Appendix H. Discrimination And Harassment Policy And Procedure

WALLA WALLA UNIVERSITY
DISCRIMINATION AND HARRASSMENT POLICY AND PROCEDURE
EFFECTIVE OCTOBER 25, 2010

INTRODUCTION

Walla Walla University believes that every person is created in the image of God as a being of inestimable value and worth. Therefore, the university promotes respect and dignity for others, fostering an academic, work, and living environment that is free from discrimination and harassment.

The university seeks to maintain an environment that is free from all forms of discrimination, including harassment as defined in this policy. Discrimination or harassment in any form that is prohibited by law or university policy will not be tolerated.

Discrimination/harassment is prohibited by federal, state, and local laws including, but not limited to, Title VII of the Civil Rights Act of 1964; the Age Discrimination Act of 1975; and the Americans with Disabilities Act of 1990.

The free exercise of religion, guaranteed by the United States Constitution, includes the right to establish and maintain religious educational institutions. The university is incorporated in Washington State as a religious nonprofit corporation, owned and operated by the Seventh-day Adventist Church. Federal and state guidelines recognize the right of religious institutions, such as the university, to seek personnel and students who support the goals and practices espoused by the institution, including rights to give preference in employment of faculty and staff, and admission of students, to members of the church which sponsors the institution.

SCOPE

This policy applies to all members of the Walla Walla University campus community, while they are on university property or are participating in university related/sponsored activities off-campus.

DEFINITIONS

1. Campus community - all Walla Walla University employees, students, and volunteers.

2. Complainant - the person making a complaint of discrimination/harassment.

3. Alleged harasser - the person against whom the allegation or complaint of discrimination/harassment is made.

4. Allegation (concern/complaint) - a statement by a complainant that he/she believes an act of discrimination/harassment has, or may have, occurred. This notification may be verbal or in writing.

PROHIBITED CONDUCT

Discrimination
Disparate and unfair treatment of any individual because of his/her race, color, sex, national origin, age, or disability as defined by federal, state, or local laws is prohibited. This includes harassment and intimidation.

Discrimination also includes treating an employee with caregiving responsibilities differently based on their race, color, sex, national origin, age, or disability. Examples include, but are not limited to, treating male employees who are caregivers differently than female employees who are caregivers, limiting a pregnant employee's job duties based on pregnancy-related stereotypes; or denying a male employee leave to care for his child when a female employee would be granted such leave.
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Harassment
Inappropriate conduct directed toward an individual or group because of his/her race, color, sex, religion, national origin, age, disability, sexual orientation or other protected group status as defined by federal, state, or local laws is prohibited. Conduct that is significant enough to alter an individual's employment conditions, educational environment, living environment, or participation in a university activity, and that creates an intimidating, offensive, or hostile environment for employment, education, or participation in a university activity, is illegal and prohibited.

Harassing behavior is typically perceived by the receiver (or observer) as unwelcome and includes, but is not limited to, the use of verbal or practical jokes, unwelcome touching, offensive remarks or put-downs, or displays of objects and materials that create an offensive environment.

Sexual Harassment
Sexual harassment is behavior of a sexual nature that is unwelcome and offensive to the person or persons it is targeted toward. Examples of harassing behavior may include, but are not limited to, unwanted physical contact, foul language of an offensive sexual nature, sexual propositions, sexual jokes or remarks, obscene gestures, and displays of pornographic or sexually explicit pictures, drawings, or caricatures. Use of a personal computer or the employer's computer system for the purpose of viewing, displaying, or disseminating material that is sexual in nature may also constitute harassing behavior.

WHO CAN BRING AN ALLEGATION
Any member of the campus community who has been the recipient of, an observer of, or has knowledge of alleged discrimination/harassment by any university employee or student should submit a complaint.

A person does not have to be the direct target of harassment to submit a complaint. Harassing or discriminatory behavior involving others may be sufficiently offensive or disruptive to the work or academic environment, and should be reported.

