

THE UNIVERSITY OF IOWA POLICY ON SEXUAL HARASSMENT

Division 1. Policy

Section 1. RATIONALE.

(a) Sexual harassment is reprehensible and will not be tolerated by the University. It subverts the mission of the University, and threatens the careers, educational experience, and well-being of students, faculty, and staff. In both obvious and subtle ways, sexual harassment is destructive to individual students, faculty, staff, and the academic community as a whole. 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 undermined.

(b) Sexual harassment is especially serious when it threatens relationships between teacher and student or supervisor and subordinate. In such situations, sexual harassment unfairly exploits the power inherent in a faculty member's or supervisor's position. A supervisor's or instructor's control of grades, compensation, recommendations, promotions, and the like, can have a decisive influence on a student's, staff member's, or faculty member's career at the University and beyond.

(c) Although sexual harassment most often takes place in situations where a power differential exists between the persons involved, the University also recognizes that sexual harassment may occur between persons of the same University status. The University will not tolerate behavior of a sexual nature by members of the University community that creates an intimidating or hostile environment for employment, education, on-campus living, or participation in a University activity.

Annotation: The Committee intended no substantive changes to the Rationale, but made some minor edits for clarity.

Section 2. PROHIBITED CONDUCT – POLICY STATEMENT.

The University of Iowa forbids sexual harassment by any member of the University community.

(a) Definition of Sexual Harassment. For purposes of this Policy, “Sexual Harassment” means persistent, repetitive or egregious conduct directed at a specific individual or group of individuals that a reasonable person would interpret, in the full context in which the conduct occurs, as harassment of a sexual nature, when:

- (1) Submission to such conduct is made or threatened to be made explicitly or implicitly a term or condition of employment, education, on-campus living environment, or participation in a University activity;
- (2) Submission to or rejection of such conduct is used or threatened to be used as a basis for a decision affecting employment, education, on-campus living environment, or participation in a University activity; or,
- (3) Such conduct has the purpose or effect of unreasonably interfering with work or educational performance, or of creating an intimidating or hostile environment for employment, education, on-campus living, or participation in a University activity.

Annotation: In paragraph (a) the Committee adopted the language from the Code of Iowa definition of sexual harassment because the Committee felt this language was more precise in defining what type of conduct constitutes harassment. In subparagraphs (1) and (2) the “threatened to be made/used” language was added so it is clear that the threat of taking such

action, even if not carried out, is harassment. In addition, the Committee added “on-campus living environment” and “participation in a University activity” to make clear that harassment is prohibited in those contexts as well as in employment and educational contexts.

- (b) Evidence of Sexual Harassment. Behavior that may be considered evidence of prohibited sexual harassment includes, without limitation, the following:
- (1) Physical assault;
 - (2) Direct or implied threats that submission to sexual advances will be a condition of employment, work status, promotion, grades, or letters of recommendation;
 - (3) Direct propositions of a sexual nature;
 - (4) Subtle pressure for sexual activity, an element of which may be repeated staring;
 - (5) A pattern of sexually explicit statements, questions, jokes or anecdotes, whether made orally, in writing, or through electronic media;
 - (6) A pattern of conduct involving:
 - (a) Unnecessary touching;
 - (b) Remarks of a sexual nature about a person’s clothing or body; or,
 - (c) Remarks relating to sexual activity or speculations concerning previous sexual experience;
 - (7) A display of graphic sexual material (not legitimately related to the subject matter of a course if one is involved) in a context where others are not free to avoid the display because of an employment or educational requirement or without surrendering a privilege or opportunity that others may reasonably expect to enjoy in that location.

In determining whether alleged conduct constitutes sexual harassment, the investigator will consider all available evidence and the totality of the circumstances, including the context in which the alleged incident(s) occurred. Although repeated incidents generally create a stronger claim of sexual harassment, a single serious incident can be sufficient. Determinations will be made on a case-by-case basis. Conduct which constitutes a protected exercise of an individual’s rights under the First Amendment to the United States Constitution shall not be deemed a violation of this Policy.

