

**UNIVERSITY OF HOUSTON SYSTEM
ADMINISTRATIVE MEMORANDUM**

SECTION: Human Resources

NUMBER: 02.A.03

AREA: General

SUBJECT: Guidelines for Sexual Harassment Policies and Procedures

1. PREAMBLE

- 1.1. This University of Houston System Sexual Harassment Policies and Procedures template was constructed by student, staff, and faculty representatives of the four universities and staff from the System office. This committee utilized existing university policies, common university practices and experiences, and federal statutes, as resources in developing this document.
- 1.2. The document is intended to provide a mechanism to protect the rights of claimants and respondents in each of the five units (the four universities and the System) and to establish common definitions, principles, and procedures while simultaneously guarding the unique needs, requirements, and personalities of these five units. To support this need for flexibility within guidelines stated, the intent was to allow for some interchangeability of terms, for additional resolutions of complaints, for some variation in time lines within the mandated time lines, and for procedures, definitions, and implementation congruent with this document's guidelines and with the established procedures at each unit.
- 1.3. The charge and the goal for this document is to affirm and support an environment in which the System unit is free of sexual harassment through comparable protection of rights and standardized practices.

2. POLICY

- 2.1. Policy Statement - The System is committed to providing a professional working and learning environment free from sexual harassment. Sexual harassment is a form of sex discrimination and is illegal. The System will not tolerate any form of sexual harassment. The System requires employment discrimination training, including sexual harassment training of all System employees, in accordance with the Texas Labor Code Chapter 21, Subchapter A, Section 21.010. The System is committed to providing this training to educate the staff, faculty, and students about sexual harassment issues.

- 2.2. Definition and Statutory Reference - Harassment on the basis of sex is discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, and Title IX of the Educational Amendments of 1972, 20 U.S.C. §1681. In addition, sexual harassment by a public servant is a criminal offense under Texas Penal Code §39.02, and sexual harassment by any individual may constitute assault, sexual assault, public lewdness, or indecent exposure under Chapters 21 and 22 of the Texas Penal Code.

Sexual harassment most often exploits a relationship between individuals of unequal power and authority (as, for example, between an employee and supervisor or between a student and teacher) but may also occur between student peers or employees of equal rank. Sexual harassment is not limited by gender of either party, nor by superior/subordinate relationships. At a university, sexual harassment also constitutes unprofessional conduct which compromises the university's commitment to the pursuit of learning.

Unwelcome sexual advances, requests for sexual favors, verbal and written comments, or physical conduct of a sexual nature may constitute sexual harassment when such conduct:

- a. is made, either explicitly or implicitly, a term or condition of instruction, employment, or participation in a university activity; or
- b. is used to be a basis for evaluation in making academic or personnel decisions affecting an individual; or
- c. creates an intimidating, hostile, or offensive university environment.

In relation to the foregoing statements, sexually harassing behavior may include, but is not limited to, the following: unwelcome sexual flirtations, advances, or propositions; verbal remarks of a sexual nature (whether directed to an individual or a group), including sexually explicit or offensive jokes; graphic or degrading verbal or written comments of a sexual nature about an individual or the individual's appearance; any suggestive or unwelcome physical contact; conduct of a sexual nature that interferes with a student's academic or extracurricular activities or with an employee's job performance; or assault.

- 2.3. Responsibility - The ultimate responsibility for the effective implementation of this policy throughout the System is with the Chancellor of the System. The responsibility for the effective implementation of this policy at each university is with the President of that university. The Senior Academic Officer, the Director of Human Resources, the Dean of Students, and the Affirmative Action Officer (AAO) (or the persons in equivalent positions) will see that the Sexual Harassment Policy is communicated on a routine basis through the faculty, staff and student handbooks.

