



Office of the Chancellor

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# University Policy 53

## Unlawful Discrimination

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*Policy Topic: Governance and Administration; Personnel*

*Administering Offices: Legal Counsel Office*

## I. POLICY STATEMENT ON UNLAWFUL DISCRIMINATION

Western Carolina University (**University** or **WCU**) is committed to equal opportunity in employment for all persons regardless of race, ethnicity, color, religion, sex, pregnancy, sexual orientation, gender identity or expression, national

origin, age, disability, genetic information, political affiliation and National Guard or veteran status. The University is also committed to an inclusive and welcoming environment where scholarship and the exchange of ideas may be freely accomplished. To the fullest extent allowed by law, the University does not permit harassment based on bigotry, slurs and other hateful rhetoric. Additionally, in order to foster participation and learning, to the fullest extent provided by law, the University does not permit discrimination based on the above classes or characteristics. See Section IV. “Definitions” below for a full description of prohibited conduct. In addition, please review University Policy 129, Title IX Sexual Harassment Policy (**Policy 129**).

## II. SCOPE AND APPLICATION OF POLICY

It shall be a violation of this Policy for any employee or agent within the University’s control to engage in Unlawful Discrimination as defined below, including discrimination described in Policy 129 and its related procedures. Employee sanctions for violating this Policy may include a letter of counseling, a letter of warning, a no contact order, and suspension or termination from employment and/or sanctions found in Policy 129 and its related procedures, as applicable. Complaints against students alleging unlawful discrimination or retaliation are addressed under the WCU Code of Student Conduct.

The protections afforded under this policy apply to: (1) all applicants for employment; (2) University officers, faculty, and staff; (3) persons who serve the University as agents (e.g. volunteers, contractors); and (5) visitors. The University is obligated to respond to reports made under this Policy.

## III. DEFINITIONS

“**Protected Status**” means characteristics for which an individual is not permitted to suffer undue distinction or unlawful mistreatment as defined below. Those traits include race, ethnicity, color, religion, sex, pregnancy, sexual orientation, gender identity or expression, national origin, age, disability, genetic information, political affiliation, and National Guard or veteran status.

“**Unlawful Discrimination**” means:

1. Unlawful Discrimination means experiencing disparate treatment based on an individual’s Protected Status. Types of relevant actions include: hiring and firing; compensation, assignment and classification; transfer, promotion or layoff; recruitment; pay, retirement plans and fringe benefits; or altering other terms and conditions of employment or

enrollment based on that individual's Protected Status.

2. Unlawful Discrimination also occurs when a protected individual is subject to a Hostile Environment as defined below.

3. Unlawful Discrimination includes failing to provide reasonable disability, religious, or other legally recognized accommodations where the University has adequate notice of the disability or requested accommodation.

**“Reasonable Person”** is the viewpoint of a hypothetical individual whose sensibilities, sensitivities and receptiveness to ideas are typical of an individual in the same or similar circumstances.

**“Hostile Environment”** occurs when one experiences unlawful distinction, preference, or harm as compared to others based on that individual's Protected Status and that it is sufficiently severe, persistent or pervasive enough to unreasonably interfere with deny or limit: 1) an employee's or applicant for employment's access to employment or conditions and benefits of employment (e.g., hiring, advancement, assignment); 2) a student's or admission applicant's ability to participate in, access, or benefit from educational programs, services, or activities (e.g., admission, academic standing, grades, assignment, campus housing); or 3) an authorized agent's ability to participate in an agent activity. A Hostile Environment is one that a reasonable person (objective standard) would find hostile or abusive and one that a complainant under this policy perceives to be hostile or abusive (subjective standard). Hostile environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, the extent to which the conduct was intended to harm, harass or exploit the complainant, and whether the conduct actually and substantially interferes with an employee's work performance or a student's ability to participate in or to receive benefits, services, or opportunities in the University's education programs and activities.

**“Interim Measures”** are temporary actions the University may impose to stabilize a situation where there is a reasonably articulated violation of this Policy. Interim Measures may be imposed to stop suspected and ongoing Unlawful Discrimination or Retaliation. Interim Measures support the people involved in the allegation, including the reporting party, respondents or witnesses.

