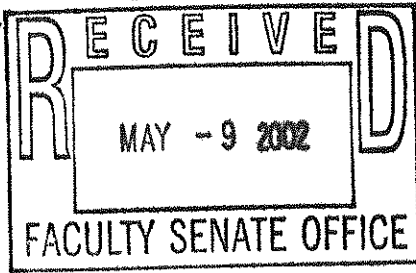


CID/II



MEMORANDUM



To: Donna E. Shalala, President

From: Steven Green
Chair, Faculty Senate

Date: 29 March 2002

Subject: Faculty Senate Legislation #2001-19(B) – Revision of Sexual Harassment Policy (revising Legislation #95003(B))

The Faculty Senate, at its 20 March 2002 meeting, voted unanimously to approve the attached revision the Sexual Harassment Policy so as to clarify the lines of jurisdiction, strengthen the ability to have faculty exonerated, and rephrase examples of sexual harassment to fit the legal definition. The revised document is attached. The changes are shown as underline addition and ~~strikethrough~~ deletions.

This legislation is now forwarded to you for your action.

SG/kl

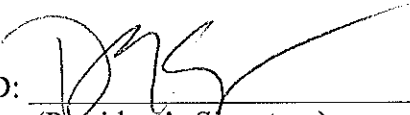
Attachment

cc: Luis Glaser, Executive Vice President and Provost

Faculty Senate
325 Ashe Admin. Bldg.
Coral Gables, Florida 33124
Phone: (305) 284-3721 Fax: (305) 284-5515
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CAPSULE: Faculty Senate Legislation #2001-19(B) – Revision of Sexual Harassment Policy
(revising Legislation #95003(B))

PRESIDENT'S RESPONSE

APPROVED:  DATE: 5-8-02
(President's Signature)

OFFICE OR INDIVIDUAL TO IMPLEMENT: Provost

EFFECTIVE DATE OF LEGISLATION: _____
(if other than June 1 next following)

NOT APPROVED AND REFERRED TO: _____

REMARKS (IF NOT APPROVED): _____

Note two typos

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.¹ The Faculty Policy on Sexual Harassment applies to all cases in which charges of sexual harassment are made by a member of the University community against a member of the UNIVERSITY FACULTY (as defined in the Faculty Manual). Charges of sexual harassment against members of the University community other than the UNIVERSITY FACULTY are dealt with under other applicable policies.

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 (a) 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 (b)
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:~~

The first kind of sexual harassment, often referred to as "quid pro quo" includes implied or overt threats or pressure for sexual favors. Such sexual harassment is engaged in when (1) A. explicit or implied threats that submission to sexual advances may be a condition of employment, work status, promotion, grades, or letters of recommendation or (2);

¹ This policy is designed to recognize and protect the rights of all parties. Insofar as applicable state or federal law, now or in the future, may provide greater substantive and procedural rights within the university context to any party, this policy should be read as incorporating any and all such rights, in addition to those specifically set out herein.

~~B. unwelcome propositions of a sexual nature are made 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.~~

Examples of the second kind of sexual harassment, often referred to as “hostile environment,” may include:

Verbal conduct, such as unwelcome sexual propositions which are made by a supervisor, coworker, or individual with authority at the University over the status of the complainant, and persist despite the objections of the person to whom they are made. It also includes sexually explicit statements, innuendoes, comments, questions and jokes, as well as remarks of a sexual nature about a person’s clothing or body or remarks about a person’s sexual activity or speculations about the previous sexual experience of that person,

~~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;~~

Physical contact, such as outright assault, other forms of inappropriate or embarrassing touching, such as brushing up against another’s body, unwanted hugging, pinching or patting,

Conduct, other than physical conduct, such as suggestive or insulting sounds, gestures, leers or stares.

In any event, to constitute sexual harassment, the conduct must be severe, or persist despite the fact that the faculty member knew or should have known that the conduct was unwelcome.

~~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~~ sexual material 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). A complaint of sexual harassment against a member of the UNIVERSITY FACULTY should be made to the department Chair or Dean who is the faculty member's immediate supervisor.²

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. Such records may not be used in any subsequent proceeding except when they are incorporated in an intervening (i.e., less than seven year old) proceeding, or when, after investigation, the Provost determines that the new allegations, if true, are serious enough to warrant initiation of dismissal for cause proceedings. The Office of General Counsel may keep

² In cases where a Dean or Chair is accused of sexual harassment, a person's immediate supervisor is responsible for pursuing the complaint.

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. These limitations do not apply, however, when it is necessary to comply with applicable law or, court order, or valid subpoena or request for production.

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 PROCEDURES*

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~~ is 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 (appointed by the Provost)

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 promptly~~ upon becoming knowledgeable of their existence³. ~~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

³ In cases where a Dean or Chair is accused of sexual harassment, a person's immediate supervisor is responsible for pursuing the complaint.

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. In cases where the Chair or Dean in consultation with the Sexual Harassment Officer concludes that the allegations are without foundation, the material placed in the Archives should clearly reflect this judgment.

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.