

**UNIVERSITY OF MASSACHUSETTS BOSTON
SEXUAL HARASSMENT POLICY AND PROCEDURES
(Doc. T92-037)**

I. POLICY

Sexual harassment is sex discrimination and, therefore, a violation of federal and state law. It is the policy of the University of Massachusetts that no member of the University community may sexually harass another. For purposes of this policy and consistent with federal regulations, sexual harassment is defined as follows:

Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of sexual nature constitute sexual harassment when: 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic work, 2) submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual, or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working or academic environment.

It is the policy of the University to protect the rights of all persons within the University community by providing fair and impartial investigations of all complaints brought to the attention of appropriate officials. Any member of the University community found to have violated this Sexual Harassment Policy will be subject to disciplinary action.

II. PROCEDURES

The University of Massachusetts at Boston will administer the Sexual Harassment Policy and Procedures under the Sexual Harassment Office.

These procedures are available to any person who, at the time of the acts complained of, was employed at or was enrolled as a student at the University of Massachusetts Boston. However, any person who files a complaint with any outside agency or court shall be deemed to have waived his/her rights to an internal University proceeding.

No individual shall be penalized by the University for participating in the procedures stipulated here, nor shall any retaliation be permitted. Complaints of retaliation should be addressed to the Sexual Harassment Office or, where formal proceedings have been initiated, to the respondent's Vice Chancellor, who, in consultation with the Sitting Panel, shall immediately attempt to address and resolve the issues (see section B.7).

Informal Resolution

Because of the emotional and moral complexities surrounding most sexual harassment incidents, every effort should be made to resolve the complaint on an informal basis.

- A. Complaints of sexual harassment should, whenever possible, be discussed informally in the first instance by the complainant with the respondent's department head or staff supervisor, in hopes that the department head/supervisor may effect an informal resolution.
- B. If this approach is either unacceptable to the complainant or unavailing, the complaint should be reported to the Sexual Harassment Officer. The Sexual Harassment Officer will inform the complainant concerning the Sexual Harassment Policy and Procedures and will counsel him or her concerning options for proceeding.

The Sexual Harassment Officer may rule that a complaint is (a) frivolous, or (b) outside the purview of the Sexual Harassment Policy and Procedures and decline to pursue it further; such ruling is subject to appeal by the complainant to the Sexual Harassment Hearing Board, which is empowered to instruct the Sexual Harassment Officer to entertain the case.

Upon certification that a complaint is non-frivolous and within the purview of this Policy and Procedures, the complainant may elect to file a written Informal Complaint Form. Upon the filing of this form, the Sexual Harassment Officer shall **attempt** an informal resolution of any complaint of sexual harassment, provided it is brought **within 180 calendar days of the alleged act**. In his/her neutral capacity, the Sexual Harassment Officer shall inform the parties of all possible courses of action, such as informal resolution and formal hearing, and of campus support and counseling services.

Steps of the Informal Resolution Process:

1. The Sexual Harassment Officer will counsel the complainant concerning options for responding to the problem on his/her own initiative (e.g. through oral or written communication to the respondent). If the complainant expresses willingness to proceed in this fashion, the Sexual Harassment Officer shall provide guidance and support to the complainant, throughout the process.
2. If this approach is either unacceptable to the complainant or unavailing, the Sexual Harassment Officer will undertake an Informal Hearing Process, in an attempt to reach a disposition agreeable to both complainant and respondent, to include the following.
 - a. a private informal hearing with the complainant;
 - b. a private informal hearing with the respondent;
 - c. if deemed necessary, an informal hearing among the Sexual Harassment Officer, the complainant and the respondent.
 - d. The Sexual Harassment Officer shall normally complete his/her investigation and all efforts to arrive at an informal resolution within thirty (30) calendar days of receipt of the complaint, unless extraordinary circumstances dictate otherwise. When it is determined, as a result of the Sexual Harassment Officer's review, that an incident of sexual harassment has in fact occurred, the Sexual Harassment Officer's attempts to arrive at informal resolution shall be guided by concern to provide appropriate relief to the aggrieved party while sensitizing the person at fault to the effects of such behavior.
 - e. Upon completion of the review, the Sexual Harassment Officer shall send a confidential report to both parties and to the Chancellor, outlining his/her findings. If a resolution is reached that has been agreed to by both parties, the Sexual Harassment Officer shall include the terms of that resolution in the report. The Chancellor shall move to implement any sanctions called for by the terms of the resolution.

The Sexual Harassment Officer shall ensure that all communications shall be kept confidential. He/she may not be called to testify at any University hearing regarding these privileged communications unless otherwise agreed by both parties.

