



MEMORANDUM

TO: President Edward T. Foote II

FROM: Kamal Yacoub *Kamal Yacoub*  
Chair, Faculty Senate

DATE: April 27, 1995

SUBJECT: Faculty Senate Legislation #94009(B) -  
Faculty Policy on Sexual Harassment

The Faculty Senate, at its meeting on April 24, 1995, voted to approve Faculty Senate Legislation #94009(B) - Faculty Policy on Sexual Harassment. The text of the legislation is attached.

This legislation is now forwarded to you for your action.

KY/b

Attachment

cc: Provost Luis Glaser  
Mr. Robert Blake, General Counsel

## FACULTY POLICY ON SEXUAL HARASSMENT

Sexual Harassment by any member of the university community is prohibited. The University and its faculty are committed to a work environment free of sexual harassment, and violations of the University policies against sexual harassment are regarded as grounds for sanctions as defined in this policy. Serious cases of sexual harassment by a member of the university community may result in dismissal in accord with the appropriate policy.

### DEFINITION

Sexual harassment is defined as unwelcome sexual conduct, such as unwelcome advances, requests for sexual favors, or other conduct of a sexual nature when:

1. Such conduct is engaged in under circumstances implying that one's response might affect academic or personnel decisions that are subject to the influence of the person engaging in that conduct; or
2. Such conduct is directed at an individual or a group and is either (a) abusive or would be considered severely humiliating by a reasonable person at whom it was directed, or (b) persists despite the objection of the person(s) targeted by the conduct; or
3. Such conduct is so clearly unprofessional that it creates a hostile environment that may substantially impair the work or academic performance of colleagues, coworkers or students.

### EXAMPLES

Sexual harassment may encompass any unwelcome sexual conduct outlined above. Examples of verbal or physical conduct that is prohibited include:

- A. explicit or implied threats that submission to sexual advances may be a condition of employment, work status, promotion, grades, or letters of recommendation;
- B. unwelcome propositions of a sexual nature by a supervisor or individual with authority at the University over the status of the complainant, or such propositions by any faculty member that persist despite the objections of the person to whom they are made.
- C. a pattern of unwelcome speech directed at a person, as an individual or as a member of a group, that is abusive or would cause severe humiliation to a reasonable person or that persists despite the objection of the person targeted, and that includes: (i) suggestive comments of a sexual nature; or (ii) sexually explicit statements, questions, jokes, or anecdotes;
- D. a pattern of unwelcome conduct that is either (1) abusive or that would cause severe humiliation to a reasonable person at whom it was directed, or (2) persists despite the

objection of the person targeted, and that includes: (i) unnecessary and inappropriate touching, patting, hugging, or brushing against that person's body; (ii) remarks of a sexual nature about that person's clothing or body; or (iii) remarks about a person's sexual activity or speculations about the previous sexual experience of that person.

This list is intended to be illustrative, not exhaustive; sexual harassment is established by determining whether the particular facts and circumstances of each case meet the definitions of this policy.

Important differences exist between the classroom and the ordinary workplace, and the academic functions of teaching and scholarship must take place in an environment of academic freedom. Nothing in this policy censures the content, method, or language of academic courses that deal with sexual topics in an explicit fashion and examine in detail such issues as gender, sexuality and sexual beliefs, feelings, actions, and practices. The University protects the academic freedom and First Amendment rights of all members of the University community. Faculty members are expected not to introduce into their teaching controversial matter that has no relation to their subject, to avoid any exploitation, harassment, or discriminatory treatment of students, and to respect students as individuals. Students are entitled to an atmosphere conducive to learning and to even-handed treatment in all aspects of the teacher-student relationship. Evaluation of students is to be based on academic performance professionally judged and not on matters irrelevant to that performance.

## PROCEDURES

### I. GENERAL MATTERS

#### *A. Responsibility of Deans, Chairs, and Faculty*

Each Dean and Chair is responsible for pursuing sexual harassment complaints immediately upon becoming knowledgeable of their existence. Faculty members should report complaints of sexual harassment to the appropriate office (see *Informal Procedures* below).

#### *B. Confidentiality*

To the extent possible, the investigation and proceedings under this policy shall be conducted in a manner to ensure the confidentiality of all parties.

