

## WINTHROP UNIVERSITY

### SEXUAL HARASSMENT and DISCRIMINATION POLICY

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#### A. Statement of Policy

Winthrop University declares and reaffirms a policy of equal educational and employment opportunity and non-discrimination in its employment and educational programs and all other activities it operates both on and off University property. Accordingly, it is the policy of Winthrop University that sexual discrimination, in any form, by employees, students, and third parties/visitors will not be tolerated. It is also the policy of Winthrop University that retaliation against any person who has filed a complaint of sexual discrimination or who has assisted or participated in any manner in the investigation and resolution of a complaint of sexual discrimination is prohibited and subject to disciplinary action.

Anyone believing he/she has been the victim of or a witness to, or otherwise has reason to believe or become aware of, discrimination by, or involving, any member of the University community, guests, or visitors on University property or any property controlled by the University, including off-campus University-sponsored events, should report the incident as soon as possible after the conclusion of the incident.

Winthrop University will respond promptly to all complaints of sexual discrimination and retaliation. Immediate and appropriate corrective action will be taken when it is determined that discrimination has occurred.

Violation of this policy can result in personal criminal and/or civil liability for any perpetrator, as well as any disciplinary action that the University deems appropriate.

**Winthrop University does not discriminate on the basis of sex in its educational programs and in other activities operated by the University and is required by Title IX, and specifically 34 C.F.R. Part 106.9, not to discriminate in such a manner. This extends to employees of and applicants for employment or admission to Winthrop University. Inquiries concerning the application of Title IX may be directed to the Title IX Coordinator for the University or to the Assistant Secretary for the Office of Civil Rights of the Department of Education.**

Contact information for the University's Title IX Coordinator is as follows:

Dr. Kimberly Faust  
Executive Director to the President and Secretary to the Board of Trustees  
114 Tillman Hall  
(803) 323-2225  
faustk@winthrop.edu

B. Applicability

This policy applies to all members of the Winthrop University community, including, but not limited to, administrators, faculty, staff, supervisors, employees, students, volunteers, and visitors both on and off campus property. Off-campus property includes, but is not limited to, university programming and sporting event venues. The prohibited sexual discrimination may arise between employment supervisors and subordinates, between instructors and students, between peers, or between any of the foregoing persons who do business with the University.

Contractors and their employees who are doing work for the university on campus or at university events are expected to abide fully in preventing all sexual discrimination involving university students, faculty, staff, and guests as outlined in Section C. Failure of to do so can be considered grounds to terminate their contracts with the university

Students who believe they have been subject to unlawful sexual discrimination or sexual misconduct by another student should contact the Office of the Dean of Students for review of the matter as an alleged violation of the Student Sexual Misconduct Policy found in the Student Handbook.

C. Sexual Discrimination Defined

Sexual Discrimination occurs in multiple forms, including sexual harassment, non-consensual sexual contact (or attempts to commit), non-consensual sexual intercourse (or attempts to commit), and sexual exploitation.

1. Sexual Harassment

Sexual harassment is one of the oldest forms of sexual discrimination prohibited by Titles VII and IX. It is unwelcome conduct of a sexual nature. Sexual harassment is defined by the U.S. Equal Employment Opportunity Commission as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic status;
- Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions;
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive work or academic environment.

Sexual harassment can take many forms. It can be committed by both men and women and can occur between members of the opposite sex or between members of the same sex.

Examples include, but are not limited to, the following:

- Seeking sexual favors or relationships in return for the promise of a grade or other academic opportunity;
- Conditioning an employment-related action (such as hiring, promotion, compensation, or performance appraisal) on a sexual favor or relationship;
- Conduct by individuals in positions of authority or by coworkers or peers that creates a hostile working or learning environment or unreasonably interferes with the ability of a person to perform his/her employment or academic responsibilities; such conduct might include, but is not limited to, the following:
  - Intentional and undesired physical contact;
  - Repeated, unwelcome requests for dates;
  - Repeated, unwelcome sexual advances;
  - Repeated, unwelcome requests for sexual favors;
  - Sexually explicit language, including sexual joking, vulgar, or offensive conversation or jokes, and writings, including emails, texts, and other social media messages;
  - Obscene gestures;
  - Displaying or electronically transmitting lewd pictures or notes;
  - Comments about an individual's physical appearance;
  - Conversation about an individual's own or someone else's sex life
  - Remarks or conduct that demeans or belittles an individual personally or in general because of his/her gender. (This type of gender harassment is a violation of the policy even though the remarks are not sexually provocative and the conduct does not involve sexual advances.)

Other possible types of sexual harassment include: bullying, cyber bullying, stalking, and relationship violence.