Upon rare occasion the university may choose to investigate allegations of discrimination/harassment based on information received from individuals outside the campus community, or from sources such as anonymous report forms, letters, or phone calls. However, before any investigation is undertaken, the university will carefully consider the source and nature of the information received; the specificity of the information; the objectivity and credibility of the report's source; and whether individuals who were subjected to the alleged harassment can be identified. If the anonymous complaint contains enough detail about conduct that, if true, would clearly constitute discrimination or harassment, the complaint will be investigated to the best of the university's ability given the anonymous nature of the complaint.

University employees or students who become aware of potential discrimination/harassment of others in violation of this policy should report such conduct. Supervisors, faculty, and administrators have a legal obligation to promptly report instances of discrimination/harassment involving employees, students, or others to an administrator or other appropriate persons as indicated in this policy.

Once the university becomes aware of possible harassment/discrimination, the university will investigate the allegation and, where required, take prompt remedial action to ensure incidents do not occur again.

See University Employee Responsibilities on page 10 for more specific details regarding employee responsibilities.

HOW TO MAKE AN ALLEGATION
If a university employee or student believes he/she has seen, heard, or felt discrimination/harassment, he/she should pursue one or more of these options:

1. Ask the alleged harasser to cease the offending behavior. If the complainant feels comfortable speaking directly with the alleged harasser to address concerns and obtain an appropriate resolution, he/she is encouraged to do so.

   • Example #1 - One person makes a comment that offends another person. The complainant expresses their offense, the complainant and alleged harasser discuss it, and the issue is resolved to the satisfaction of both parties, and no subsequent incidents occur.
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• Example #2 - A person responsible for employees or students observes a minor isolated act of inappropriate behavior, addresses the situation, and it does not reoccur. It is recommended that both the complainant and the alleged harasser create a detailed record of the occurrence for their own records.

While this method of resolution may be desirable and successful in solving the immediate problem, the university will not be officially aware of the problem and thus will not take steps that might be appropriate to address broader concerns.

Individuals who choose not to address the alleged harasser directly, or who have not obtained a satisfactory resolution following such an attempt, are encouraged to utilize other options as outlined below.

2. Students may contact a counselor at Counseling and Testing Services of the Chaplain in Campus Ministries. Counselors can assist the student complainant in a counseling capacity. Because of their professional credentials, these counselors are immune from being compelled to divulge confidences. Any communication with these counselors is not considered official notification to the university, will remain confidential, and will not result in an investigation.

3. Report the issue to a designated university official. Report an issue involving a student to Vice President for Student Life and Mission in Kellogg Hall or dial (509) 527-2511 (on main campus dial ext. 2511).

Report an issue involving an employee or third party to the Director of Human Resources in the Haffner House (203 SW 4th Street) or dial (509) 527-2141 (on main campus dial ext. 2141).

These designated officials will receive official allegations, verbal or written, on behalf of the university and can assist the complainant in reporting the alleged incident. Reports may also be submitted anonymously. If a complainant prefers to speak to a particular gender when directly reporting to the Vice President of Student Life and Mission or the Director of Human Resources the complainant is encouraged to make a request at the time of reporting and an accommodation will be made.

4. Submit a "Notification of Concern Related to Discrimination or Harassment" form found at http://hr.wallawalla.edu/Harassment to the appropriate university officials themselves, without assistance.

5. Call 911 or Campus Security. When a complainant is in imminent danger of being harmed he/she should promptly dial 911. Campus Security may also be contacted at (509) 527-2222 (on main campus dial ext. 2222).

Reports of allegations of discrimination/harassment should be promptly reported. The university will take steps to stop alleged discrimination/harassment as soon as possible, but can only do so if it has knowledge of such behavior and the cooperation of those being affected.

The university will address reported and anonymous allegations of discrimination/harassment and seek a resolution.

When an allegation of discrimination/harassment involves a university student and a university employee, the complaint handling process will be determined based on consultation between the Vice President for Student Life and Mission and the Director of Human Resources. All investigations are conducted in consultation with the appropriate university departments and personnel.

