

ARTICLE 10
ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION
AND SEXUAL HARASSMENT

10.§1 EQUAL OPPORTUNITY EMPLOYER. Western Michigan University is an equal opportunity employer, which means that no applicant shall be denied an opportunity to apply for employment, nor shall be denied consideration for employment, nor shall be denied employment on the basis of race, color, religion, national origin, sex, age, height, weight, handicap, marital status, or sexual orientation. Western and the Chapter agree with this statement, and further agree that neither shall violate this principle. Except as otherwise provided in this Agreement, Western and the Chapter further agree that all decisions relating to an individual's initial appointment, or a faculty member's promotion, tenure, salary, or other personnel matters, shall be based on the individual's professional competence in ~~his/her~~ **their** academic discipline, and upon ~~his/her~~ **their** competence in relation to the performance of the duties of the position. Personality characteristics and/or beliefs of the faculty member that do not affect the individual's competence in ~~his/her~~ **their** discipline or performance of duties shall not be a basis for such decisions. Western and the Chapter agree with this statement, and further agree that neither shall violate this principle.

10.§2 AFFIRMATIVE ACTION. Western Michigan University is an affirmative action employer, which means that in all areas of personnel matters, such as initial employment, promotion, tenure, and retention, Western shall give particular attention to the candidacy of women and minorities (i.e., protected-class persons) and take affirmative steps as provided in the University Affirmative Action Plan and in this Agreement. However, all candidates shall be judged on the merits of their professional performance. Western and the Chapter agree with this statement and further agree that neither shall violate this principle and that they shall cooperate to implement affirmative action.

10.§2.1 Western and the Chapter agree that a University Affirmative Action Plan is in the best interest of both and that they shall cooperate in endeavoring to achieve the goals and objectives therein sought.

10.§2.2 The Affirmative Action Advisory Committee is advisory to the President and shall include the Chapter's designee.

10.§2.3 Western shall provide the Chapter with a copy of the annual report prepared by Western's Office of Institutional Equity (formerly known as the Affirmative Action Office).

10.§2.4 Western agrees that any University-wide committee recognized by Western as participating in affirmative action endeavors shall include the Chapter's designee.

10.§2.5 No later than the last day of the first fall semester in which this agreement is in effect, Western shall provide training on contemporary issues of diversity, equity, inclusion, and anti-racism as they apply to an academic environment for the purpose of faculty development. The training shall be provided at no cost to bargaining unit members, and both electronic and in-person options shall be provided when feasible. All persons holding faculty rank shall complete the training in the first year of their employment. Persons with faculty rank hired prior to the creation of this requirement shall complete the training in the first year the training is available. Follow-up training can be mandated if state and/or federal guidance changes significantly, or other circumstances warrant it. These training requirements shall be automatically deferred for up to one year for individuals on a full-year sabbatical or other type of long-term leave. Training content, initial selection and substantive changes, shall be reviewed by a committee that includes three bargaining unit members with relevant expertise nominated by the Chapter and approved by the Vice President of Diversity and Inclusion. If the Chapter does not nominate bargaining unit members within ten (10) business days of a request for nominations, Western may convene the committee with the positions vacant.

10.§2.6 ~~5~~ The University agrees that the **Executive Director** ~~Associate Vice President~~ of Western's Office of Institutional Equity (or ~~his/her~~ **their** designee) will invite the Affirmative Action Advisory Committee to meet at least once a year to review the University's Affirmative Action Plan.

10.§3 AFFIRMATIVE STEPS. In order to implement affirmative action, it may be necessary to initiate special procedures based on the need to increase the proportions of minority and women faculty (protected-class persons). Such procedures will be developed and instituted by Western as needed.

10.§3.1 *Hiring*. In order to increase the utilization of protected-class persons in under-utilized areas, Western shall continue to take affirmative action in the hiring process.

10.§3.2 *Promotion and Tenure*. The candidacy of minorities and women shall be given particular attention. However, all candidates shall be judged on the merits of their professional performance.