Annotation: The Committee incorporated the former Section 3 into paragraph (b) of Section 2 because it helps to define further what conduct is prohibited. The title of the section was changed from “Examples” to “Evidence” of sexual harassment and the introductory language was modified to make clear that this list is not intended to identify conduct which will always per se constitute sexual harassment, but identifies conduct which may be harassment depending on the context in which it occurs. The list has been edited for clarity. A reference to electronic media was added to item (5) to include newly developed forms of communication. In addition, item (7) was added to describe displays of graphic material that may be considered harassment.

The final paragraph was added to emphasize further that each case will be decided on a case-by-case basis considering the totality of circumstances involved, and that speech protected by the First Amendment does not violate this Policy.

Division 2. Procedures

Section 3. BRINGING A COMPLAINT.

- (a) A complaint that this Policy has been violated may be brought through informal or formal channels by any member of the University community, including a third party, or by the University itself.
- (b) An informal complaint may be brought to an appropriate member of the University community, including any academic or administrative officer of the University such as the Director of Affirmative Action; the Vice President for Student Services and Dean of Students; the Associate Provost for Faculty; the Vice President for Finance and University Services; the Ombudsperson; any collegiate dean, director, supervisor, department head, or advisor; and departments or organizations such as the Women's Resource and Action Center and the Rape Victim Advocacy Program.
- (c) A person to whom a complaint is brought will counsel the complainant as to the options available under this Policy and, at the complainant's request, will (i) help the complainant resolve the complaint informally and/or (ii) refer the complainant to the Office of Affirmative Action so that the complainant may choose either to pursue informal resolution through that office or to bring a formal complaint.
- (d) Any academic or administrative officer of the University who becomes aware of allegations of sexual harassment, whether through the report of a complainant, the report of a third party, or otherwise, shall report the allegations to the Office of Affirmative Action for assistance in evaluating the situation and determining an appropriate course of action, even if the complainant has requested that no action be taken. Even if the Office of Affirmative Action cannot be consulted immediately, the academic or administrative officer shall take appropriate action to stop the alleged behavior until such consultation is possible.
- (e) When an informal complaint is brought, the person(s) charged in the complaint will not ordinarily be informed of the complaint without the consent of the complainant unless circumstances require (such as multiple complaints against the same person). No disciplinary action can be taken against a person charged in an informal complaint unless the person is notified of the charges and given an opportunity to respond.

Annotation: In paragraph (a), the Policy now allows complaints to be made by third parties or by the University itself. This change was made to increase the reporting of harassment and enhance the University's ability to pursue remedial action even when the recipient of the behavior does not wish to make a complaint. Recent legal and regulatory authority have imposed liability on employers and Universities who had notice of sexually harassing behavior and failed to act, even when the recipient of the behavior did not bring a complaint.

The reference to drafting a formal complaint was deleted from former paragraph (b), now paragraph (c), because current practice does not require a written statement other than a completed complaint form.

The Committee added paragraph (d) to require consultation with the Office of Affirmative Action whenever sexual harassment allegations are made known to an officer of the University. This requirement is intended to enhance the reporting of sexual harassment and

the consistency in enforcement of this Policy. It also underscores the supervisor's or administrator's responsibility to take prompt appropriate action to stop sexual harassment.

Paragraph (e) was modified to allow notice to a person named in an informal complaint without the complainant's consent when circumstances warrant such disclosure. While confidentiality will be maintained whenever possible, in some situations the University may need to take further action to ensure that the behavior does not recur. The final sentence was added to clarify that informal complaints do not result in disciplinary action unless the person charged is informed of the complaint and given an opportunity to respond to the allegations.

Section 4. INVESTIGATION OF FORMAL COMPLAINTS.