#### *C. Archive of Records*

At the conclusion of informal or formal procedures all records of proceedings and actions of the Faculty Sexual Harassment Officer and the Committee on Professional Conduct shall be placed in an archive maintained by the Provost's Office. In an informal procedure, the record shall include only a description of the complaint, any response to the complaint by the faculty member, and any action or agreement in response to the complaint. In a formal procedure, the record shall include only the findings of the Faculty Sexual Harassment Officer and the conclusions of the Committee on Professional Conduct. Access to the records shall be restricted to the Faculty Sexual Harassment

Officer in the context of a subsequent complaint. Records shall be kept for a maximum of seven years after the conclusion of the investigation and then sealed and they may not be used in any subsequent proceeding except when they are incorporated in an intervening proceeding. The Office of General Counsel may keep appropriate records, and these records shall be sealed after seven years under the same terms. No other record of proceedings or actions may be kept, except that a Chair or Dean may keep a record of any action, agreement, or sanction.

#### *D. Right to Resist and Report*

No faculty member or University official shall retaliate or take any other adverse action against any person because that person resists sexual harassment, plans to report acts of harassment in accordance with the procedures of this Policy, or reports acts of sexual harassment in accordance with those procedures. However, persons who knowingly make false claims of sexual harassment are subject to disciplinary action.

#### *E. Time Limits*

Complaints of sexual harassment, both formal and informal, should be filed within 30 calendar days from the date the most recent incident occurred. A complaint that is not filed within 30 days but that is filed within four years of the incident may still be subject to University action.

## II. TYPES OF PROCEDURE

Any individual who believes that he or she has been subjected to sexual harassment has available two methods for resolving the matter within the University:

1. through an informal procedure, or
2. through a formal procedure. A formal procedure requires the complainant to submit a written statement of the complaint.

The Human Resources Office and the Faculty Sexual Harassment Officer are available to assist the complainant at any point during these procedures. The complainant may choose another University employee to provide assistance. In all proceedings, formal and informal, every effort shall be made to ensure due process and to protect the rights of both the complainant and the accused.

## III. INFORMAL PROCEDURES.

### *A. Making a Complaint*

Any individual who encounters sexual harassment is encouraged to seek an informal resolution of the problem at the department or school level. Instances of sexual harassment may be reported to the appropriate Chair or Dean or to any of the following individuals or offices:

1. Faculty Sexual Harassment Officer
2. Human Resources Office
3. University Student Ombudsperson
4. Designated School or College counselor (a list of counselors may be obtained through the Provost, Dean of Students, or the Human Resources Office )
5. Provost

Complaints received by these individuals or offices shall be reported to the appropriate Chair or Dean.

*B. Actions of the Chair or Dean*

Each Chair or Dean is responsible for resolving sexual harassment complaints immediately upon becoming knowledgeable of their existence. Where a complaint is directed against the Chair or Dean, the complaint shall be reported to that person's immediate supervisor, who shall have the responsibility for resolving the complaint.

If the Chair or Dean, after consultation with the Faculty Sexual Harassment Officer, determines that the facts described in the complaint would not, in the meaning of the law or policy, constitute sexual harassment, the Officer shall so advise the complainant.

The Chair or Dean shall make every reasonable effort to inquire into the facts regarding the complaint including: speaking with the complainant; speaking with other persons identified by the complainant; speaking with the faculty member; and speaking with other persons identified by the faculty member. This inquiry should be completed as soon as practicable, usually in ten academic days. When the inquiry is complete, the accused faculty member shall immediately be provided with a description of the complaint, including the name of the complainant, where appropriate, the time and circumstances of the conduct, and other material facts.

In all cases of sexual harassment, the Chair or Dean is to notify the Faculty Sexual Harassment Officer of the complaint and the action taken to resolve the matter. This notification normally will be submitted at the end of the inquiry. The Faculty Sexual Harassment Officer may inform the Provost that a complaint has been made where the circumstances warrant this action to protect the University and its personnel.

*C. Resolution by Action or Agreement*

At the conclusion of the inquiry, the Chair or Dean, in consultation with the Sexual Harassment Officer, may take appropriate administrative action to resolve the complaint or may attempt to resolve the complaint informally and by voluntary means. If administrative action is taken

or an agreement satisfactory to all persons involved is reached, the terms of the action or agreement shall be summarized by the Chair or Dean and placed in the Archives by the Faculty Sexual Harassment Officer, together with a record of the complaint. Where no agreement is reached, the complainant may file a formal complaint within 20 academic days of the termination of the informal procedures.

