

Sexual Harassment**Policy Statement**

It is the policy of the University of Arkansas to provide an educational and work environment in which thought, creativity, and growth are stimulated, and in which individuals are free to realize their full potential. The university should be a place of work and study for students, faculty, and staff, which is free of all forms of sexual intimidation and exploitation. Therefore, it is the policy of the University of Arkansas to prohibit sexual harassment of its students, faculty, and staff and to make every effort to eliminate sexual harassment in the university.

The university's prohibition of sexual harassment applies to members of the university community, to visitors to the campus, and to contractors and others who do business with the university or who use university facilities. The policy prohibiting sexual harassment applies regardless of the gender of the harasser or of the person being harassed. The policy applies to sexual harassment that takes place in any relationship, including both those involving a power differential and those between peers, colleagues, and co-workers. The university policy prohibits sexual harassment between or among students, faculty, staff, and others visiting or conducting official business on campus, and in all areas of the university's work and educational environments.

Sexual harassment of employees is a form of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964. Sexual harassment of students is a violation of Title IX of the Education Amendments of 1972. These laws apply to both the university and to individuals. Those who engage in sexual harassment may be subject to legal consequences, including civil and criminal penalties and monetary damages.

Sexual harassment subverts the mission of the university and threatens the careers, educational experience, and well being of students, faculty, staff, and visitors to the campus. In both obvious and subtle ways, sexual harassment is destructive to individual students, faculty, staff, and the academic community as a whole. Sexual harassment blurs the boundary between professional and personal relationships by introducing a conflicting personal element into what should be a professional situation. When, through fear of reprisal, a student, staff member, or faculty member submits or is pressured to submit to unwanted sexual attention, the university's ability to carry out its mission is seriously undermined.

Sexual harassment is especially destructive when it threatens relationships between teachers and students or supervisors and subordinates. Through control over grades, salary decisions, changes in duties or work loads, recommendations for graduate study, promotion, and the like, a teacher or supervisor can have a decisive influence on a student's, staff member's, or faculty member's career at the university and beyond. Sexual harassment in such situations constitutes an abuse of the power inherent in a faculty member's or supervisor's position.

Definitions

Sexual harassment as defined by the U.S. Equal Employment Opportunity Commission and adapted to the academic environment consists of unwelcome sexual advances, requests for

sexual favors, and other verbal or physical conduct or written communication of a sexual nature, regardless of where such conduct might occur, when:

- (1) submission to the conduct is made either implicitly or explicitly a term or condition of an individual's employment with the university or of an individual's academic status or advancement in a university program, course, or activity;
- (2) submission to or rejection of the conduct by an individual is used as the basis for employment or academic decisions affecting that individual; and/or
- (3) the conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or learning environment.

Sexual harassment is distinguished from voluntary sexual relationships in that it introduces such elements as coercion, threat, unwanted sexual attention, and/or promises of academic or professional rewards in exchange for sexual favors. Sexual harassment is *unwelcome* behavior. Behavior that the courts have found to constitute sexual harassment is usually repeated or continues even after the individual makes it clear that it is unwanted.

Sexual harassment is often divided into two categories: (1) *quid pro quo* harassment and (2) harassment resulting from a hostile or abusive environment.

Quid pro quo harassment involves an explicit or implied exchange; that is, the granting or denial of a benefit or privilege in exchange for sexual considerations. The harasser uses submission to or rejection of the offensive conduct as the basis for decisions such as employment, promotion, transfer, selection for training, performance evaluation, or the basis for academic evaluation or recommendations.

