

GUIDELINES ON SEXUAL HARASSMENT

I. Policy Statement And Scope

Sexual harassment is reprehensible conduct that will not be tolerated by the University. Such behavior subverts the University's mission and threatens the careers, educational experience, and well being of students, faculty, and staff. It undermines authority and collegial relationships and generates suspicion, conflict, and ill feelings.

Relationships involving sexual harassment or discrimination on the basis of gender have no place within the educational community. In both obvious and subtle ways, sexual harassment is destructive to individual students, faculty, staff, and the academic community as a whole. When a student, faculty member, or staff member submits to or is pressured to submit to unwanted sexual attention through fear of reprisal, the institution's ability to carry out its mission is threatened. The tolerance of an unwelcome hostile environment by students, faculty, and staff is not conducive to scholarly pursuits.

Sexual harassment is especially serious when it threatens relationships between a faculty member and student or supervisor and subordinate. In such situations, sexual harassment unfairly exploits the power inherent in a faculty member's or staff supervisor's position. Through grades, wage increases, recommendations for graduate study, performance evaluations, promotions, etc., a faculty member or supervisor can have a decisive influence on the career of a student, staff member, or other faculty member at the institution.

Although sexual harassment most often takes place in a situation that involves a "power differential" between the persons involved, the University also recognizes that sexual harassment may occur between persons of the same institutional status. The University will not tolerate behavior between or among members of the educational community that creates a hostile or offensive work or educational environment.

This policy applies to all administrators, faculty, staff, agents, and students at all times and places in any connection with the University. This policy applies for and to those with whom the University conducts business. Compliance with this policy is a term and condition of employment with the University. For purposes of this policy, the terms "employee" or "employment" include, but are not limited to, faculty, support staff, and administrators, agents, and contractors. The term "faculty" or "faculty member" shall include all of those who teach at the University; this includes graduate students with teaching responsibilities as well as other instructional personnel.

II. Definition of Sexual Harassment

Sexual harassment is defined as unwelcome or unwanted advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature on or off campus when:

- submission to or toleration of such conduct is made explicitly or implicitly a term or condition of an individual's employment, academic standing; or
- submission to or rejection of such conduct is used as a basis for an employment or academic decision affecting such individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, or creating an intimidating, hostile, or offensive environment for work or learning.

III. Examples of Sexual Harassment

Sexual harassment includes any interpersonal attention of a sexual nature that is unwanted and unwelcome. Examples may include, but are not limited to, the following:

- physical assault; assault in this sense includes any physical touching of any kind that is sexual in nature; or
- direct or implied threats that submission to sexual advances may favorably affect employment, work status, promotion, grades, or letters of recommendation; or that rejection of sexual advances may negatively affect the same; or

- direct propositions of a sexual nature; or
- subtle pressure for sexual activity, one element of which may be conduct such as repeated and unwanted leering; or
- a pattern of conduct (not legitimately related to the subject matter of the course if a course is involved or to employment if employment is involved) that tends to bring discomfort and/or humiliation, which may include comments of a sexual nature, or sexually explicit jokes, statements, questions, or anecdotes; or
- a pattern of conduct that would tend to bring discomfort or humiliation to a reasonable person at whom the conduct was directed, which may include unnecessary touching, patting, hugging, or brushing against a person's body; remarks of a sexual nature regarding a person's clothing or body; or remarks about sexual activity or speculations about previous sexual experience.

IV. Consensual Relationships

The University's educational mission is promoted by professionalism in the faculty-student and supervisor-employee relationships. This professionalism is fostered by an atmosphere of mutual trust and respect. Actions of students or employees that harm this atmosphere undermine professionalism and hinder fulfillment of the University's mission. Trust and respect are diminished when those in positions of authority abuse, or appear to abuse, their power. Those who abuse, or appear to abuse, their power in such a context violate their duty to the entire University community.

A. Faculty - Student Relationships

Faculty members exercise power over students, whether in giving them grades, praise, or criticism, evaluating them or making recommendations for future employment, or conferring other benefits on students. Amorous relationships between students and faculty members are obviously wrong when the faculty member has professional responsibility for, and thus power over, the student. Such situations greatly increase the probability that the faculty member will abuse this power and sexually exploit the student.

Given the fundamentally asymmetric nature of and the "power differential" inherent in such relationships, any appearance of voluntary consent on the part of the student is suspect. Moreover, other students and faculty members may be affected by such unprofessional behavior because it places the faculty member in a position to advance or favor one student's interests at the expense of others, and implicitly makes obtaining benefits contingent on amorous or sexual favors.

