

UNIVERSITY OF WISCONSIN-STOUT

NON-DISCRIMINATION POLICY: Employees, Vendors, Contractors, Subcontractors, Program Participants, and Visitors or Users of UW-Stout Services

Policy No. 90-61

Date: 2/20/90

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1.0 STATEMENT OF POLICY

1.1 The University of Wisconsin-Stout (University) is committed to providing an academic and workplace environment for employees which recognizes the dignity and worth of all members of the university community. Discrimination violates the dignity of the individual and the integrity of the University as an institution of higher learning. The University will not tolerate discrimination or harassment by or toward employees and visitors on the basis of sex, race, religion, color, creed, disability, sexual orientation, gender identity or expression, national origin, ancestry, age, marital status, pregnancy, political affiliation, arrest or conviction record, veterans status, or any other prohibited basis defined by federal or state law or University of Wisconsin System policy. Discrimination and harassment are inconsistent with the University's efforts to foster an environment of respect for all members of the university community. Incidents of discriminatory conduct are detrimental to the individuals directly involved and diminish the university community as a whole. It is, therefore, the policy of the University that such behavior will not be tolerated and will be dealt with according to the procedures outlined below. Retaliation for filing a complaint of discrimination or harassment is also a form of harassment and is therefore prohibited.

1.1.1 Discrimination against Employees or Applicants: In accordance with federal and state laws and UW System policy, no employee or prospective employee of the University may be discriminated against on the basis of age, race, color, creed, religion, disability, sex, sexual orientation, gender identity or expression, marital status, pregnancy, veterans status, relationship to other employees, ancestry, national origin, arrest or conviction record, political affiliation, membership in the national guard or military reserve, or use or nonuse of lawful products off university premises during nonworking hours. Employment policies, practices, and procedures that are covered include but are not limited to recruiting, interviewing, testing, screening, selection, placement, classification, evaluation, transfer, promotion, training, compensation, fringe benefits, layoffs, and termination.

- 1.1.2 Harassment: Harassment based on sex, race, religion, color, creed, disability, sexual orientation, gender identity or expression, national origin, ancestry, age or any other prohibited basis defined by federal or state law or University of Wisconsin System policy is a form of discrimination and is prohibited.
- 1.1.3 Retaliation: Retaliation is defined as any act of reprisal, including negative or otherwise unwarranted treatment, related to the reporting of, or participation in a complaint of discrimination/harassment. Retaliation may include, but is not limited to a) taking negative tangible employment actions against a person; b) taking actions that substantially interfere with or have a chilling effect on the employee's ability to participate fully in and benefit from the work or educational environment; c) failing to provide assistance or instruction that would otherwise be provided; d) failing to fairly and/or objectively evaluate an employee's performance; or e) otherwise sabotaging an employee's performance or evaluation.

It is a violation of this policy to engage in any retaliatory acts against an employee who reports an alleged incident of discrimination or harassment or any employee who testifies, assists, or participates in a proceeding, investigation, or hearing relating to an allegation or complaint of discrimination or harassment.

- 1.2 Board of Regents Policies: This policy shall be enforced in a manner that is consistent with Board of Regent's policies and statutes relating to non-discrimination and equal opportunity, and the statutory protections under both state and federal law.
- 1.3 No Impact on Academic Freedom: This policy shall not abridge any individual's speech and due process rights under the First and Fourteenth Amendments; nor shall it abridge principles or rights of academic freedom or the University's educational mission. Prohibited discrimination or retaliation is not an expression protected as a matter of academic freedom.

2.0 COMPLAINT PROCEDURES/APPEAL PROCESS

The University has adopted specific procedures as provided in [Appendix A](#) and [Appendix B](#) for initiating an informal or formal complaint, investigation, remedy and appeal in regard to allegations of a violation of this Policy (see [Appendix A](#) - Complaint Procedures; [Appendix B](#) - Appeal Process). Such procedures shall be the exclusive review or appeal rights or remedies at the University level available to any person complaining of discrimination. A person may pursue redress of his or her complaint with an external state or federal agency or judicial system at any time. The right of a person to a prompt resolution of a complaint filed under the appeal procedure shall not be impaired by the person's pursuit of remedies outside the University.