Court decisions have established that a hostile or abusive working or learning environment may also constitute sexual harassment. While the exact definitions and limits of a hostile or abusive environment continue to be delineated by the courts, case law indicates that such an environment exists when the workplace or educational environment is permeated by discriminatory intimidation, insults, and ridicule, such as sexual innuendos, uninvited sexual advances, sexually suggestive or discriminatory remarks, sexually suggestive or offensive signs, graffiti, or pictures, the use of sexually crude and vulgar language, etc. The U.S. Supreme Court has held that, to constitute sexual harassment, the offensive conduct must be sufficiently severe and pervasive that a reasonable person would find the conditions of the working or learning environment to have been adversely affected. The employee or student must also subjectively perceive the environment to be hostile or abusive. However, it is not necessary that an employee's or student's psychological well being be seriously affected or that she or he suffer injury for a discriminatorily hostile or abusive environment to exist. One utterance of an offensive epithet does not by itself constitute sexual harassment. The Supreme Court has indicated that whether an environment is hostile or abusive can be determined only by looking at all the circumstances, which may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance or a student's learning.

Examples of behavior that may constitute sexual harassment are included in Appendix A.

Academic Freedom

Works of art and literature, readings, and other written, auditory, or visual course materials which are used in an educational context, including classrooms, academic offices, and all other learning environments, or which are part of academic or cultural programs, *do not* constitute sexual harassment, regardless of their sexual, erotic, suggestive, or vulgar content and regardless of whether they may be offensive to some individuals.

Consensual Relationships

Consensual sexual relationships between faculty and their students or between supervisors and their employees in some instances may result in charges of sexual harassment.

Consensual relationships may lead other faculty and students or supervisors and coworkers to question the validity of grades, evaluations, and other interactions between the people involved in such a relationship. The integrity of the work of both people in the relationship may be compromised.

University faculty, administrators, and other supervisory staff should be aware that any sexual involvement with their students or employees could subject them to formal action if a sexual harassment complaint is subsequently made and substantiated, and that they bear the greater burden of responsibility should it be proven that the power differential between them made the relationship other than fully consensual. Even when both parties have consented to a relationship, it is the faculty member, administrator, or supervisor who may be held accountable for unprofessional behavior. Other students or employees may allege that the relationship creates a hostile or abusive environment affecting them. Graduate assistants, residence hall staff, tutors, and undergraduate course assistants who are professionally responsible for students will be held to the same standards of accountability as faculty in their relationships with students whom they instruct or evaluate.

When a consensual relationship exists between a student and a faculty member who has control over the student's academic work or status or between an employee and his or her supervisor, the resulting conflict of interest should be addressed in accordance with university policies concerning conflict of interest.

Responsibility to Report

Any student, faculty member, staff member, administrator, or visitor to the campus who has experienced or witnessed sexual harassment is strongly urged to report it. The university must know about incidents of sexual harassment in order to stop them, protect victims, and prevent future incidents.

It is the responsibility of university faculty, administrators, and supervisors to report complaints of sexual harassment that they receive and of possible sexual harassment of which they become aware. When there is a relationship that involves legally recognized professional confidentiality between the complainant and the person to whom the harassment is reported, the report may be withheld at the request of the complainant.

Timeframe for Reporting

Sexual harassment should be reported immediately and must be reported within 180 days of its occurrence. However, under compelling circumstances, a delayed report of sexual harassment may be made, provided it is made within 180 days after a student has graduated from the university or 180 days after an employee has left his or her current position at the university.

Retaliation Prohibited

University policy and federal law prohibit any form of retaliation against a person who makes a sexual harassment complaint, participates in an investigation of sexual harassment, or participates in formal grievance or disciplinary procedures. Retaliation against a complainant or witness is, in itself, a violation of university policy and the law, and is a serious separate offense.

False Reports of Sexual Harassment

Willfully making a false report of sexual harassment is a violation of university policy and is a serious offense. Any person who willfully makes or participates in making a false or frivolous report of sexual harassment will be subject to disciplinary action.

Reporting System

Students, faculty members, administrators, staff members, or visitors to the university may report allegations of sexual harassment to an official (hereinafter referred to as the "compliance officer") who is designated by, and who reports to, the Chancellor. They may discuss with the compliance officer any situation that they believe may constitute sexual harassment. Reports may be made by the person experiencing the harassment or by a third party, such as a witness to the harassment or someone who is told of the harassment. The compliance officer can be reached at the Office of Opportunity and Compliance, 346 N. West Avenue (West Avenue Annex), 479-575-4019, titlevii@uark.edu.

