

Memo to: All UH-Downtown/PS Holders
From: Max Castillo, President
Subject: Sexual Harassment Policy

UH-Downtown/PS 02.A.15
Issue No. 3
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1. PURPOSE

This PS provides a mechanism to protect the rights of claimants and respondents and establishes the foundation for providing a professional working and learning environment free from sexual harassment.

2. DEFINITION

2.1 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.

2.2 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.

2.3 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.

2.4 Sexual harassment is not limited by gender of either party.

2.5 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:

2.5.1 is made, either explicitly or implicitly, a term or condition of instruction, employment, or participation in a university activity; or

2.5.2 is used as a basis for evaluation in making academic or personal decisions affecting an individual; or

2.5.3 creates an intimidating, hostile, or offensive university environment.

2.6 Sexual harassing behavior may include, but is not limited to, the following:

2.6.1 Unwelcome sexual flirtations, advances or propositions;

2.6.2 Verbal remarks of a sexual nature (whether directed to an individual or a group), including sexually explicit or offensive jokes;

2.6.3 Graphic or degrading verbal or written comments of a sexual nature about an individual or the individual's appearance;

2.6.4 Any suggestive or unwelcome physical contact;

2.6.5 Conduct of a sexual nature that interferes with a student's academic or extra-curricular activities or with an employee's job performance; or

2.6.6 Physical assault.

3. POLICY/PROCEDURES

3.1 The ultimate responsibility for the effective implementation of this policy is with the President of the University of Houston - Downtown. The Vice President for Academic Affairs and Provost, the Assistant Vice President for Human Resources and Affirmative Action, and the Dean of Student Affairs will insure that the University's Sexual Harassment Policy is communicated routinely through the

faculty, staff and student handbooks.

3.2 Failure of supervisors to investigate allegations of sexual harassment or failure to take timely corrective action is a violation of University policy and may be considered a violation of the law.

3.3 The University shall take preventive and corrective action in cases of sexual harassment; individuals who engage in such misconduct are subject to appropriate disciplinary action.

3.4 Concerted effort will be made to respect the right to confidentiality of all parties involved in a sexual harassment charge and to treat allegations of sexual harassment seriously. However, confidentiality cannot be absolutely guaranteed.

3.5 Retaliatory action taken against an individual as a result of that person's seeking remedy under the applicable procedures dealing with sexual harassment is prohibited. Such action shall be regarded as a separate and distinct cause for complaint.

3.6 Malicious charges may result in sanctions being imposed against the complainant by the University, or charges being 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.

3.7 This policy does not preclude anyone from pursuing a complaint, at any stage of the process, with an external agency.

3.8 The University sexual harassment procedures are composed of two parts: (1) intervention and (2) a hearing. The University 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.

INTERVENTION STEP

3.9 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 University provides trained individuals, including supervisors, to assist in implementing the intervention step.

3.10 Actions that may be taken in the intervention step include, but are not limited to, the following:

3.10.1 Listening to the complainant to find out what action is desired;

3.10.2 Advising the parties about the scope of the University's Sexual Harassment Policy and procedures;

3.10.3 Providing information and materials on recommended actions 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;

3.10.4 Sending a letter to everyone in the unit indicating concern about sexual harassment and enclosing a copy of the policy;

3.10.5 Undertaking a preliminary and confidential

investigation;

3.10.6 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;

3.10.7 Having a supervisor speak to and counsel the respondent;

3.10.8 Having the complainant meet with the respondent, with a third party present, to discuss the complaint;

3.10.9 Helping to develop an agreement providing for a letter of apology, a transfer of either party, a voluntary resignation, or other levels of appropriate university sanctions; or

3.10.10 Following up on an inquiry to determine if the complaint has been resolved or if the complainant still wishes to take further action.

3.11 Each complaint shall 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, witness(es), and any other information relevant to the case.

3.12 A statistical reporting procedure indicating the number, type, and disposition of sexual harassment inquiries or complaints received by each unit or division for a specific period covered by the report will be developed and monitored by the Assistant Vice President for Human Resources and Affirmative Action Officer. These reports are confidential and will not disclose the names of parties or other identifying details. A summary report of the data will be presented periodically to the University community by the Office of the President. The President will submit an annual statistical report to the Chancellor.

3.13 If the complainant decides to terminate the intervention step or withdraws the complaint, it will not necessarily preclude a University investigation by the Assistant Vice President for Human Resources and Affirmative Action Officer.

HEARING STEP

3.14 All stages of the hearing process shall be accompanied by explicit time limits that are reasonable to all parties. All participants in each stage of the hearing process shall maintain confidentiality to the greatest extent possible.

3.15 The Assistant Vice President for Human Resources and Affirmative Action Officer is the designated individual charged with facilitating the hearing process.

