

EDINBORO UNIVERSITY OF PENNSYLVANIA

SEXUAL HARASSMENT - Policy No. G004

Supersedes Policy G004, Dated 10/7/88, 1/10/90, 12/2/92 & 1/1/99

Recommended For Approval By: James P. Sheehan, Vice President for Finance and Administration

Approved By: Frank G. Pogue, President on January 1, 2004

Review Date: As Required

INTENT

The purpose of this policy is to address the topic of sexual harassment and to establish the procedures for processing allegations by full-time and part-time students, employees, and job applicants and others who feel that they have been subjected to sexual harassment.

POLICY

Edinboro University of Pennsylvania prohibits sexual harassment by all faculty, staff, and students. The University is committed to creating and maintaining a working environment for all University personnel and students which is free of objectionable and disrespectful conduct and communication of a sexual nature, to the extent such behavior is unlawful, or to the extent it exists at a level that constitutes good cause for corrective action. The University will not tolerate sexual harassment. It is the University's position that any degree of sexual harassment is a sufficient basis for the imposition of discipline on students and employees, ranging, depending on the nature of the offense, from verbal warnings to termination or expulsion. When sexual harassment is sufficiently pervasive that it manifestly interferes with an individual's performance and creates an intimidating, hostile, and/or substantially offensive working or learning environment, substantial disciplinary action is warranted. Nothing in this statement is to be taken to in any way vary the standard of good cause, just cause, or other standard enunciated in any collective bargaining agreement, merit principles policy, or other existing, applicable regulation governing disciplinary action regarding employees or students; nor is the statement to be taken to vary in any way from the legal standards for liability against any party responsible for sexual harassment. Harassment on the basis of sex can constitute a violation of two federal laws: Title VII of the Civil Rights Act of 1964, as amended, and Title IX of the Education Amendments of 1972, and its regulations, 34 C.F.R. Part 106. 1, which prohibit the University from discriminating on the basis of sex.

REGULATIONS

A. Sexual harassment is a form of sex discrimination consisting of offensive or inappropriate sexual and/or sexually harassing behavior.

B. Unwelcome sexual advances, requests for sexual favors, whether or not accompanied by promises or threats, improper behavior toward an individual based upon sexual orientation, and other sexual, verbal or physical conduct can constitute sexual harassment when:

1. submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of enrollment, employment, or participation in other University activities; or,
2. submission to or rejection of such conduct by an individual is used as a basis or substantial factor in assignment, advancement, or evaluation, or in making other academic or employment decisions affecting an

individual; or,

3. such conduct is sufficiently severe or pervasive so as to have the effect of creating an intimidating, hostile, or offensive work or educational environment, which unreasonably interferes with work or educational performance, or negatively affects an individual's employment or education opportunities.

4. sexual harassment also consists of other sexually harassing behavior, e.g., including, but not limited to, comments about an individual's body, sexually degrading words to describe an individual, offensive comments, off-color language or jokes, innuendos and sexually suggestive objects, books, magazines, photographs, cartoons or pictures.

RIGHTS AND RESPONSIBILITIES

In determining whether the alleged conduct constitutes sexual harassment, consideration should be given to the record as a whole and to the totality of the circumstances, including the nature of the sexual advances and the context in which the alleged incidents occurred. Retaliation against an employee, colleague, or student for filing a sexual harassment complaint is prohibited by this policy and is grounds for a subsequent harassment complaint.

A. It shall be a violation of University policy for anyone who is authorized to recommend or take action affecting faculty, staff, or students:

1. to grant, recommend, or refuse to take action for reasons improperly related to sexual favors, or as a reprisal against the person who has rejected or reported sexual advances;

2. to disregard and to fail to investigate, or fail to refer to a proper University employee, allegations of sexual harassment whether reported by the person who is the subject of the alleged harassment, or a witness, and, when authorized to do so, to fail to take timely corrective action in the event misconduct has occurred. Whenever there is an abuse of authority or neglect of responsibility involving sexual harassment, the supervisor or other person with appropriate authority is required to take prompt corrective action not inconsistent with discipline provisions of any appropriate policy manual, collective bargaining agreement, or other applicable University policy or procedure.