3.0 IMPLEMENTATION

By approval of the Chancellor, or his or her designee, this policy, and the complaint and appeal procedures described in [Appendix A](#) and [Appendix B](#) will be implemented throughout the University. The Chancellor delegates the responsibility for the administration of this policy to the Director of Human Resources. The Director, or his/her designee, shall be responsible for the enforcement of this policy, investigation of all discrimination complaints, dissemination of the policy to the campus community, implementation of education and training programs, maintenance of centralized records of discrimination complaints, and coordination of the resolution of complaints.

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APPENDIX A: COMPLAINT AND INVESTIGATION PROCEDURES

1.0 FILING A COMPLAINT OF DISCRIMINATION

1.1 Complaint Process: Complaints under the Non-Discrimination Policy and Procedure are restricted to complaints of discrimination, harassment or retaliation as outlined in UW-Stout Non-Discrimination Policy No. 90-61, the UWS Regents anti-discrimination and equal opportunity policies, Wisconsin Fair Employment Act, applicable state and/or federal anti-discrimination statutes. This complaint process is internal to the University and applies to incidents that take place at the University and its affiliated off-site locations and/or during University-related events or activities; or affect or impact an employee's working conditions or workplace environment. The complaint may be handled through an informal complaint process and resolution or filed as a formal complaint as stated herein below.

1.1.1 Informal Resolution: In some cases, a complaint can be resolved informally, for example through direct contact with the complainant and the accused, or through the intervention of the complainant or accused's supervisor. The purpose of informal resolution is to address the alleged behavior, discuss the impact of the alleged behavior on the complainant and reach a voluntary and mutually-acceptable resolution to the concern. The informal process is not intended as a process for investigating allegations of wrongdoing, determining whether a violation of policy occurred, or imposing disciplinary action. It is an informal step toward reaching a reasonable and effective resolution between the parties. While informal resolution may result in some mutually agreeable action, such as an apology or a behavior contract, no record of a complaint resolved informally will be placed in the accused official personnel file.

1.1.2 Formal Complaint: If an informal resolution is not reached, or if the offense is so serious or persistent as to warrant an investigation into the allegations, then a formal complaint should be filed in accordance with Sec. 2 below. The purpose of a formal complaint is to determine whether there is sufficient evidence to find that a violation of the Non-Discrimination Policy has occurred, and if so, what remedial action is required in order to properly respond to the violation. A record of the formal complaint, investigative findings and final disposition of the matter shall be made a part of the accused's official personnel file if found guilty. If the accused is found not guilty, the complaint will be removed from the official personnel file.

- 1.2 Proper Complainants: Individuals who may utilize this complaint filing process are limited to individuals applying for employment at the University of Wisconsin-Stout, UW-Stout employees, vendors, contractors, subcontractors, program participants and visitors or users of UW-Stout services.
- 1.3 Duty to File in Good Faith/No False Reports: Any person who files a complaint, submits allegations of discrimination or harassment, or provides information during the investigation of a complaint is presumed to have participated in the investigatory process in good faith. It is a violation of this policy for persons to knowingly make a false allegation or complaint, or knowingly provide false information at any stage of a complaint process, including but not limited to the investigative process.
- 1.4 Confidential Nature of Process: Due to the sensitive nature of discrimination cases, complainants, respondents, witnesses, and any other parties involved in a complaint of discrimination are expected to maintain confidentiality throughout the complaint and investigative process. Information relating to the alleged discrimination should be shared only with individuals who have a legitimate need to be informed and/or apprised of the details of the case. The University shall take all reasonable and necessary steps to maintain confidentiality during the complaint and investigative process; however, confidentiality cannot be guaranteed.