#### IV. FORMAL PROCEDURES

If no agreement is reached under the informal procedures, or if an individual wishes to follow the formal procedures, a formal complaint may be filed.

##### *A. Making a Complaint*

The formal complaint shall be in writing and shall set forth: the facts and circumstances pertaining to the alleged harassment; the name of the complainant and the accused; the date, time and place of the incident(s); the names of other persons with knowledge of the incident(s); and the desired resolution. The formal complaint shall be filed with the Faculty Sexual Harassment Officer. If the Faculty Sexual Harassment Officer determines that the facts described in the complaint would not, in the meaning of the law or policy, constitute sexual harassment, the Officer shall so advise the complainant. If the Officer determines that an investigation is warranted the Officer shall notify the accused faculty member, the appropriate Dean or Chair, and the complainant.

##### *B. Investigation*

The Faculty Sexual Harassment Officer shall conduct the investigation, shall make every reasonable effort to interview the complainant, the faculty member, and other persons identified by the complainant or the faculty member as having direct knowledge of the matters, and shall examine appropriate records.

##### *C. Hearing*

Upon completion of the investigation, the Faculty Sexual Harassment Officer shall report the results of the investigation in writing to the Committee on Professional Conduct and recommend whether or not a hearing should be held. The Committee shall determine whether or not a hearing shall be held and shall conduct any such hearing in accordance with Committee policies and procedures.

The Faculty Sexual Harassment Officer shall inform the complainant, the faculty member, the Provost, the Chair of the Senate, and the appropriate Chair or Dean of the outcome of the hearing of the Committee on Professional Conduct.

#### V. REPORTS

Each year the Faculty Sexual Harassment Officer and the Committee on Professional Conduct shall separately submit written reports on all actions taken or findings made. These reports shall be made to the Provost and the Chair of the Senate and shall briefly describe the nature of the harassment and the outcomes in each case without identifying individuals.

CAPSULE: Faculty Senate Legislation #94009(B) -  
Faculty Policy on Sexual Harassment

RESPONSE BY THE PRESIDENT:

DATE: \_\_\_\_\_

APPROVED: \_\_\_\_\_

OFFICE OR INDIVIDUAL TO IMPLEMENT OR PUBLISH: \_\_\_\_\_

EFFECTIVE DATE OF LEGISLATION: \_\_\_\_\_

NOT APPROVED AND REFERRED TO: \_\_\_\_\_

REMARKS (IF NOT APPROVED): \_\_\_\_\_

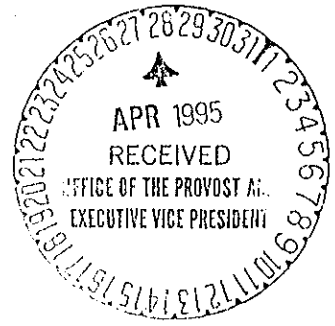
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CDFHI



MEMORANDUM

TO: President Edward T. Foote II

FROM: Kamal Yacoub *Kamal Yacoub*  
Chair, Faculty Senate

DATE: April 27, 1995

SUBJECT: Faculty Senate Legislation #94009(B) -  
Faculty Policy on Sexual Harassment

*Needs review by*  
*Louvelis*

The Faculty Senate, at its meeting on April 24, 1995, voted to approve Faculty Senate Legislation #94009(B) - Faculty Policy on Sexual Harassment. The text of the legislation is attached.

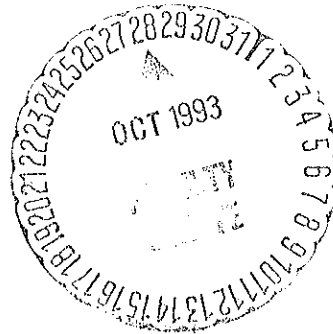
This legislation is now forwarded to you for your action.

KY/b

Attachment

cc: → Provost Luis Glaser  
Mr. Robert Blake, General Counsel






Edward T. Foote II  
President

MEMORANDUM

October 22, 1993

TO: Kamal Yacoub  
FROM: Edward T. Foote II 

Long ago, following receipt of the Senate proposal concerning sexual orientation, I asked our lawyers to review it. Various distractions intervened. Summer came. Paul Dee went.

Lourdes La Paz has provided the enclosed analysis. When you have had a chance to review it, let's talk about the best way to proceed.