B. A faculty member, staff member or student alleging sexual harassment, including, but not necessarily limited to either a) sexual harassment by anyone with supervisory authority or b) failure by the supervisor to take timely action on the individual's complaint of being sexually harassed by someone not in a supervisory capacity (such as a co-employee, a student or a campus visitor), may file a written or make an oral complaint with the Equity and Special Programs Officer or the University Ombudsperson/Associate Vice President for Human Resources and Faculty Relations by following the procedures developed by that office.

C. The right to confidentiality of all parties involved in a sexual harassment charge shall be strictly adhered to insofar as it does not interfere with the University's legal obligation to investigate and take action on allegations of misconduct when brought to the University's attention, and to take corrective action. Those making complaints must understand that the initiation of an investigation, and/or the taking of corrective action, usually requires a written complaint and disclosure of details to persons accused of misconduct. There will be no retaliation against those who report sexual harassment or assist the University in the investigation of a complaint. However, the University may take disciplinary action against someone who provides false information during the investigation of a complaint of sexual harassment or unlawful discrimination. Informal action can only be taken when it is not inconsistent with the rights of persons accused of misbehavior. Informal action refers to that which results in a verbal, undocumented admonition. Informal actions do not leave a written record of the admonition.

D. Nothing in this policy is to be taken to modify in any way the existing University procedures for investigation of allegations of misbehavior by any faculty member, other employee or student, or issuance of discipline to them, or appeals from disciplinary action. The University regards this policy as a reaffirmation of a view it has always held that sexual harassment constitutes a basis for disciplinary action that can include,

where appropriate, termination of employees or expulsion of students. Nothing in this policy modifies the rights of students or employees accused of misbehavior or creates any rights regarding them. This policy merely creates a procedure for persons to make complaints and entitles them to a response from the University. The rights of accused employees and students are derived from other sources such as their respective collective bargaining agreements or the University's rules regarding student discipline.

E. The fact that the person accused of harassment and the person complaining of it are the same gender is, in and of itself, not dispositive of the question of whether the action complained about can constitute sexual harassment. Further, in any disciplinary action against a member of the faculty, staff, or a student, the issue shall be whether the particular allegations have been shown to be true, and whether they constitute appropriate cause for any disciplinary action that might be issued. An allegation of sexual harassment under this policy is an allegation of misbehavior.

Whether or not the facts alleged meet the definition of sexual harassment under any statutory language, or regulatory language issued by an outside agency does not determine whether discipline may be issued. In disciplinary cases, the appropriate question is whether the facts alleged are true, and whether they warrant disciplinary action under the standards established in, as applicable, another source of policy, such as a collective bargaining agreement, Merit Principles Policy or Student Handbook.

PROCEDURE

Procedures for reporting allegations of sexual harassment and for taking corrective action follow.

A. Responsibility of faculty member, staff member, or student

Action:

Report sexual harassment to immediate supervisor. If necessary, particularly in University settings where it is unclear as to the managerial authority of a person such as a faculty member or department chairperson who might broadly be called a supervisor, report to the Equity and Special Programs Officer or the University Ombudsperson/Associate Vice President for Human-Resources and Faculty Relations. Sexual harassment may also be reported to any vice president, assistant or associate vice president, dean or assistant dean.

B. Responsibility of: supervisor receiving complaint of sexual harassment

Action:

Notify Equity and Special Programs Officer or the University Ombudsperson/Associate Vice President for Human Resources and Faculty Relations who may advise on procedures and required action. The University shall investigate the allegations immediately and, if misconduct has occurred, initiate timely disciplinary action which may range up to and including termination of employment or expulsion in accordance with University policy.

C. Appeal:

If, after 90 days or review by the Equity and Special Programs Officer or the University Ombudsperson/Associate Vice President for Human Resources and Faculty Relations, the complainant has not received a written decision, or is not satisfied with the action taken or the University's decision, he or she may file a written appeal with the Office of the President of the University. Consideration of any appeal is discretionary with the Office of the President.