- 2.4. Failure of supervisors to respond to allegations of sexual harassment in a timely manner is a violation of policy and a violation of the law. Failure of the university to investigate and take timely and appropriate action is a violation of policy and the law. The System is prepared to take preventive and corrective action in cases of sexual harassment; individuals who engage in such misconduct are subject to appropriate disciplinary action.
- 2.5. Confidentiality - All efforts will be made to respect the right to confidentiality of all parties involved in a sexual harassment charge. Confidentiality, however, cannot be guaranteed.
- 2.6. Retaliation - Retaliatory action taken against an individual as a result of that person's seeking redress under the applicable procedures dealing with sexual harassment is prohibited. Such action shall be regarded as a separate and distinct cause for complaint.
- 2.7. Malicious Allegations/Complaints - Malicious charges may result in sanctions imposed against the complainant by the university, or charges filed against the complainant by the respondent. Repeated filing of frivolous complaints will be considered a malicious action. The failure to substantiate a sexual harassment charge does not automatically constitute a malicious charge.
- 2.8. Pursuit of Complaint Outside the System - This policy does not preclude anyone from pursuing a complaint, at any stage of the process, with any external agency.

3. PROCEDURES

- 3.1. Introduction - The System, as an employer and as an educational institution, has a moral and legal obligation and a duty to take complaints of sexual harassment seriously. In addition, the System may be legally liable if a person with supervisory responsibility knew or should have known about sexual harassment and failed to take any actions to stop it. The System is prepared to take preventive and corrective action in cases of sexual harassment.

Each university's sexual harassment procedures are composed of two parts: (1) an intervention and (2) a hearing. The System is committed to resolving sexual harassment complaints at the intervention step whenever possible. The hearing, the optional second step in this two step process, must be preceded by the intervention step.

3.2. Education and Information - Each university will provide education and information for students, staff, and faculty to enhance understanding and increase awareness of the System's Sexual Harassment Policy and Procedures. Each university should identify members of its community with knowledge of the sexual harassment policy and from whom individuals may seek information on matters related to sexual harassment. These individuals provide information on the procedures for pursuing an intervention of the complaint (Step 1) and for filing a complaint under the hearing procedures (Step 2). Information on external agencies will be available at the Affirmative Action Office.

3.3. Step 1: Intervention

3.3.1. Scope - Intervention is an attempt to resolve the sexual harassment complaint rather than focusing on motive or blame. Resolution at this stage requires the voluntary agreement of all parties. The System believes that resolution at the intervention step can benefit the complainant, the respondent, and the System as a whole. Each university will provide trained persons (including supervisors) for implementing the intervention step.

Actions that can be taken in the intervention step include but are not limited to:

- listening to the complainant to find out what action is desired;
- advising the parties about the scope of the Sexual Harassment Policy and Procedures;
- providing materials and information on recommended actions that the complainant may consider to communicate the unwelcome nature of the behavior of the respondent, such as advising the complainant on how to write a letter designed to stop unwelcome behavior;
- sending a letter to everyone in the unit indicating concern about sexual harassment and enclosing a copy of the policy;
- undertaking a preliminary and confidential investigation;
- conducting a workshop on sexual harassment for the unit, division or department, and keeping an attendance record as proof of notice given to the respondent of this policy;
- having a supervisor speak to and counsel the respondent;

- having the complainant meet with the respondent, with a third party present, to discuss the complaint;
- helping to draft an agreement providing for a letter of apology, a transfer of either party, a voluntary resignation, or other levels of appropriate university sanctions;
- following up on an inquiry to see if the complaint has been resolved or if the complainant still wishes to take further action.

3.3.2. Record Keeping - Each complaint should be documented at the intervention step in a confidential file kept separate from any personnel or student files. Documentation should include name of the complainant, name of the respondent, the nature of the complaint, date, witnesses and any other information relevant to the case.

3.3.3. Reporting - The university AAO is responsible for communicating to the university President the number, type, and disposition about sexual harassment complaints receive. These communications are confidential and will not disclose the names of parties or other identifying details.