ETF:LLS  
Enclosure  
cc: Lourdes F. La Paz  
cc/enc: John H. Knoblock

92024  
94009



Paul T. Dee  
Cynthia L. Augustyn  
Lourdes F. La Paz  
Shelley Niceley Groff  
Patricia A. Peoples  
Leyda Benitez-Herrmann  
Elsie Romero

Office of Vice President and General Counsel

MEMORANDUM

TO: Edward T. Foote II  
President

FROM: Lourdes F. La Paz *jjh*  
Associate General Counsel

DATE: October 20, 1993

RE: Legal Issues/Sexual Orientation  
Nondiscrimination Policy

This memorandum will serve to provide you with further information to my memorandum of September 24, 1993.

As I recently informed you, I was advised that a bill had been submitted in the Florida legislature this past legislative session to expand the applicability of the Florida Civil Rights Act and Fair Housing Act to include a prohibition against discrimination on the basis of sexual orientation.

I contacted Mr. Bob Kauzlarich of our governmental relations staff in Tallahassee, and he advised me that the proposed bill did not come for a formal vote in last year's session. At my request, Mr. Kauzlarich checked with the two sponsors of last year's bill to determine whether it would be re-introduced. Neither Representative Mimi McAndrews (H 737) nor Senator Ron Silver (S 1530) have made a final decision on this matter. Rep. McAndrews is still holding meetings regarding the issue. Senator Silver is not. Mr. Kauzlarich advises me that his best guess is that Rep. McAndrews will re-introduce the bill, since she still appears to be considering it. He informed me that the earliest possible date for a final decision would be November 22, 1993.

The bill proposes the following changes to existing legislation:

- 1. "Sexual orientation" is defined as heterosexuality, bisexuality or homosexuality.

Coral Gables Office:  
Plumer Building, Suite 10  
P.O. Box 248052  
Coral Gables, Florida 33124-2425  
305-284-2700  
Fax: 305-284-5063

Medical School Office:  
1122 RMSB, R-79  
P.O. Box 016960  
Miami, Florida 33101  
305-547-5500  
Fax: 305-547-3500

Reply to Coral Gables Office

October 20, 1993

2. "Unlawful employment practices" (i.e. discharge or refusal to hire or promote, etc.) now includes sexual orientation as a category.<sup>1</sup>
3. It would also be unlawful not to make a "dwelling" available on the basis of an individual's sexual orientation.<sup>2</sup>

In conclusion, the bill would not appear to affect our present (unofficial) employment policies, but could significantly impact our housing policy, which limits housing to married students.

Please feel free to call me should you have any questions or wish to discuss this matter further.

LLP:lad

Enclosures

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<sup>1</sup>Employee benefit plans are excluded from the unlawful employment practices category, so long as they are not designed, intended, or used to evade the purposes of the statute.

<sup>2</sup>"Dwellings" and "families," respectively, include "any building or structure" and "individuals." There is an exception in the bill for religious (educational) institutions.



Paul T. Dee  
Cynthia L. Augustyn  
Lourdes F. La Paz  
Shelley Niceley Groff  
Patricia A. Peoples  
Leyda Benitez-Herrmann  
Elsie Romero

Office of Vice President and General Counsel

## MEMORANDUM

TO: Edward T. Foote II  
President

FROM: Lourdes F. La Paz *for*  
Associate General Counsel

DATE: September 24, 1993

RE: Legal Issues/Sexual Orientation  
Nondiscrimination Policy

This memorandum is in response to your inquiry concerning the above.

Presently, there is no federal statute or regulation prohibiting discrimination in employment or educational matters based on sexual orientation. The federal courts have uniformly held that Title VII's prohibition against discrimination based on an individual's sex is not so broad as to include sexual orientation. DeSantis v. Pacific Tel. & Tel. Col., Inc., 608 F.2d 327 (9th Cir. 1979).<sup>1</sup> Several states, however, have promulgated their own statutes banning this type of discrimination. Currently, 9 states have statutes prohibiting discrimination based on sexual orientation by both public and private employers, while 9 other states have statutes which apply only to public employers. Additionally, a growing number of cities and counties have enacted local anti-discrimination statutes. Neither Florida nor Dade County, however, presently have in effect a statute prohibiting an employer from discriminating against an individual because of their sexual orientation. Consequently, there is no current legal mandate that the University of Miami promulgate a policy banning sexual orientation discrimination. However, should the University volitionally choose to enact such a policy, there are a number of key issues which must be addressed.