3.16 The role of the Assistant Vice President for Human Resources and Affirmative Action Officer shall be:

3.16.1 To obtain a written complaint;

3.16.2 To maintain permanent records required by policy;

3.16.3 To determine whether there is sufficient cause to send the complaint to a hearing committee;

3.16.4 If cause is found, the Assistant Vice President for Human Resources and Affirmative Action Officer shall, within thirty (30) days from receipt of the complaint:

(a) Notify the respondent, in writing;

(b) Notify the appropriate supervisors, and if a student is involved, notify the Dean of Students;

(c) Include in the written notification a statement warning those involved with the complaint, including the supervisors, that retaliation may subject that individual and the institution to additional charges.

3.16.5 If cause is not found, the Assistant Vice President for Human Resources and Affirmative Action Officer will communicate to the complainant in writing, within thirty (30) days from receipt of the complaint, the reasons why the complaint will not be sent forward to a hearing committee.

3.17 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. The complaint must be signed and dated by the complainant.

3.18 If the complainant wishes to withdraw the complaint, it will not necessarily preclude a University investigation by the Assistant Vice President for Human Resources and Affirmative Action.

HEARING PANEL

3.19 The hearing panel shall be specifically formed to address sexual harassment cases and shall be distinct from any other formal disciplinary procedures. Appointments will be made by the President using recommendations of constituencies. All constituencies (student, faculty, and staff) will be represented. Gender and ethnic diversity will be considered.

3.20 A hearing committee will be selected from among the members of the Hearing Panel by the Assistant Vice President for Human Resources and Affirmative Action. Constituencies of both the complainant and respondent will be represented. Both respondent and complainant will have an opportunity to challenge the selection of prospective hearing panel members. The Hearing Panel chair will consider the challenge and replace the member if appropriate. A potential hearing committee member may elect not to serve based on a conflict of interest.

3.21 Documents to be presented as evidence and names of potential witnesses must be forwarded to the Assistant Vice President for Human Resources and Affirmative Action within seven (7) business days of the hearing.

3.22 There will be a simultaneous exchange of documents and witness lists between complainant and respondent conducted and documented by the Assistant Vice President for Human Resources and Affirmative Action within four (4) business days of the hearing.

3.23 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, the hearing committee is vested with the authority to request testimony from additional witness(es) or request additional documentation. However, additional time must then be provided to both parties to prepare a response.

3.24 The hearing, but not the deliberation, will be recorded so that there is an official record of what occurred. The Affirmative Action Officer will have responsibility for recording the hearing and no other recording devices 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 Assistant Vice President for Human Resources and Affirmative Action for at least two years after the resolution of the complaint.

3.25 It is strongly advised that an attorney from the Office of General Counsel sit as an advisor 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 in the deliberations.

3.26 Procedures for the hearing include the following:

3.26.1 Parties will have the right to an advisor(s) of their choice. However, neither party may proceed through their advisor. Any advisor not listed will not be allowed to attend.

3.26.2 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 follow. After all the witnesses are presented, the complainant will make a closing statement, which will be followed by the respondent's.

3.26.3 Following the 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. The same procedure will be followed by the respondent. After both parties and the committee have concluded questioning the witness, the witness will be excused from the room, being reminded of the confidential nature of the hearing.

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

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

3.26.6 The committee will decide if the University's policy has been violated based upon the preponderance of the evidence presented during the hearing.

3.27 Within five (5) business days of the hearing, the committee will provide the Assistant Vice President for Human Resources and Affirmative Action with their decision. The Hearing Committee will:

3.27.1 Dismiss the complaint for lack of merit; or

3.27.2 Find that the policy against sexual harassment has not been violated; or

3.27.3 Find that the policy against sexual harassment has been violated. In that case, the Hearing Panel will recommend administrative sanctions which may include 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. Removal of tenure from a faculty member may only be accomplished through procedures outlined in the Faculty Handbook.

3.28 Copies of the hearing committee's decision and recommendation will be sent to the Assistant Vice President for Human Resources and Affirmative Action and the appropriate vice president. The Vice President will take one of the following actions:

3.28.1 Uphold the hearing committee's decision and accept its recommendations; or

3.28.2 Uphold the hearing committee's decision and impose different sanctions; or

3.28.3 Reject the decision of the hearing committee and take administrative actions.

3.29 The decision will be transmitted to the appropriate supervisor(s) and both parties.

3.30 During the procedures, the complaint and all related documents will be kept strictly confidential, with the

exception of maintaining the appropriate administrative officers 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 Assistant Vice President for Human Resources and Affirmative Action, and retained as a file with limited access. 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.

3.31 Both the complainant and respondent have the right to appeal the Vice President's decision and/or recommendation. Appeals must be submitted to the President within five (5) business days of notification of the Vice President's decision. The President's decision is final and binding.

4. REVIEW AND RESPONSIBILITIES

Responsible Party (Reviewer): Vice President for Administration

Review: Biennial



President

03/15/1999
Date