The University views it as unethical for faculty members to engage in amorous relationships with students who are enrolled in their classes or subject to their supervision, even when both parties appear to have consented to the relationship.

Amorous consensual relationships between students and faculty members occurring outside the instructional context are suspect by nature and may lead to difficulties. Particularly when the student and the faculty member are in the same academic unit or in units that are academically allied, relationships both parties view as consensual may appear to others to be exploitative. Further, in such situations (and in others that may occur in the future, which neither party can anticipate), the faculty member may face serious conflicts of interest. In certain instances, it may be necessary for a faculty member to withdraw from participation in activities or decisions that tend to reward or penalize the student involved. A faculty member who fails to recognize such conflicts of interest and fails to withdraw accordingly risks rewarding or penalizing a student with whom the faculty member has had an amorous relationship. In such cases, the faculty member has violated his ethical obligations to the student, to colleagues, and to the institution. Moreover, actions that occur after the breakup of such relationships may cause problems (the lack of favorable recommendation for the student from the faculty member, etc.) and therefore may be viewed as retaliation for "breaking up" and may be actionable.

B. Supervisor - Employee

Supervisors exercise power over employees in all terms and conditions of employment, including the evaluation of performance or making recommendations for future employment. Amorous relationships between a supervisor and an employee reporting either directly or indirectly to the supervisor are obviously wrong as the supervisor has professional responsibility for and thus power over the employee. Such situations greatly increase the potential for abuse of this power and sexual exploitation of the employee.

Given the fundamentally asymmetric nature of and the "power differential" inherent in such relationships, any appearance of voluntary consent on the part of the employee is suspect. Moreover, other employees may be affected by such unprofessional behavior because it places the supervisor in a position to advance or favor one employee's interests at the expense of others, and implicitly makes obtaining employment or other terms and conditions of employment contingent on amorous or sexual favors.

The University therefore views it as unethical for supervisors to engage in amorous relationships with employees subject to their supervision, even when both parties appear to have consented to the relationship.

V. Complaint Resolution Procedure for Complaints Involving Employees

When an incident involving sexual harassment occurs, the victim may be inclined to ignore it or offer minimal protest in the hope that the offensive behavior will cease and not be repeated. In general, this is an ineffective method of resolving such problems. Even if the behavior should cease in this particular relationship, there remains the probability that it represents a pattern of behavior on the part of the accused and that it has been or will be repeated in other relationships. At the very least, the accused may retain the belief that such behavior is acceptable. For this reason (if for no other), the victim should take steps to resolve the matter conclusively and finally. This complaint procedure is intended to investigate and resolve complaints in a manner that is fair and timely.

A. Complainant Resolves Issue with Person Involved

Initially, the victim may attempt to resolve the issue directly with the accused. This attempt need not be confrontational in nature. Whether the victim speaks directly (face to face or on the telephone) or indirectly (in writing) to the accused, the victim has the right and responsibility to one's self to let the other individual know that his behavior is unwelcome.

Any attempt at direct resolution between the victim and the accused should be regarded as strictly voluntary on the part of the complainant. However, the complainant has the right to proceed directly to informal resolution or file a formal complaint without being required to attempt to resolve the complaint directly with the accused.

An effort at direct resolution is likely to be inappropriate where the alleged offense involved force or threat of force.

B. Informal and Formal Complaints

An individual who believes that he has been a victim of sexual harassment is expected to bring either an informal or formal complaint of sexual harassment or any threat, attempt or act of retaliation to an administrative official (supervisor, director, dean or department chair, faculty member, academic advisor or human resources manager) as soon as possible, and is encouraged to do so within 180 days from the most recent occurrence. Delay in taking action with respect to an incident may foreclose other remedies under federal or state law. The University reserves the right but has no obligation to conduct an investigation of such matters or take remedial action if the complaint is made after 180 days from the most recent occurrence of perceived harassment.

A prompt report of harassment or retaliation is very important for several reasons. The University is better able to investigate and remedy complaints if they are brought to its attention immediately. The recollection of witnesses usually is better closer to the incident. Many perpetrators will discontinue inappropriate behavior once they understand that it is objectionable. The University's ability to impose a meaningful remedy dissipates with the passage of time. For all these reasons, the University urges that complaints be filed promptly.

The University may initiate an investigation if it has reason to believe that its policy prohibiting harassment or retaliation has been violated.