Disciplinary or legal action may be imposed on a university employee who has a duty to act under this policy, and who fails to respond to an allegation, observation, or report of discrimination/harassment as indicated in this policy.

The university does not prevent an individual from filing a complaint with an external agency, but it cannot extend time limits imposed on or by those agencies which are bound by law to handle only recent complaints.

THE COMPLAINT HANDLING PROCESS

Once the university has knowledge of potentially discriminatory or harassing behavior, an investigation will commence to evaluate the allegations, formulate a response that addresses the facts as they are revealed, determine if there is sufficient evidence of violation of policy or law, and ensure necessary action steps are completed.
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Conduct alleged to constitute discrimination will be evaluated according to federal, state, and local laws, as well as university policy. Conduct alleged to constitute harassment will be evaluated according to university policy and required legal standards.

The university will take reasonable steps to investigate allegations irrespective of when they occurred, but urges prompt reporting so that concerns can be fully and expeditiously resolved.

Method of Handling a Complaint

1. The designated university official—the Vice President for Student Life and Mission (students) or the Director of Human Resources (employees/vendors)—will determine if the matter can be resolved informally between both parties. If not, the designated university official will investigate or select an "Investigator," a qualified individual who will conduct the investigation.

If the report involves the designated university official, the President will select a qualified investigator. The Investigator will document the allegation, gathering and maintaining all details.

In appropriate cases, the Investigator may be selected from outside of the university.

2. As soon as practical, the Investigator will inform the complainant of the process before proceeding with the investigation and before the alleged harasser is informed of the complaint and the complaint handling process. The complainant and alleged harasser will be provided with a copy of the Discrimination and Harassment Policy and Procedure document. The alleged harasser will be informed of the concerns. Both parties will be given the opportunity to present verbal and written documentation, and information on witnesses regarding the allegation. The investigation will be a fact-finding inquiry.

The Investigator, upon request, may allow another individual observer (co-worker, friend, family member), excluding legal counsel, to accompany the complainant, alleged harasser, or witnesses during investigatory interviews.

The Investigator will inform the complainant, alleged harasser, witnesses, and other involved individuals of the prohibition against retaliation and reprisal, and of the need for confidentiality. The Investigator will consult, where appropriate, with the Vice President who oversees the alleged harasser's group or area to review questions and documents that might be relevant to the circumstances.

The Investigator may inform the complainant and alleged harasser of the status of the investigation at reasonable times until final disposition of the investigatory report.

3. The Vice President who oversees the alleged harasser's group or area (and Human Resources Director if involving a university employee), to determine what corrective action should be taken. Corrective action, if any, will be based on the seriousness of the offense, the alleged harasser's prior history, and other relevant circumstances. See "Outcome of Complaint Handling Process" below.

Before a final decision is made or corrective action is taken, a written summary of allegations will be delivered to the alleged harasser for his/her opportunity to respond (within a reasonable time to be determined by the Investigator).

4. Charges not substantiated (not likely a policy violation) by the investigation will be maintained in a general investigation file with no record included in the alleged harasser's student/personnel file unless proven relevant to subsequent substantiated discrimination/harassment charges, retaliation, or if the alleged harasser chooses to have the findings filed. All appropriate entities that were involved in the investigatory process will be notified of the findings.

5. A final report that includes, but is not limited to, observations on credibility, factual findings, and remedial actions will be confidentially recorded and filed in the Human Resources Department (employees) and Student Life and Mission office (students).

6. Upon resolution of the investigation, all investigative reports, notes, evidence, and records will be maintained confidentially within Student Life and Mission office (students) or Human Resources Office (employees/vendors) in case they are needed for investigation and response to other allegations, or for legal process.
Information discovered during the investigatory process will be disclosed to others only on a need-to-know basis as determined by the university.

Outcome of Complaint Handling Process
Possible outcomes of the complaint handling process include:

1. A determination that the allegations cannot be substantiated.

2. A negotiated resolution of the allegation.

3. A determination that a violation of the policy has not occurred, but inappropriate actions/behaviors have occurred which may merit corrective action.

