



UNIVERSITY OF WISCONSIN-LA CROSSE

POLICY AGAINST DISCRIMINATION, DISCRIMINATORY HARASSMENT, SEXUAL MISCONDUCT, AND RETALIATION

Updated March 2016

1.0 Introduction.

- 1.1. The University of Wisconsin-La Crosse is committed to providing an educational, program, activity, and workplace environment that is inclusive and free of discrimination, discriminatory harassment (including sexual harassment), sexual misconduct, and retaliation, and to the prompt and equitable investigation and resolution of all complaints thereof.
- 1.2. This policy implements, fulfills and/or furthers the goals of University of Wisconsin System policies including Regent Policy Documents (RPD) 14-2, 14-3, 14-5, 14-6, 14-7, 14-10, and federal and state laws including Title IX of the Education Amendments of 1972 and the Violence Against Women Act.
- 1.3. In the application of this policy, due consideration will be given to the protection of individual rights to freedom of speech and expression.

2.0 Scope.

- 2.1. This policy applies to:
 - (a) all University of Wisconsin-La Crosse programs, activities, employment practices and operations;
 - (b) the conduct of all students, employees, officers, and agents of the University that arises out of their employment, educational, academic, or athletic status; and
 - (c) the conduct of third parties, including all guests, visitors, vendors, contractors, subcontractors and others who do business with the University, use the University's facilities, or take part in the University's programs.
 - (d) conduct and communications that take place via technological means (e.g. computers, mobile devices, e-mail, telephone, voice mail, web sites, or apps).
- 2.2. The University reserves the right to apply this policy to conduct occurring off-campus, if the University determines that the conduct could have an impact on the educational or work environment of the University.
- 2.3. Nothing in this policy is intended to take the place of applicable criminal statutes, civil or criminal proceedings and/or law enforcement actions. All individuals have the right to report suspected criminal conduct to the appropriate law enforcement authorities in addition to any report made pursuant to this policy. The University will provide appropriate assistance, upon request, to those wishing to make such a report. Nothing in this policy limits any individual's right to pursue any available legal remedy through federal or state courts, the Equal Employment Opportunity

Commission, the Department of Education Office for Civil Rights, the Wisconsin Department of Workforce Development, or any other administrative agency, in addition to or instead of proceeding under this policy.

3.0 Policy Statement.

3.1. **Discrimination, discriminatory harassment, and retaliation.** (Based on RPD 14-6.)

- (a) 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.
- (b) Discrimination or discriminatory harassment that is based upon an individual's characteristics which are protected under institution policy, state law or federal law ("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 they¹ have been subject to this type of prohibited activity should immediately report it to their supervisor, the Office of Affirmative Action or the Student Life Office.
- (c) Protected status for 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).
- (d) Protected status for 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.

3.2. **Sexual Misconduct.** Sexual misconduct includes sexual harassment, sexual assault, dating violence, domestic violence, and stalking. Sexual misconduct is a

¹ At appropriate places in this document, "they" and "their" are used as gender-inclusive third-person singular pronouns.

form of discrimination and is prohibited. The University of Wisconsin-La Crosse is committed to preventing sexual misconduct, promptly responding to all incidents, and protecting the rights and safety of all members of the campus community.

