



## University Senate TRANSMITTAL FORM

<b>Senate Document #:</b>	11-12-05
<b>PCC ID #:</b>	N/A
<b>Title:</b>	Proposal to Encourage Mediation as a Method for Resolving Sexual Harassment Complaints
<b>Presenter:</b>	Vincent Novara, Chair of the Senate Committee on Equity, Diversity, and Inclusion (EDI Committee)
<b>Date of SEC Review:</b>	04/05/2012
<b>Date of Senate Review:</b>	04/19/2012
<b>Voting (highlight one):</b>	<ol style="list-style-type: none"> <li>1. On resolutions or recommendations one by one, or</li> <li>2. In a single vote</li> <li>3. To endorse entire report</li> <li>4. For information only</li> </ol>
<b>Statement of Issue:</b>	The EDI Committee was charged by the Senate Executive Committee (SEC) on September 12, 2011, with reviewing a proposal submitted by an Emeritus Professor. The proposal requested that the Senate consider recommending that the University's Policy on Sexual Harassment be amended to add the option of mediation as a method for resolving complaints of sexual harassment at the University.
<b>Relevant Policy # &amp; URL:</b>	<a href="http://president.umd.edu/policies/vi120a.html">http://president.umd.edu/policies/vi120a.html</a>
<b>Recommendation:</b>	<p>The EDI Committee recommends that no changes regarding mediation, or other process of voluntary dispute resolution, be made to the VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment at this time.</p> <p>The EDI Committee also requests that it be charged by the Senate Executive Committee (SEC) with further review of the current appeal processes and opportunities for cases of sexual harassment at the University. While the focus of the EDI Committee during this review was on whether mediation options would be appropriate for complaints of sexual harassment, as instructed by its charge, the proposal also briefly mentioned the lack of appeal opportunities for respondents in cases of sexual harassment complaints. EDI feels that a further review of appeal opportunities, if appropriate, would necessitate a separate charge.</p>

<b>Committee Work:</b>	The EDI Committee met with the proposer on November 14, 2011, to discuss the proposal. The EDI Committee researched sexual harassment policies at peer institutions to identify whether mediation is offered as a method for resolving complaints of sexual harassment. The committee consulted with the University's Campus Compliance Officer, who is often the individual to whom faculty, staff, and students report an alleged incident of sexual harassment. Additionally, the EDI Committee consulted with the President's Chief Legal Counsel regarding the University's legal obligations for appropriately investigating cases of sexual harassment.
<b>Alternatives:</b>	The Senate could vote to have a committee re-charged with further review of mediation options for resolving complaints of sexual harassment. The SEC could choose not to charge the committee with further review of appeal opportunities.
<b>Risks:</b>	There are no associated risks.
<b>Financial Implications:</b>	There are no financial implications.
<b>Further Approvals Required:</b>	N/A

# Senate Committee on Equity, Diversity, & Inclusion

## REPORT

Senate Document 11-12-05

### Proposal to Encourage Mediation as a Method for Resolving Sexual Harassment Complaints

March 2012

#### **BACKGROUND:**

The Senate Committee on Equity, Diversity, & Inclusion (EDI) Committee was charged by the Senate Executive Committee (SEC) on September 12, 2011, with reviewing a proposal to encourage mediation as a method for resolving sexual harassment complaints at the University. An Emeritus Professor submitted the proposal. The EDI Committee was asked to consult with the proposer to discuss his specific concerns about the current process, review similar sexual harassment policies at peer institutions, consult with the Office of Legal Affairs, review research about whether mediation is a viable procedure for resolving sexual harassment complaints, and whether it is already included in the University's current policy, and, if appropriate, recommend how mediation procedures could be implemented in the current policy.

#### **CURRENT PRACTICE:**

According to the University's current Policy and Procedures on Sexual Harassment, the University "is committed to maintaining a working and learning environment in which students, faculty, and staff can develop intellectually, professionally, personally, and socially. Such an environment must be free of intimidation, fear, coercion, and reprisal. Accordingly, the Campus prohibits sexual harassment." Sexual harassment by faculty, staff, and students is strictly prohibited. Additionally, sexual harassment may constitute violations of criminal and civil laws of the State of Maryland and the United States. The University policy defines sexual harassment as follows:

- (1) unwelcome sexual advances; or
- (2) unwelcome requests for sexual favors; or
- (3) other behavior of a sexual or gender-based nature where:
  - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or participation in a University-sponsored educational program or activity; or
  - b. Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting that individual; or
  - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance, or of creating an intimidating, hostile, or offensive educational or working environment.

In addition, there are currently two procedures available for an individual who believes that she or he has been subjected to sexual harassment: the individual may follow the Informal Complaint Procedures (outlined in Section 5 of the policy), or the Formal Complaint Procedures (outlined in Section 6 of the policy).

