

# DISCRIMINATORY CONDUCT ENFORCEMENT PROCEDURES

No: S-47

Date: December 2002  
(Original: January 1982;  
Revised May 1988, May 1998)

## Authority:

Title VI of the Civil Rights Act (42 U.S.C. § 2000d et seq.)  
Title VII of the Civil Rights Act (42 U.S.C. §2000e et seq.)  
Title IX of the Educational Amendments of 1972 (20 U.S.C. §1681 et seq.)  
Federal Regulations: 28 C.F.R. Ch. 1 §35.107; 29 C.F.R. §32.7; 34 C.F.R. §§104.7, 106.8, 110.25  
Wisconsin Fair Employment Law, Chapter 111, Subchapter II, Wis. Stats  
Regent Resolution 2384 (amended 4/10/87)  
UWM Faculty Document #1605, 1607  
UWM Administration  
*Faragher v. City of Boca Raton*, 524 U.S. 775 (1998)

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## I. POLICY

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.

To that end, UWM prohibits discrimination, harassment, and retaliation, and has established the procedures listed below for the investigation and remedy of such conduct. These procedures include a voluntary process for facilitating a mutually satisfactory resolution without formal findings.

## II. DEFINITIONS

### A. Discrimination

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

- age
- ancestry
- arrest or conviction record
- color
- disability
- 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
- use of lawful products off the premises during non-working hours (e.g. smoking cigarettes)

**B. Harassment**

Harassment is a form of prohibited discrimination. UWM defines harassment as conduct that (1) is of any type (oral, written, graphic, or physical); (2) is directed towards or against a person because of the person's protected status (see the list of protected statuses in Section II.A 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.

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.

**C. Retaliation**

UWM defines retaliation as employment or academic decisions that are made as a result of an individual's complaint about conduct prohibited under this policy or participation in enforcement of this policy.

**III. ENFORCEMENT PROCEDURE**

**A. Options for Employees to Report Conduct**

An employee who feels that he or she is the subject of discrimination, harassment, or retaliation (the "complaining party") that is prohibited by this policy is encouraged to clearly tell the person responsible for the behavior (the "responding party") to stop.

If a complaining party feels uncomfortable confronting the responding party, or complaining party's efforts to stop the conduct have been unsuccessful, the complaining party may discuss the conduct with his or her supervisor or department chair. The supervisor or department chair may be able to quickly resolve the matter. If a supervisor or department chair learns of an alleged violation of this policy, but is unable to quickly resolve the matter or feels that the matter

warrants further investigation prior to taking action, he or she should refer the complaining party to the Office of Equity/Diversity Services (“EDS”).<sup>1</sup>

At any time, an employee who feels that he or she is the subject of discrimination, harassment, or retaliation may contact EDS to file a complaint. An employee should file a complaint with EDS if he or she has confronted the person responsible for the behavior, or has discussed the matter with his or her supervisor or department chair, and the employee feels these steps have not been successful in resolving the matter.

## **B. Options for Students to Report Conduct**

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

## **C. Filing a Complaint with EDS**

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

## **D. Response by EDS**

1. EDS will review the complaint to ensure that it contains the information necessary to proceed. If any necessary information is missing, EDS will request the complaining party 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 III.E below.

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<sup>1</sup> This is the official name for UWM’s office for enforcing equal opportunities for employees and students at the time the policy is being issued. EDS is presently located in Mitchell Hall, Room 359, and can be reached at telephone number 414/229-5923. Should either the name or campus location change in the future, the policy will remain in effect. Corrections will be made as soon as is practicable.

3. If EDS determines that the matter involves the alleged misconduct of a student, EDS will work with the Office of Student Life on that aspect of the matter for possible investigation and/or action under UWS Chapters 14 and 17.<sup>2</sup>
4. Within 10 working days of the filing of the complaint, the Equal Opportunity Officer<sup>3</sup> (or her or his designee) will provide a copy of the complaint to the person(s) alleged to have violated this policy (the “responding party”) and the Dean or Division Head of the complaining party and responding party. In the event that a conflict of interest exists for anyone involved in processing the complaint, a substitute will be appointed accordingly.
5. EDS will initiate an investigation of the complaint within 10 working days of receipt of the complaint. EDS will complete the investigation within 120 calendar days of receipt of the complaint, unless the Equal Opportunity Officer’s immediate supervisor<sup>4</sup> approves an extension of the time period, which in most cases will not be later than 180 calendar days from receipt of the complaint. The immediate supervisor of the Equal Opportunity Officer will grant such an extension only for legitimate and necessary reasons. The investigation may include, but is not limited to: (a) meetings with material persons who may have relevant information; (b) reviewing relevant records and files; (c) comparing the treatment of the complaining party to that of others who are in similar situations in that person’s department or unit; and (d) reviewing applicable policies and practices.
6. EDS may dismiss a complaint without issuing factual findings and remedial recommendations based on the factual findings if it determines that the circumstances are appropriate for doing so. These circumstances may include, but are not limited to:
  - a. If, in the opinion of the Equal Opportunity Officer in consultation with her or his immediate supervisor, the complaint is without sufficient basis to warrant investigation.
  - b. If, in the opinion of the Equal Opportunity Officer, part or all of the complaint would be handled more appropriately by another department or individual at UWM.
  - c. If the complaining party and responding party have agreed to a mutually acceptable resolution of the matter, pursuant to Section III.E below, which makes further investigation unnecessary.
  - d. If the complaining party requests that the complaint be dismissed, and subsequently, EDS, in consultation with the Office of Legal Affairs, determines the complaint no longer be investigated.<sup>5</sup>
  - e. If the complaining party fails or refuses to cooperate with the investigation.