- Bullying is unwanted, aggressive behavior that involves a real or perceived power imbalance. Bullying involves a pattern of gestures or communications that places a person in actual or reasonable fear of harm or creates, or is likely to create, a hostile environment. Examples of bullying include, but are not limited to, making threats, spreading rumors, and attacking someone physically or verbally.
- Cyber bullying is bullying that takes place using electronic technology (e.g., e-mail, internet, social media websites, social networking websites, cell phones, etc.) to promote the unwanted, aggressive behavior.
- Relationship violence is a pattern of behavior in an intimate relationship that is used to establish power and control over another person through fear and intimidation. It can include physical abuse, threats of abuse, emotional/psychological abuse, and sexual abuse.

- Stalking is persistent, unwanted behavior that involves a course of conduct directed at a specific person that would cause a reasonable person fear. Stalking includes, but is not limited to, the following types of behaviors:
  - information gathering;
  - repeated, non-threatening mail, e-mails, phone calls, and text messages;
  - leaving notes, flowers, presents, etc. for the target;
  - coincidentally showing up at the same location;
  - sending disparaging messages or images;
  - spreading rumors;
  - repeated threatening mail, e-mail, phone calls, and text messages;
  - breaking into a home or apartment; and
  - following the target using any means
  
- 2. Non-Consensual Sexual Contact (or attempt to commit)  
Non-consensual sexual contact is any intentional sexual touching, however slight, with any object, by a man or a woman upon a man or a woman that is without consent and/or by force.
  
- 3. Non-Consensual Sexual Intercourse (or attempt to commit)  
Non-consensual sexual intercourse is any sexual intercourse, however slight, with any object, by a man or a woman upon a man or a woman that is without consent and/or by force.
  
- 4. Sexual Exploitation  
Sexual exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the sexual misconduct offenses.
  
- 5. Consent  
Consent means an informed, freely given agreement, communicated by clearly understandable words or actions, to participate in each form of sexual activity. Consent cannot be inferred from silence, passivity, or lack of active resistance. By definition, there is no consent when there is a threat of force or violence or any other form of coercion or intimidation – physical or psychological. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts. In order to be consent, the individual must be of legal age and should not be mentally or physically incapacitated. Consent can be revoked at any time. For all of these reasons, sexual partners must evaluate consent in an ongoing fashion and should communicate clearly with each other. To be considered “consent,” the following elements must apply:
  - The consent must be clear, knowing, and voluntary.
  - The individual giving consent must be active, not passive. Silence, in and of itself, cannot be interpreted as consent.

- o If consent is given by words or actions, the words or actions must create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.

6. Overview of Policy Expectations with Respect to Consensual Relationships

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. 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 or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of faculty/staff policies. The university does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the university. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged. Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical.

D. Reporting Sexual Harassment

Winthrop University is committed to taking immediate, equitable, and effective action in responding to all claims of sexual discrimination. In the event that any perceived discrimination or inappropriate conduct based on sex interferes with any employee's work performance, employees are encouraged to immediately report the matter. University faculty, staff and administrators (including, individuals employed in the roles listed in Section E of this policy as reporting sources) who know, or in the exercise of reasonable care should have known, of discrimination and fail to appropriately handle the report may be subject to disciplinary action. In order for the University to be able to remedy alleged discrimination, it is imperative that claims are immediately brought to the attention of administration. Reports of sexual discrimination should be made as soon as possible to enable the University to more effectively investigate the allegations. Failure to report claims of such conduct hamper the University's ability to take appropriate steps to remedy such situations. Every report of perceived discrimination will be fully investigated and corrective action will be taken when appropriate.

Any faculty, staff, or student employee who suspects or has any concern regarding child abuse or neglect should report this information promptly to his/her Department Head, the Office of Human Resources, the Dean of Students, the Campus Police or other law enforcement authority, or Executive Officers. University officials who receive such reports shall consult with the University's Chief of Police who will determine the University's duty under the circumstances and, if determined appropriate, will assist in contacting the proper external authorities.

The University will take steps to ensure that no retaliation will be tolerated against individuals who report claims of discrimination or who cooperate in the investigation of such reports in accordance with this Policy. The University strongly encourages and expects all members of the University community to report suspected or actual incidents involving discrimination. Individuals employed in the roles listed in Section E of this policy as reporting sources are required to report claims of discrimination.

