



University Policies

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Policy #53

Sexual Harassment and Other Forms of Discriminatory Personal Conduct

SCOPE OF THIS POLICY

This Policy applies to EPA faculty, EPA non-faculty, and students.^{1} SPA staff should refer to Policy # 70. See Policy #58 for the policy on Improper Relationships between Students and Employees.

STATEMENT OF PRINCIPLE

Harassment of any kind is inconsistent with Western Carolina University's commitment to excellence and to respect for all individuals. It is the responsibility of every employee and student in the University community to conduct him or herself in a manner that contributes to an environment free of harassment or discrimination and free of unprofessional bias in the supervision and evaluation of students and employees.

Western Carolina University is committed to protecting the academic freedom and freedom of expression of all members of the University community. It acknowledges that instructional responsibilities require appropriate latitude for pedagogical decisions concerning the topics discussed and methods used to draw students into discussion and full participation.

Western Carolina University believes it is more appropriate to encourage and nurture positive interactions and understanding between individuals rather than activities which may invite charges of harassment for hostile, disrespectful, or intimidating speech or behavior. Also, harassment must be distinguished from behavior which may be appropriate to the carrying out of certain instructional, advisory, or supervisory responsibilities.

POLICY STATEMENT ON DISCRIMINATORY PERSONAL CONDUCT

It is the policy of Western Carolina University that speech or action by a university employee, occurring in the scope and course of university business, that gives offense by its clear expression of bias or prejudice toward an individual or group because of that person's or group's race, age, color, creed, national origin, religion, sex, disability, or political affiliation is subject to review on a case-by-case basis and may subject the offender to appropriate discipline if warranted by the entire record and totality of the circumstances. Some of the factors that will be considered in determining whether discriminatory personal conduct warrants discipline and, if so, what type of discipline, include, but are not limited to, the following:

1. The severity and pervasiveness of the harm or harassment inflicted upon or directed toward the victim by the offending party.

2. The extent to which the speech or conduct disrupts the orderly operation of the University. It will be presumed, unless disproved, that discriminatory personal conduct, in and of itself, has an adverse impact upon the operation of the University.
3. The extent to which the discriminatory personal conduct was intended to harm, harass, or exploit the victim.

In all cases, any inquiry into alleged discriminatory personal conduct should consider the record as a whole and the totality of the circumstances, taking into account the nature of the speech or conduct and the context in which the alleged incidents occurred.

POLICY STATEMENT ON SEXUAL HARASSMENT

It is the policy of Western Carolina University that employees and students should be free from sexual harassment from any university employee, student, or visitor to the campus, or any agent or contractor having a business, professional, or educational relationship with the university. Sexual harassment may involve persons of the opposite sex or persons of the same sex. Students and employees should be free from the threat or promise of any consequence, whether negative or positive, because of how they respond to any sexual overture. They should be free from unwelcome sexual overtures in and of themselves. Thus a single refusal to cease sexual overtures may be grounds for appropriate discipline. In addition, a single attempt to impose adverse consequences or offer favorable ones in connection with any sexual overture may result in appropriate discipline. Decisions will be made in light of the entire record and the totality of the circumstances. Equally, no student or employee should be favored or rewarded because he or she willingly enters into a sexual relationship with a university employee.

Sexual harassment includes, but is not limited to, the definition adopted by the Equal Employment Opportunity Commission (EEOC) Guidelines: unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature which may arise in one of the three following circumstances:

- a. submission to the sexual request or conduct is made either explicitly or implicitly a term or condition of employment or education;
- b. submission to or rejection of the sexual request or conduct is used as the basis for an employment or educational decision affecting the individual;
- c. the sexual request or conduct has the purpose or effect of unreasonably interfering with an employee's work performance or education or creating an intimidating, hostile, or offensive environment.

Sexual harassment is further defined by the Office of Civil Rights (OCR) as unwelcome conduct of a sexual nature that can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the school's program. Therefore, sexual harassment of students is a form of sex discrimination prohibited by Title IX.

An accusation of sexual harassment is a most serious charge that may stigmatize an individual who is wrongly accused. However, the right to bring a charge in good faith is protected. Internal interference, coercion, or retaliation

against any person complaining of alleged discriminatory personal conduct is prohibited.