Option One: Informal Resolution

Any member of the University community who believes that he has been sexually harassed may attempt to resolve the complaint through an informal resolution procedure. In this step, the complainant should report the unwelcome behavior to an administrative official (supervisor, director, dean or department/program chair, faculty member, academic advisor or human resources manager). Upon receiving such complaint, the administrative official should proceed as follows:

1. Document all the facts and circumstances surrounding the allegations as told to the administrative official by the complainant.
2. Notify the director of affirmative action within 48 hours or two business days of receiving the complaint. Timeliness in reporting and initiating action is important in avoiding future potential liability.
3. Understanding the University has the obligation to seriously consider any complaint of sexual harassment, the administrative official cannot promise confidentiality to the complainant. The administrative official must regard his position as a trust and is not to discuss the matter with anyone not directly involved in the resolution of the complaint.
4. Upon discussing the complaint with the director of affirmative action, the administrative official may turn over the complaint to the director of affirmative action or, if appropriate, assist the complainant in resolving the complaint informally. In this case, assistance may be provided by the director of affirmative action.

If the administrative official is able, through discussion, to resolve the matter to the satisfaction of all persons involved, the matter may be closed at this point. The director of affirmative action will maintain a confidential record of the complaint and its resolution in the event the behavior recurs. In the event of a potential conflict of interest on the part of the director of affirmative action, the director of affirmative action will refer the entire matter to the vice president of business affairs who shall appoint an investigator to handle the case in question.

Option Two: Formal Complaint

Although informal resolution is encouraged as the first step in attempting to resolve the complaint, a formal complaint may be filed without an informal attempt to resolve the complaint.

Timeliness. Complaints should be filed as soon as possible after any incident, but should be filed within 180 days of the most recent incident.

Where to File. A formal complaint should be filed with the director of affirmative action.

Contents of Complaint. The complaint should be a written, detailed statement of the alleged incident and the remedy desired. The statement should be signed and dated.

Withdrawal of Complaint. Withdrawal of a complaint will not necessarily result in the termination of the University's investigation into the allegations. Knowingly false or malicious charges may result in sanctions being imposed against the complainant by the University or charges being filed against the complainant by the respondent.

Response to a Complaint. Within seven calendar days of receipt of a formal complaint, the director of affirmative action will notify the respondent of the complaint, provide a summary of the allegations and inform the respondent that he has 14 calendar days in which to respond in writing to the allegations. This time period may be extended when necessary to accommodate the absence of relevant persons due to the academic calendar, illness, closure of the University or other such reason; in such a case, the director of affirmative action will notify all parties and establish a timetable for the entire complaint procedure.

In the response to the complaint, the respondent should include any relevant information and explanation of the matters involved in the complaint or a denial, in whole or in part, of the charges. The respondent will be specifically warned not to retaliate against the complainant in any way. Retaliation will subject the respondent to disciplinary action up to and including termination of employment or disciplinary action under the Student Code of Conduct if the individual is a student.

Notification to Administrative Supervisors. The director of affirmative action will notify the appropriate administrative supervisors to whom the complainant and respondent report of the existence of the complaint. However, all administrative supervisors are expected to maintain confidentiality of the complaint, discussing only with those who have a legitimate need to know.

Director of Affirmative Action Investigation. Upon receipt of the response, or 14 calendar days after the respondent is given a copy of the complaint, the director of affirmative action may further investigate the complaint or may reach a decision without an investigation, based on the complaint and the response.

In making a determination of whether there is sufficient basis for the complaint, the director of affirmative action shall consider the perceptions of the complainant, the alleged offender(s), witnesses to the incident, and others who have information about the presence or absence of conduct following the same pattern. The fact that there is no witness to the incident that the complainant says occurred and the alleged offender denies does not require a finding that harassment has or has not occurred.

Director of Affirmative Action Decision. The director of affirmative action must take some action on the complaint within 45 calendar days after receipt of the formal complaint. The director of affirmative action may dismiss the complaint for lack of merit; refer the complaint to a hearing committee of the EEO Appeal and Hearing Board (see Section VI); or allow the parties to sign a written statement of agreement resolving the differences between them. Further action by the University against either party is not precluded by any agreement between the parties unless the agreement is approved by the director of affirmative action and the respondent's vice president. If the director of affirmative action refers the complaint to the EEO Appeal and Hearing Board, no appeal is necessary by the respondent to challenge the action; the Board will convene a hearing committee to hear the case.

Appeals of Decisions of the Director of Affirmative Action. If the director of affirmative action dismisses the complaint, the complainant has 10 calendar days from the date of notification by the director of affirmative action of the dismissal to appeal the dismissal to an appeal committee of the EEO Appeal and Hearing Board. If the complainant appeals, the director of affirmative action will forward the complete file to this Board.