4. A determination that a violation of the policy has occurred.

When a violation of the university's policy is established, and a final report has been completed, corrective action shall be:

1. Rapid and appropriate to decrease the chance of recurrence.

2. Reasonably related to the gravity and/or frequency of the violation or violations.

The university shall take whatever corrective action it considers appropriate under the circumstances, including but not limited to counseling, training, reprimand, suspension, transfer, expulsion, or termination.

Corrective action for university faculty will be considered with reference to the Faculty Governance Policy on Termination and Nonrenewal of Faculty Appointments.

Violation of criminal law will be reported to the appropriate legal authorities.

APPEAL

If the alleged harasser does not agree with the final determination, he/she may file an appeal by following the procedures outlined in their respective handbook based on their status (faculty, staff, or student).

CONFIDENTIALITY

Confidentiality is essential for investigation and resolution of discrimination/harassment allegations. Although confidentiality cannot be guaranteed, the interest of both the complainant and the alleged harasser will be protected, to the extent possible, as information is gathered and evaluated.

Therefore, participants in the investigatory and resolution process are authorized to discuss the case only with those individuals who have a legitimate need-to-know. Any questions regarding confidentiality, including who has a need-to-know in a particular case, should be directed to the Student Life and Mission office (students) or Human Resources Department (employees/vendors).

University employees or students who disclose information obtained during the reporting, investigation, or resolution process to individuals not in the need-to-know chain may be subject to corrective action.

The Investigator is authorized to disclose any relevant confidential information gathered during his or her investigation to the appropriate university officials if he or she believes there has been a possible violation of law or university policies.

RETRALIATION

Retaliation against a person who alleges, assists someone with an allegation, or participates in any manner is an investigation or resolution of an allegation related to discrimination/harassment is prohibited.
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Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education.

Any person subjected to continued discrimination/harassment or retaliation is responsible to promptly report the behavior to a designated university official.

CONFLICT OF INTEREST

If at any time during an investigation of discrimination/harassment the Investigator believes that he/she can no longer investigate in an appropriate or impartial manner, he/she may ask that a new Investigator be appointed.

Similarly, if senior administration believes that the Investigator may no longer conduct the investigation in a proper and impartial manner, he/she may appoint another Investigator.

HARASSMENT BY VENDORS, CONTRACTORS AND THIRD PARTIES

If a member of the campus community feels he/she has been harassed by an individual who is not a current member of the campus community, he/she should report the alleged discrimination/harassment following the procedures listed under the section called “HOW TO MAKE AN ALLEGATION” [143].

If the university determines that a third party has harassed a member of the campus community, the university will take corrective action, including reporting violations of criminal law to the appropriate legal authorities.

FALSE AND/OR MISLEADING ACCUSATIONS

Members of the campus community who make false and/or misleading assertions of discrimination/harassment in bad faith, will be subject to investigation and corrective action as appropriate.

EDUCATION AND PREVENTION

The university will provide education and training programs to promote awareness and prevention of discrimination/harassment. Informational materials about the university's Discrimination and Harassment Policy will be provided to the campus community during orientations. Copies of the policy will be posted on the university's website. The policy will also be disseminated annually to all employees and students.

The university will also provide training for appropriate personnel in conducting investigations, taking prompt and remedial actions, and management and implementation of the reporting procedure.

FREE SPEECH AND ACADEMIC FREEDOM

This policy is intended to complement descriptions found in the Governance Handbook that support free speech and academic freedom on the university campus. It should not be construed to limit the scholarly, educational, or artistic content of written, oral, or other presentations or discussions.

The university encourages meaningful, candid discussions in the classroom and other academic settings. This policy is intended to protect the campus community from harassment, not to regulate speech or academic freedom. However, freedom of speech and academic freedom are not boundless, and do not protect speech or expressive conduct that violates state or federal law. True academic freedom and free speech require an environment in which civility and mutual respect is upheld.

CONSENTING RELATIONSHIPS

Relationships Between Individuals in Inherently Unequal Positions

As a Seventh-day Adventist institution, WWU expects the highest standards of professional conduct and integrity among faculty, staff, and students.