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

<sup>3</sup> As of the publication of this policy, the Equal Opportunity Officer is the Director of Equity/Diversity Services.

<sup>4</sup> As of the publication of this policy, the immediate supervisor of the Equal Opportunity Officer is the Associate Vice Chancellor for Campus Climate.

<sup>5</sup> There may be circumstances where EDS, in consultation with the Office of Legal Affairs, determines that a complaint should be investigated even after the complaining party asks that it be dismissed.

- f. If the complaining party files a complaint based on the same factual circumstances with an external (non-UWM) agency or court.

**E. Negotiated Resolution**

1. Negotiated resolution is a process by which EDS attempts to resolve complaints quickly and to the satisfaction of all parties without reaching any formal findings. EDS may initiate a negotiated resolution at the request of any party or at its own initiative. At any time during the negotiated resolution process, either the complaining party or a responding party may elect to terminate the process with respect to their own role in the matter, which will result in the continuation of the investigation.
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 Section III.D above (if they have not already passed) for up to 30 additional days during the negotiated resolution process. However, if the negotiated resolution is discontinued by EDS or does not result in a resolution within 30 days from the date it is started, EDS will continue its investigation of the matter.
3. If the complaint is successfully resolved through a negotiated resolution, each party will sign a “negotiated resolution form” prepared by EDS, which describes the agreed-upon terms. EDS will discard all other documents and notes except for the original complaint and the negotiated resolution form.

**F. Findings by EDS, Implementation, and Appeals**

1. At the conclusion of the investigation, the Equal Opportunity Officer, in consultation with his or her immediate supervisor, will issue to the Provost a report containing factual findings and remedial recommendations based on the factual findings. Copies of the factual findings and remedial recommendations will be provided to the complaining party, the responding party, and the Dean or Division Head of both the complaining party and the responding party.
2. Within 10 working days of receipt of the Equal Opportunity Officer’s factual findings and remedial recommendations, the complaining party or the responding party may appeal the factual findings and remedial recommendations. An 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 Equal Employment Officer and his or her immediate supervisor, and the Dean or Division Head of both the complaining party and the responding party. An appeal may be based on either: (1) whether the evidence supports the findings; and/or (2) whether the recommended remedial actions are appropriate.
3. Within 20 working days after the last day that either the complaining party or responding party was eligible to appeal the factual findings and remedial recommendations, even if neither party filed such an appeal, the Provost will issue a determination regarding the Equal Opportunity Officer’s factual findings and remedial recommendations in which s/he: a) accepts them; b) modifies them; or c) requests 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 Enforcement Procedures. A copy of the determination will be provided to the complaining party, responding party, the Dean or

Division Head of the complaining party and the responding party, the EO Officer and the Equal Employment Officer's immediate supervisor. The Provost's determination is final and shall be implemented except to the extent that all or part of the determination is subject to an additional process provided by another University policy (e.g., as described in Sections III.F.4 and 5 below).

4. If the Provost's determination includes discipline of an employee, the discipline must be considered and implemented through an additional process, depending on the employment classification of the person who is to receive the discipline. The following briefly describes the appropriate process for each 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.
  - a. Academic Staff: The Provost shall forward her or his determination to the Dean or Division Head for implementation pursuant to UWS 13.01 and Academic Staff Policies and Procedures Chapter 111.<sup>6</sup>
  - b. Classified Employees and Graduate Assistants: The Provost shall refer the determination to the employee's immediate supervisor for implementation consistent with the following authority, as applicable: a collective bargaining agreement; rules of the Secretary of the Department of Employment Relations and Division of Merit Recruitment and Selection; and UWM policies and procedures.
  - c. Faculty: The Provost shall forward her or his determination to the University Committee in the form of a complaint pursuant to UWM Faculty Policies and Procedures 5.42 et al.
  - d. Limited Term Employees and Student Employees: The Provost shall refer the determination to the employee's immediate supervisor for implementation.
5. If the Provost's determination 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.
  - a. Academic Staff: The Provost shall refer the determination 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.
  - b. Classified Employees and Graduate Assistants: The Provost shall refer the determination to the employee's supervisor for implementation consistent with the following authority, as applicable: a collective bargaining agreement; rules of the Secretary of the Department of Employment Relations and Division of Merit Recruitment and Selection; and UWM policies and procedures.

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<sup>6</sup> If the determination contemplates non-renewal of an academic staff employee, UWM Academic Staff Policies and Procedures Chapter 106 should apply.

- c. Faculty: The Provost shall initiate dismissal proceedings as the Chancellor's designee, pursuant to UWM Faculty Policies and Procedures 5.21 et al and UWS 4, Wis. Admin. Code, which includes forwarding her or his determination to the University Committee in the form of written charges.
- d. Limited Term Employees and Student Employees: The Provost shall refer the determination to the employee's supervisor for implementation.

**G. Confidentiality**

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

Issued:

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Nancy L. Zimpher, Chancellor  
University of Wisconsin—Milwaukee

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Date