EEO Appeal and Hearing Board Action. Once the EEO Appeal and Hearing Board receives the complaint, either an appeal or a hearing committee will be appointed by the chair of the Board within 21 calendar days.

Appeal Committee. An appeal committee, appointed to consider an appeal of a prior decision, will only accept appeals on the basis of due process/procedural grounds or if new evidence becomes available that was previously unknown. Appeals must be submitted in writing and clearly identify the basis and justification of the appeal. The appeal committee will judge the merit of the appeal; if the committee agrees to review the appeal, all documentation considered in the decision being appealed shall be made available to the committee. The committee will have the option to uphold the prior decision or overturn the decision. If the decision is overturned, the appeal will be referred to the appropriate vice president for action.

Hearing Committee. A hearing committee may be appointed to hear the complaint. All documentation gathered in the case, as well as other sources of information and/or additional data-gathering procedures, may be used by the committee. The committee shall determine its rules for conducting the hearing. The committee may dismiss the complaint for lack of merit; find that the respondent violated the University's policy on sexual harassment; or allow the parties to sign a written statement of agreement resolving the differences between them. Further action by the University against either party is not precluded by any agreement between the parties unless the agreement is approved by the committee convened for the case.

In determining the outcome of the complaint, the committee shall consider all circumstances including the frequency and pervasiveness of the harassing or retaliatory conduct, its severity, whether physical threats or humiliation were present, or if the behavior unreasonably interfered with the work or education of the complainant or others. The committee may recommend sanctions to the appropriate vice president.

Appeals of Actions of the Hearing Committee. The hearing committee's decision to dismiss the complaint is final and cannot be appealed. However, if the hearing committee finds that the respondent violated the University's policy on sexual harassment, the respondent has 10 calendar days from notification by the hearing committee of their finding to appeal that finding to the respondent's vice president. Also, if the committee recommends sanctions, the respondent has 10 calendar days to respond to that recommendation by writing to the respondent's vice president. In either case, the respondent has a total of 10 calendar days in which to appeal the finding or appeal the sanction.

Vice Presidential Action. If the hearing committee finds that the respondent violated University policy on sexual harassment, the respondent's vice president may investigate the complaint further, or may rely on the record in the file. The vice president may impose sanctions against the respondent. In the event that the respondent is under the authority of more than one vice president, the complaint will be referred to the vice president of the area of primary employment. The vice president may reverse the findings of the hearing committee and dismiss the complaint for lack of merit; uphold the hearing committee's findings and accept its recommendations on sanctions; uphold the committee's finding and impose different sanctions; or allow the parties to sign a written statement resolving the differences between them. Further action by the University against either party is not precluded by any agreement between the parties unless the agreement is approved by the vice president.

Appeals of Actions of the Vice President. The vice president's decisions may be appealed to the president only in extenuating circumstances and only by special permission of the president.

Exceptions to Established Time Periods. The time period established for reaching closure

on the complaint may need to be extended to accommodate the absence of relevant persons due to the academic calendar, illness, closure of the University, or other such reason. In such a case, both the complainant and respondent will be notified by the individual coordinating the investigation.

VI. EEO Appeal And Hearing Board

A. Membership of the Board

The members of the board are selected by the appropriate groups represented on the board: three faculty members selected by the Faculty Senate, three support staff members selected by Staff Council; three administrative staff members selected by the Administrative Council; and three students selected by the Student Government Association. Faculty and staff members serve three year staggered terms; student members serve one-year renewable terms. Members of the board shall select a chair of the board annually.

B. Membership of Either an Appeal or Hearing Committee

Each appeal/hearing of the board shall be conducted by a committee of three board members, two from the constituency to which the respondent belongs and one from the constituency to which the complainant belongs. The members of the committee, one of whom who will serve as the committee chair, shall be chosen by the chair of the board.

C. Challenges to the Committee Membership

The respondent and the complainant shall each have the opportunity to challenge any committee member for cause, but the final decision as to committee membership is the responsibility of the board chair.

D. Function of the Committee

The primary function of a committee is to either hear appeals or conduct hearings on complaints of sexual harassment. In the case of an appeal of a prior decision, the committee may decide, at its discretion, to clarify the documentation provided that was used in the appealed decision. This may include interviewing individuals or other actions necessary to get clarification. In the case of a hearing, the committee may decide, at its discretion, to conduct an investigation, schedule hearings, and request University members to speak to the committee and/or supply documents. The board shall adopt its procedures. The complainant bears the burden of convincing the committee and any other University officials that the respondent has violated the University's sexual harassment policy. The committee will also make recommendations to the appropriate vice presidents concerning sanctions for violations of the sexual harassment policy.