If no Informal Complaint Form is filed by the complainant, no written records shall be kept. Where an informal resolution process is initiated, written records indicating the nature of the complaint, the names of the parties, and a dated copy of the terms and the resolution (if any) shall be kept by the Sexual Harassment Officer for a period of eight years. Such records shall normally be available only to the complainant, the respondent, the Sexual Harassment Officer and the Chancellor; they shall be made available to the respondent's Vice Chancellor in the event that, in accordance with these procedure, this or any subsequent charge of sexual harassment against the respondent or any charge of retaliation by the respondent is brought before the Vice Chancellor for review. These records are also available pursuant to a judicial subpoena, subject to the provisions of the University's Fair Information Practices Regulations (Doc. T77-059).

In extraordinary circumstances and for good cause, the Sexual Harassment Officer may, at his or her discretion, rule that the Informal Resolution Process may be omitted, and a complainant may move directly to Formal Proceedings.

Formal Proceedings

1. Hearing Process

a. Filing a Complaint

If informal proceedings do not result in resolution, or if the resolution agreed upon is not carried out, or if the Sexual Harassment Officer rules that the Informal Resolution Process may be omitted, the Sexual Harassment Officer shall advise the complainant of his/her right to a formal hearing. The Sexual Harassment Officer shall review the formal procedures for both parties.

If the complainant decides to proceed with a formal hearing, a formal written complaint shall be filed with the respondent's Vice Chancellor. The complaint shall state, clearly and concisely, the facts which are the grounds for the proceeding and the relief sought. Within two (2) working days the complaint shall be forwarded by the Vice Chancellor to the Sexual Harassment Officer in his/her capacity as coordinator of the Sexual Harassment Hearing Board and to the respondent, with notice that an answer must be filed with the Vice Chancellor within ten (10) calendar days.

The respondent's answer shall contain full, direct and specific responses to each claim in the complaint, admitting to, denying or explaining the material facts. The Vice Chancellor shall forward the answer to the complainant within two (2) working days of its filing.

It shall be the Sexual Harassment Officer's responsibility to appoint a Sitting Panel, schedule a hearing date, and notify the respective parties at least twenty-one (21) calendar days before the hearing. The hearing will be schedule and held no later than forty-five (45) calendar days after the formal written complaint has been filed, unless continued by the Board pursuant to Section d, ii, 6 or 7 below.

b. Composition of the Hearing Board

The Chancellor, in consultation with the appropriate governing and administrative bodies, shall appoint a 12-member Sexual Harassment Hearing Board. The Sexual Harassment Officer shall act as the coordinator of the Board.

The Hearing Board shall be composed of 3 faculty members, 3 members of the professional staff, 3 classified employees and 3 students.

Appointments will be guided by consideration of continuity, experience, and sensitivity to the concerns of those most profoundly affected by sexual harassment. Insofar as possible the Board shall reflect the diversity of the campus community. The membership of each constituency shall include at least one woman and one man. Members are to serve for staggered terms of three years.

The members of the Board shall act at all times to preserve the confidentiality of complainants and respondents. Board members shall participate in sexual harassment training workshops designed to sensitize them to the issues encompassing sexual harassment, including confidentiality, and the hearing procedures herein.

c. The Sitting Panel

Upon notice of a formal complaint, the Sexual Harassment Officer shall designate 5 members of the Board to serve as Sitting Panel. The Sitting Panel shall normally include two Board members from the respondent's constituency (faculty, professional or classified staff, students), two from the complainant's, and a fifth drawn from a neutral constituency. In such case as the complainant and respondent come from the same constituency, or Board members disqualify themselves in sufficient numbers to make the normal configuration of the Panel impossible, the Sitting Panel shall normally include three Board members from that constituency, the remaining membership to be chosen by the Sexual Harassment Officer from neutral constituencies; but in no case shall a student sit on a case which does not involve students. The Sitting Panel shall elect a Presiding Officer at its first meeting.

The function of a Sitting Panel is to hear and consider testimony and other relevant, reliable evidence, to make findings of fact, to determine whether the University Policy on Sexual Harassment has been violated, and, if so, to recommend appropriate penalties and relief.

d. Duties and Powers of the Presiding Officer and the Sitting Panel

i. The Presiding Officer shall have the following specific duties:

1. To ensure an orderly presentation of evidence and issues;
2. To ensure that a record is made of the proceedings; and
3. To ensure that a fair, independent, impartial decision based on the issues and evidence presented at the hearing is issued by the Sitting Panel no later than fourteen (14) calendar days, or thirty (30) calendar days when briefs are submitted, after the conclusion of the hearing.

