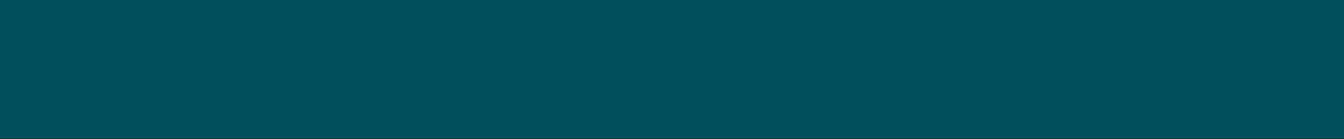


Recognizing and Responding to Sexual Harassment Complaints

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I. SEXUAL HARASSMENT LAWS, POLICY AND DEFINITION

Sexual harassment is prohibited by University Policy AD41 and by Title VII of the Civil Rights Act of 1964 and Title IX, Education Amendments of 1972. It is also prohibited under the Pennsylvania Human Relations Act.

A. Penn State University Policy AD41

“Sexual harassment of faculty, staff or students is prohibited and will not be tolerated at The Pennsylvania State University. It is the policy of the University to maintain an academic and work environment free of sexual harassment. Sexual harassment violates the dignity of individuals and impedes the realization of the University’s educational mission. The University is committed to preventing and eliminating sexual harassment of faculty, staff and students through education and by encouraging faculty, staff and students to report any concerns or complaints about sexual harassment. Prompt corrective measures will be taken to stop sexual harassment whenever and wherever it occurs.”

“Any member of the University community who experiences sexual harassment should immediately report the incident to the Affirmative Action Office, a sexual harassment resource person, an administrator in his or her department or unit, or the Office of Human Resources. In cases where an individual reports alleged sexual harassment to an administrator, faculty member, or staff member, the person receiving the complaint should contact the Affirmative Action Office to discuss resolution and ensure consistent responses to issues across units.”

B. Consensual Relationships and the Potential for Sexual Harassment Complaints

“Romantic and/or sexual relationships between faculty and student, staff and students or supervisors and subordinate employees are strongly discouraged. Such relationships have the potential for adverse consequences, including the filing of charges of sexual harassment. Given the fundamentally asymmetric nature of the relationship where one party has the power to give grades, thesis advice, evaluations, recommendations, promotions, salary increases or performance evaluations, the apparent consensual nature of the relationship is inherently suspect.” Policy AD41

There is the potential in consensual relationships for sexual harassment and other complaints due to the:

- Power differential in the relationship
- Potential for abuse and exploitation
- Retaliatory harassment

- Conflict of interest
- Effect on others

University Policy AD41 requires that “the person in the position of supervision or academic responsibility must report the relationship to his or her immediate supervisor. Once the consensual relationship is reported, the immediate supervisor is responsible for eliminating or mitigating the conflict of interest to the fullest feasible extent and ensuring that fair and objective processes are in place for decisions relative to grading, thesis advice, evaluations, recommendations, promotions, salary increases or performance evaluations. The new supervisory or academic arrangement should be documented.”

C. Definition of Sexual Harassment

The Equal Employment Opportunity Commission (EEOC) and the Office for Civil Rights (OCR) provide the following three prong definition for sexual harassment.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is a condition for employment, promotion, grades, or academic status;
- Submission to or rejection of such conduct is used as the basis for employment or academic decisions affecting an individual;
- Such conduct has the purpose or effect of interfering unreasonably with the individual’s work or academic performance or creates an offensive, hostile, or intimidating working or learning environment.

Behavior of a sexual nature that might be sexual harassment falls into two categories:

- Quid Pro Quo - involves the first two prongs of the definition
- Hostile Environment sexual harassment - refers to the third prong of the definition

In other words the first two prongs involve unwelcome sexual advances or requests for sexual favors in exchange for a job, a promotion, a grade or some other employment or academic benefit. The third prong involves unwelcome behaviors of a sexual nature that a reasonable person would find so offensive, hostile, or intimidating as to alter the conditions of employment or academic activity.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex. Sexual harassment can occur between peers or between individuals of the same sex.
- The harasser can be the victim’s supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee in the workplace.

- The victim does not have to be the person harassed but could be anyone reasonably affected by the offensive conduct.

The harasser's conduct must be unwelcome. It is important to note that apparent consent to requests for sexual favors or participation in verbal or physical conduct of a sexual nature does not necessarily constitute welcomeness.