3.3.4. Withdrawal of a Complaint -If the complainant decides to terminate the intervention or withdraws the complaint, this action will not necessarily preclude an investigation by the AAO/EEO representative.

3.3.5. Confidentiality - It is understood that some individuals may be reluctant to tell anyone about harassment or to have their names disclosed. Every possible effort will be made to maintain confidentiality in the intervention step. Confidentiality, however, cannot be guaranteed.

3.4 Step 2: Hearing

3.4.1. Timeliness and Confidentiality - All stages of the hearing process should be accompanied by explicit time limits that are reasonable within the context of the particular university.

All participants in each stage of the hearing process should maintain confidentiality to the greatest extent possible.

3.4.2. Initiation of the Hearing Process - The university AAO is the designated individual at each university charged with facilitating the process of the hearing.

The role of the AAO shall be:

- a. to obtain a written complaint

- b. to maintain permanent records required by policy
- c. to determine whether there is sufficient cause to send the complaint to a hearing committee
- d. if cause is found, then the AAO shall:
 - (1) notify, in writing, the respondent
 - (2) notify, in writing, appropriate supervisor(s); when a student is involved, notify the Dean of Students
 - (3) include in the written notification a statement warning those involved with the complaint, including the supervisors, that retaliation may subject that individual and the university to additional charges.
- e. if cause is not found, the AAO will write a letter to the complainant stating the reasons why the complaint will not be sent forward to a hearing committee.

3.4.3. Contents of the Written Complaint - The complaint must state the name and address of the complainant; the nature, date, and description of the violation(s); the relief requested for corrective action; and any background information the complainant believes would be helpful. This must be signed and dated by the complainant.

3.4.4. Withdrawal of the Complaint - The university should specify what happens if the complainant wishes to withdraw the complaint. If the complainant decides to terminate the hearing or withdraws the complaint, this action will not necessarily preclude an investigation by the university AAO.

3.4.5. Hearing Panel

- a. Composition of Hearing Panel - The Sexual Harassment Hearing Panel will be appointed by the President, using recommendations of constituencies. The panel is specifically constituted to provide members for hearing committees. Members of the panel will be appropriately trained. All constituencies (student/faculty/staff) will be represented. Gender and ethnic diversity should be considered.

- b. Members of the Hearing Committee for a Specific Case - A hearing committee will be selected from among the members of the Hearing Panel by the AAO. Constituencies of both complainant and respondent will be represented. Both complainant and respondent will be represented. Both complainant and respondent will have an opportunity to challenge the selection of prospective hearing panel members. A potential hearing committee member may elect not to serve based on a conflict of interest.
- c. General Counsel - It is strongly advised that an attorney from the Office of General Counsel sit as an adviser to the hearing committee. This person would be available to answer procedural questions and to assist in maintaining the decorum of the proceeding. The attorney will not be present during the deliberations.

3.4.6. Hearing Procedures -Each university will address the following:

- a. Advisers - Parties will have the right to an adviser(s) of their choice; however, neither party may proceed through their adviser. Any adviser not listed will not be able to attend.
- b. Documents and witnesses - Documents to be presented as evidence and names of potential witnesses must be presented to the AAO within a time frame established by the university. There will be a simultaneous exchange of documents and witness lists between complainant and respondent conducted and documented by the AAO within a time frame established by the university. Only listed witnesses will be allowed to address the Hearing Committee. If information is made available to the Hearing Committee during the course of the hearing that the Hearing Committee deems necessary for the resolution of the charge, the Hearing Committee is vested with the authority to request testimony from additional witnesses or request additional documentation. The Hearing Committee can only hear testimony from additional witnesses and can only review additional documents if it allows the complainant and respondent additional time to prepare a response.