**“Retaliation”** is mistreatment or any act of reprisal, interference, restraint, coercion, penalty, discrimination, harassment - overtly or covertly - against any applicant for employment, student, employee, volunteer or agent within the University's control when the person engages in a protected activity. A protected activity includes opposing discrimination or participating in the investigatory process under this policy. Examples of other protected activities include, filing or being a witness to a complaint under this policy or a formal grievance, communicating with a supervisor or manager about unlawful discrimination, answering questions during an investigation, refusing to follow orders that would result in

Unlawful Harassment or Sexual Misconduct, requesting a disability accommodation, or availing oneself of rights protected under the Family and Medical Leave Act (“FMLA”).

## **IV. COMPLAINTS**

### **A. INFORMAL RESOLUTION OF UNLAWFUL DISCRIMINATION**

With the exception of behavior contemplated pursuant to Policy 129, for complaints concerning Unlawful Discrimination, any party may elect to discuss the problem directly with the person whose behavior is questioned before seeking formal assistance, which is recommended in most circumstances. Confronting the offending party in a conversation or in writing to request that he/she stop engaging in the offensive behavior may resolve the situation. Candid discussion between the parties involved about how a behavior made someone feel can be an empowering experience that overcomes the negative feelings associated with the offending conduct.

The Title IX Coordinator may offer to facilitate informal resolution by acting as a mediator, conducting a limited investigation, working with appropriate University personnel, and recommending further administrative action in order to resolve the complaint.

For any complaint under this Policy, a reporting party may request that his or her identity remain confidential. The University will evaluate that request in the context of the University’s responsibility to provide a safe and nondiscriminatory environment for all students, employees, and third parties in order to determine the steps the University will take to pursue the matter.

Some situations may be so serious that informal resolution may not be appropriate and direct progression to the formal initiation of a complaint may be necessary. For example, if a complaint is directed against a supervisor or administrator who would otherwise play a role in responding to and attempting to resolve the complaint, the employee might not wish to discuss his/her complaint with that supervisor but may elect to discuss the complaint with the next supervisor in a direct line of authority.

NOTE: For applicants to SHRA covered positions and SHRA employees, informal resolution occurs as part of WCU Policy 77 “Grievance Policies and Procedures for SHRA Employees,” sub-section V.A. “EEO Informal Inquiry.”

### **B. FORMAL RESOLUTION OF UNLAWFUL DISCRIMINATION**

With the exception of behaviors contemplated pursuant to Policy 129, procedures provided under this Policy allow for a prompt, thorough, and impartial investigation and adjudication process that provides appropriate procedural safeguards and adequate due process for all parties.

## **1. Complaints from Applicants, EHRA Non-Faculty Employees, Faculty, Students, Agents and Visitors Against Other Employees, Agents or Visitors (See Below for Complaints from Applicants to SHRA Positions)**

### **(a) Initiating Section V.B.1 Complaints**

Complaints should be reported, preferably in writing, to the Title IX Coordinator at 520 HFR Administration Building, Cullowhee, NC, 28723. The Title IX Coordinator may be reached by telephone at (828) 227-7116. Complaints should be made within fifteen (15) calendar days of the conduct giving rise to the complaint to ensure a prompt and complete investigation; however, the University reserves the right to initiate investigations and take action at any time depending on the nature of the alleged conduct.

### **(b) Investigation of Section V.B.1 Complaints**

The Title IX Coordinator shall assign to the University Investigator as appropriate. All investigations shall be thorough and impartial and shall be completed within forty-five (45) calendar days from the receipt of complaints. The Title IX Coordinator may seek the assistance of other University officials, in situations where there may be actual or perceived conflicts of interest or as otherwise may be necessary to ensure timely, impartial, and complete investigations.

