

E 221.2 DISCRIMINATION AND HARASSMENT REPORTING

Authority	Executive Director of Human Resources/CHRO
Effective Date	May 21, 1991
Revision Date(s)	September 1, 2021; February 28, 2017; September 15, 2004; May 17, 2002
Reviewed Date(s)	February 23, 2009; October 18, 2006
Related Policies	E-222 – Prohibition of Sexual Harassment Under Title IX
In compliance with	Title VII of the Civil Rights Act of 1964 The Age Discrimination in Employment Act of 1967 Americans with Disabilities Act of 1990 Wisconsin Fair Employment Act

The College is committed to providing an academic and work environment that is free from discrimination and harassment. The College will not tolerate unlawful discrimination, harassment, or retaliation against a person who files a report or participates in the investigation of a report relating to discrimination or harassment by an employee, student, customer, or vendor.

Employees discriminating against other employees, students, or non-employees will be subject to corrective action under appropriate College employment procedure. Students discriminating against other students, employees, or non-employees will be subject to discipline under the applicable student code of conduct. The College will take necessary corrective action to remedy instances where discrimination or harassment is determined to have occurred. All employees are mandatory reporters of harassment and discrimination and are obligated to report harassment to appropriate College officials.

For sexual harassment under Title IX, reports should be made in accordance with Procedure E-222.2 – Responding to Harassment Based on Sex Under Title IX.

Use of this procedure does not preclude the right of a person to also file a complaint with the Equal Rights Division of the Department of Workforce Development, the Department of Education’s Office for Civil Rights, the U.S. Equal Employment Opportunity Commission or the U.S. Wage and Hour Division in the Department of Labor or any other administrative or law enforcement agency with jurisdiction over the complaint. Most non-discrimination laws have a time limit of 180 to 300 days for filing a complaint.

REPORTING PROCEDURE***Step 1: File a Report.***

If a person believes they were subject to an act of discrimination or harassment as defined in this procedure, they may report the discrimination or harassment to the College's Equal Opportunity Officer within 300 days of the date of the alleged discrimination or harassment. The report may be oral or written; however, the College encourages written reports. Reports may be submitted online at blackhawk.edu.

Step 2: Notification of Rights.

Upon receiving the report, the Equal Opportunity Officer will inform the reporting party of their rights under state and federal law. This will include outlining external resources that are available through the Wisconsin Department of Workforce Development and the Equal Employment Opportunity Commission, if applicable.

Step 3: Determination of Validity.

The Equal Opportunity Officer will review the report to determine if it is valid under this procedure. Validity does not concern whether an unfair act has occurred but whether the report pertains to conduct that is governed by this procedure. If the report is determined not to be valid under this procedure, the matter will be closed, and the Equal Opportunity Officer will refer those involved to any appropriate College resources. If the report is determined to be valid under this procedure, the Equal Opportunity Officer will investigate the merits of the report.

Step 4: Investigation.

The Equal Opportunity Officer will conduct a prompt, fair, and impartial investigation of the report that will include, but will not necessarily be limited to, interviews with the reporting party, responding party, and appropriate witnesses; fact and information gathering; and review of documentary evidence. The Equal Opportunity Officer will attempt to complete their investigation within 30 calendar days from receipt of the report. However, the investigation period may be extended if the Equal Opportunity Officer determines an extension is necessary in order to complete a proper investigation. The Equal Opportunity Officer will inform the parties of any extension.

Step 5: Determination of Responsibility.

Within ten days of completion of the investigation, the Equal Opportunity Officer will issue a written determination to both parties regarding whether an act of discrimination or harassment has occurred. This deadline may be extended by the Equal Opportunity Officer if they determine that an extension is necessary in order to prepare the written determination. The Equal Opportunity Officer will make their determination using the preponderance of evidence standard, which means that the Equal Opportunity Officer will base their decision on whether they find it is more likely than not that an act of discrimination or harassment occurred. If the Equal Opportunity Officer finds it is more likely than not that an act of discrimination or harassment occurred, their written determination will also impose appropriate corrective action, up to and including termination of employment or expulsion, as applicable.

Step 6: Appeals.

There are two options for a party who wishes to appeal the determination of the Equal Opportunity Officer: investigation appeals and corrective action appeals.

1. **Investigation Appeals.** Either the reporting party or the responding party may request an investigation appeal of the investigator's decision by submitting a written request for an investigation appeal to the Equal Opportunity Officer within five business days of receiving the Equal Opportunity Officer's decision. An investigation appeal may be filed on either of the following grounds: (1) that the appealing party believes the Equal Opportunity Officer failed to comply with this procedure and that the failure materially affected the outcome of the investigation, or (2) that there is new evidence, unknown or unavailable during the original investigation, that materially affects the Equal Opportunity Officer's original determination. All investigation appeals will be reviewed by the President/District Director or designee. Decisions on investigation appeals will be issued within ten business days of receipt of the appeal request. However, this deadline may be extended if it is determined that an extension is necessary in order to make a proper decision on the appeal.
2. **Corrective Action Appeals.** Either the reporting party or the responding party may request a corrective action appeal by submitting a written request for a corrective action appeal to the Equal Opportunity Officer within five business days of receiving the Equal Opportunity Officer's decision. A corrective action appeal may be used when the requesting party does not contest the Equal Opportunity Officer's determination of whether an act of discrimination or harassment occurred but does wish to appeal the specific sanction imposed. Corrective action appeals will be reviewed by the Executive Director – Student Services if the requesting party is a student or the President/District Designee if the requesting party is an employee. Decisions on investigation appeals will be issued within ten business days of receipt of the appeal request. However, this deadline may be extended if it is determined that an extension is necessary in order to make a proper decision on the appeal. The sanction being appealed will remain in effect during the appeal.