2.0 REPORTING DISCRIMINATION/FORMAL COMPLAINT

- 2.1 Formal Complaint: In order to facilitate the efficient and effective investigation and resolution of complaints, a complaint should contain a clear and concise factual description (either verbal or written) of the alleged incident or violation, the date or period of time during which the situation took place, the issue involved (including the reasons the complainant believes the alleged discrimination violates university rules or policies or adversely affects the complainant's work performance, work environment or obligation to the university), the name of the victim, the name of the accused, names of any witnesses, and the relief sought.
 - 2.1.1 Employees or Applicants for Employment: An employee or applicant for employment who believes that he or she has been the victim or witness of discrimination or retaliation against him or herself or others should promptly report this belief and the basis thereof to either his or her direct supervisor, the supervisor of the accused, the Office of Human Resources and/or the Office of the Chancellor.
 - 2.1.2 Other Complainants: Any University vendor, contractor, subcontractor, program participant, visitor or user of UW-Stout services who believes that he or she has been the victim or witness of discrimination or retaliation against him or herself or others should promptly report this belief and the basis thereof to the Human Resources Office. The same

investigative and finding process shall be initiated in regard to the complaint.

2.2 Official Recipient of Complaints: No later than five (5) business days from receipt of a complaint by a supervisor or other University representative, the recipient shall forward the complaint to the Human Resources Office for processing. Within five (5) business days of receiving a complaint of discrimination, the Director of Human Resources, or her or his designee, shall make an initial determination as to whether the complaint provides facts sufficient to warrant an investigation.*

2.2.1 Insufficient Evidence to Warrant Investigation: If the information or evidence submitted to the Director of Human Resources does not provide sufficient information or evidence to warrant an investigation, the Director shall notify the alleged victim, the accused, and/or the accused's supervisor. The alleged victim may pursue a review of the evidence and/or the complaint through appropriate administrative agencies or judicial venues.

2.2.2 Sufficient Evidence to Warrant Investigation: If the Director of Human Resources, or her or his designee, determines that the complaint warrants an investigation, consistent with the independence and integrity of the investigation, the Director shall notify the victim, the accused, the accused's supervisor of the investigation. The Director shall also notify each individual of the name of the investigator(s) he/she has assigned to the complaint. Further, the Director of Human Resources may recommend to the Chancellor that the accused be placed on administrative leave, or otherwise temporarily ban such individual from campus pending the investigation, if the Director of Human Resources believes that it is in the best interest of the University, or may aid the investigation. The Director of Human Resources shall consult with the appropriate supervisor before determining that an accused will be placed on paid administrative leave and/or removed from campus.

3.0 INVESTIGATIVE PROCESS

3.1 Initiate Investigation: Upon receipt of a complaint and determining that there is sufficient evidence to warrant an investigation in regard to the allegations of discrimination, and after notifying all applicable parties pursuant to the provisions herein above, the Director of Human Resources, following consultation with the Chancellor or his/her designee, shall initiate the investigation process by assigning the matter to a staff member in the Human Resources Office or other designated office as approved by the Chancellor. The investigator shall be familiar with the University's policy and procedures relating to complaints of discrimination, harassment and retaliation. The investigator shall conduct the investigation in accordance with this Appendix A and pursuant to the direction of the Director of Human Resources, who shall be responsible for the investigation of complaints.

The complainant(s) or respondent(s) may have a representative from the University community or private legal counsel to be present during any of the proceedings. The role of the representative or legal counsel shall be limited to providing advice and support to the party during the proceeding. The representative or legal counsel shall not speak on behalf of the complainant or respondent nor directly participate in the investigation, except to the extent that the representative may be a witness. The complainant and respondent shall present their evidence and statements on their own behalf. The complainant or respondent must notify the Human Resources Office or the appeal panel no less than three (3) days from the date of the next proceeding that he or she will have a representative or legal counsel present. Failure to do so may result in the Human Resources Office or appeal panel refusing to allow the representative or legal counsel to be present during the proceeding.