## **COMMITTEE WORK:**

The EDI Committee met with the proposer on November 14, 2011, who explained the rationale behind his proposal. The proposal asserted that mediation by non-lawyers is accepted at other institutions, for dealing with such disputes. The proposer provided copies of procedures from Washington University in St. Louis as an example (attached). The proposer maintained that mediation typically produces results that are more transparent to both the complainant and the alleged offender, while simultaneously protecting the rights of both parties. The proposer suggested that, if approved, the mediation should be performed by supervisors or by ombudspersons of the University, and that lawyers need not be involved.

The EDI Committee researched sexual harassment policies at peer institutions to identify whether mediation is used as a means to handling cases of alleged sexual harassment. The committee found that procedures for early resolution, including such options as mediating an agreement between parties, are used at the University of California, Los Angeles (UCLA). However, the ULCA policy clearly states that some reports of sexual harassment may not be appropriate for early resolution, and may instead require a formal investigation at the discretion of the University's Complaint Resolution Officer, Sexual Harassment Officer, or other appropriate official designated to review and investigate complaints of sexual harassment ([UCLA's Sexual Harassment Policy](#)). In addition, the policy for University of California, Berkeley, also mentions the early resolution procedure as a possible option for resolving potential violations of its policy on sexual harassment. The University of North Carolina at Chapel Hill (UNC) policy suggests that mediation may be used in some cases, if appropriate, based on directives to administrators or supervisors who receive complaints of sexual harassments. The administrators or supervisors are instructed to promptly notify Equal Opportunity/ADA Officers to receive advice on investigation, education, mediation, documentation, and/or disciplinary action, if appropriate ([UNC's Policy on Prohibited Harassment and Discrimination](#)). Conversely, after consulting with the Director of the Office of Student Conflict Resolution at the University of Michigan, the EDI Committee found that Michigan does not officially offer mediation as a means for resolution, particularly in cases that involve students ([Michigan Interim Procedure for Addressing Sexual Misconduct Allegations Against Students](#)).

Throughout its review, the committee regularly consulted with the University's Campus Compliance Officer, who is often the individual to whom faculty, staff, and students report an alleged incident of sexual harassment. The Campus Compliance Officer or the Legal Office must first be notified before any action to investigate or resolve the matter can be initiated. Following thorough discussion on this topic, the committee considered developing text that would potentially allow for voluntary alternative dispute resolution process (e.g., mediation), at the instance of the complaining party. The committee considered whether the Office of Diversity Education and Compliance or the Office of Legal Affairs would be able to recommend such action, if appropriate. The committee members agreed that such a provision could not be recommended to operate as a limitation on the rights of the parties nor on the obligation of the University to prevent, investigate, and appropriately respond to allegations of sexual harassment.

However, throughout its review, the EDI Committee also sought legal counsel on this issue from the President's Legal Office. The committee was advised that, while an alternative dispute resolution process like mediation may be well intended and advisable in many types of disputes, mediation is not an acceptable or practical way to handle illegal activity. The EDI Committee confirmed that sexual harassment is indeed illegal activity, as are other types of discrimination.

The President's Legal Office informed the EDI Committee that federal law places the responsibility and obligation on the University to promptly investigate and take whatever remedial or disciplinary action is necessary to ensure that the conduct will not recur. Because the University must act to resolve the matter, it would not be appropriate for the individuals involved with the case to do so themselves. Additionally, the EDI Committee determined that the University cannot legally delay investigation or action while individuals mediate a complaint of harassment. A mediation process could also create a mistaken expectation by the individual parties that the matter would end a certain way if they agree on something, but in reality it may not. The EDI Committee determined that the legal obligation to resolve the matter is the University's responsibility, and it cannot fairly or properly be undertaken by the individuals involved in the complaint.

Based on its extensive research and legal advice, in February 2011, a large majority of committee members unanimously voted in favor of not recommending or inserting any new language to the text of the current policy at this time.

### **RECOMMENDATION:**

The EDI Committee recommends that no changes regarding mediation or other processes of voluntary dispute resolution be made to the VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment at this time. The policy should remain as is.

The focus of the EDI Committee during this review was on whether mediation options would be appropriate for complaints of sexual harassment, as instructed by its charge. However, the proposal also briefly mentioned the lack of appeal opportunities for respondents in cases of sexual harassment complaints. As such, the EDI Committee requests that it be charged with further review of the current appeal processes and opportunities for cases of sexual harassment at the University.