- (a) Sexual Harassment. It is the policy of the University of Wisconsin-La Crosse, consistent with its efforts to foster an environment of respect for the dignity and worth of all students and staff of the University, that sexual harassment of students and employees of the University is unacceptable and impermissible conduct that will not be tolerated. Sexual harassment is a form of sex discrimination. It occurs in a variety of situations that share a common element: the inappropriate introduction of sexual activities or comments into the work or learning situation. Often, sexual harassment involves relationships of unequal power and contains elements of coercion—as when compliance with requests for sexual favors becomes a criterion for granting work, study, or grading benefits. However, sexual harassment may also involve relationships among equals, as when repeated sexual advances or demeaning verbal behavior have a harmful effect on a person's ability to study or work in the academic setting. (Based on RPD 14-2.)
- (b) Consensual romantic and/or sexual relationships between members of the University community are addressed in a separate policy. (See Appendix A.)
- (c) Other categories of sexual misconduct, including sexual assault, dating violence, domestic violence, and stalking, are defined by state law and will be investigated in accordance with this policy and other applicable laws and policies.
- (d) Any person may be a perpetrator or a victim of sexual misconduct, regardless of any personal identity characteristic (or lack thereof), including gender, gender identity, gender expression, or sexual orientation.
- (e) In proceedings related to sexual misconduct, the complainant's sexual history with anyone other than the alleged perpetrator is not relevant and may not be considered as evidence. In addition, the mere fact of a current or previous consensual dating or sexual relationship between the parties does not itself imply consent to a particular act or preclude a finding of sexual misconduct.
- (f) The "preponderance of the evidence" standard shall be the applicable standard in all sexual misconduct and/or Title IX-related procedures.
- (g) Any person seeking confidential support and assistance regarding sexual misconduct should contact the Violence Prevention Coordinator. The University will provide prompt, confidential assistance and ongoing advocacy and resources to victims of sexual misconduct through the Violence Prevention Coordinator, regardless of whether any formal report is made. Such resources include on-campus and/or off-campus referrals to health care, law enforcement and advocacy resources.
- (h) Title IX, UW System, and UW La Crosse policies prohibit retaliation.

3.3. **Title IX Coordinator.** The Director of Affirmative Action shall serve as the Title IX Coordinator for UW-La Crosse. The University may designate Deputy Title IX Coordinators as deemed appropriate. The Title IX Coordinator should be notified

any time the University receives notice of an incident or allegation of sexual misconduct or any other potential Title IX violation.

4.0 Definitions.

- 4.1. **Discrimination** (RPD 14-6) 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** (RPD 14-6) 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.
 - (c) 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. **Sexual Harassment** (RPD 14-2) is one form of discriminatory harassment. Sexual harassment includes 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 offensive employment or educational environment.
- 4.4. **Sexual Assault** (Wis. Stat. § 940.225(4)) is sexual intercourse or sexual contact with a person without the consent of that person. Consent (Wis. Stat. § 940.224(4)) consists of words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual

intercourse or sexual contact. Individuals incapacitated due to an intoxicant are generally incapable of providing consent.

- 4.5. **Dating Violence** (Wis. Stat. § 813.12(1)(ag)) is violence committed in a “dating relationship,” which is defined as a romantic or intimate social relationship between two adult individuals but “dating relationship” does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.
- 4.6. **Domestic Violence** (Wis. Stat. §§ 813.12(1)(am); 968.075(1)(a)) is any of the following engaged in by an adult family member or adult household member against another adult family member or adult household member, by an adult caregiver against an adult who is under the caregiver’s care, by an adult against his or her adult former spouse, by an adult against an adult with who the individual has or had a dating relationship, or by an adult against an adult with whom the person has a child in common:
 1. Intentional infliction of physical pain, physical injury or illness.
 2. Intentional impairment of physical condition.
 3. A violation of the state statute regarding sexual assault (Wis. Stat. § 940.225(1), (2) or (3).
 4. A violation of the state statute regarding stalking (Wis. Stat. § 940.32).
 5. A violation of the state statute regarding damage to property (Wis. Stat. § 943.01), involving property that belongs to the individual.
 6. A threat to engage in the conduct under 1, 2, 3, 4, or 5 listed above.
- 4.7. **Stalking** (Wis. Stat. § 940.32(2)) is intentionally engaging in a course of conduct directed at a specific person that would cause a reasonable person under the same circumstances to suffer serious emotional distress or to fear bodily injury to or the death of himself or herself or a member of his or her family or household.
- 4.8. **Retaliation** (RPD 14-6) 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.
- 4.9. **Complainant**, for the purposes of this policy, is any person who files a complaint under this policy, or takes any other action in response to conduct perceived to be a violation of this policy.
- 4.10. **Respondent**, for the purposes of this policy, is any person against whom an allegation of discrimination, discriminatory harassment, harassment, sexual misconduct, or retaliation has been made, or any person who a complainant believes has violated this policy.