- 3.2 Time Limit for Completion: The investigator(s) shall begin the investigation as soon as practicable, and shall complete the investigation as promptly as reasonably possible, but no later than sixty (60) business days from the date the Human Resources Office received the complaint.*
- 3.3 Rights of Complainant: Any individual who reports being a victim of discrimination shall have the following rights:
- a. To present relevant information to the investigators;
 - b. To be informed of the conclusion(s) reached as a result of the complaint;
 - c. To be free from retaliation for filing a complaint; and
 - d. To appeal any adverse determination pursuant to the relevant policies.
- 3.4 Rights of Accused: Any individual who is accused of discrimination or harassment shall have the following rights:
- a. To be informed of the nature of the allegations and sufficient details that will sufficiently provide the accused an opportunity to respond;
 - b. To present relevant information and evidence to the investigator;
 - c. To be informed of the investigative process, the findings and conclusions reached; and
 - d. To appeal any adverse determination pursuant to Appendix B herein or the rights provided to employees under applicable campus or Board of Regents policies or procedures, or applicable collective bargaining agreement.
- 3.5 Report and Findings: Upon completion of the investigation, the investigator(s) shall prepare a confidential report of the findings and any recommendations to the Director of Human Resources. The report shall include a statement as to whether the investigator(s) believes that a probable violation of the University's Non-Discrimination Policy occurred, a summary record of the information gathered, and any mitigating or aggravating factors to be considered. This report shall be completed within five (5) business days, or as soon as practicable following the completion of the investigation.
- 3.6 Confidentiality of Process: Consistent with the University's obligation to investigate

complaints of discrimination or retaliation, and to the extent permitted by law, the complaint, investigative process and findings, except for the final disposition, will remain confidential.

4.0 FINDINGS

4.1 Initial Findings by Director of Human Resources: Upon receipt of the investigative report submitted by the assigned investigator(s), the Director of Human Resources shall review the report and make a determination as to whether the investigation revealed evidence that is sufficient to find that a violation of the Non-Discrimination Policy occurred. The following actions shall be taken:

4.1.1 Insufficient Evidence: If the Director of Human Resources, or his or her designee, determines that the evidence is insufficient to support a finding that the Non-Discrimination Policy was violated, the Director shall prepare a written notice of the conclusion and provide a copy to the alleged victim, accused, and the accused's supervisor. Such notice shall specify that retaliation against the alleged victim is strictly prohibited and any such retaliation shall result in disciplinary action, up to and including termination.

4.1.2 Sufficient Evidence: If the Director of Human Resources, or his or her designee, determines that the evidence is sufficient to support a finding that the Non-Discrimination Policy was violated, the Director shall prepare a written summary of the investigative process, findings and recommended action, if any. A copy of this summary shall be provided to the complainant, accused, and the accused's supervisor within five (5) business days of its completion.* Prior to determining an appropriate remedy and/or disciplinary action in accordance with applicable disciplinary policies or procedures and/or applicable collective bargaining agreements, the Director of Human Resources shall consult with appropriate supervisory personnel and hiring authority of the accused. Such consultations shall be considered in developing a proper remedy and/or recommended disciplinary action.

5.0 REMEDIAL ACTION

5.1 Action Imposed: If the Director of Human Resources, in consultation with the employee's supervisor, determines that disciplinary action should be imposed against the violating employee, then disciplinary action may be imposed in the manner described herein below. The level of disciplinary action taken will be dependent on the nature, severity, frequency and pervasiveness of the violation(s), and may include the following action as stated herein.

5.1.1 Employees: If there is a finding that a University employee violated the

Non-Discrimination Policy, the Director of Human Resources, in concurrence with the employee's supervisor, may impose sanctions including, but not limited to:

- a. Apology to the victim
- b. Advice and counseling
- c. Required attendance at training programs which are relevant to nondiscrimination, inappropriate workplace behavior, cultural diversity or other related program.
- d. Written warning
- e. Letter of reprimand
- f. Removal of discriminatory, offensive or inappropriate material
- g. Required attendance at substance abuse training, if substance abuse was involved
- h. Loss of travel dollars
- i. Loss of choice assignments
- j. Change of job or class assignment
- k. Suspension, probation, termination
- l. Loss of access to University-related facilities, property or equipment