### **APPENDICES:**

Appendix 1 – Charge from the Senate Executive Committee, September 12, 2011

Appendix 2 – Proposal from Dr. Tossell, July 25, 2011 (including the current University of Maryland Policy and Procedures on Sexual Harassment and the Washington University in St. Louis Policy on Sexual Harassment)



## University Senate CHARGE

<b>Date:</b>	September 12, 2011
<b>To:</b>	Vincent Novara Chair, Equity, Diversity, and Inclusion (EDI) Committee
<b>From:</b>	Eric Kasischke Chair, University Senate 
<b>Subject:</b>	Proposal to Encourage Mediation as a Method for Resolving Sexual Harassment Complaints
<b>Senate Document #:</b>	11-12-05
<b>Deadline:</b>	March 30, 2012

The Senate Executive Committee (SEC) requests that the Faculty Affairs Committee review the attached proposal entitled, “Proposal to Encourage Mediation as a Method for Resolving Sexual Harassment Complaints” and make recommendations on whether the University of Maryland Policy and Procedures on Sexual Harassment (VI-1.20(A) should be revised.

The University is committed to an environment in which the campus community can interact freely, openly, and without intimidation and fear. The sexual harassment policy defines which acts constitute sexual harassment and outlines procedures for filing a complaint. The SEC requests that the EDI Committee review the proposal and advise on whether the current policy should be revised to include a process for mediation.

Specifically, we ask that you:

1. Consult with the proposer to discuss his specific concerns about the current process.
2. Review similar sexual harassment policies at our peer institutions.
3. Review research about whether mediation is a viable procedure for resolving sexual harassment complaints, and whether it is already included in our current policy.
4. Consult with the University’s Office of Legal Affairs.
5. If appropriate, recommend how mediation procedures could be implemented in the current policy.

We ask that you submit your report and recommendations to the Senate Office no later than March 30, 2012. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.



## University Senate PROPOSAL FORM

<b>Name:</b>	John A. Tossell
<b>Date:</b>	July 25, 2011
<b>Title of Proposal:</b>	Proposal to Encourage Mediation as a Method for Resolving Sexual Harassment Complaints
<b>Phone Number:</b>	301 346 2750
<b>Email Address:</b>	tossell@umd.edu
<b>Campus Address:</b>	Chemistry, Bldg. 091, 1102A
<b>Unit/Department/College:</b>	Chemistry and Biochemistry, CMNS
<b>Constituency (faculty, staff, undergraduate, graduate):</b>	Faculty (emeritus)
<b>Description of issue/concern/policy in question:</b>	At present, all complaints of sexual harassment at UMCP are treated purely legalistically, as either informal or formal complaints, which are usually handled by University lawyers. All decisions as to severity of offense and punishment are made by the lawyers. In fact, any attempt by a faculty colleague to Intervene in or mediate a sexual harassment dispute is concerned a violation of university policy and may be punishable. At many other universities mediation by non-lawyer professionals is an accepted, even recommended method, for dealing with such disputes. This procedure typically produces results more transparent to both the complainant and the alleged offender while protecting the rights of both.
<b>Description of action/changes you would like to see implemented and why:</b>	Section VI-1.20A of UM policy and Procedures should be modified to explicitly recognize mediation as an acceptable procedure for resolving sexual harassment complaints along with the informal and formal complaint procedures already described. Mediation would be performed by supervisors or by the ombudspersons of the university. University lawyers need not be involved. It should also be noted in the policy statement that the present informal complaint procedure does not involve peer evaluation of actions and penalties and is not subject to appeal. The alleged offender should have the right to refuse to respond to an informal complaint and demand that the complaint be made formal to insure their due process protections.

<p><b>Suggestions for how your proposal could be put into practice:</b></p>	<p>Such changes could simply be announced and placed in the Policy and Procedures documents available online. No new personnel would need to be established.</p>
<p><b>Additional Information:</b></p>	<p>I have examined the procedures for dealing with sexual harassment at a number of other institutions. Attached are the UMCP procedures and the Washington University at St. Louis procedures. Although there are numerous small differences in policy from one university to another, all the universities I've examined except UMCP provide for an administrative or mediation (non-legalistic) option in the treatment of such cases. In many cases this option is recommended or required as a first step. The sexual harassment procedures at UMCP were developed in 1991 (in apparent response to the Clarence Thomas – Anita Hill controversy) and have not been seriously updated since. The version promulgated by Acting President Farvardin on Oct. 20, 2010 is very similar to the 1991 version.</p> <p>I have discussed possible changes in sexual harassment policy with Ms. Susan Bayly, General Counsel of UMCP. Although she does not endorse my proposed changes she believes that it is appropriate for the University Senate to consider them.</p>

***Please send your completed form and any supporting documents to [senate-admin@umd.edu](mailto:senate-admin@umd.edu) or University of Maryland Senate Office, 1100 Marie Mount Hall, College Park, MD 20742-7541. Thank you!***

VI-1.20(A) UNIVERSITY OF MARYLAND POLICY AND PROCEDURES ON  
SEXUAL HARASSMENT

APPROVED BY THE PRESIDENT 1 AUGUST 1991; Revised  
December 13, 2004

A. POLICY

UM is committed to maintaining a working and learning environment in which students, faculty, and staff can develop intellectually, professionally, personally, and socially. Such an environment must be free of intimidation, fear, coercion, and reprisal. Accordingly, the Campus prohibits sexual harassment. Sexual harassment may cause others unjustifiable offense, anxiety, and injury. Sexual harassment threatens the legitimate expectation of all members of the Campus community that academic or employment progress is determined by the publicly stated requirements of job and classroom performance, and that the Campus environment will not unreasonably impede work or study.

