

# **SEXUAL HARASSMENT POLICY**

## **University of Arkansas, Fayetteville**

### **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 which 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 sexual 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 workloads, 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, request 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 a 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 or visual course materials which are used in an educational context, 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 which 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 "complaint officer") who is designated by, and who reports to, the Chancellor. They may discuss with the complaint officer any situation which 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.

### **Investigation of Complaints**

The complaint officer must investigate every allegation of sexual harassment, including informal and 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. The investigation must be initiated within five working days after the complaint is made.

Upon receiving a complaint, the complaint officer will interview the complainant (and the alleged victim 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 complaint officer will explain the university's obligation to investigate and take appropriate corrective action. The complaint officer will present options for resolution of the complaint, including actions which the aggrieved person can take, methods of informal resolution, the appropriate formal University of Arkansas grievance procedure, and legal remedies. The complaint officer will offer information about the availability of counseling and other assistance appropriate to the situation.

The complaint 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, and whether the complaint is informal or formal. The alleged harasser may make an initial, informal response to the allegations.

If the issue is not resolved at that point, the complaint officer will proceed with an informal complaint resolution process or, if appropriate, will refer the complainant to a formal grievance procedure.

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

## **Resolution and Grievance Procedures**

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

### **Direct, Informal Action**

After the complaint officer has discussed the complaint with the complainant and informed the person accused that a complaint has been made, complainant may choose to attempt to resolve the matter by confronting the accused harasser directly. The complaint officer can suggest methods and models; for example, writing a letter describing the offensive behavior, its effects on the complainant, and her or his request that the behavior cease.

### **Informal Resolution Process**

If the complainant wishes to attempt to resolve the problem informally, the complaint 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. Both parties must be informed of their rights to due process. The complaint officer may take statements from either party and from any witnesses that either party identifies, but the main focus will be on resolution and conciliation. Deans, directors, and department heads or chairpersons will be involved, as appropriate, in the informal resolution process.

## **Formal Grievance 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 grievance procedure, the complaint officer will help identify the appropriate procedure and explain how to use it. The matter will then follow the steps outlined in the Staff Handbook, the Faculty Handbook, or the University Catalog for that specific grievance procedure. The complaint officer's records concerning the matter may be made available during the formal grievance procedure, as appropriate.

Both parties will be informed in writing of the results of the resolution and grievance procedures and reminded of the university's policy.

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

## **Disclosure**

Every possible effort will be made to ensure the confidentiality of information received as part of the university's resolution and grievance procedures. All parties to the complaint will be asked to assist in keeping the complaint confidential. However, the university's obligation to stop sexual harassment means that it cannot fail to take appropriate action and that confidentiality cannot always be guaranteed.

In the interests of fairness and problem resolution, disclosure of complaints and their substance and the results of investigations and grievance procedures, except as compelled by law, will be limited to the immediate parties and other appropriate administrative officials.

## **Disciplinary Action**

Disciplinary action up to and including dismissal will be taken against persons found to have engaged in sexual harassment. The specific disciplinary action will be determined by the nature and seriousness of the offense.

If a thorough investigation of a complaint substantiates that sexual harassment has occurred and that formal disciplinary action is warranted, the complaint officer will report the findings to the appropriate vice chancellor, who is responsible for initiating disciplinary action. If a formal grievance procedure has been used, a recommendation for disciplinary action may be made by the administrator or panel that has heard and made a decision about the grievance. Recommendations for disciplinary action may be appealed, using the appropriate University of Arkansas grievance procedure.

At the direction of the vice chancellor and following applicable university rules, the Dean of Students, the academic dean, the director, or the department head or chairperson will implement disciplinary action against the student, faculty member, or staff member. The disciplinary action shall be implemented within thirty days of the notification of the vice

chancellor. The complaint officer will monitor the implementation of the disciplinary process and its timeliness.

### **Record Keeping**

Records will be kept in employee personnel files only if a complaint of sexual harassment is substantiated and disciplinary action is taken. All other records will be kept only for statistical purposes and to document that the university has responded to complaints. The Arkansas Freedom of Information Act compels disclosure of employee records only if they form the basis for decisions to suspend or terminate an employee and if there is a compelling public interest in their disclosure. Student records are protected from disclosure under the Family Education and Privacy Rights Act.

Records maintained by the complaint officer to document that the university has responded to all complaints will include information concerning the receipt of the complaint, the notification of the alleged harasser and 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. Whether the complaint is substantiated or not, the records will document that all parties have been reminded in writing of the university's policy prohibiting sexual harassment.

### **Statistical Review**

The complaint officer will report periodically to the Chancellor the statistical data compiled from investigation records and all disciplinary action taken by the university.

## **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 nature.

NOTE: Some of the forms of harassment described above may constitute criminal behavior.

## **Appendix B**

### **Recommendation for Education and Publicity Concerning the Policy**

Because new students and employees continually join the university community, it is important that education about sexual harassment and publicity about the university's policy be presented frequently, and that attempts be made to reach all members of the community. Information should be presented at new student and new employee orientation sessions, and new administrators, supervisors, and managers should be reminded about their additional obligation to help keep the university free of sexual harassment. In addition, programs about sexual harassment, campus awareness events and activities, training sessions, and other educational activities should be provided regularly. Student, faculty, and staff handbooks, catalogs, and other publications that include university policies and procedures should contain the sexual harassment policy. Brochures, flyers, newspaper articles, posters, and other methods of publicizing the policy should be used as well.

### **Examples of Sexual Harassment**

The following conduct could be considered sexual harassment if unwelcome:

- Direct or indirect threats or bribes for unwanted sexual activity
- Sexual innuendoes and comments
- Intrusive sexually explicit questions
- Sexually suggestive sounds or gestures such as sucking noises, winks, or pelvic thrusts
- Repeatedly asking a person out for dates or to have sex
- Touching, patting, pinching, stroking, squeezing, tickling or brushing against a person
- A neck/shoulder massage
- Rating a person's sexuality
- Ogling or leering, staring at a woman's breast or a man's derriere
- Spreading rumors about a person's sexuality
- Graffiti about a person's sexuality
- Name-calling, such as bitch, whore or slut
- Sexual ridicule
- Frequent jokes about sex or males/females
- Letters, notes, telephone calls or material of a sexual nature
- Pervasive displays of pictures, calendars, cartoons, or other materials with sexually explicit or graphic content
- Attempted or actual sexual assault

### **Dangerous Words**

When responding to a complaint, be careful that these words don't come out of your mouth

- It's just teasing - no big deal.
- The people in our school would never do ...
- I know he/she didn't mean anything like that.

- It's your fault for dressing so provocatively.
- You need to learn to handle these things.
- Just ignore it.
- He puts his arms around everyone.
- Why can't you learn to accept a compliment?
- You must have wanted it, otherwise you would have told him no.
- That's how they do things where he comes from.
- It's just a joke. Lighten up.
- No one's filed a charge so our hands are tied.
- We've never had a complaint, so we don't have a problem.
- This kind of behavior is all part of growing up.
- It's a matter of hormones, we can't control that.
- If we had to discipline every student who used bad language we'd never get anything else done.
- It's just a prank that got out of hand.
- Oh well, boys will be boys.