consequences even when conflict of interest issues are resolved. Individuals entering into such relationships must recognize that:

- a. the reasons for entering such a relationship may be a function of the power differential;
- b. where such differentials exist, even in a seemingly consensual relationship, there are limited after-the-fact defenses against charges of sexual harassment; and
- c. the individual with the power in the relationship should expect to bear the burden of responsibility.

II. Allegations of sexual harassment should be made in accordance with the provisions of the accompanying document on informal and formal hearing procedures.

Hearing Procedures

I. Initiating a Complaint

Anyone who wishes to lodge an allegation of sexual harassment should so inform the Affirmative Action Officer either orally or in writing within 300 days of the last occurrence. Alternately, department chairs or unit supervisors may be advised of the allegation if the complainant prefers.

II. Treatment of Complaints

The Affirmative Action Officer or the chair or supervisor will respect the wishes of the person making the complaint regarding further investigation and will not carry a specific complaint forward without that person's explicit written permission and instruction. An attempt to penalize a person bringing a complaint or any other form of retaliation is prohibited and will be treated as a separate incident to be reviewed in its own right.

III. Preliminary Discussions

The Affirmative Action Officer or the chair or supervisor who has received a complaint should collect information from the person making the complaint. If it seems advisable and if the complainant wishes to pursue the matter, the investigator should then discuss the issue discreetly with the person against whom the complaint has been made, protecting the identity of the complainant if that is possible. The investigator should also explain all the appropriate procedures and options to all of the people involved.

On the basis of these preliminary discussions, the investigator must recommend whether or not the complaint should be pursued, and the complainant should decide whether to pursue the complaint and if so by what methods.

IV. Informal Procedures

The options for informal procedures include:

- A. separate confidential meeting(s) with the appropriate parties involved
- B. joint confidential meeting(s) of the appropriate parties and departmental chair or supervisor, or
- C. joint confidential meeting(s) of the appropriate parties involved.

The goal of all preliminary discussions of the informal procedures is mediation and conciliation. If these efforts are not successful in resolving the problem, the parties should move to the formal hearing procedures. When the informal procedures are concluded, the person investigating the complaint will file a written confidential report of each complaint and

its outcome at the Affirmative Action Office. The sole purpose of this report is to document the incidence of complaints filed against a specific individual within a three-year period. If after three years no further complaints have been lodged by or about either involved party, the report and any related records shall be destroyed, following procedures outlined in Wisconsin Statutes, Section 16.61.

V. Formal Hearing Procedures

If the informal procedures do not result in a satisfactory resolution of the problem, then a Formal Hearing Panel may be called into session. However, if this step is to be taken, then fairness dictates that both parties to the dispute will be identified. If any sanctions are to be recommended and recorded, the accused must have the opportunity to confront his/her accuser. If the person lodging the allegation wishes to postpone such a confrontation, then the panel will set a time limit that appears reasonable, depending upon the circumstances and reasons given. The formal hearing proceeding may be terminated by mutual agreement of petitioner and respondent at any step. Either party may seek the help of legal counsel at any stage of the hearing.

A. Complaint

1. Initiation of a Formal Hearing

Any person may initiate a formal petition for a hearing regarding any matters of substance alleged to be sexual harassment, as defined by the university guidelines.

2. The Petition

A petition form shall be available in the Affirmative Action Office. The petition shall provide:

- a. the petitioner's name
- b. the respondent's name
- c. a detailed statement as to the specific facts by the petitioner, which are alleged to constitute sexual harassment
- d. additional information such as statements by witnesses and other documentation, which support the petitioner's allegations.
- e. a statement of the possible outcome of the hearing
- f. a statement regarding academic freedom

3. Receipt of Petition and Duties of Affirmative Action Officer

The completed petition shall be submitted to the Affirmative Action Officer. The Affirmative Action Officer shall review the contents of the petitions with the petitioners. The Affirmative Action Officer shall note the time and date of receipt of the petition and additional information submitted by the petitioner to the respondent within seven (7) calendar days. At the time of receipt of the petition, the Affirmative Action Officer shall request that petitioner select one member of the Hearing Panel from the Hearing Panel Register. At the time of notifying the respondent of the petition and pending hearing, the Affirmative Action Officer shall request that the respondent select one Hearing Panel member, from the remaining members of the Hearing Panel Register. The other two panel members will choose the third member of the panel from the register. If the petitioner, respondent or panel members do not exercise their selection option within seven (7) calendar days of being duly notified by the Affirmative Action Officer, then the Affirmative Action Officer shall select the Hearing Panel member(s) on their behalf from the register.