10.§4 RESOLUTION OF COMPLAINTS AND GRIEVANCES BY UNIT MEMBERS. A bargaining unit faculty member who has a complaint or grievance alleging discrimination proscribed by this article shall have access to the two internal dispute-resolution procedures provided in 10.§4.1 and 10.§4.2 below, and shall not use any other internal dispute-resolution procedures.

10.§4.1 *Early Resolution*. Within ten (10) business days following alleged discrimination proscribed by this article and after consultation with Western's Office of Institutional Equity, the bargaining unit faculty member alleging discrimination may request in writing to Western's Office of Institutional Equity that a meeting be held to informally

discuss and attempt to resolve the matter. The meeting shall include a representative of the Office of Institutional Equity and the bargaining unit faculty member alleging discrimination, and may include, at the request of the faculty member, a Chapter representative and/or, at the request of the Office of Institutional Equity, representatives of Western, including the person(s) against whom the charge is made. The meeting shall be held within ten (10) business days of the request, when possible. Any agreements resolving the matter that are reached at the meeting shall be reduced to writing and signed by the parties. A copy of any such Early Resolution Agreement shall be provided to the Chapter upon request. Such an Early Resolution Agreement shall be final and binding and shall serve as a bar to any further pursuit of the claim(s) covered by the Early Resolution Agreement, including internal pursuit through the grievance procedure and external pursuit through agencies or courts. If no Early Resolution Agreement is reached at the meeting, the Office of Institutional Equity shall so notify the parties in writing.

10.§4.2 *Grievance Procedure.* A bargaining unit faculty member who has a grievance alleging discrimination proscribed by this article may file that grievance under the grievance procedure provided in Article 12, Grievance Procedure, of this Agreement, provided the following: (1) the use of Early Resolution in 10.§4.1 above shall not prejudice the faculty member's right to use the grievance procedure except that an Early Resolution Agreement shall be a bar to any further pursuit of the claim(s) covered by the Early Resolution Agreement; (2) if a faculty member uses Early Resolution and an Early Resolution Agreement does not result, the faculty member may initiate a grievance under Article 12, Grievance Procedure, of this Agreement within twenty (20) business days after the Office of Institutional Equity's written notification that no Early Resolution Agreement has been reached; (3) the grievance must allege discrimination in the application of the terms of this Agreement and must not deal with positions outside the purview of this Agreement; and (4) a grievance may be filed only if the matter is not being pursued with any governmental agency or in any court action. In the event such complaint or charge is pursued with any governmental agency or in any court action after a grievance has been initiated, no further action under the grievance procedure shall be taken with respect thereto following notification of Western's Office of Institutional Equity that such complaint or charge has been so filed.

10.§5 RESOLUTION OF OTHER COMPLAINTS. The sexual harassment policy applies to all members of the University, and charges of sexual harassment that identify members of the bargaining unit may be brought forward by any concerned individual of the University community. Such charges shall be investigated first by the University **Director of Title IX Compliance** ~~sexual harassment officer~~. If the investigation leads to a determination that there are sufficient grounds for further action, charges may be brought under Article 21, Professional Conduct, and other related articles, according to the procedures described in Article 22, Progressive Review and Discipline for Cause.

10.§6 SEXUAL HARASSMENT. Sexual harassment is a form of sex discrimination prohibited by federal (i.e., Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972) and state law. The University and the WMU-AAUP are committed to the

principle that the learning and working environment should be free from harassment by faculty, staff, or students. If Western disciplines a bargaining unit faculty member for sexual harassment, the issue of whether the discipline was for cause (including the reasonableness of any sexual harassment policy promulgated by Western and the reasonableness of the application of said policy to the bargaining unit faculty member), may be grieved and arbitrated pursuant to Article 12, Grievance Procedure, Article 22, Progressive Review and Discipline for Cause, or any other applicable article.

10.§6.1 In cases of hostile environment sexual harassment, and subject to applicable law, Western and the Chapter recognize that the classroom constitutes a setting which involves wide latitude in the presentation and discussion of ideas which are germane to the subject matter being taught (see Article 13, Academic Freedom and Academic Responsibility).

Tentative Agreement

WMU: *Nancy Muenberg*

WMU-AAUP: *Whitney DeCamp*

Date: July 22, 2021

Date: July 20, 2021