5.1.2 Vendors, Contractors, Subcontractors, Program Participants, Visitors:

Upon receipt of the findings, conclusions and recommendations, if the Director of Human Resources determines that a violation of the Non-Discrimination Policy occurred, he/she shall recommend an appropriate sanction to the Chancellor, who shall make the final decision as to what sanction should be imposed. The Chancellor's decision shall be final. Any right to a review or appeal of such decision shall be in accordance with applicable statutory or administrative rights or remedies. An appropriate sanction or action may include, but is not limited to, the following:

- a. Apology to the victim
- b. Written warning
- c. Letter of reprimand
- d. Removal of offensive or inappropriate material
- e. Suspension, probation, dismissal or expulsion
- f. Removal from approved bid list for any University-related projects, programs or other
- g. Loss of access to University-related facilities, property or equipment
- h. Termination of current contract

5.2 Appeal or Review of Action: Any disciplinary action imposed against an employee shall be issued in accordance with the appropriate Board of Regents policies or statutes, campus disciplinary policies and/or collective bargaining agreements. An employee who seeks to appeal or request a review of such disciplinary action or dismissal shall have the rights to such review in accordance with the applicable

campus disciplinary or dismissal policies, Board of Regent policies and statutes, or applicable collective bargaining agreement.

6.0 INFORMATION RESOURCES

6.1 Information Resource Personnel: Information resource personnel shall assist individuals who believe they may be victims, witnesses, or others with knowledge of discrimination in filing a complaint. Information resource personnel may include, but are not limited to, the Director of Human Resources, Employee Relations Specialist, and supervisors. Further, individuals who complain of or are accused of discrimination, witnesses, or supervisors of parties to a complaint may consult information resource personnel for assistance during the investigation or subsequent processes. Information resource personnel also may provide the following information:

- a. The Board of Regents Non-Discrimination Policies;
- b. The UW-Stout Policies on Non-Discrimination;
- c. The UW-Stout Non-Discrimination complaint and investigation procedures; and
- d. Information related to campus and other resources as appropriate.

6.2 Publish Information: Designated information resources will be published in appropriate locations as determined by the Director of Human Resources.

7.0 DISCLOSURE OF INVESTIGATIVE FILES

7.1 Redacted Documents for Litigation: The Director of Human Resources may provide, prior to formal litigation, and subject to protecting the identity of the alleged victim or potential witnesses, redacted reports, documents and other materials germane to the investigation. The decision of the Director of Human Resources or the Chancellor's Office, with appropriate consultation regarding disclosure, shall be final and non-appealable.

7.2 Documents Protected/Confidential: Any documents disclosed either to the accused, the alleged victim, or to those representing either party, shall be used for the sole purpose of investigating or defending against the allegations of discrimination, and shall not be disclosed to any third parties, unless required by law. Information contained in any such documents shall remain confidential for all parties, to the extent allowable under applicable laws, and subject to the University's duty to investigate claims of discrimination. Under no circumstances shall any such documents or information contained therein be used to retaliate against the alleged victim, the accused, their representatives or any participating witnesses.

***The time frame set for these procedures may be extended if circumstances warrant the need for additional time, and such extension is reasonable and necessary.**

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APPENDIX B: APPEAL PROCESS

1.0 NON-DISCRIMINATION APPEAL RIGHTS

Upon the conclusion of the investigative process and upon completion of the Director of Human Resource's written findings, conclusions and recommendation to the appropriate university official, the complainant or the accused may seek a review of the Director's findings and recommendation under the following procedures. The procedures set forth herein shall be the exclusive remedy at the University level available to any person complaining of discrimination or an accused who has been found to have violated the Non-Discrimination Policy (or applicable Board of Regents policies or statutes).