REPORTING PARTY RIGHTS

Reporting parties of discrimination or harassment have the right to:

- Be notified of existing resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available within the College and in the community.
- Be notified about options for, available assistance in, and how to request changes to academic, transportation, and working situations or protective measures regardless of whether the reporting party chooses to report to local law enforcement.

- Report to law enforcement authorities and be assisted by the College in doing so.
- Decline to report to law enforcement.
- File a complaint with the U.S. Department of Justice and/or U.S. Department of Education Office for Civil Rights.
- Exercise rights as detailed in Chapter 950 of the Wisconsin Statutes when reporting to a Wisconsin law enforcement agency.
- Apply for crime victim compensation, which can help pay for unreimbursed expenses that are the result of crimes causing personal injury or death, including lost wages, counseling, medical costs, and replacement of property held as evidence.

REPORTING PARTY AND RESPONDING PARTY RIGHTS

The College shall provide assistance to the reporting and responding parties, including access to copies of nondiscrimination laws and regulations, related guidelines, and other relevant material supplied to the College by the federal government. In addition, the Equal Opportunity Officer shall provide consultation in the use of this reporting procedure.

Neither the reporting party nor the responding party shall arbitrarily delay action of the reporting procedure.

Non-Retaliation

Retaliating directly or indirectly against a person who has in good faith submitted a report, made a report, or participated in an investigation is strictly prohibited. Retaliation includes, but is not limited to, pressuring the person to drop or not support their report or to provide false or misleading information; engaging in conduct that may reasonably be perceived to adversely affect that person's educational, living, or work environment; threatening, intimidating, or coercing the person; or otherwise discriminating against any person for exercising any rights or responsibilities under this procedure. Retaliation may exist regardless of whether the report is ultimately found to have merit. Any retaliation will be treated as a violation of this procedure.

Administration of Procedure

Records shall be kept of each report in the office of the Equal Opportunity Officer. Such records shall be maintained in a confidential manner and for a minimum of three years after the resolution of the complaint.

It is the primary responsibility of the Equal Opportunity Officer to ensure the effective implementation, processing, recordkeeping and notification required by this procedure. The President has appointed Kathy Broske, Executive Director of Human Resources/CHRO, as the Equal Opportunity Officer.

If the Equal Opportunity Officer is named in the report or implicated by the allegations in the report, the report should be filed with the College's Title IX Coordinator. The investigation will be conducted by the Title IX Coordinator, or assigned to another staff member or external person under contract with the College.

DEFINITIONS

- **Discrimination:** A difference in treatment in any service, program, course, or facility provided by the College that is based on a person's legally protected status.
- **Equal Opportunity Officer:** Employee designated by the College's President who has the responsibility for coordinating this procedure. Kathy Broske, Executive Director of Human Resources/CHRO, is the College's Equal Opportunity Officer.
- **Harassment:** Unwelcome conduct based on a person's legally protected status where (1) enduring the conduct becomes a condition of continued employment/enrollment, or (2) the conduct is sufficiently severe or pervasive to create a work/learning environment that a reasonable person would consider intimidating, hostile, or abusive. The conduct may include, but is not limited to, offensive jokes, bullying, slurs, epithets, or name calling; physical assaults or threats; intimidation, ridicule or mockery; insults or put-downs; offensive objects or pictures; and interference with performance. The term harassment, as used in this procedure, shall at all times be interpreted consistent with applicable law. Sexual misconduct is another form of harassment that is prohibited by this procedure. Sexual misconduct includes non-consensual sexual intercourse, non-consensual sexual contact, sexual exploitation, interpersonal relationship violence, sex- or gender-based stalking, sexual harassment, rape, acquaintance rape, sexual assault, dating violence, and domestic violence.
- **Protected Status:** Legally protected statuses include sex or gender, national origin, religion, age, gender identity, gender expression, race, color, genetic information, sexual orientation, disability, military and veteran status, pregnancy and any other protected class established by applicable state, federal, or local law.
- **Report:** A complaint alleging the occurrence of an act of discrimination or harassment as defined under this procedure.
- **Reporting Party:** A person who files a report. A reporting party can be, but is not necessarily limited to, an applicant for employment with the College, a College employee, an applicant for admission to a program or course at the College, or a College student.
- **Responding Party:** The person who the reporting party has alleged to have violated this procedure.