Sexual harassment by University faculty, staff, and students is prohibited. This constitutes Campus policy. Sexual harassment may also constitute violations of criminal and civil laws of the State of Maryland and the United States. For the purpose of this Campus policy, sexual harassment is defined as: (1) unwelcome sexual advances; or (2) unwelcome requests for sexual favors; or (3) other behavior of a sexual or gender-based nature where:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or participation in a University-sponsored educational program or activity; or
- b. Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting that individual; or
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance, or of creating an intimidating, hostile, or offensive educational or working environment.

In assessing whether a particular act constitutes sexual harassment forbidden under this policy, the standard shall be the perspective of a reasonable person within the College Park Campus community. The rules of common sense and reason shall prevail. Nothing in this policy limits expression protected under the First Amendment, campus freedom of expression, or similar policies. Allegations of sexual harassment shall be judged with attention to the facts particular to the case and the context in which the alleged incident(s) occurred.

Conduct prohibited under this policy may manifest itself in many different ways. Sexual harassment may, for example, be as undisguised as a direct solicitation of sexual favors, or solicitation accompanied by overt threats. Harassment may also arise from behavior that has the effect of creating an intimidating, hostile, or offensive educational or working environment. In this regard, the following types of acts, if pervasive and continuous, are most likely to result in allegations of sexual harassment: unwelcome physical contact; sexual remarks about a person's clothing, body, or sexual relations; conversation of a sexual nature or similar jokes and stories; and the display of sexually explicit materials in the workplace or used, without defensible educational purpose, in the classroom.

Sexual harassment may occur within a variety of relationships. It may occur among peers. It may occur where no relationship exists between the parties other than being co-employees or co-students. Especially injurious is harassment in relationships characterized by inequality of power, where one party has institutional authority over the other. Inherent in these relationships is the power and fear of reprisal. Typically, such relationships are found between employer and employee; senior faculty and junior faculty; graduate teaching assistant and undergraduate; and faculty and student, when the student is enrolled in a faculty member's class or when the student is in a continuing position to require evaluation of work or letters of recommendation from the faculty. Such relationships can be immediate or based upon future expectations, for example, the need for future evaluations and references. Sexual harassment may occur between persons of the same or different sex.

Education and awareness are the best tools for the elimination of sexual harassment. The Campus is committed to taking appropriate action against those who violate the provisions of the policy. The Campus is committed to protecting targets of harassment from retaliation.

## B. PROCEDURES

### 1. General Principles.

Preventing sexual harassment is a responsibility of the entire Campus community. The Campus has made this a priority, but ultimately, no satisfactory investigation or resolution of a complaint can occur without the initiative and continuous cooperation of the person who feels injured.

Similarly, allegations of sexual harassment are extremely serious, with potential for great harm to all persons if ill-conceived or without foundation. Procedures which implement Campus policy recognize the potential for harm. The Campus is committed to protecting the rights of the alleged offender as well as the offended.

## 2. Confidentiality.

All complaints of sexual harassment are to be kept confidential. This means that the complaint will be discussed only with those who have a legitimate administrative or legal reason to know about the complaint. Information related to a complaint also may be subject to disclosure as required by state or federal law.

## 3. Filing a Complaint.

An individual who believes he or she has been subjected to sexual harassment has several ways to bring this to the attention of the University, and, where proper, obtain redress or protection. There is an Informal Complaint Procedure (see Section 5). There are also Formal Complaint Procedures (see Section 6) sufficiently broad to deal with sexual harassment. These procedures are explained later in this Policy.

Faculty, staff and students may report an alleged incident of sexual harassment to:

- a. the Campus Compliance Officer, Office of Human Relations Programs (405-2839);
- b. a Departmental or College equity officer;
- c. any Campus or University official or faculty member, including the reporting individual's supervisor, the department chair or dean;
- d. the Director of University Human Resources (405-5648);
- e. the President's Legal Office (405-4945);
- f. In addition to the options listed above, students also may report an incident of sexual harassment to the Office of Judicial Programs (314-8204).