1. Any employee or non-employee who has experienced, or who knows of or through the exercise of reasonable care should have known of, sexual discrimination in any form by a Winthrop employee, may report the incident to the Office of Human Resources, 303 Tillman Hall; (803) 323-2273. An employee may also report the incident to his/her supervisor or any University official. (University officials include administrators, deans, directors, department heads, chairs, faculty members, supervisors /someone who directs the work of others, Campus Police, employees responsible for the security of employees or students, or employees responsible for student and campus activities.)
2. Any student who has experienced or who knows of or through the exercise of reasonable care should have known of, sexual discrimination in any form by an employee of Winthrop University should report the incident to the Dean of Students or Associate Dean of Students, 246 DiGiorgio Campus Center; (803) 323-4503.
3. Any employee or student who has experienced, or who knows of or through the exercise of reasonable care should have known of sexual discrimination in any form may also report the incident to Winthrop's Title IX Coordinator; Dr. Kimberly Faust, Executive Director to the President and Secretary to the Board of Trustees, 114 Tillman Hall; (803) 323-2225.
4. Sexual discrimination may be reported to U.S. Department of Education, Office for Civil Rights, Lyndon Baines Johnson Department of Education Bldg., 400 Maryland Avenue, SW, Washington, DC 20202-1100, Telephone: 800-421-3481;FAX: 202-453-6012; TDD: 877-521-2172; Email: [OCR@ed.gov](mailto:OCR@ed.gov).

E. Responsibility to notify the Office of Human Resources

In some circumstances, a conflict between the reporting individual's desire for confidentiality and the University's duty to investigate may arise if an individual discloses the alleged discrimination, but asks that the matter be kept confidential and that no action be taken. Inaction by the supervisor or University official could lead to University liability. While it may seem reasonable to let the individual determine whether to pursue a complaint, Winthrop University has an affirmative obligation to prevent and correct the discrimination to protect the entire University community. Therefore, it is important that all allegations of discrimination involving a Winthrop employee be reported to the Office of Human Resources. Failure of a University official to report a complaint of sexual discrimination involving a Winthrop employee may lead to disciplinary action, up to and including termination.

Privileged reporting consists of those communications that legally cannot be disclosed, without the reporter's consent, to any other person, except under very limited circumstances such as an imminent threat of danger to self or others. Examples of privileged reporting resources include:

- Counseling Staff (Psychiatrists, Psychologists, Counselors, and Social Workers)
- Health Service Staff (Nurses or Nurse Practitioners)
- Campus Ministry (ordained minister, priest, or rabbi)

Limited confidential reporting consists of those communications that will not be disseminated to others except on a need-to-know basis. A limited confidential reporting source has the obligation to enlist designated campus resources to ensure that necessary steps are taken to protect the community as a whole and that appropriate disciplinary measures are considered and imposed. Examples of limited confidential reporting resources include:

- Residence Learning Coordinators and Resident Assistants
- Victim Services Coordinators
- Fraternity and Sorority Affairs program director
- Dean of Students Office and Student Affairs staff
- Faculty
- Supervisors (someone who directs the work of others)
- Coaches and athletics staff
- All other Campus Security Authorities (Faculty Advisors to student organizations; athletic team coaches; Director of Athletics; Intercollegiate Athletics Administration; Director of Health, Physical Education, Recreation and Dance; the Dean of Students; Director of Residences; Resident Advisors; Campus Police)

#### F. Complaint Procedure

The Office of Human Resources is responsible for investigating allegations of sexual harassment involving Winthrop employees. Every effort will be made to resolve the complaint within 60 days, unless extraordinary circumstances hinder the ability to resolve the complaint in an efficient manner. The amount of time that it will take to complete the investigation will depend on the particular circumstances. The individual in the Office of Human Resources tasked with resolving the complaint ("investigator") will provide periodic status updates to the complainant as the investigation and resolution of the complaint proceeds. The Title IX Coordinator will be involved in the investigatory process once Human Resources receives a complaint, and will also be involved in any decision regarding determining if a violation occurred.

1. Should the employee decide to report the alleged discriminatory conduct, the employee will first be given the option to proceed informally or formally.
  - In situations in which the complaining party elects to proceed informally, the investigator will determine the appropriate steps to resolve the issue without filing a formal complaint.
  - Should the complaining party elect to proceed informally, he/she may elect to stop the informal process at any time and proceed through the formal process.