The hearing, but not the deliberation, will be recorded so that there is an official record of what occurred. The AAO will have responsibility for recording the hearing and no other recording will be allowed. The complainant or respondent may obtain a copy of the tapes from any recorded hearing, at the requesting party's expense. The tapes of the hearing will be kept by the AAO for at least two years after the resolution of the complaint.

c. Opening and Closing Statements - All parties will be afforded a reasonable opportunity for oral opening and closing arguments. The complainant will make the first opening statement. The respondent will then make an opening statement. After all the witnesses are presented, the complainant will make a closing statement, which will be followed by the respondent's closing statement.

d. Witnesses - After opening statements, the complainant will present witnesses. After the complainant has questioned each witness, the respondent will be given an opportunity to question each witness. The committee may ask questions of a witness at any time.

After the complainant has presented all witnesses, the respondent then has an opportunity to present witnesses. The respondent may question these witnesses, and the complainant should have an opportunity to question the respondent's witnesses.

After both parties and the Hearing Committee have concluded questioning the witness, the witness will be reminded that all testimony is confidential and will be excused from the room. Witnesses will not be present during the questioning of any party or any other witness.

e. Disruptive Behavior - Disruptive behavior by any participant, as determined by the Hearing Committee, will not be tolerated and will be grounds for expulsion from the hearing.

f. Deliberation - After the hearing is concluded, the Hearing Committee will deliberate in closed session and arrive at a majority decision.

g. Standard of Evidence - The Hearing Committee will decide whether or not the Sexual Harassment Policy has been violated based upon the preponderance of evidence presented during the hearing.

3.4.7. Hearing Committee Outcomes - In a time period to be specified by the university, the Hearing Committee will:

a. Find that policy against sexual harassment has not been violated;
or

- b. Find that policy against sexual harassment has been violated. In that case, the Hearing Committee will recommend administrative sanctions which may include any disciplinary action, up to and including termination of employment for faculty or staff or dismissal from the university for students. This procedure is to be used in place of all other procedures concerning grievances, but removal of tenure from a faculty member may only be accomplished through procedures outlined in the university faculty handbook.

3.4.8. Recommendation Transmittal - Within a specified period of time after the hearing is concluded, the Hearing Committee will transmit a written copy of their recommendation to the AAO, who will then mail a copy of the recommendation to the complainant and respondent by certified or hand delivered mail with proof of delivery at the addresses provided by the complainant and the respondent. The recommendation will also be given to the appropriate vice president(s).

3.4.9. Administrative Actions - Each university will delineate the administrative officer who will receive the finding of the Hearing Committee. The administrative officer will:

- a. Uphold the Hearing Committee's findings and accept its recommendations; or
- b. Uphold the Hearing Committee's findings and impose different sanctions; or
- c. Reject the findings of the Hearing Committee and take administrative actions.

The decision will be transmitted to appropriate supervisor(s) and to the complainant and respondent.

3.4.10. Records Retention and Confidentiality - During the procedures, the complaint and all documents will be kept confidential, except that the appropriate administrative officers will be kept informed on a "need to know" basis. At whatever stage the procedure above is completed, the file containing all documentation in the complaint will be sent to the university's Affirmative Action Office and retained as a file with limited access. However, all findings of violations of the sexual harassment policy and all sanctions imposed will be added to the respondent's personnel and/or student file.

3.4.11. Appeals - Both complainant and respondent have the right to appeal. Each university will establish one of the following appeal processes to the findings and recommendations of the administrative officer:

- a. the university's existing administrative appeals processes as delineated in the student, faculty, or staff handbooks; or
- b. a two-step appeals process with the first appeal to the appropriate administrative officer and the second and final appeal to the university President; or
- c. a single appeal to the appropriate administrative officer.

4. REVIEW AND RESPONSIBILITIES

Responsible Party: Assistant Vice Chancellor for Human Resources
Executive Director of Affirmative Action

Review: Annually on or before December 31

5. APPROVAL

Approved: Arthur K. Smith
Chancellor

Date: July 4, 2000

6. INDEXING TERMS

Civil Rights Act of 1964
Discrimination
Protection of Rights
Sexual harassment