## 4. Responsibilities of the Person Receiving the Complaint.

Any person who receives a complaint of sexual harassment shall not initiate any action to investigate or resolve the matter until he or she:

- a. explains that as a person receiving a report of sexual harassment, he/she must notify the Campus Compliance Officer or the Legal Office about the complaint. The Campus Compliance Officer and Legal Office will have a collaborative and information-sharing relationship regarding reports of sexual harassment. The purpose

of contacting one of these offices is:

- i. to ensure that the receiving person communicates the necessary information to the complainant,(including giving the complainant a copy of the Sexual Harassment Policy)
- ii. to determine what questions the complainant has about the Sexual Harassment Policy and procedures
- iii. to advise who would most likely be the appropriate University Official to handle an Informal Complaint.

b. speaks again to the complainant, after consulting with the Campus Compliance Officer and/or Legal Office. After the complainant has had the opportunity to raise any questions about the Sexual Harassment Policy and the Informal Complaint Process, the complainant will be offered the opportunity to decide which process to initiate.

#### 5. Informal Complaints.

The Informal Complaint Procedure is intended to be a flexible process so that each case may be handled according to the specific facts presented. The Informal Complaint Procedure has no specific steps, time limits or other prescribed requirements.

- a. Depending on the specific facts, an Informal Complaint may be reviewed or investigated by a supervisor or similar University official who has administrative authority over the person accused of harassment, or by the Campus Compliance Officer or Campus Legal Office staff. The Campus Compliance Officer and/or Legal Office will determine who is the most appropriate person to handle an Informal Complaint.
- b. While a written complaint is not required to initiate an Informal Complaint, the complainant will generally be asked to submit a signed complaint. If the matter is to be investigated, consideration shall be given to the situation and the wishes of the complainant.
- c. The results of the investigation shall be confidentially reported, according to the procedures of the Office of Legal Affairs' and/or the Office of Human Relations Programs' procedures, to the complainant, the alleged

offender, the Legal Office, and as required, to the President, the relevant vice president, dean, chairman, or supervisor. Sanctions for sexual harassment may range from reprimand to termination, depending upon the circumstances of the case.

- d. Files will normally be kept for the period of time designated in the record retention policy of the office handling the complaint. Complainants and alleged may ask where and how long a file will be kept.
- e. The person accused of sexual harassment shall be:
  - i. told that a complaint has been made;
  - ii. informed of the specific facts of the complaint;
  - iii. told that the complainant has chosen to pursue the complaint under the Informal Complaint Procedures;
  - iv. given an opportunity to have his/her questions about the Informal Process answered before any review or investigation proceeds;
  - v. given a copy of the Sexual Harassment Policy; and
  - vi. advised of his/her rights to contest any disciplinary action taken against him/her as a result of the Informal Complaint Procedure.

## 6. Formal Complaints

Formal procedures for resolving sexual harassment complaints are available based on the classification of the complaining person.

- a. Faculty, all categories of staff, and students can file a complaint under the University Human Relations Code with a Campus unit equity administrator or the Campus Compliance Officer, Office of Human Relations Programs, 1130 Shriver Laboratory (405-2839). The Human Relations Code is on-line at <http://www.inform.umd.edu/PRES/policies/vi100b.html>
- b. Faculty members can file a complaint under the Faculty Grievance

Procedure with the Faculty Ombuds Officer, 2132 Main Administration Building (405-1901). The Faculty Grievance Procedure is on-line at <http://www.inform.umd.edu/PRES/policies/ii400a.html>

- c. Exempt employees can file a complaint under the USM Policy on Grievances for Exempt and Non-Exempt Staff Employees with the Office of Staff Relations, Department of University Human Resources, 1100 Chesapeake Building (405-5651). This grievance policy is on-line at <http://www.usmh.usmd.edu/Leadership/BoardOfRegents/Bylaws/SectionV II/VII800.html>
- d. Non-Exempt employees can file a complaint under the USM Policy on Grievances for Exempt and Nonexempt Staff Employees with the Office of Staff Relations, Department of University Human Resources, 1100 Chesapeake Building (405-5651). This grievance policy is on-line at <http://www.usmh.usmd.edu/Leadership/BoardOfRegents/Bylaws/SectionVII/VII800.html>
- e. A student can file a complaint against another student under the Code of Student Conduct with the Office of Judicial Programs, 2108 Mitchell Building (314-8204). The Code of Student Conduct is on-line at <http://www.inform.umd.edu/PRES/policies/v100b.html>

The procedures listed above are long-standing, structured procedures established by law and/or University System of Maryland policy. Unlike the Informal Complaint Process, each procedure sets out specific steps, time limits, and other formal requirements. Time limits may be extended to take into account behavior considered continuing in nature. The location of a file on a complaint of sexual harassment and how long a file may be retained are determined by the particular procedure used. A complainant or person accused of harassment can find specific information about each of the Formal Complaint procedures by calling the relevant office listed above.