### Employee Benefits.

One of the more important issues to be decided is in the area of benefits. Several universities such as Stanford, the University of Iowa and the University of Chicago have elected, in conjunction with the

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<sup>1</sup>Cases under Title IX do not specifically address this issue.

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P.O. Box 016960  
Miami, Florida 33101  
305-547-5500  
Fax: 305-547-3500

adoption of their anti-discrimination policies, to extend comparable benefits to the domestic partners of their gay and lesbian employees. There is, however, no legal requirement that the University of Miami confer comparable benefits to the partners of its gay employees. In a recent decision by the District Court for the Southern District of New York, Rovira v. AT&T, 817 F. Supp. 1062 (S.D.N.Y. 1993), the court held that AT&T's policy prohibiting discrimination against gays did not require the awarding of benefits to the partners of gay employees. The Court noted that the nondiscrimination policy and the company's benefit plan documents did not reference one another and that the plain language of the plan required a "legal marriage" as opposed to a functional one. This case emphasizes, however, that an employer should remove any ambiguity in both its nondiscrimination policy and benefit policies should it choose not to extend benefits to domestic partners.

Because of the broad preemption provision included in ERISA, any state law banning discrimination in the distribution of benefits based on sexual orientation would be superseded by this federal law. Although discrimination is considered a breach of fiduciary duty under ERISA, it is not discriminatory under ERISA to limit the class of eligible beneficiaries to spouses and to define the term "spouse" as requiring a marriage valid under state law. Rovira at 1072.

A secondary issue in the area of benefits is whether providing benefits to the domestic partners of gay lesbian employees would subject the University to a claim from heterosexual unmarried couples that they too should be entitled to equal benefits. There is no present legal requirement that benefits be extended to the partners of heterosexual employees should the University decide to provide these benefits to domestic partners of gay employees. Several universities, including Stanford, and numerous companies in private industry have decided to make this distinction. Often, the underlying reason that is given for this decision is that denying comparable benefits to all unmarried couples has a disparate impact on gays and lesbians (i.e. such a policy affects only those heterosexual couples who choose not to marry while it affects 100% of gay couples).<sup>2</sup>

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<sup>2</sup>Should the University elect to extend benefits to the partners of its employees, the biggest dilemma will be how to validate specific relationships as marital-equivalents. The University of Chicago has dealt with this issue by requiring same sex couples to verify in writing that their relationship is of a permanent nature and to provide indicia of this permanency by showing such things as joint ownership of property and joint bank accounts. If a relationship ends, the employee is required to notify the university in writing within 30 days, and then must wait 12 months before becoming eligible to sign up another partner.

Family and Residential Housing

A further issue is whether the implementation of a nondiscrimination policy based on sexual orientation would require access to "family housing" operated by the University to same sex couples and whether it would affect current University policy with respect to non-married housing. Again, there is no federal or state law requiring that the University offer equal access should such a policy be implemented.<sup>3</sup> However, some institutions, such as Stanford, allow any couple (heterosexual or homosexual) declaring themselves to be domestic partners the same priority to family housing as married couples.

Current University policy allows non-married students to change roommates if they are unhappy or unsatisfied with the roommate to which they are assigned. No reason need be given. A change in policy to include nondiscrimination on the basis of sexual orientation policy should not affect this current practice.

ROTC

Another important issue is whether exceptions should be carved out of any anti-discrimination policy for activities such as ROTC which is conducted under the auspices of the United States Department of Defense. Although President Clinton promised throughout his campaign that he would lift the ban on gays in the military, his more recently adopted compromise position is not an acceptance of individuals regardless of their sexual orientation. The current "don't ask, don't tell" policy mandates that individuals are not to be questioned about their sexual preference, however, it does not prohibit them from being discharged should they reveal their sexual orientation as being homosexual. Obviously, the current policy of the U.S. military would not be consistent with a university policy which would prohibit all sexual orientation discrimination. Several different approaches have been taken by universities who have a policy banning discrimination based on sexual orientation. One approach is to simply carve out an exception in the policy whereby it does not apply to the ROTC. On the other extreme, some universities have decided to eliminate the program entirely.

Coloring this issue is the fact that federal legislation prohibits the expenditure of defense funds at universities which decide to eliminate ROTC or ban the military from recruiting on campus. 32 C.F.R. § 216 (1990). Similarly, federal legislation mandates that NASA funds are to be cut off for any institution that bars military recruiting on campus. (See attached.)