### **(c) Written Reports /Resolution of Section V.B.1 Complaints**

Upon completion of the investigation, the Title IX Coordinator shall provide to the applicable Executive Council member a written report of key evidentiary findings, based upon a preponderance of the evidence, whether the alleged conduct constituted a violation of this policy and the Title IX Coordinator's recommended resolutions pertaining to the complaint.

The Title IX Coordinator's report is deemed a confidential personnel record of the respondent employee and shall not be disclosed except as required or permitted by law. The applicable member of Executive Council shall be responsible for determining what University action, if any, is warranted.

Upon completion of the investigation, the Title IX Coordinator also shall provide a written response to: (1) the complaining employee apprising him/her that the investigation is complete and whether the alleged conduct constituted a violation of this policy; and (2) the respondent employee apprising him/her that the investigation is complete and whether the alleged conduct constituted a violation of this policy.

### **(d) Internal Appeals of Section V.B.1 Complaint Resolution**

Both the complaining employee and the respondent may appeal the Title IX Coordinator's finding(s) and conclusions within fifteen (15) calendar days of receipt of the Title IX Coordinator's written response. Appeals must be in writing and clearly state the basis for the appeal (i.e., that the findings and conclusions are (i) erroneous; (ii) violate applicable

federal or state law or university policies; or (iii) the result of a flawed process. Appeals must be directed to the Director of Human Resources at 220 HFR Administration Building, Cullowhee, NC, 28723. The Director of Human Resources may be reached by telephone at (828) 227-7218. The Director of Human Resources shall respond to the appeal within thirty (30) calendar days of receipt, and may either uphold, overturn, or modify the finding(s). No further appeal by either party shall be permitted.

## **2. Complaints from Applicants for SHRA Covered Positions and SHRA Employees against Other Employees, Agents or Visitors**

Complaints, investigations and appeals regarding prohibited conduct under this policy shall be processed in accordance with **University Policy 77, “Grievance Policies and Procedures for SHRA Employees”** [ </DISCOVER/LEADERSHIP/OFFICE-OF-THE-CHANCELLOR/LEGAL-COUNSEL-OFFICE/UNIVERSITY-POLICIES/NUMERICAL-INDEX/UNIVERSITY-POLICY-77.ASPX> ]

## **V. RETALIATION PROHIBITED**

This policy seeks to encourage employees and others to report concerns involving discriminatory or harassing personal conduct and accordingly retaliation is prohibited. Any act of reprisal or retaliation, including interference, restraint, coercion, penalty, discrimination, harassment - overtly or covertly - against a student or employee for responsibly reporting under this policy interferes with free expression and violates this policy. Accordingly, individuals who violate this retaliation prohibition may be subject to disciplinary action.

## **VI. EMPLOYEES’ OBLIGATION TO REPORT**

Any University employee who experiences, witnesses, reasonably suspects or receives a written or verbal complaint of an incident of Unlawful Discrimination or Retaliation related to the workplace shall promptly report it to the Title IX Coordinator.

Those employees designated as Campus Security Authorities under University Policy 116 “Clery Act Compliance” are obligated under the law to notify the University Police Department of alleged Clery Crimes that are reported to them (see University Policy 116). All employees are encouraged to report known or suspected crimes to law enforcement to the extent provided by law and according to appropriate professional standards.

In some instances, employees with legally recognized professional privileges may not be subject to mandatory reporting under Section IX. The Title IX Coordinator with Legal Counsel shall delineate these individuals’ reporting obligations by an

official memorandum to the department.

## **VII. FRIVOLOUS OR FALSE COMPLAINTS**

This policy shall not be used to bring frivolous or false complaints. If a complaint has been made maliciously or in bad faith, disciplinary action may be taken against the person bringing the complaint.

## **VIII. CONFIDENTIALITY OF INVESTIGATIONS AND RECORDS**

Information gathered in the course of investigations conducted under this policy will be given the full extent of confidentiality accorded by law to employee personnel records and student education records. Any person who, without authorization, reveals such information may be subject to disciplinary action. Disclosure of the content of complaints will be made on a “need to know” basis, depending on the type of investigation and remedial action required by the complaint. In any event, the accused individual will be informed of the specific allegations in the complaint.