D. Examples of Sexual Harassment

- Direct or indirect threats or bribes for unwanted sexual activity
- Intrusive sexually explicit questions
- Rating a person's sexual attractiveness
- Unwelcome patting, hugging or touching of a person's body, hair or clothing
- Offensive or suggestive sexual comments
- Disparaging remarks to a person about her/his gender, body or gender identity
- Pervasive displays of pictures, calendars, cartoons or other material with sexually explicit or graphic content
- Asking about a person's sexual fantasies, sexual preferences or sexual activities
- Repeatedly asking for a date after the person has implicitly or explicitly expressed disinterest
- Making sexual gestures with hands or through body movements
- Spreading rumors about a person's sexuality
- Frequent jokes about sex or gender stereotypes
- Name-calling, such as "bitch," "whore," "slut," "fag" or "dyke"
- Ogling or leering, staring at a woman's breast or a man's derriere
- Unwanted letters, notes, telephone calls, e-mails or material of a sexual nature
- Stalking
- Attempted or actual sexual assault

These examples are not all-inclusive of the types of conduct that may constitute sexual harassment. Each situation must be considered in light of the specific facts and circumstances to determine if sexual harassment has occurred. Not all behavior with sexual connotation constitutes sexual harassment under the law. Generally, in order for the behavior to rise to the level of sexual harassment it must be so sufficiently severe, persistent or pervasive that it adversely affects a person's work or education or creates a hostile or abusive working or educational environment. For a one-time incident to rise to the level of harassment, it must be severe.

E. Equal Employment Opportunity Commission Guidelines

When investigating allegations of sexual harassment, the Equal Employment Opportunity Commission looks at the whole record: the circumstances, such as the nature of the sexual behavior, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

F. Evaluating Sexual Harassment Behaviors

- Are comments or actions related to the gender or gender identity of the person?
- Does the complainant find the behavior unwelcome?
 - Even if the complainant voluntarily submits or does not expressly object to the behavior, the conduct may still be considered unwelcome, especially if there is a power differential between the parties.
- Is there a power differential?
 - In the context of the relationship, does one person have more formal power than the other? Does one person evaluate or reward work or academic performance of the other person?
 - In the context of the relationship, does one person have more informal or perceived power than the other? Can one person be viewed as more powerful because of size, gender, academic/work status, or other attributes?
- How severe is the behavior?
 - What is the impact on the complainant: offensive, intimidating, or threatening?
- How pervasive is the behavior?
 - How often does it occur?
- How widespread are the behaviors?
 - Is it happening to others?

Even when the conduct does not rise to legal sexual harassment, if it is inappropriate or unprofessional, it needs to be addressed.

II. THE SEXUAL HARASSMENT RESOURCE PERSONS

A sexual harassment resource person is an employee trained in all areas of sexual harassment to provide informal assistance to students, faculty and staff, including explaining options for responding and preventing sexual harassment complaints.

The purpose of having designated resource persons in each college and work unit is to provide prompt access to a knowledgeable individual to address sexual harassment issues at the most immediate level. When an individual reports sexual harassment, the resource person receiving the complaint must contact the Affirmative Action Office to discuss resolution and ensure consistent responses to issues across the units. All such reports will be treated confidentially to the extent reasonable.

A. Role and Responsibilities

- Be familiar with the University's Sexual Harassment Policy AD41.
- Assist the University in creating a climate free of sexual harassment.
- Be visible and accessible:
 - communicate to your unit/area that you are the resource person
 - post notices on bulletin boards
 - introduce yourself in orientation meetings
 - participate in climate committees
 - distribute brochures and literature on sexual harassment
- Respond to sexual harassment inquiries and concerns.
- Assist in providing or coordinating educational programs for preventing sexual harassment.
- Complete and submit the Sexual Harassment Information Form to the Affirmative Action Office.
- Attend workshops sponsored by the Affirmative Action Office.

B. When Receiving A Complaint

- Take the complaint seriously.
- Listen, sympathize, but do not judge.
- Do not delay in responding to concerns.
- Take steps to ensure that the harassment stops.
- Take steps to provide protection from retaliation.
- Document. Write a summary of what the complainant told you.
- Consult the AAO for assistance with resolution, determine whether you can resolve, or refer to the AAO for investigation.