Investigation of Complaints

The compliance officer must investigate every allegation of sexual harassment, including third-party reports. The investigation shall be appropriate to the complaint, taking into consideration its seriousness, the extent to which it is or can be substantiated, and the nature of the resolution desired by the complainant. An initial review to determine whether an investigation is warranted must be initiated within five working days or as soon as possible after the complaint is made.

Upon receiving a complaint, the compliance officer will interview the complainant (and the individual allegedly experiencing the conduct if it is a third-party report) to compile as much specific information as possible, including the nature of each incident, the time, place, actual or potential witnesses, any actions or other responses to the alleged harassment already taken by the complainant, identification of the alleged harasser, and other pertinent facts or allegations.

The compliance officer will explain the university's obligation to investigate and take appropriate corrective action. The compliance officer will present options for resolution of the complaint, including actions that the aggrieved person can take and methods of informal resolution. The compliance officer will offer information about the availability of counseling and other assistance, as appropriate to the situation.

The compliance officer will meet with the person accused of sexual harassment and present the allegations, indicating whether there are witnesses or other evidence that would appear to

substantiate the charge. The alleged harasser may make an initial response to the allegations. If the issue is not resolved at that point or if the compliance officer determines that an investigation is warranted, the compliance officer will proceed with an investigation.

Deans, department heads, chairpersons, directors, and other administrators who are responsible for personnel matters will participate with the compliance officer, as appropriate, in investigating charges of sexual harassment and in the process of resolution of sexual harassment complaints.

Individuals who make complaints of sexual harassment and individuals who are accused of sexual harassment are entitled to a fair and prompt resolution of the complaint that is consistent with the principles of due process. Resolution may be attempted through direct informal action, through an informal resolution process, or through a formal complaint process.

Informal Resolution Process

After the compliance officer has discussed the complaint with the complainant and informed the person against whom a complaint has been made, the complainant may choose to attempt to resolve the matter by addressing the person directly. The compliance officer can suggest methods and models (e.g., writing a letter describing the offensive behavior and its effects on the complainant and requesting that the behavior cease).

If the complainant wishes to attempt to resolve the problem informally, the compliance officer may serve as a mediator, or otherwise assist both parties in coming to an understanding and resolving the problem, with a focus on changing current and future behavior. The compliance officer may take statements or review records from either party and from any witnesses that either party identifies, but the main focus will be on resolution and conciliation. Deans, department heads, chairpersons, directors, or other administrators will be involved, as appropriate, in the informal resolution process.

Formal Complaint Procedure

If either party is not satisfied with the result of the informal process or if the complainant chooses, instead, to use a formal University of Arkansas complaint procedure, the compliance officer will help identify the appropriate procedure and explain how to use it. At the discretion of the compliance officer, records concerning the matter may be made available to parties, witnesses, or administrators, as necessary, to properly conduct the investigation during the formal complaint procedure.

If a formal complaint is initiated, at the conclusion of the process, both parties will be informed in writing of the findings of the investigation and reminded of the university's relevant policies, including policies prohibiting retaliation.

In some instances, it may not be possible to determine whether sexual harassment has occurred. Allegations of sexual harassment that are not substantiated are not necessarily false allegations.

Disclosure

Subject to the other provisions of this policy and the requirements of law, every possible effort will be made to ensure that any information received as part of the University's resolution and complaint procedures is treated discreetly. All parties to the complaint will be asked to assist in treating the complaint confidentially. The university's obligation to investigate and to prevent

claims of sexual harassment means that it is not possible to guarantee that complaints of sexual harassment will be handled confidentially.

In the interests of fairness and problem resolution, disclosure of complaints and their substance and the results of investigations and complaint procedures, except as compelled by law, will be limited to the immediate parties and other appropriate administrative officials or as necessary to conduct a full and impartial investigation.