## IX. RELATED POLICIES AND RESOURCES

- [University Policy #10, Equal Opportunity Programs \[ /DISCOVER/LEADERSHIP/OFFICE-OF-THE-CHANCELLOR/LEGAL-COUNSEL-OFFICE/UNIVERSITY-POLICIES/NUMERICAL-INDEX/UNIVERSITY-POLICY-10.ASPX \]](/DISCOVER/LEADERSHIP/OFFICE-OF-THE-CHANCELLOR/LEGAL-COUNSEL-OFFICE/UNIVERSITY-POLICIES/NUMERICAL-INDEX/UNIVERSITY-POLICY-10.ASPX) ,
- [University Policy #58, Improper Relationships between Students and Employees \[ /DISCOVER/LEADERSHIP/OFFICE-OF-THE-CHANCELLOR/LEGAL-COUNSEL-OFFICE/UNIVERSITY-POLICIES/NUMERICAL-INDEX/UNIVERSITY-POLICY-58.ASPX \]](/DISCOVER/LEADERSHIP/OFFICE-OF-THE-CHANCELLOR/LEGAL-COUNSEL-OFFICE/UNIVERSITY-POLICIES/NUMERICAL-INDEX/UNIVERSITY-POLICY-58.ASPX) ,
- [University Policy #77, Grievance Policies and Procedures for SHRA Employees \[ /DISCOVER/LEADERSHIP/OFFICE-OF-THE-CHANCELLOR/LEGAL-COUNSEL-OFFICE/UNIVERSITY-POLICIES/NUMERICAL-INDEX/UNIVERSITY-POLICY-77.ASPX \]](/DISCOVER/LEADERSHIP/OFFICE-OF-THE-CHANCELLOR/LEGAL-COUNSEL-OFFICE/UNIVERSITY-POLICIES/NUMERICAL-INDEX/UNIVERSITY-POLICY-77.ASPX) ,
- [University Policy #109, Campus/Workplace Violence Prevention and Management \[ /DISCOVER/LEADERSHIP/OFFICE-OF-THE-CHANCELLOR/LEGAL-COUNSEL-OFFICE/UNIVERSITY-POLICIES/NUMERICAL-INDEX/UNIVERSITY-POLICY-109.ASPX \]](/DISCOVER/LEADERSHIP/OFFICE-OF-THE-CHANCELLOR/LEGAL-COUNSEL-OFFICE/UNIVERSITY-POLICIES/NUMERICAL-INDEX/UNIVERSITY-POLICY-109.ASPX) ,
- [University Policy # 116, Clery Act Compliance \[ /DISCOVER/LEADERSHIP/OFFICE-OF-THE-CHANCELLOR/LEGAL-COUNSEL-OFFICE/UNIVERSITY-POLICIES/NUMERICAL-INDEX/UNIVERSITY-POLICY-116.ASPX \]](/DISCOVER/LEADERSHIP/OFFICE-OF-THE-CHANCELLOR/LEGAL-COUNSEL-OFFICE/UNIVERSITY-POLICIES/NUMERICAL-INDEX/UNIVERSITY-POLICY-116.ASPX) ,
- [University Policy #129, Title IX Sexual Harassment Policy \[ /DISCOVER/LEADERSHIP/OFFICE-OF-THE-CHANCELLOR/LEGAL-COUNSEL-OFFICE/UNIVERSITY-POLICIES/NUMERICAL-INDEX/UNIVERSITY-POLICY-129.ASPX \]](/DISCOVER/LEADERSHIP/OFFICE-OF-THE-CHANCELLOR/LEGAL-COUNSEL-OFFICE/UNIVERSITY-POLICIES/NUMERICAL-INDEX/UNIVERSITY-POLICY-129.ASPX) ,
- [Western Carolina University Code of Student Conduct \[ /EXPERIENCE/DEAN-OF-STUDENTS/STUDENT-CONDUCT/WCUCODE.ASPX \]](/EXPERIENCE/DEAN-OF-STUDENTS/STUDENT-CONDUCT/WCUCODE.ASPX)

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