2. Upon receipt of the formal complaint, the investigator will determine whether any appropriate remedial actions are necessary.
3. Thereafter, the assigned investigator will determine the policies allegedly violated, notify the accused party of the complaint and begin conducting a thorough investigation. The investigation may include interviews of any and all of the following: the complaining party, the accused, any witnesses, and anyone else who might have information that may be helpful. The investigation will also include a review of the relevant data and documents.
4. Upon conclusion of the investigation, the investigator will present a written report to the Vice President for Human Resources, Employee Diversity and Wellness (HRDW). The Vice President for HRDW may request to re-interview any of those previously interviewed or may request additional information. The Vice President for HRDW will prepare a recommendation for remedy or action based on the facts presented using a preponderance of the evidence standard.
5. The Vice President for HRDW will prepare a written recommendation and present the case to the divisional Vice President or other senior leader. The written recommendation will include basic facts and recommend a ruling either in favor of the complainant or the accused. If the Vice President or other senior leader finds that it is reasonable based on a preponderance of the evidence that some form of sexual discrimination in violation of this policy did occur, or a violation of another University policy occurred, a recommended course of appropriate disciplinary action against the accused will be included in the written document. Employees found to be in violation of this policy may incur disciplinary action up to and including termination of employment.
6. The divisional Vice President or other senior leader may re-interview any of those previously interviewed or may request additional information. The divisional Vice President or other senior leader will make the final determination based on a preponderance of the evidence presented. In the event it is determined that sexual discrimination did occur, the divisional Vice President or other senior leader may either take the recommendation for disciplinary action presented by the Vice President for HRDW or may recommend another course of disciplinary action.
7. The complaining party and the accused individual will be notified of the outcome of the investigation.
8. The University reserves the right to amend this procedure depending on the nature of the complaint and the information learned after beginning the investigation into the allegations in the complaint.

G. Disciplinary Actions

Persons found to be in violation of Winthrop's Sexual Discrimination policy will be subject to disciplinary action(s), which may include but are not limited to, oral or written warnings, suspension, transfer, demotion, termination, or expulsion. Willful false accusations will be subject to disciplinary action, which may result in sanctions such as reprimand, suspension, demotion, termination, or expulsion. Winthrop University reserves the right to determine appropriate sanctions to impose in each case.

For covered staff employees in FTE positions, if the disciplinary action is a demotion, termination, or suspension, the action may be grievable under the Winthrop University Policy and Procedure for Grievance and Appeals.

#### H. Appeal Process

The complainant or the accused has a right to appeal the decision of the complaint process. The grounds for appeal include:

1. A claim of error in the investigation or complaint process.
2. A claim of new evidence or information material to the case that was not available at the time of the investigation or during the complaint process, and such evidence could substantially impact the original finding or sanction. The appealing party must include a summary of the new evidence and its potential impact on the case.

Appeals must be submitted in writing to the Title IX Coordinator within seven working days (excluding weekends and University holidays) after notification of the outcome of the complaint process. All appeals will be reviewed to determine if the appeal meets the limited grounds above and is timely. The original findings and disciplinary action will stand if the appeal is not timely or substantively ineligible for an appeal. If the appeal has standing, the documentation will be directed to the Office of the President for consideration. The President will make a final determination.

#### I. Retaliation

Retaliation is conduct causing any interference, coercion, restraint or reprisal against a person complaining of sexual discrimination or against a person assisting in any way in the investigation and resolution of the complaint. Retaliation is a violation of this policy and will not be tolerated. Appropriate disciplinary action will be taken against any person found to have participated in any acts of retaliation. Persons who feel they have been subjected to retaliation for filing a complaint of sexual discrimination or for assisting with resolution of a complaint are encouraged to contact the Office of Human Resources.

#### J. Confidentiality

Winthrop University wishes to create a safe environment in which individuals are unafraid to discuss concerns. Therefore, the University will always maintain confidentiality to the extent possible and permitted under federal law, including the Clery Act and the Crime Victims' Rights Act. However, confidentiality of the allegations and the identity of the complainant cannot be guaranteed because the University must also consider fairness to the individual accused as well as the safety and welfare of all members of the University community. These considerations may require the University to disclose the allegations and the identity of the complaining party to the accused and to other University officials. See definitions above on confidential and limited confidential reporting.

#### K. Filing a Criminal Complaint

Every individual has the right, and is encouraged, to file a criminal complaint if they feel they are a victim of sexual misconduct. Criminal complaints may be filed with the Winthrop

University Campus Police Department in person or by calling (803) 323-3333; or with any other local or state law enforcement department.

L. Filing with External Agencies

In addition to, or in lieu of, the procedures outlined above, Winthrop employees may file complaints of sexual discrimination with the following agencies:

South Carolina Human Affairs Commission  
2611 Forest Drive, Suite 200, P.O. Box 4490  
Columbia, SC 29240  
(803) 737-7800; TDD (803) 253-4125  
(Must file within 180 calendar days from the date of discrimination.)

U.S. Equal Employment Opportunity Commission  
301 North Main Street, Suite 1402, Greenville, SC 29601  
(864) 241-4400; TDD (864) 241-4403  
(Must file within 300 calendar days from the date of the discriminatory act, or 30 days after receiving notice that the state or local agency has terminated its processing of the charge, whichever is earlier.)

M. Applicable Laws

This policy is governed by Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and South Carolina Human Affairs Law.