III. RESPONDING TO A COMPLAINT

A. Concerns of Complainants

- Many complainants may show hesitation or even fear about coming forward with concerns or complaints of sexual harassment.
- A complainant may need to be assured that she/he will be treated fairly and protected from retaliation.
- Complainants are often concerned about who will learn about the details of their experience.
- Assure the person that only those people that “need to know” to resolve the issues will be informed.
- In cases of sexual assault, stalking or other forms of criminal sexual conduct, inform the person of their option to file a report with the police, then contact AAO.

B. The Initial Interview

- Have a copy of the policy, brochure, and other appropriate information available. Provide copies to the complainant.
- Listen and take the complaint seriously.
- Avoid making judgment and remain neutral and supportive.
- Determine if the harassment has stopped.
- Help the person regain a sense of control by explaining the process and what happens next.
- Determine if the complainant and others are at immediate risk.
- Take factual notes during the conversation for accuracy of recall.

C. What to Say When Receiving a Complaint

- Explain briefly the University’s Policy AD41.
- Indicate that the University takes complaints of sexual harassment very seriously.
- Advise that the University will take prompt action.
- Communicate that although complete confidentiality cannot be guaranteed, the facts will be protected as much as possible including, when possible, the identity of the complainant.
- Explain that the University will protect a complainant in every possible way, including protection against retaliation for filing a complaint or participating in a complaint.

- Explain that your role is to make sure the complainant knows and understands all available options and to help explore these options.
- Stress that the complainant may also go directly to the Affirmative Action Office for consultation and advice.
- Ask what happened.

D. Information to Secure from Complainant

Ask the person reporting the behavior or making a complaint the following:

- What was (or is) the offensive behavior?
- Where did the behavior occur?
- Who is the person doing the offensive behavior? Obtain name, employment status, phone number and description of the person complained about.
- When and where did the behavior occur? Obtain this information for each instance of offensive behavior.
- Who else was present that witnessed the behavior? Obtain name and phone numbers.
- Were there any others who have had the same or similar offensive behavior directed at them?
- Did the complainant tell anyone else about what happened?
- How long has this been going on? Did the complainant keep a journal or notes about what happened?
- Did the complainant indicate that the behavior was unwelcome? If yes, what was that person's reaction to what the complainant said or did?
- What was the effect of the behavior on the complainant?
- What does the complainant want as the outcome?

E. During the Initial Interview

- Ask only open ended questions - "why" questions put people on the defensive.
- Remain neutral - voicing opinions or reaching conclusions prematurely is inappropriate.
- Don't make promises or guarantee any particular results.
- Don't ask leading questions or multiple-choice questions.
- Avoid making assumptions.

- Complete confidentiality can not be promised (you can not resolve the complaint if you can not talk to anyone about it); indicate that only people with a “need to know” will be consulted.
- Don't reveal information which would violate the privacy of the person accused (i.e. “this is not the first time I've heard a complaint about this person.”)
- Summarize what the person has told you.
- Make sure that the person knows she or he will be kept informed.
- Explain the next step. Ask for complainant's contact information.
- Indicate that she/he can call you to provide additional information or for an update.
- If the issue does not appear to be sexual harassment, refer the person to the appropriate resources.
- Complete your notes, keeping them factual.

IV. WHAT TO DO NEXT

A. Review the Information Received

Call the Affirmative Action Office for advice and assistance after gathering the preliminary information and before conducting further interviews, if possible. Consider the following:

- Do you need to take immediate action?
- Is the person potentially in physical danger?
 - Has the complainant expressed fear or concern about ongoing behavior?
 - Do the parties need to be separated while an investigation is conducted?
- Is the person's employment or education status in jeopardy due to the situation?
- Who needs to be involved to resolve the situation?

B. Follow-up with Complainant - Explain/Discuss Appropriate Options

Discuss strategies the complainant might want to use in responding to a sexual harassment situation. It may be helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. However, this is not required and in some circumstances it is not the appropriate approach.

- **Describe direct action the person can take:**
 - Let the offender know that their behavior is unwelcome and it must stop
 - Verbally
 - In writing - by sending an email or a letter by certified mail to the harasser. (See more information and sample letters at the end of this booklet)

- **Describe informal actions the institution can take:**
 - Have conversation with the alleged harasser to discuss the behavior and review the Policy.
 - Send administrative letter addressing adherence to the Policy to unit/office.
 - Provide an educational program on sexual harassment prevention to the unit.
 - Place a copy of the University policy in offender's mailbox.
 - Suggest other types of assistance.
- **Describe formal actions the institution can take:**
 - Administrator or supervisor speak with alleged harasser about the behavior and require that behavior stop.
 - Refer to the Affirmative Action Office.
 - Conduct a formal investigation that could possibly result in appropriate disciplinary action.
- **Summarize and agree on the next step.**

V. COMPLAINT RESOLUTION

A. Discuss with the Affirmative Action Office

Review all the information including what the complainant wants to happen to rectify the situation. It may not be possible or appropriate to carry out everything the complainant wants, but her or his concerns are important.