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<sup>3</sup>Equal protection issues may arise for state institutions.

Religious Groups

Yet another issue is how a sexual orientation nondiscrimination policy would affect religious groups on campus. Unfortunately, there is no case law directly on point. In Healey v. James, 408 U.S. 169, 193-194 (1972), the United States Supreme Court did make clear that "the benefits of participation in the internal life of the college community may be denied to any group that reserves the right to violate any valid campus rules with which it disagrees." However, this does not answer the original question. Many state laws forbidding discrimination based on sexual orientation, including California's, expressly include an exception for religious organizations. Those statutes which do not contain such an exception may well be vulnerable to attack on the grounds that they violate the right to freedom of religion.

On-campus Recruiting by Private Employers

The final issue is whether the adoption of an anti-discrimination policy based on sexual orientation would require the University to begin screening companies which recruit on campus to find out whether they discriminate against gays. Currently, there are no cases which provide an answer. However, many universities which have such nondiscrimination provisions do not require that employers who recruit on campus enact a general nondiscrimination policy. Rather, they require employers who recruit on campus to certify that they will not discriminate in the interview and hiring process handled through on-campus placement offices. (See Yale and Harvard Laws Schools, attached.)

I apologize for the length of this memorandum. Even though I only touched on the major issues, it obviously involved a little more than I believe you may have anticipated. Please feel free to call me if you have any questions.

LLP:lad

Enclosures

05-0219 f7.1d

## FACULTY POLICY ON SEXUAL HARASSMENT

Sexual Harassment by any member of the university community is prohibited. The University and its faculty are committed to a work environment free of sexual harassment, and violations of the University policies against sexual harassment are regarded as serious grounds for disciplinary action. Serious cases of sexual harassment by a member of the university community may result in dismissal in accord with appropriate policies.

### I. Definition.

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

- A. Submission to said conduct is made explicitly or implicitly a term or condition of an individual's employment or status in a course, program, or activity; or
- B. Submission to or rejection of such conduct is used as a basis for an employment or educational decision affecting an individual; or
- C. Such conduct is sufficiently severe or pervasive so as to create an environment which unreasonably interferes with an individual's work or educational performance, or as to create an intimidating, hostile, or offensive environment for work or learning.

### II. Examples of Sexual Harassment.

Sexual harassment may encompass any unwelcome sexual conduct outlined above. Examples of verbal or physical conduct which are prohibited include, but are not limited to:

- A. physical assault;
- B. direct or implied threats that submission to sexual advances will be a condition of employment, work status, promotion, grades, or letters of recommendation;
- C. direct unwelcome propositions of a sexual nature by a supervisor or individual with authority at the University over the status of the complainant;
- D. a pattern of unwelcome conduct (not legitimately related to the subject of a course, if one is involved) which causes discomfort or humiliation, or both, that includes one or more of the following; (i) suggestive comments of a sexual nature; or (ii) sexually explicit statements, questions, jokes, or anecdotes; or



E. a pattern of unwelcome conduct that would cause discomfort or humiliation, or both, to a reasonable person at whom the conduct was directed that includes one or more of the following: (i) unnecessary and inappropriate touching, patting, hugging, or brushing against that person's body; (ii) remarks of a sexual nature about that person's clothing or body; or (iii) remarks about the sexual activity or speculations about the previous sexual experience of that person.

This list is intended to be instructive, not exhaustive; the final decision as to whether sexual harassment has occurred is determined by the particular facts and circumstances of each case.

The procedures governing sexual harassment complaints against *Faculty Members* are governed by the policies adopted by the Faculty Senate and approved by the President.

## PROCEDURES

### I. GENERAL MATTERS

#### *A. Responsibility of Deans, Chairs, and Faculty*

Each Dean and Chair is responsible for pursuing sexual harassment complaints immediately upon becoming knowledgeable of their existence. Faculty members also should report instances of sexual harassment to the appropriate office (see below *Procedures*). If any supervisor or faculty member fails to do so, they may be held legally liable.

#### *B. Confidentiality*

To the extent possible, the investigation and proceedings conducted under this policy shall be conducted in a manner to ensure the confidentiality of all parties. The record of such proceedings shall be kept confidential, but the University reserves the right to disclose any relevant information regarding the complaint and its disposition which may be required by law to other University officials, and to take any necessary action consistent with the above.