Following is a Statement on Sexual Relationships and Professional Conduct. While sexual relationships in the supervisory context are not prohibited in the sense that penalties are attached to such conduct, all members of the Campus community are urged to consider the ethical concerns that arise as a result of such relationships, and to take prompt and reasonable steps to prevent such issues.

#### STATEMENT ON SEXUAL RELATIONSHIPS AND PROFESSIONAL CONDUCT

The basic function of a university is the discovery and transmission of knowledge, activities which are founded upon the free and open exchange of ideas. In order for productive learning and the work that supports it to occur, members of the Campus community--faculty, students, and staff personnel--should pursue their responsibilities guided by a strong commitment to principles of mutual trust and confidence and professional codes of conduct.

It should be understood by all members of the Campus community that sexual relationships that occur in the context of educational or employment supervision and evaluation are generally deemed very unwise because they present serious ethical concerns. Many professional codes of conduct prohibit sexual relationships that occur within the context of one's profession. Accordingly, faculty and supervisors are warned about the possible costs of even an apparently consensual relationship. The element of power implicit in sexual relationships occurring in the supervisory context can diminish a subordinate's actual freedom of choice. There is doubt whether any such relationship can be truly consensual. In addition, sexual relationships between a professor or supervisor and subordinate create an environment charged with potential conflict of interest. Questions of favoritism frequently arise. As a result, such conduct may subvert the normal structure of incentives that spurs works and learning advancement and interjects attitudes and pressures that are not consonant with the education and employment policies and principles to which the Campus is committed.

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## Policies & Procedures

### Policy on Sexual Harassment

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#### I. Introduction and Policy Statement

Washington University is committed to having a positive learning and working environment for its students, faculty and staff and will not tolerate sexual harassment.

Sexual harassment is an attack on the dignity of individuals and the integrity of the University as an institution of learning. Academic freedom can exist only when every person is free to pursue ideas in a non-threatening, non-coercive atmosphere of mutual respect. Sexual harassment is reprehensible and threatening to the careers, educational experience and well-being of all members of our community.

Sexual harassment is a form of discrimination that violates University policy. It is also illegal under state and federal law.

This policy applies to all members of the Washington University community. It allocates responsibilities for helping to ensure that University policy is fairly applied, explains the process by which complaints of sexual harassment may be brought forward and provides sanctions for sexual harassment, which may range from reprimands to termination or dismissal, depending upon the severity of the offense. If you believe you have been sexually harassed, Sections IV and V describe options about what you can do and where you can get help. If you believe you have been falsely accused of sexual harassment, the procedures set out below are also available to you. Those charged with implementation of this Policy will, whenever appropriate, encourage and assist those who believe they may have been sexually harassed to pursue the assorted informal means outlined in Section IV below for securing the cessation of unwelcome and offensive conduct.

#### II. What is Sexual Harassment?

For the purposes of this statement, Washington University has adapted the Equal Employment Opportunity Commission (EEOC) definition of sexual harassment for an academic

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community: Sexual harassment is defined as any unwelcome sexual advance, request for sexual favor or other unwelcome verbal or physical conduct of a sexual nature, whether committed on or off campus, when:

1. submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or academic advancement;
2. submission to or rejection of such conduct by an individual is used as the basis or threatened to be used as the basis for employment or academic decisions or assessments affecting an individual; or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's work or educational performance or creating an intimidating or hostile environment for work or learning. Such conduct will typically be directed against a particular individual or individuals and will either be abusive or severely humiliating or will persist despite the objection of the person targeted by the speech or conduct.

Sexual harassment can be verbal, visual, physical or communicated in writing or electronically. Some conduct obviously constitutes sexual harassment -- such as a threat that a grade or promotion will depend on submission to sexual advance. But whether particular conduct constitutes sexual harassment will often depend upon the specific context of the situation, including the participants' reasonable understanding of the situation, their past dealings with each other, the nature of their professional relationship (e.g., supervisor-subordinate, colleague, etc.) and the specific setting. The inquiry can be particularly complex in an academic community, where the free and open exchange of ideas and viewpoints preserved by the concept of academic freedom may sometimes prove distasteful, disturbing or offensive to some.

Examples of conduct which may constitute sexual harassment include but are not limited to:

- o requests for sexual favors
- o hugging, rubbing, touching, patting, pinching or brushing another's body
- o inappropriate whistling or staring
- o veiled suggestions of sexual activities
- o requests for private meetings outside of class or business hours for other than legitimate mentoring purposes
- o use in the classroom of sexual jokes, stories or images in no way germane to the subject of the class
- o remarks about a person's body or sexual relationships, activities or experience
- o use of inappropriate body images to advertise events

Members of the University community can expect to be free from sexual harassment and thus all members of the University community should guard against it. The fact that someone did not intend to sexually harass an individual is generally not considered a sufficient defense to a complaint of sexual harassment, although the reasonableness or the accused's perceptions may be considered. In most cases, it is the effect and characteristics of the behavior on the complainant and whether a reasonable person similarly situated would find the conduct offensive that determine

whether the behavior constitutes sexual harassment.