- Contact the Affirmative Action Office to discuss resolution options.
- Conduct an informal review/investigation of the situation. Remember there are two sides to every story. Make sure that you obtain all perspectives.
- If the review reveals that the alleged behaviors have occurred, the supervisor or administrator, after consultation with the AAO, will determine what sanctions, if any, should be applied.

B. Resolution/Corrective Actions

- Disciplinary options may include, but are not limited to:
 - verbal warnings
 - written warnings
 - letter of reprimand in personnel file

- apology
 - education for offender or whole unit
 - altered work schedules or responsibilities
 - transfer
 - counseling
 - suspension and/or termination
- The complainant and only those with a “need to know” may be informed of the outcome.

C. Actions after the Complaint has been Resolved

- After the complaint has been resolved, continue to monitor the situation to make sure objectionable behavior has not reoccurred.
- Make sure everyone in the workplace understands that retaliation against a person for filing a complaint, or anyone involved in the investigation, is illegal and subject to sanctions. Actions that might appear to be retaliatory against the complainant, the respondent or against people known to have supported either of them, must be avoided.
- Consider the need for further intervention if the complaint has caused disruption in the work unit, and/or if feelings and emotions may be unresolved at the closing of the complaint. Allow some time for stress to decrease, but if necessary, call the AAO to discuss resources for resolving the situation.
- Complete the Sexual Harassment Information Report and send to the Affirmative Action Office. (See AAO web site for a copy of the report)

VI. APPENDIX

Advantages of Writing a Letter

Writing a letter to the sexual harasser is another way of dealing with the problem.

The letter can be an important tool for actually ending sexual harassment, and in fact, any kind of harassment.

The letter itself should be polite, factual and detailed. Several drafts may be necessary because the victim is angry and understandably upset. The letter should consist of THREE PARTS.

PART I tells the facts of what happened, without evaluation, as seen by the writer. It should be detailed and as precise as possible, with dates (or approximate dates), places and a description of the incidents the victim has experienced with that person.

PART II describes how the writer feels about the events described in PART I, such as afraid, miserable, distrustful or offended and includes the writer's opinions or thoughts about what happened.

PART III consists of what the writer wants to happen next. This part may be very short, since most writers just want the behavior to stop.

ADVANTAGES OF WRITING A LETTER TO THE HARASSER

- it usually works
- little cost
- gives victim a sense of control
- comfortable method for victim as opposed to talking to harasser
- keeps incident quiet and victim's fear of exposure minimized
- avoids public confrontation; keeps it between victim and harasser
- provides harasser a forewarning (if appropriate)
- provides victim an opportunity to indicate a reasonable solution(s) was attempted
- provides documentation
- provides those wrongly accused a chance to defend themselves
- provides those justly accused the chance to make amends

Sample Letter to Harasser 1

Mr. Eager:

Six days ago, you commented on my arms and shoulders, told me I would probably look “dazzling” and “extremely inviting” in a halter neck dress and asked me to meet you after class for a drink. I told you I was not interested in a social relationship and that I would prefer that you not comment about my body and clothing.

This morning, you brushed up against me as we passed in the hallway – and again said that “you were eager to see more of me.” Again you asked me to meet you in the Lurid Lounge after your last class, “when your boyfriend won’t be around.”

Your persistent comments on my clothing and requests to meet socially are upsetting to me and, as I have made clear, are unwelcome. I want our relationship to be purely professional, as it was during the first five months I started working at xxx institution.

If you are unwilling to comply with my request to conduct yourself more appropriately in the workplace, I will ask our XXXXXXXX department to investigate.

Sincerely,

XXXXXXXXXXXXX

Sample Letter to Harasser 2

Mr. Eager

I am writing in reference to your recent email correspondence. I do not appreciate the tone of your email messages, nor do I welcome the unwanted attention. Furthermore, I find them unprofessional and disrespectful. This letter serves as my notice to you that I expect this to stop.

Sincerely,

XXXXXXXXXXXXX

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