5.0 Reporting Procedures and Related Provisions.

5.1. Procedures for Students.

- (a) A student who believes that they are the target of discrimination, discriminatory harassment, sexual misconduct, 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 been successful in resolving the matter.
- (c) In cases of sexual harassment or any other form of sexual misconduct, students should contact the Violence Prevention Coordinator in the Student Life Office.
- (d) Complaints against students will be received, investigated and resolved by the Student Life Office on a case-by-case basis through the procedures outlined in UWS Chapters 17 and 18, with potential disciplinary sanctions up to and including expulsion
- (e) The University will provide assistance upon request to students who wish to file a complaint with campus police or local law enforcement. If a complaint has also been filed with local law enforcement, the University will work with the law enforcement agency to ensure that the complainant is receiving all necessary rights, protections and processes in regard to the alleged incident(s).
- (f) Complaints against student employees may result in a combination of responses based on the individual's dual status as a student and an employee.
- (g) Complaints by students against non-students will be referred to the Office of Affirmative Action, 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.

5.2. Procedures for Employees.

- (a) An employee who believes that they are the target of discrimination, discriminatory harassment, sexual misconduct, 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, to go to their supervisor's supervisor.
- (b) Employees may contact the Office of Affirmative Action to discuss the matter or file a complaint at any time, and they are encouraged to do so if the above steps are not been successful in resolving the matter.
- (c) In cases of sexual harassment or any other form of sexual misconduct, employees should contact the Office of Affirmative Action promptly.
- (d) The Office of Affirmative Action will handle complaints under this policy on a case-by-case basis using the *Office of Affirmative Action Complaint Handling Procedures*.
- (e) When appropriate, the University may take corrective action to ensure that the misconduct does not recur and that the rights and safety of all members of the campus community are protected.

- (f) When warranted, for reasons which may include the severity or repeated nature of the misconduct or the ineffectiveness of past corrective efforts to end to the misconduct, the University may take disciplinary action pursuant to applicable UWL and UW System policies, up to and including termination.
- (g) The University will provide assistance upon request to employees who wish to file a complaint with campus police or local law enforcement. If a complaint has also been filed with local law enforcement, the University will work with the law enforcement agency to ensure that the complainant is receiving all necessary rights, protections and processes in regard to the alleged incident(s).

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 the Office of Affirmative Action. The Office of Affirmative Action 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, sexual misconduct, or retaliation, or who become aware of conduct that may meet any of these definitions, should notify the Office of Affirmative Action, and should notify the complainant of their right to contact the Office of Affirmative Action (and the Student Life Office, if the complainant is a student).
- (b) The Office of Affirmative Action will handle complaints under this policy using the *Office of Affirmative Action Complaint Handling Procedures*.
- (c) If the incident does not involve sexual assault, and if the supervisor and/or department chair believes the matter can be resolved through informal dialogue with the parties, individually or jointly, such dialogue may be initiated with the approval of, and ongoing consultation with, the Office of Affirmative Action.
- (d) If such informal dialogue does not result in the prompt resolution of the matter, or if either party elects not to participate in such dialogue, the supervisor and/or department chair should inform the Office of Affirmative Action.
- (e) Supervisors and/or department chairs should: encourage employees to disclose any and all instances of discrimination, discriminatory harassment, sexual misconduct, 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.

5.5. Responsibilities of Other Individuals.

- (a) It is the collective responsibility of all members of our campus community to help create and maintain a safe and inclusive environment free of

discrimination, discriminatory harassment, sexual misconduct, and retaliation.

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

5.6. Additional Provisions.

- (a) **University Action.** The University reserves the right to assume the role of a complainant and 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.
- (b) **Anonymous Reporting.** Individuals wishing to anonymously report discrimination, discriminatory harassment, sexual misconduct, or retaliation may do so using the Hate/Bias Incident Reporting Form, which can be accessed at on the University's web site. The University may not be able to investigate an anonymous complaint unless sufficient information is provided. Anonymous reports will be reviewed by the Office of Affirmative Action in conjunction with other relevant offices to determine what action, if any, is warranted based on the facts and allegations contained therein.
- (c) **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 complainants and respondents.
- (d) **Time limitations.** There is no fixed time limitation for the filing of a complaint. However, the ability of the University to investigate and take corrective action may be affected by the length of time between the alleged incident(s) and the filing of the complaint.
- (e) **Conflict of interest.** If the Director of Affirmative Action is implicated in the offending conduct, or has an actual, perceived, or potential conflict of interest, the Chancellor or the Director of Human Resources may be contacted in lieu of the Director of Affirmative Action for the purposes of any provision of this policy.
- (f) **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.