### **III. Confidentiality**

The University will strive to protect, to the greatest extent possible, the confidentiality of persons reporting harassment and of those accused of harassment. Because the University has an obligation to address sexual harassment, however, the University cannot guarantee complete confidentiality where it would conflict with the University's obligation to investigate meaningfully or, where warranted, take corrective action. Even when some disclosure of the University's information or sources is necessary, it will be limited to the extent possible. The University will, to the extent permitted by law, keep confidential all records of complaints, responses and investigations. The records maintained by the Sexual Harassment Response Coordinator shall be available only to the Coordinator and, to the extent necessary, to administrators and other supervisors charged with responding to allegations of harassment. Allegations of sexual harassment shall not be placed in student records or personnel files unless, after appropriate investigation, such allegations have been sustained. Records of allegations maintained by the Coordinator which do not lead to formal hearings or personnel actions will be discarded after five years unless there are additional, more recent complaints against the same person. Any records maintained by the Coordinator concerning an allegation about which an accused person was not given reasonably timely notice and an opportunity to respond shall not be used to justify or enhance a sanction, other than an oral or written warning, imposed for a different instance of harassment.

If you want to discuss possible harassment in a more confidential setting or clarify your feelings about whether and how you wish to proceed, you may want to consult a social worker, therapist or member of the clergy, who is permitted, by law, to assure greater confidentiality. Clergy and counseling resources on campus are listed in Bearings, Ternion and Safety and Security on the Danforth Campus. In addition, any member of the University community may contact the Student Counseling Services at 935-5980 for a confidential discussion and, if desired, referral to off-campus resources.

### **IV. Seeking Advice; Making a Complaint**

If you believe that you have been sexually harassed, you have a number of response options, both formal and informal. Some people may wish to pursue informal means instead of or before making a formal complaint; others will not. If an informal procedure is ineffective, the formal procedures will remain open to you. You should select the route you feel most appropriate for your circumstances. However you wish to proceed, you may consult at any time with the Danforth or Medical Center Sexual Harassment Response Coordinator (listed in the Appendix), whose responsibilities include assisting students, faculty and staff with sexual harassment issues, be they general or specific, formal or informal. You may wish to work with the Coordinator to select an approach.

#### **A. Informal Procedures**

- I. If you feel comfortable dealing with the situation without assistance, you can:
  - A. Clearly say "no" to the person whose behavior is unwelcome.
  - B. Communicate either orally or in writing with the person whose behavior is unwelcome. The most useful communication will have three parts:
    1. A factual description of the incident(s) including date, time, place and specific action.
    2. A description of the writer's feelings, including any consequences of the incident.
    3. A request that the conduct cease.

Frequently, such a communication will cause the unwelcome behavior to stop, particularly where the person may not be aware that the conduct is unwelcome or offensive.

- II. If you would like to proceed informally, but with the assistance of someone else, you may:
  - A. Ask the person's supervisor, e.g., department chair, dean, director, housing office representative, academic advisor or resident advisor, to speak to the person whose behavior was unwelcome. The purpose of such conversations is the cessation of unwelcome behavior.
  - B. Consult with the Coordinator or one of the Sexual Harassment Response Advisors listed in the Appendix and specifically charged with responding to sexual harassment inquiries and complaints.

These individuals are thoroughly familiar with University policy on sexual harassment and are available to consult with victims of sexual harassment, those charged with sexual harassment, witnesses and supervisors of parties to a complaint. They can provide information about informal actions that might remedy the situation and discuss University policy on sexual harassment and procedures for resolving complaints.

- C. Ask the Coordinator to mediate or arrange for mediation. Mediation is Discussion and negotiation, with the help of a third party, designed to permit the parties to reach a mutually agreeable resolution of dispute. If a person complaining of sexual harassment seeks mediation, the person accused of harassment agrees, and the Coordinator concludes that mediation would be consistent with the University's legal obligations in responding to and preventing sexual harassment, the Coordinator may mediate or arrange for

mediation.

## B. Formal Procedures

Whether or not you have attempted to resolve a sexual harassment claim through informal means, you may initiate a formal sexual harassment grievance proceeding by filing written complaint. This process may lead to a formal hearing at which evidence will be considered and witnesses heard. If this is the course you wish to take, the Coordinator can assist you in filing a complaint.

Complaints, prepared with or without the assistance of the Coordinator, can be filed with the following Committees, with a copy to the Coordinator for your campus:

Complaints against faculty or staff:

Faculty and Administrative Affirmative Action Committee (complaints by faculty and administrators)  
Title IX Grievance Committee (complaints by students)  
Human Resources Advisory Committee (complaints by staff)

All of these committees may be contacted:

c/o Office of Human Resources  
North Brookings Hall, Room 126  
Campus Box 1184  
935-5990

Hearing procedures are set out in the Washington University Discrimination and Sexual Harassment Hearing Procedures. These procedures may be obtained from the Office of Human Resources or from any Sexual Harassment Response Coordinator or Advisor.