There are special risks in any romantic or sexual relationship between individuals in inherently unequal positions, and parties in such a relationship assume those risks. In the university context, such positions include (but are not limited
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to) teacher and student, supervisor and employee (includes student employees), senior faculty and junior faculty, mentor and mentee, adviser and advisee, coach and athlete, and individuals who supervise the day-to-day student living environment and student residents. Because of the potential for conflict of interest, exploitation, favoritism, and bias, such relationships may undermine the real or perceived integrity of the supervision and evaluation provided, and the trust inherent particularly in the teacher-student context. They may, moreover, be less consensual than the individual whose position confers power or authority believes. The relationship is likely to be perceived in different ways by each of the parties to it, especially in retrospect.

Moreover, such relationships may harm or injure others in the academic or work environment. Relationships in which one party is in a position to review the work or influence the career of the other may provide grounds for complaint by third parties when that relationship gives undue access or advantage, restricts opportunities, or creates a perception of these problems. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic involvement, this past consent does not remove grounds for a charge based on subsequent unwelcome conduct.

Expectations When a Relationship of Inequality Exists
Where a relationship between individuals in unequal positions exists, the person in the position of greater authority or power will bear the primary burden of accountability, and must ensure through recusal that he or she does not exercise any supervisory or evaluative function over the other person in the relationship. When recusal is required, the recusing party must notify his/her department head or supervisor so that the department head or supervisor, in consultation with the recusing party, can identify alternate supervisory or evaluative arrangements to be put in place. Department heads will report recusals and the planned response to the Human Resources Director. Failure to comply with these recusal and notification requirements is a violation of this policy, and therefore grounds for corrective action up to and including termination for cause.

Romantic Relationship Between Teacher and Student
At a university, the role of the teacher is multifaceted, including serving as intellectual guide, counselor, mentor and adviser; the teacher's influence and authority extend far beyond the classroom. Consequently and as a general premise, the university believes that a romantic relationship between a teacher and a student, even where consensual and whether or not the student would otherwise be subject to supervision or evaluation by the teacher, is inconsistent with the proper role of the teacher, and should be avoided. The university therefore strongly discourages such relationships. When such a relationship exists, faculty must follow the required notification guidelines discussed in the previous paragraph.

Other Important Considerations in Consenting Relationships
All employees of the university are expected to model the guidelines for sexual behavior as outlined by the Seventh-day Adventist Church. Therefore, any sexual relationship outside of marriage is grounds for corrective action up to and including termination for cause.

Allegations that arise from alleged consenting relationships will be subject to investigation.

UNIVERSITY EMPLOYEE RESPONSIBILITIES

University employees who become aware of potential discrimination/harassment of others, either directly or indirectly, in violation of this policy should report such conduct. Failure to act according to the provisions of this policy may result in corrective action.

Supervisors, faculty, and administrators have a legal obligation to promptly report instances of discrimination/harassment involving employees, students, or others to a designated university official or other appropriate persons as indicated in this policy. This reporting should include specific details, preferably in writing, of what has been observed or heard.

Administrators, supervisors, or faculty members must contact the Vice President for Student Life and Mission (for situations involving students) or the Director of Human Resources (for situations involving employees) to report incidents that might reasonably be construed as possible discrimination/harassment.

This obligation exists even if the complainant requests that no action be taken.
It is not the responsibility of the complainant to correct the situation. Proper university offices must be contacted. The university has an affirmative legal obligation to address all perceived complaints of discrimination or harassment whether they initially appear to be valid or significant.

Administrators, supervisors, and faculty members also have the legal responsibility to protect a complainant from continued discrimination/harassment or retaliation. They must also protect persons accused of discrimination/harassment from potential damage by false allegations. Administrators, supervisors, and faculty members will be held accountable to do so by the university, and also can be legally liable for not properly responding to and taking necessary steps to prevent or stop discrimination/harassment as defined in this policy. Administrators, supervisors, and faculty members are responsible for informing their employees and students of this policy.