- (a) A formal complaint must be brought to the Office of Affirmative Action, which will conduct an investigation.
- (b) The purpose of the investigation is to establish whether there is a reasonable basis for believing that a violation of this Policy has occurred. In conducting the investigation, the Office of Affirmative Action may interview the complainant, the respondent, and other persons believed to have pertinent factual knowledge, as well as review any relevant documentary evidence. At all times, the Office of Affirmative Action will take steps to ensure confidentiality to the extent possible.
- (c) When a formal investigation begins, the respondent will be informed of the allegations, the identity of the complainant, and the facts surrounding the allegations. The investigation will afford the respondent a full opportunity to respond to the allegations.
- (d) At the conclusion of the investigation, the Office of Affirmative Action will issue a written finding which will summarize the evidence gathered and state whether or not there are reasonable grounds to believe that a violation of this Policy has occurred. Both parties to the complaint will receive a copy of the written finding, which is to remain confidential as defined by Section 10(b) of this Policy.
- (e) If the Office of Affirmative Action finds reasonable grounds to believe that a violation of this Policy has occurred, the matter will be referred to the appropriate administrative official for further consideration as outlined in Section 5 below.

Annotation: The changes in Section 4 are intended to clarify current practice in the investigation of formal complaints. This section describes the role of the Office of Affirmative Action in the investigation process. The new language in paragraph (c) was moved from the former Section 14 (now Section 9). The former paragraph (d) has been moved to Section 5(c) below, which describes the role of the administrative authority in initiating disciplinary action based on a finding of sexual harassment.

Section 5. PROCESS FOR FORMAL DISCIPLINARY ACTION.

- (a) The appropriate administrative official as defined in Subsection (b) of this Section will review the finding of the Office of Affirmative Action and will decide whether formal disciplinary action will be pursued.
- (b) The decision to initiate formal disciplinary action in cases in which:

- (i) a faculty member or other instructional personnel (except graduate assistants) is the respondent will be made by the Office of the Provost;
- (ii) a staff member is the respondent will be made by the Vice President responsible for the unit employing the person charged, or that person's designee;
- (iii) a student is the respondent will be made by the Vice President for Student Services and Dean of Students, or that person's designee.
- (iv) a graduate assistant is the respondent will be made by the Dean of the Graduate College, or that person's designee.

(c) Possible outcomes are (i) a judgment that the allegations are not warranted; (ii) a negotiated settlement of the complaint; or (iii) institution of formal disciplinary action.

(d) Violations of the Policy on Sexual Harassment may lead to disciplinary sanctions up to and including termination or separation from The University of Iowa.

Annotation: Section 5 has been revised to clarify the role of the administrative authority after the Office of Affirmative Action issues a finding. In paragraph (b), the administrative authority in complaints filed against graduate assistants will now be the Dean of the Graduate College rather than the Office of the Provost. This change was required because it is the Dean of the Graduate College that is involved in the graduate assistant grievance procedures under the COGS contract; the Office of the Provost has no direct role in that process. Paragraph (c) was moved from Section 4 above. Paragraph (d) was added to state explicitly that disciplinary sanctions may be imposed for violations of this Policy.

Section 6. APPLICABLE PROCEDURES.

Except as specifically modified by other provisions of this Policy, formal disciplinary action resulting from violations of this Policy by:

- (a) faculty members will be governed by the Faculty Dispute Procedures (see Section III.29, *University Operations Manual*) and that portion of those procedures dealing with faculty ethics (Sec. III.29.7).
- (b) staff members will be taken by the Vice President (or designee) responsible for the unit employing the respondent. Appeals from any formal disciplinary action against covered Professional and Scientific staff members are governed by Section III.28.4 of the *University Operations Manual* as applicable. Appeals from any formal disciplinary action against an Exempt Merit staff member are governed by Section III.28.1 of the *University Operations Manual*. Organized Merit Staff have access to a contractual grievance procedure, and non-organized merit staff have a procedure available under Regents Merit System Rules;
- (c) graduate assistants, when dismissal is sought, will be governed by the procedure for dismissal of graduate assistants (Sec. III.12.4, *University Operations Manual*). When disciplinary action other than dismissal is taken by the Dean of the Graduate College, a graduate assistant may appeal through any existing contractual grievance procedures;
- (d) students will be governed by Judicial Procedure for Alleged Violations of the Code of Student Life. Both the Code of Student Life and the Judicial Procedure are published and distributed to students annually in the "Policies and Regulations Affecting Students."