EXAMPLES

Actions deemed to violate this policy include, but are not limited to, the following:

- a. It is against the policy of Western Carolina University for its employees or students to subject other employees or students to unlawful treatment on the basis of their gender.
- b. It is against the policy of Western Carolina University for its employees or students to propose to other employees or students that they engage in or tolerate activities of a sexual nature in order to avoid some punishment or receive some reward.
- c. It is against the policy of Western Carolina University for its employees or students to create a hostile or intimidating environment in which verbal or physical conduct based on gender, because of its severity and/or persistence, is likely to interfere significantly with work, education, or living conditions.
- d. It is against the policy of Western Carolina University for its employees or students to continue verbal or physical conduct of a sexual nature when the employees or students of the university to whom such conduct is directed have indicated clearly, by word or by action, that such conduct is unwanted. Clearly inappropriate physical contact, threats, or sexual propositions are always inappropriate whether as a single incident or continuing conduct.
- e. It is against the policy of Western Carolina University for its employees or students to exert subtle pressure for sexual activity, an element of which may be conduct such as repeated and unwanted staring.
- f. It is against the policy of Western Carolina University for its employees or students to engage in a pattern of conduct which embarrasses and/or humiliates and which includes one or more of the following: (i) comments of a sexual nature; or (ii) sexually explicit statements, questions, jokes, or anecdotes.

PROCEDURES FOR SEXUAL HARASSMENT POLICY

Employees and students who believe that they have been subjected to sexual harassment have several, independent options available to them within the University to address the situation and seek a remedy. The options range from informal discussions with the Office of Student Affairs or other appropriate Vice Chancellor's office and/or the Director of Equal Opportunity Programs, seeking assistance from the Counseling Center, to formal grievance procedures. Once the University becomes aware of a problem, it reserves the right to pursue an inquiry in its name even though a person chooses not to pursue a complaint under these procedures.

PROCEDURES FOR COMPLAINTS OF OTHER FORMS OF DISCRIMINATION

Employees or students who believe that an employee or another student has unlawfully harassed them on the basis of their race, age, color, creed, national

origin, religion, disability, or political affiliation should follow the same procedures outlined below for sexual harassment.

FORMAL COMPLAINTS AND INVESTIGATIONS

Filing a Complaint

Students or employees who believe that an employee or another student has unlawfully harassed them may make a formal complaint, which will be investigated. The complainant should prepare a written statement describing the incident(s) of harassment. While there are no time limits barring a complainant's use of this part of the procedures, delay by the complainant in bringing a complaint may make it difficult for the University to properly investigate the matter. Complaints shall be made to and investigated by the following individuals:

A. Complaints from Students ----- Complaints from students about other students should be reported to the Student Affairs Office and shall be handled in accordance with student disciplinary rules. Complaints from students about university employees, agents, or contractors shall be made to the Student Affairs Office. A designee from the Office of Student Affairs will discuss the complaint process with the complainant and will immediately refer the student to the Director of Equal Opportunity Programs. The Equal Opportunity Programs Director and the supervisor of the offending party (or other appropriate individual) will investigate the complaint and results of the investigation will be reported to the accused employee's vice chancellor for action if warranted.

B. Complaints from Employees about Other Employees, Agents, or Contractors or about their Immediate Supervisor ----- These complaints should be made to the offending party's supervisor and shall be investigated by the appropriate supervisor and the Director of Equal Opportunity Programs jointly. If the offending party is an employee in another department, the complaint should be made to either the complainant's supervisor or the supervisor of the allegedly offending party. If made to the complainant's supervisor, the supervisor must communicate the complaint to the supervisor of the accused. The Equal Opportunity Programs Director and the supervisor of the accused will investigate the complaint jointly.^{2} Results of the investigation will be reported to the accused employee's vice chancellor for action if warranted. Complaints about third party agents or contractors should be made to the complainant's supervisor or to the Director of Equal Opportunity Programs.

C. Complaints from Employees about Students ----- These complaints will be handled in accordance with student disciplinary rules.^{3}

The Director of Equal Opportunity Programs may be involved in any investigation. In addition, the person charged with investigating the complaint may seek assistance from University Legal Counsel. The Chancellor may assign the University Legal Counsel to assist in the investigation as necessary.