Complaints against students or student groups:

Office of the Judicial Administrator  
Women's Building, Room B2  
Campus Box 1136  
935-4062

Hearing procedures are set out in the University Judicial Code, found in Bearings and Washington University Faculty Information. These procedures may also be obtained from the University Judicial Administrator or from the Sexual Harassment Response Coordinators or Advisors.

Whether or not you choose to file a complaint, the University may be required, or may otherwise deem it necessary and protective of the academic community, to commence its own investigation.

## V. Protection of Rights

The University will not tolerate retaliation or discrimination against persons who report or charge sexual harassment or against those who testify, assist or participate in any investigation, proceeding or hearing involving a complaint of sexual harassment. In this context, retaliation means speech

or conduct that adversely affects another's terms or conditions of employment or education and is motivated by an intent to harm the targeted person because of his or her participation in the filing or investigation of an allegation of sexual harassment. Any such retaliation -- or any encouragement of another to retaliate -- is a serious violation of University policy and law, independent of whether the particular claim of sexual harassment is substantiated. If you believe you have been subjected to retaliation in violation of this rule, you may use the procedures described above to complain and seek redress.

The University seeks to protect the rights of all persons, accusers and accused, to fair procedures. Accusations of sexual harassment typically have injurious far-reaching effects on the careers and lives of accused individuals. Allegations of sexual harassment must be made in good faith and not out of malice. Knowingly making a false or frivolous allegation of sexual harassment, whether in a formal or informal context, will be treated as a serious offense under this policy and, where it applies, the University Judicial Code. If you believe you have been falsely accused of sexual harassment you may use the procedures of this policy or the University Judicial Code, where applicable, to seek redress. See Section IV.

#### **VI. Obligations of Vigilance and Reporting**

The University can respond to specific instances and allegations of harassment only if it is aware of them. The University therefore encourages anyone who believes that he or she has experienced sexual harassment to promptly come forward with inquiries, reports or complaints and to seek assistance from the University. In addition, any University employee who becomes aware of instances or allegations of sexual harassment by or against a person under his or her supervisory authority must report it to those charged with responding to such allegations and reports: the appropriate dean, director or department head or other similar administrator or to the Sexual Harassment Response Coordinator or one of the Advisors. It shall be the responsibility of these individuals to respond to allegations and reports of sexual harassment or refer them to other University officials for such response.

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#### **VII. Possible Sanctions**

Possible sanctions for a person found guilty of behavior in violation of this policy include but are not limited to the following:

- o oral or written reprimand, placed in the personnel file
- o required attendance at a sexual harassment sensitivity program
- o an apology to the victim
- o oral or written warning
- o loss of salary or benefit, such as sabbatical or research or travel funding transfer or change of job, class or residential assignment or location (i.e., removing the person from being in a position to retaliate or further harass the victim).
- o fine
- o demotion
- o suspension, probation, termination, dismissal or expulsion

While counseling is not considered a sanction, it may be offered or required in combination with sanctions. Where alcohol is involved in the sexual harassment, such counseling may include an alcohol abuse program.

If students or student groups are guilty of sexual harassment any of the sanctions set forth in the University Judicial Code may also be invoked.

#### VIII. **Education**

The best way to deal with sexual harassment is to prevent it. Education is essential to eliminating sexual harassment. Washington University has developed an ongoing training program. Please call a Sexual Harassment Response Coordinator or Advisor to find out more about these programs, what sexual harassment is, how to respond to it and what to do when someone asks for advice about sexual harassment.

Approved by the Washington University Senate Council, October 19, 1995. Approved by the Washington University Senate April 22, 1996. Revision approved by the Washington University Senate, April 28, 1997. (This policy supersedes prior University Policies on Sexual Harassment).

### **Appendix: Sexual Harassment Coordinators and Advisors**

(as of January, 2006)

#### **Danforth Campus**

##### **Coordinator:**

Ann B. Prenatt  
- 935-7746

##### **Advisors:**

Lorraine Goffe-Rush (complaints by faculty, staff and others)  
- 935-8046

Kathy Steiner-Lang (complaints by students and others)  
- 935-5910

John Drobak (complaints by faculty and others)  
- 935-6487

**Medical Campus**

**Coordinator:**  
Legail Chandler  
- 362-4900

**Advisors:**  
Apyle Cotton (complaints by faculty, staff and others)  
- 362-7198

Dr. Leslie Kahl (complaints by students and others)  
- 362-7481

Sandra Sledge (complaints by staff and others)  
- 362-4937

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