Annotation: Section 6 has been revised to reflect accurately the various grievance and/or dispute procedures that will govern the disciplinary process depending on the status of the respondent.

Section 7. ISOLATED BEHAVIOR.

- (a) Members of the University community who engage in isolated behavior of the kind described in Section 2(b), which does not rise to the level of sexual harassment but if repeated could constitute sexual harassment, demonstrate insensitivity that may warrant remedial measures. When University administrators become aware that such behavior has occurred in their areas, they should communicate to those who have engaged in the behavior the potential consequences if such behavior persists and should recommend, as appropriate, that they undertake an educational program designed to help them understand the harm they are causing.
- (b) If a person continues to engage in the conduct described in Subsection 7(a), he or she may be deemed to have engaged in sexual harassment.
- (c) This section addresses isolated behavior that does not rise to the level of a violation of this Policy. However, it should be understood that a single incident can under certain circumstances constitute sexual harassment.

Annotation: Section 7 is based on former Section 4, and is moved to Division 2 because it is part of the procedures for handling specific situations rather than the definition of the underlying policy. This section indicates that when individuals engage in isolated behavior which if repeated could constitute sexual harassment, they should be counseled about their behavior and referred to attend training on a voluntary basis, in an effort to prevent similar behavior in the future. Paragraph (c) was added to emphasize that in some circumstances, an isolated incident may constitute sexual harassment.

Section 8. PROTECTION OF COMPLAINANT AND OTHERS.

- (a) The complainant will be informed fully of steps taken during the investigation.
- (b) Retaliation against a complainant and/or witnesses who provide information during an investigation pursuant to this Policy is prohibited. All reasonable action will be taken to assure that the complainant and/or witnesses will suffer no retaliation as the result of their activities with regard to the process. Steps that may be taken to avoid retaliation might include:
- (i) lateral transfers of one or more of the parties in an employment setting and a comparable move if a classroom setting is involved, and
 - (ii) arrangements that academic and/or employment evaluations concerning the complainant or others be made by an appropriate individual other than the respondent.
- (c) Any retaliation against the complainant or witnesses should be reported to the Office of Affirmative Action for further investigation. If retaliation occurs, it may result in disciplinary action against the person committing the retaliatory act(s).
- (d) In extraordinary circumstances, the Provost, Dean, or a Departmental Executive Officer (DEO) may, at any time during or after an investigation of a sexual harassment complaint, suspend from teaching or supervisory responsibilities any faculty member, teaching assistant, or other instructional personnel accused of sexual harassment if the Provost, Dean, or DEO finds that it is reasonably certain that (i) the alleged sexual harassment has occurred and (ii) serious and immediate harm will ensue if the person continues to teach the class or continues in his or her supervisory responsibilities.

Annotation: The first sentence in paragraph (a) regarding complainant's consent was deleted because recent legal developments have made it clear that employers have an obligation to take prompt and effective action to stop harassing behavior once the employer has notice of it. Therefore, in some circumstances, an investigation or other action may need to occur even if the complaining party does not wish for any action to be taken.

The first sentence in paragraph (b) was added to strengthen the statement that retaliation is prohibited. Also in that paragraph, the language regarding "testifying" was deleted because there is no sworn testimony taken during an investigation, although witnesses are interviewed.

Paragraph (c) was added to strengthen the prohibition on retaliation and make clear that retaliation should be reported

Paragraph (d) was modified to reflect current practices in removing instructional personnel from the classroom pending an investigation in certain circumstances.

Section 9. PROTECTION OF THE RESPONDENT.

- (a) In the event the allegations are not substantiated, all reasonable steps will be taken to restore the reputation of the respondent if it was damaged by the proceeding.
- (b) A complainant found to have been intentionally dishonest in making the allegations or to have made them maliciously may be subject to University discipline.

Annotation: Throughout the Policy, references to "accused" have been amended to "respondent" because "accused" is associated with criminal proceedings. Former paragraph (a) has been moved to Section 4(c) above.