VII. Sanctions

Individuals who violate the University's policy on sexual harassment may be subject to a variety of sanctions imposed by the University and/or external agencies.

Administrative sanctions include any disciplinary action, up to and including termination of employment for faculty, administrators, or support staff, or up to and including dismissal from the University for students. This procedure is to be used in place of other procedures concerning grievances identified in the *University Handbook* or *Student Code of Conduct*.

Sexual harassment may be considered a criminal offense within the state of Indiana. Depending on the severity of the acts, an individual may be subject to prosecution. An individual could be sanctioned by the University and also be criminally prosecuted for the same conduct, if merited by the conduct.

Official governmental investigations by the Equal Employment Opportunity Commission, the Indiana Civil Rights Commission, and/or the Office of Civil Rights of the Department of Education may result in civil lawsuits and penalties against any person guilty of sexual harassment.

VIII. Third Party Harassment

Harassment of employees or students by third parties is not acceptable. The University of Southern Indiana will do whatever it reasonably can to stop such harassment. Individuals who are harassed or aware of such harassment should make the University aware of such harassment immediately by contacting the director of affirmative action.

IX. Protection of Rights

Investigations of complaints will be initiated with the complainant's consent if possible. However, based on the nature and seriousness of the complaint, the University may initiate an investigation without such consent. The accused may not initially be informed of the identity of the complainant, but should be informed of the specific allegations and the facts surrounding the allegations.

To the extent possible, all proceedings will be conducted in a way calculated to protect the confidentiality interests of both parties. Moreover, all reasonable action will be taken to ensure that the complainant and those testifying on behalf of the complainant will suffer no retaliation as a result of their actions. Steps to see that retaliation is avoided might include lateral transfers of one or more of the parties in an employment setting or a comparable move if a classroom setting is involved; and/or arrangements that academic and/or employment evaluations concerning the complainant or others are made by an appropriate individual other than the accused.

In the event that the allegations are not substantiated, all reasonable steps will be taken to restore the reputation of the accused if it may have been damaged by the proceedings. If a complainant is found to have been intentionally dishonest in making the allegations or to have made allegations maliciously, the complainant is subject to discipline, up to and including termination from employment for faculty, administrators, and support staff and up to and including dismissal from the University for students.

X. Records Retention and Confidentiality

During the procedures, the complaint and all documents will be kept strictly confidential, except that the appropriate administrative supervisors will be kept informed. At whatever state the procedure above is completed, the file containing all documentation in the complaint will be sent to the director of affirmative action and retained in a sealed file with access limited to the president or vice presidents. However, all findings of violations of the Sexual Harassment Policy and all sanctions imposed will be added to the respondent's personnel and/or student file.

Although the University cannot commit to keeping a complaint of sexual harassment confidential because of the University's obligation to investigate the complaint, the University will use its best efforts to protect all parties involved and not disseminate information concerning the complaint beyond those who have a legitimate "need to know". The administrative official to whom a person brings a complaint of sexual harassment shall inform the complainant that the University cannot promise to keep the complaint confidential.

XI. Retaliation

No one shall threaten, attempt to retaliate, or retaliate against a person filing a complaint of sexual harassment or retaliation, or against any participant in the investigation, or against any person who protests the alleged sexual harassment or retaliation. The administrative official to whom the complainant brings the complaint shall tell him that (1) the law and the University's rules prohibit

threats, attempts, or actual retaliation against him for bringing the complaint, or against any participant in the investigation, or against any person who protests the alleged sexual harassment or retaliation; and (2) any incident of retaliation must be reported immediately to the director of affirmative action.

In addition, when the director of affirmative action and/or the hearing committee investigates the complaint, the respondent is to be warned that (1) he is not to retaliate against the complainant for filing the complaint, or against any participant in the investigation, or against any person who protests the alleged sexual harassment, whether or not he accepts the complaint as true; (2) such retaliation would be a violation of law and of the University's rules; and (3) the University may use any verified threats, attempts, or acts of retaliation as a basis for initiating dismissal-for-cause proceedings.

Retaliation directed toward the complainant or others who have participated in the investigation may include such things as the following: adverse employment action; adverse academic action; lowering a grade or giving poor academic recommendation; exclusion from employment or educational opportunities; limiting scholarly activities (e.g. exclusion from teaching or research, or interfering with publication); and spreading negative information about an individual who has made, pursued, or supported a complaint.