B. The Hearing Register and Panel

1. The Hearing Register

The formal Hearing Panel shall be selected from a register of people nominated from the various constituencies (faculty, academic staff, classified, and students) within the University, with at least five from each group. The Affirmative Action Officer shall request these nominations annually through the appropriate channels in each instance. A balance of male and female membership shall be maintained.

2. The Hearing Panel

The Hearing Panel shall be comprised of three members from the register. The petitioner and the respondent shall each select one member of the register to serve on the Hearing Panel. The other two members on the panel shall select the third member. If the two members selected by the petitioner and respondent cannot agree on the panel member, the Affirmative Action Officer shall select the third member.

3. The Hearing Panel Chairperson

The three Hearing Panel members shall elect a chairperson who has the responsibilities to convene the panel, chair the formal hearing, and assure that a decision is rendered and a copy provided to identified interested parties within the specified time limits.

4. Time Lines

A decision shall be rendered by the Hearing Panel within thirty (30) calendar days from receipt of the petition. The panel may, by majority vote, grant an extension of up to twenty (20) calendar days for good cause if requested by petitioner, respondent, or a panel member. All written evidence to be presented at the hearing shall be provided to both parties--the Hearing Panel Chairperson, and the Affirmative Action Officer--ten (10) calendar days prior to the hearing. Such evidence shall include written statements, documentation, and a list of possible witnesses who may testify. Any written evidence not provided at least ten (10) calendar days prior to the hearing may be excluded by majority vote of the Hearing Panel.

C. The Hearing Panel: Procedure

1. Hearing Panel Chairperson's opening statement regarding:

- a. jurisdiction for the hearing
- b. identification of parties present at the hearing including legal counsel for the parties
- c. exact nature of petitioner's allegations
- d. burden of proof, which rests with the petitioner
- e. the possible outcome of the hearing
- f. a statement of the possible outcome of the hearing
- g. a statement regarding academic freedom
- h. record of the hearing (an electronic recording of the hearing shall be kept)

2. Opening statements - petitioner followed by respondent

3. Presentation of evidence

- a. All witnesses shall testify under oath or affirmation
- b. Witnesses shall first be questioned by the party calling them, cross-examined by the adverse party, and questioned by panel members.

4. Sequence of presentation of evidence

- a. Petitioner presents evidence
- b. Respondent presents evidence
- c. Petitioner presents rebuttal evidence
- d. Respondent presents rebuttal evidence

5. Closing statements, petitioner followed by respondent.

D. Decisions

1. The Hearing Panel Decision

- a. The Hearing Panel shall determine, by majority vote, whether the allegations made by the petitioner are true and whether, if they are true, the behavior constitutes sexual harassment as defined under the university guidelines.
- b. Any panel member who disagrees with a decision by the majority shall write a dissenting opinion explaining the nature of his/her disagreement.
- c. If the Hearing Panel's decision is that the allegations are not true or that the behavior does not constitute sexual harassment as defined under the university guidelines, the hearing will be terminated. If the Hearing Panel's decision is that the allegations are true and the behavior does constitute sexual harassment as defined under the university guidelines, the panel shall forward recommendations to the chancellor regarding disciplinary actions to be taken. At the same time, the panel shall advise both the petitioner and the respondent of its recommendations.
- d. Such disciplinary actions may include but are not limited to: reprimand, temporary suspension, expulsion, or discharge. All appropriate due process shall be observed in any of these disciplinary actions.

2. The Chancellor's Decision

Unless advised that the Hearing Panel's recommendations have been appealed, the chancellor shall act on those recommendations within sixteen

(16) calendar days of the receipt of them from the panel. In the event of an appeal to the appropriate committee(s), the chancellor shall await the report of the appeals committee but should not delay the decision longer than forty-five (45) calendar days.

3. Appeals

Appeals on the recommendations, including recommendations of disciplinary actions, of the Hearing Panel by either the petitioner or respondent may be made to the appropriate existing faculty committee (UWS and UWL 4.0) academic staff committee (UWS and UWL 11.0) or student committee (UWS 17). Represented classified staff may appeal using procedures stipulated in their respective collective bargaining agreements. The appeals procedure for non-represented employees is given in Wisconsin Statute 230.44. Such appeals should be made within fourteen (14) calendar days of receipt of the panel's recommendations.

Approved by UW System Board of Regents, February 1982. Revised February 17, 1992, with the addition of I.C. in accord with UW System consensual relationship statement and guidelines. University of Wisconsin-La Crosse