2.0 APPEAL PANEL

2.1 Creation of Panel: A panel of university employees and students (Appeal Panel) shall be drawn from a pool composed of three representatives from each of the three divisions of the University, and two representatives from the student body. Division heads and the President of the Stout Student Association will recommend candidates for the pool to the Director of Human Resources, who will forward the recommendations to the Chancellor. The eleven members of the pool will be approved by the Chancellor on the basis of ability to maintain objectivity; to maintain confidentiality; and to attend training. The Appeal Panel pool shall include representatives from faculty, staff, civil service, and student representation; and shall include both males and females as well as represent diversity.

2.2 Composition of Panel Members: The Appeal Panel shall be composed of three members of the Non-Discrimination Panel pool. None of the three panel members shall be drawn from the same school, college, or other reporting area as either the complainant or the accused.

3.0 APPEAL PROCEDURES

3.1 Time Line for Requesting Appeal: Within five (5) business days of notification of the results of the findings and recommendations by the Director of Human Resources, a complainant or accused may submit a written request for appeal to the Human Resources Office. Said request must state the nature and basis for the appeal and what remedy, if any, is sought. If a request for appeal is not received within the timeframe herein, the Director of Human Resource's findings and recommendations may be acted upon by the appropriate University official in regard to taking appropriate action in light of the findings and recommendations.

- 3.2 Selection of Panel Members: Within five (5) business days of receipt of the notice of appeal, the Director of Human Resources shall select the three members of the Non-Discrimination Appeal Panel, taking into account such factors as the nature of the complaint, the prior experience and availability of the eligible members of the pool, and equitable gender representation on the panel, and provide each member of the panel with a copy of the investigation report.*
- 3.3 Conflict of Panel Member: If any panel member has a conflict of interest, or if the complainant or accused objects to a member serving on the Panel, the Director of Human Resources shall replace the member with another individual from the pool. The Director shall determine the reasonableness of the objection and whether a replacement is warranted.
- 3.4 Stay of Action During Pendency of Appeal: An appeal shall stay any further action or implementation of disciplinary action or remedies, unless the Director of Human Resources determines that substantial harm will likely be imposed upon the complainant, witnesses, or any employee, student or member of the campus community. If such determination is made, the Director of Human Resources shall recommend to the Chancellor that the accused be temporarily removed and banned from the campus during the pendency of the appeal, and such action is necessary and reasonable. The Chancellor shall make the final decision in regard to this action.
- 3.5 Panel Review and Decision: Within ten (10) business days of receipt of the investigation report, the Appeal Panel will convene to review and discuss the investigation report, findings and conclusions. Within ten (10) business days from the date of this review, the Appeal Panel shall issue a written decision in regard to its review and either uphold, reverse, or modify the decision.*
- 3.6 Panel Report and Findings: Within ten (10) business days of the conclusion of the Appeal Panel's review, it shall prepare a written report of its decision, and any recommendations for sanctions, and forward a copy of such report to the complainant and accused with a copy to the Director of Human Resources. *
- 3.7 Finding That Violation Occurred: If the Appeal Panel makes a finding that the Non-Discrimination Policy was violated, the Director of Human Resources will forward a copy of the Appeal Panel's report and recommendations for sanctions to the appropriate University administrators for action. Within ten (10) business days of receipt of the Appeal Panel's report and recommendations, the appropriate University administrator will impose sanctions as deemed appropriate and in accordance with applicable policies and procedures relating to disciplinary action or dismissal.*
- 3.8 Final Appeal to Chancellor: Within five (5) business days of receipt of the Appeal Panel's report, either the accused or complainant may request a review of the Appeal Panel's finding to the Office of the Chancellor, with a copy to the Director of Human

Resources and the appropriate supervisor. Within fifteen (15) business days from the date the appeal is received, the Chancellor, or his or her designee, shall consider the appeal in light of the records of the Director of Human Resources and the Appeal Panel, and issue a final decision to either uphold, modify or reverse the Appeal Panel's decision.* The decision of the Chancellor shall be final. Any review or appeal of the Chancellor's decision shall be in accordance with and/or subject to applicable state or federal laws.

***The time frame set for these procedures may be extended if circumstances warrant the need for additional time, and such extension is reasonable and necessary.**