Disciplinary Action

Disciplinary action up to and including termination (employees) or dismissal (students) may be taken against persons found to have engaged in sexual harassment or found to have willfully made a false or frivolous accusation of sexual harassment. The specific disciplinary action will be determined by the nature and seriousness of the offense. In all cases where disciplinary action is recommended, pertinent procedures in the *Staff Handbook*, the *Faculty Handbook*, the applicable student catalog or handbook and/or the applicable university policies are to be followed.

If a thorough investigation of a complaint substantiates that formal disciplinary action is warranted because either sexual harassment has occurred or a false report of sexual harassment has been made, the compliance officer will report the findings to the appropriate vice chancellor, the Dean of Students, or the Dean of the Graduate School, who is responsible for initiating disciplinary action. Any disciplinary action is subject to all applicable University policies. The disciplinary action shall be implemented within 30 days of the notification to the vice chancellor or dean. The compliance officer will monitor the implementation of the disciplinary process and its timeliness.

Record Keeping

Investigation records will be kept in employee personnel files only if a complaint of sexual harassment is substantiated and disciplinary action is taken. All other investigation records will be kept only for statistical purposes and to document that the university has responded to complaints. This provision shall not prevent the retention of personnel records where a finding of a violation of the University's Sexual Harassment Policy was not sustained but where administrative action was determined to be appropriate.

Records maintained by the compliance officer to document that the university has responded to all complaints include information concerning the receipt of the complaint, the notification of the person against whom a complaint is made as well as his or her response, the steps taken to investigate the complaint, and indicate whether the complaint was substantiated. All written statements obtained, as well as summaries of witness interviews, will be included in the documentation. If the complaint is substantiated, the records will document actions taken to stop the harassment and to remedy its effects. If the complaint is not substantiated, all records pertaining to the complaint will be marked and treated as confidential, except as required by law or to the extent pertinent to investigation of any subsequent matters.

Statistical Review

The compliance officer will meet with the Chancellor when deemed necessary by the compliance officer to review any complaints or concerns arising under this policy.

Training

All organizational units must make reasonable efforts to provide sexual harassment training for their employees each year. All new employees should receive a copy of the Sexual Harassment Policy and sexual harassment training within the first six months of beginning employment. All employees should receive refresher training from the Office of Equal Opportunity and Compliance or its designee every three years.

Appendix A

The following are some examples of behavior that the courts have found to constitute either *quid pro quo* or hostile atmosphere sexual harassment. The list is not inclusive; other behaviors not included on the list may be sexual harassment. And most of the behaviors listed, *if they are welcome by the person at whom they are directed*, would not be sexual harassment. An important distinction is that sexual harassment must be unwelcome.

Sexual harassment can take many forms. Most sexual harassment falls into three categories: verbal, physical, and written or visual.

Verbal sexual harassment may include, but is not limited to:

- sexual innuendoes, comments, and suggestive remarks about clothing, a person's body, or sexual activities;
- suggestive or insulting sounds;
- whistling in a suggestive manner;
- humor and jokes about sex;
- sexual propositions, invitations, or other pressure for sex; and
- implied or overt threats.

In most cases, a single offensive epithet would not constitute sexual harassment.

Physical sexual harassment may include, but is not limited to:

- patting, pinching, feeling, or any other intentional inappropriate touching;
- brushing against the body;
- making obscene or offensive gestures;
- attempted or actual kissing or fondling;
- coerced sexual intercourse; and
- assault. (See the University of Arkansas Sexual Assault Policy)

Written or visual sexual harassment may occur when the following types of materials are directed to a specific individual or when people cannot reasonably avoid seeing them (the list is not inclusive):

- pictures or drawings of a sexual nature;
- sexually derogatory pin ups, posters, cartoons, magazines, or calendars;
- messages, words, comments, rhymes, or other writing of a sexually derogatory or suggestive nature.

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