Section 10. CONFIDENTIALITY.

- (a) In order to empower community members to voice concerns and bring complaints, the confidentiality of all parties will be protected to the greatest extent that is legally possible. However, legal obligations may require the University to take some action once it is made aware that sexual harassment may be occurring, even when the complainant is reluctant to proceed. The Office of Affirmative Action will be consulted (see Section 3(d)) and information will be shared only with those individuals who need to know it to implement this Policy.
- (b) The parties to a complaint are expected to maintain confidentiality as well. Parties are not prohibited from discussing the situation with persons who make up their personal support network, such as family, friends, and counselors outside of the work or educational environment. However the matter should not be discussed with or disclosed to others in the work or educational environment. Dissemination of documents relating to a complaint and/or investigation, other than as necessary to pursue an appeal, grievance, or other legal or administrative proceeding, is prohibited. Failing to maintain confidentiality may be considered to be a form of retaliation in violation of Section 8(b) of this Policy.

Annotation: The Committee felt that the issue of confidentiality was not addressed adequately in the existing policy. In paragraph (a), the Committee sought to encourage individuals to bring complaints, while at the same time informing readers that absolute

confidentiality cannot be guaranteed. This paragraph informs readers that in some situations the University may need to take action that the complainant does not desire. Recent legal developments have necessitated this change away from allowing a complainant to have absolute control over whether an investigation is undertaken. However, the new paragraph also assures the reader that information is only disclosed on a “need to know” basis.

Paragraph (b) is intended to address questions that often are asked by parties during the investigation process regarding their duty to maintain confidentiality. The University does not intend to restrict parties from discussing the situation privately with their support network in their efforts to deal with the emotions involved in such a situation. However, discussion of the matter in the work or educational environment is prohibited to prevent the matter from unduly disrupting the environment. In addition, dissemination of documents other than through appropriate legal or administrative channels is prohibited. This information about confidentiality also will be included in written findings that are issued to the parties.

Division 3. Educational Programs

Section 11. EDUCATION AS A KEY ELEMENT OF UNIVERSITY POLICY.

Educational efforts are essential to the establishment of a campus milieu that is free of sexual harassment. There are at least four goals to be achieved through education: (a) ensuring that all victims (and potential victims) are aware of their rights; (b) notifying individuals of conduct that is proscribed; (c) informing administrators about the proper way to address complaints of violations of this Policy; and (d) helping educate the insensitive about the problems this Policy addresses.

Annotation: The reference to consensual relationships was deleted due to the separation of the two policies.

Section 12. PREPARATION AND DISSEMINATION OF INFORMATION.

(a) The Office of Affirmative Action is charged with distributing information about this Policy to all current members of the University community and to all those who join the community in the future. An annual notification from the Office of Affirmative Action is provided to all faculty and staff to remind them of the contents of this Policy. A copy of the Human Rights Policy will be included in student orientation materials, including those distributed to students in professional schools. In addition, information about that Policy will be made continually available at appropriate campus centers and offices.

(b) The Office of Affirmative Action offers courses for persons who are likely to receive complaints that this Policy has been violated, including, but not being limited to, such persons as residence hall resident advisors, academic advisors, supervisors, department heads, faculty advisors, and University and collegiate ombudspersons. Academic departments are encouraged to provide training for graduate assistants and other instructional personnel.

(c) The Office of Affirmative Action offers courses designed to educate the University community about sexual harassment prevention. The Office of Affirmative Action also offers courses designed to inform those whose behavior does not rise to the level of a violation of this Policy as defined in Section 2, but if repeated could rise to the level of a violation, of the problems they create by their insensitive conduct. The course may

be recommended for those described in Section 7 and may be an element in the resolution of a complaint. It also may be mandated for persons found to have violated this Policy.

Annotation: This section has been updated to reflect accurately the current practices in disseminating information about the policy and the educational programming available through the Office of Affirmative Action. The reference to "mandated" training for those individuals described in new Section 7 (Isolated Behavior) has been changed to reflect that such educational programming will be recommended but attendance is voluntary.

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