6.0 Rights of Parties.

- 6.1. Every complainant and respondent has the following rights:
 - (a) to be treated with respect by University officials.
 - (b) to access available campus support resources (which may include Violence Prevention, Counseling & Testing, the Employee Assistance Program, University Police, and Ombudspersons).
 - (c) to have an advisor or advocate.
 - (d) to refuse to participate in mediation or informal conflict resolution processes, and to be informed of the potential ramifications of that choice.
 - (e) to be simultaneously informed in writing of: the outcome/resolution of the complaint; the rationale for the outcome; any changes made to the outcome/resolution before it comes final; when the outcome/resolution becomes final; and any available appeal procedures.
 - (f) any and all other applicable rights set forth in applicable laws or policies.

7.0 Confidentiality and Responsible Employees.

- 7.1. All complaints will be treated with consideration to their sensitive nature. Complaints will be considered confidential to the extent requested by the complainant, if possible. However, certain disclosures may be necessary for the University to conduct a thorough investigation, comply with state and federal law, and comply with its own procedures and regulations. In addition, 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).
- 7.2. Students seeking a confidential source of support should contact the Violence Prevention Coordinator, the Counseling & Testing Center, or the Student Health Center. These are the only University services with the ability to ensure confidentiality of information provided by students, subject to applicable law.
- 7.3. Other than those employees listed in 7.2 above, all UW-L employees, including resident assistants, are considered "responsible employees" for the reporting of sexual misconduct under both Title IX and Wisconsin state law and must notify the Student Life Office or the Title IX Coordinator if they receive a report of sexual misconduct.
- 7.4. Responsible employees, as defined in 7.3 above, should not promise confidentiality to any student or colleague, and should, whenever possible, inform a student or colleague who wishes to disclose sexual misconduct of their reporting obligation prior to any details being given. Any person who is unsure about whether they wish to disclose sexual misconduct to a responsible employee should be directed to one of the confidential resources listed in 7.2.

8.0 Campus Education and Notification

- 8.1. 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, sexual misconduct, and retaliation.

- 8.2. The University will fulfill all applicable requirements for training and education of employees and students pursuant to University of Wisconsin System policy, state law, and/or federal law.

9.0 Conduct Not Covered By This Policy

- 9.1. Offensive or biased language or conduct that does not meet the criteria of discrimination, discriminatory harassment, sexual misconduct, 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.
- 9.2. Regardless of whether or not disciplinary or punitive measures are available, the University may employ non-punitive measures to address such incidents, including 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.
- 9.3. Individuals seeking assistance regarding offensive or biased language or conduct that is not covered by this policy are encouraged to contact Affirmative Action or Campus Climate.

10.0 Policy Revisions

- 10.1. This policy will be regularly reviewed and updated in order to remain in compliance with evolving federal law, state law, and University of Wisconsin System policies.
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APPENDIX A

CONFLICT OF INTEREST & ABUSE OF POWER IN CONSENSUAL RELATIONSHIPS WITHIN THE UNIVERSITY COMMUNITY

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. 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 documented in order to ensure fair and objective treatment for the student, subordinate or prospective employee. Individuals must remove themselves from a position of evaluating or influencing the evaluation of a current or former partner in a consensual romantic and/or sexual relationship 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.

Reporting Requirements. UW-L recognizes that the conflict of interest inherent in a consensual romantic and/or sexual relationship where there is a power differential affects the University's obligation to provide equal employment and educational opportunity. Therefore, UW-L requires:

- a. Participants in such a relationship must act immediately to acknowledge and remove any conflict of interest;
- b. Promptly upon the establishment of the relationship, the person in the more powerful position in such a relationship shall notify in writing the relevant authority (Chair and Dean, Provost/Division Head) of the actions being taken to remove the conflict of interest.
- c. All such notification shall be archived in a sealed envelope in the official personnel file.
- d. Records will be kept confidential to the extent permitted by law, but will be available as evidence in the processing of possible related sexual harassment complaints in the future.