Reporting

All complaints received pursuant to this section must be reported to the Director of Equal Opportunity Programs by the person receiving them. The report shall

be in the form of a written statement identifying the complaining party, the conduct complained of and the employee or student alleged to have engaged in it. No matter may be resolved without first consulting with the Director of Equal Opportunity Programs. All documents, except for student disciplinary records, generated in the handling of a complaint shall be delivered to the Equal Opportunity Programs Director at the conclusion of the process.

Investigation

The purpose of the investigation is to determine whether there is a reasonable basis for believing that a violation of this policy has occurred. The investigator serves as a neutral fact finder. While there are no time limits placed on investigators, investigations must be completed as quickly as justice and fairness allow. If the complainant believes that the investigator is not proceeding diligently, the complainant may seek relief from the investigator's supervisor. Possible outcomes of the investigation include: (1) a judgment that a policy violation occurred and institution of formal disciplinary action in accordance with existing disciplinary policies and procedures; (2) a negotiated settlement of the complaint; (3) counseling of the offender; or (4) a judgment that a policy violation did not occur.

Normally, an investigator will have to disclose the complainant's identity and the substance of the complaint to the accused in order to do a thorough investigation. To prevent such a disclosure, the complainant must file a written instruction with the investigator at the time the complaint is made. Such an instruction may make it impossible for the University to investigate or otherwise respond to the complaint, however.

Generally, the results of the investigation will be confidential under State Personnel laws making it impossible for the University to share the results of the investigation with the complainant. Complainants will be notified, however, when an investigation concludes and when appropriate action is taken.

MEDIATION

After a formal complaint is made, the investigator or either party may ask for mediation of the dispute between the parties. Mediation will be conducted if both parties sign a written consent to mediate. The investigation will continue independent of the mediation process unless both parties request that the investigation be delayed pending the outcome of mediation and the University, through its Legal Counsel, agrees to the delay. Any agreement arrived at during mediation to terminate the investigation requires approval by the University through its Legal Counsel. Information disclosed by either party during mediation will not be made part of the investigation. Neither the mediation process, any agreement reached by the parties, nor anything that occurs during mediation is grievable by any party.

GRIEVANCE PROCEDURES

After these procedures are utilized and a decision is made regarding the complaint, any further review is limited to that which is allowed by existing grievance procedures. The proper subject for any such review is the disposition of the complaint. All grievances involving alleged sexual harassment shall be reported to the Director of Equal Opportunity Programs when they are filed.

Any person who wants to file a grievance concerning sexual harassment should not initiate the grievance with the supervisor, faculty member, or other employee who is the object of the complaint. If any University grievance policy or procedure requires a grievant to file the grievance with an employee who is

the allegedly offending party, the grievant shall instead file the grievance with the allegedly offending party's supervisor.

REPORTING REQUIREMENTS

The Director of Equal Opportunity Programs shall file an annual report with the Chancellor describing activity under these policies and procedures.

TRAINING REQUIREMENTS

The Director of Equal Opportunity Programs is responsible for developing or obtaining educational materials addressing sexual harassment as well as conducting training on the subject. The Sexual Harassment Training Program will have two components: a basic education and training program for all new employees (EPA and SPA) to be conducted as part of new employee orientation and an advanced education and training component for managers who might serve as investigators and others as appropriate. Any employing unit, including academic departments, may request advanced education and training through the Director of Equal Opportunity Programs as needed. Materials also must be made available for use by employees or students who want to develop a better understanding of sexual harassment.

FOOTNOTES

[1] This policy also applies to those who hold student status and work in some capacity for the University. Student to student problems are governed by the Student Code of Conduct as outlined in the Student Handbook available from the Office of Student Affairs. Policy on student harassment of faculty or staff is found in the Student Handbook.

[2] If the offending supervisor's supervisor is the Chancellor, the investigation will be conducted by the Chancellor's designee. If the offending supervisor is the Chancellor, the complaint should be made to the chair of the Board of Trustees. The investigation will be conducted by the Board's designee.

[3] These rules may be found in the Student Handbook.

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