#### *C. Archive of Records*

Records of all proceedings and actions of the Affirmative Action Office and Committee on Professional Conduct shall be maintained by Affirmative Action Office. Access to the records shall be as required by law.

#### *D. Retaliation*

Retaliation against any individual who resists sexual harassment or who reports acts of sexual harassment is prohibited.

### *E. Time limits*

Complaints of sexual harassment, both formal and informal, should normally be filed within 30 calendar days from the date the incident occurred; but in no case later than the 300 days required by federal statutes.

## II. TYPES OF COMPLAINT

Any individual who believes that he or she has been subjected to sexual harassment has available two methods for resolving the matter within the University:

1. through an informal procedure, or
2. through a formal procedure.

## III. INFORMAL PROCEDURES.

### *A. Making a Complaint*

Any individual who believes he or she is the subject of sexual harassment by a Faculty Member may contact any one of the following individuals or offices (reporting officer) as soon as possible after the incident:

1. Affirmative Action Office;
2. University Student Ombudsman;
3. Dean or Chair;
4. Designated School or College counselor (a list of counselors may be obtained through the Provost, Dean of Students, or the Personnel or Affirmative Action Office); or
5. Provost, Legal Counsel, or designated faculty officer.

### *B. Inquiry*

1. Within five working days of receipt of the complaint, the Reporting Officer must notify the Affirmative Action Office of the charge.
2. The Affirmative Action Officer will advise the complainant of the process and available options.

3. If the Affirmative Action Officer determines that the substance of the complaint would not, in the meaning of the law or policy, constitute sexual harassment, they shall so advise the complainant. A record of the complaint and the disposition shall be placed in the Archives.

4. The Affirmative Action Officer will inquire into the facts regarding the complaint including but not limited to: speaking to the complainant; speaking with the Reporting Officer; speaking with other persons identified by the complainant; speaking with the faculty member charged; and speaking with other persons identified by the charged faculty member. This inquiry should be completed as soon as practicable.

#### *D. Resolution by Agreement*

At the conclusion of the inquiry by the Affirmative Action Officer, if appropriate, the Affirmative Action Officer, and where appropriate with the Reporting Officer, may attempt to resolve the complaint informally and by voluntary means and, in this effort, may obtain the assistance of the Dean or Department Chair of the faculty member charged with the harassing conduct. If an agreement satisfactory to the persons involved is reached, the terms of actions taken shall be summarized by the Affirmative Action Officer and placed in the Archives, together with a record of the complaint and its disposition.

### **IV. FORMAL PROCEDURES.**

#### *A. Making a Complaint*

When a person makes a formal complaint, the Affirmative Action Officer shall immediately proceed with an inquiry as outlined in section III, paragraph C, above. Any complainant who desires to file a formal complaint may do so without the necessity of filing an informal complaint first.

When the University as a consequence of its inquiry believes that sufficient information is available to support the complaint, it may file a formal complaint against a member of the faculty even if the person making the complaint declines to do so.

#### *B. Time*

Within 10 academic days of receipt of a final determination of the informal proceeding, the complainant may request that the University take formal action.

#### *C. Charges*

The formal complaint shall be in writing and shall set forth: the facts and circumstances pertaining to the alleged harassment; the name of the complainant and the accused; the date, time and place of the incident; the names of other persons with knowledge of the incident; and the desired resolution. The formal complaint shall be filed with the Affirmative Action

Office which shall notify the accused faculty member, Provost, Chair of the Faculty Senate, and Dean of the charges.

#### *D. Investigation*

The Affirmative Action Office shall conduct the investigation. They shall make every reasonable effort interview the complainant, the accused, and other persons identified by the complainant or the accused as having direct knowledge of the matters, and shall examine appropriate records. The accused faculty member has the right to be informed of all evidence brought before the Affirmative Action Office, to inspect all records examined by it, and to introduce evidence in rebuttal.

#### *E. Hearing*

Upon completion of its investigation, the Affirmation Action Office shall report in writing to the Committee on Professional Conduct.

*(It is recommended below that Bylaw 4.15 be amended to create a special sub committee of Committee on Professional Conduct to hear sex harassment cases. This would address the problem of having a two-stop process.)*

If the Committee decides that the charges warrant a hearing, the committee shall so advise the faculty member concerned.

#### *F. Findings*

As a result of its deliberations, the Professional Conduct Committee shall make one of the following findings:

1. That the complaint is not substantiated, or inadequately substantiated, in which case the accused and the complainant shall receive a letter stating this conclusion;
2. That the complaint has merit, but that the nature of the offense warrants only a recommendation that the accused be given a warning, be required to undergo appropriate counseling and/or therapy provided by the University, be required attend a workshop on sexual harassment, or, with the approval of the Dean, be transfered to another class; or
3. That the complaint has merit, and that the nature of the offense warrants imposition of a formal sanction. In this case the committee shall forward its recommendation to the Faculty Senate and the President.

*G. Formal Sanctions*

1. formal reprimand;
2. prohibition of advising and/or directing theses and dissertations;
3. suspension with pay;
4. termination for cause as provided in the University policy on Dismissal for Cause.

Imposition of these sanctions 1-3 requires approval of the Faculty Senate and the President.

## STATEMENT ON CONSENSUAL SEXUAL RELATIONSHIPS.

Consensual romantic and sexual relationships between faculty and students in a supervisory relationship, are prohibited. Codes of ethics for many professional associations forbid professional-client sexual relationships. The power exercised by a professor in giving praise or blame, grades, recommendations for further study and future employment, as well as the respect and trust accorded a professor by a student, greatly diminish the student's actual freedom of choice in consensual romantic and sexual relations. Supervisory relationships include teaching, coaching, evaluating, or allocating money or privileges. A faculty member and a student are in a supervisory relationship when, for example:

- 1) a student is currently registered in a course by the instructor;
- 2) the faculty member is formally counselling the student as a departmental or school advisor or as a member of a thesis or dissertation committee;
- 3) the student's activities are being directly supervised or evaluated by the instructor, for sample as a teaching assistant supervisor; or
- 4) the faculty member is the Dean, Chair, Associate Dean or Chair, Assistant Dean or Chair, or other equivalent title, of the student's school or department.

Persons who begin consensual romantic or sexual relationships with students are expected to resign any supervisory position which they may hold when the relationship begins. If any person having such a relationship has not resigned, the appointing authority shall not reappoint that person to any supervisory position.

Faculty who are in a supervisory role are warned against the possible costs of even an apparently consenting relationship, in regard to the academic efforts of both faculty member and student. A faculty member who enters into a sexual relationship with a student where a professional supervisory relationship existed must realize that, if a charge of sexual harassment is subsequently lodged, it will be exceedingly difficult to prove immunity on grounds of mutual consent.

### Committee on Professional Conduct

A panel of ~~five~~ **nine** senior tenured Faculty Members shall be elected annually by the Faculty Senate. **The committee hearing a specific charge shall consist of three members of the panel.** Matters involving the professional conduct of Faculty Members may be brought before this committee by a complainant (a Faculty Member, a director of an academic program, an academic dean, the Provost, or the President), after all reasonable efforts to reach an informal settlement at the department or school level have failed. **Matters involving sexual harassment may be brought by the Affirmative Action Office at the completion of its investigation.** A subcommittee of three persons shall be formed to hear cases of sexual harassment to assure continuity and consistency. Those who bring matters of professional conduct to the committee shall provide the committee with a written statement of specific charges. If the committee decides that the charges warrant further inquiry, a copy of the charges shall be forwarded to the Faculty Member concerned and hearings shall be held. At the hearing, the Faculty Member shall have the right to **choose any member of the University Faculty** as academic council and the right to hear all evidence presented to the committee. As a result of its deliberations, the committee shall inform the Faculty Member, **Chair of the Senate**, and the President of the opinion of the committee as to whether the Faculty Member's conduct conforms to acceptable professional standards or constitutes sexual harassment. If the matter cannot be resolved at this point, the committee may recommend to the Faculty Senate a specific sanction of censure **or the special sanctions provided for cases of sexual harassment (see the policy and special procedures on sexual harassment, pp. xx).** If the committee recommends that procedures for dismissal for cause be initiated, it shall **advise the Chair of the Senate and** transmit this recommendation to the President for further consideration and action. If the committee recommends sanctions short of dismissal, except for censure, such recommendation will be transmitted to the President who may impose the recommended sanction or a lesser sanction or forward the matter to the Hearing Committee provided for in the Termination for Cause procedure ~~elsewhere in this Manual~~ (see pp. xx). The period of time from receipt of a complaint through final recommendation by the committee shall not exceed 30 academic working days, unless an extension of fifteen academic working days is requested of and approved by the President.