- ii. The Sitting Panel shall have the following specific duties or prerogatives:
 - 1. To conduct a fair hearing to ensure that all the rights of the parties are protected;
 - 2. To define issues;
 - 3. To receive and consider all relevant and reliable evidence of the kind which reasonable people are accustomed to rely upon in the conduct of serious business;
 - 4. To assist all those present in making a full and free statement of the facts in order to bring out all the information necessary to decide the issues involved;
 - 5. To ensure that all parties have full opportunity to represent their claims orally, or in writing, and to secure witnesses and evidence to establish their claims;
 - 6. To continue the hearing to a subsequent date to permit either party to produce additional evidence, witnesses, and other material;
 - 7. To change the date, time or place of the hearing on its own motion or upon request of any party, for good cause shown and upon due notice to the parties;
 - 8. To permit the parties or their representatives to submit briefs within fourteen (14) calendar days of the conclusion of the hearing, on the condition that notification of intent to file is made to the Presiding Officer of the Panel within three (3) calendar days of the conclusion of the hearing;
 - 9. By majority vote to rule on all questions of fact; interpretations of rules, regulations and policies; penalties and relief; and such requests as are made during the hearing.

e. Hearing Procedure

- 1. Unless otherwise agreed by a majority of the Sitting Panel (pursuant to Numbers 6, 7 or 9 of the preceding section), a closed hearing shall be held within forty-five (45) calendar days of the receipt of the formal complaint by the Sexual Harassment Officer.
- 2. Each party shall be afforded the opportunity to hear all the testimony; to examine all the evidence; to respond to any adverse testimony; to present evidence and witnesses; to advance any pertinent arguments on his/her own behalf; and to file a brief within fourteen (14) calendar days of the conclusion of the hearing, on the condition that notification of intent to file is made to the Presiding Officer of the Panel within three (3) calendar days of the conclusion of the hearing.
- 3. Each party shall have the right to be accompanied, advised and/or represented by up to two members of the campus community (not legal counsel) at any stage of the proceedings.¹

¹ N.B.: Each party is free to retain legal counsel for advise, but may not bring legal counsel to University proceedings.

4. The hearing shall be tape-recorded by the Sitting Panel, the tape to remain the property of the University. Subsequently, either party shall have supervised access to the tape through the Sexual Harassment Officer.
 5. The proceedings before the Sitting Panel shall be as follows (unless waived or modified by the parties at such point as the respondent admits his/her guilt):
 - a. The Presiding Officer shall read the charge(s) and allow the respondent to either admit to or challenge the allegations;
 - b. First the complainant, then the respondent may present a brief opening statement;
 - c. First the complainant, then the respondent will present any and all evidence and testimony germane to the allegations, with the following provisions:
 - i. each party may question evidence and testimony introduced by the other;
 - ii. each party may rebut any inferences drawn by the other
 - d) First the complainant, then the respondent may briefly summarize his/her case to the Board.
- f. Decision of the Sitting Panel

After the hearing and the filing of briefs (if any), the Sitting Panel shall convene for private deliberations to determine whether the University's Policy on Sexual Harassment has been violated. If so, the Panel will make findings of fact and propose penalties for the respondent and relief for the complainant.

The Panel's findings of fact and its proposal of penalty and relief shall be based solely on the testimony and evidence presented at the hearing and in the briefs (if any). In making its determination, the Panel will examine the totality of the circumstances, such as the nature of the sexual harassment and the context in which the alleged incident(s) occurred. Penalties should reflect the severity of the incident(s).

Possible penalties for employees shall include, but not limited to, oral admonition, written reprimand, to be included in the individual's personnel file, probation, suspension with or without pay, ineligibility to receive merit pay for a state period of time, involuntary demotion, removal from administrative duties within a department, required professional counseling, and dismissal.

Possible penalties for students shall include, but not be limited to, oral admonition, disciplinary reprimand, disciplinary probation, suspension from the University for a stated period of time, and expulsion from the University.

The Sexual Harassment Officer shall review the Panel's proposed penalty in conjunction with any records of previous sexual harassment violations by the respondent and, if evidence of recidivism is found, may adjust the severity of the Panel's proposal accordingly.

In cases (a) where the respondent has been found guilty of sexual harassment and (b) where the Panel finds substantial reason to believe that the complainant may have been unfairly treated with respect to a grade, the Panel shall have the power to mandate to the respondent's department or program that the department or program appoint a committee

of three faculty members to determine the student's grade. Unless extraordinary circumstances dictate otherwise, final determination of the student's grade by this committee shall be made within thirty (30) calendar days of the Panel's referral of the case to the department of program.

Within fourteen (14) calendar days, or, if briefs are to be submitted, within thirty (30) calendar days of the hearing, the Panel's written decision (including findings of fact and recommendations for penalty and relief, if any) shall be forwarded to the complainant, the respondent, and the appropriate Vice Chancellor.

The Sitting Panel's decision shall be implemented within ten (10) calendar days, unless a review at the Vice Chancellor's level is requested within that period.

2. Standard of Proof

In cases where the allegations of sexual harassment are contested by the respondent, a violation of the Policy on Sexual Harassment shall be found only when there is a preponderance of evidence that a violation occurred. The Sitting Panel, the Vice Chancellors, and Chancellor shall be bound to make their determinations based on this standard of proof.

3. Vice Chancellor's Review

Either party may request review within ten (10) calendar days of the date of the Panel's decision by filing a written petition with the respondent's Vice Chancellor. The petition shall set forth in detail the specific grounds upon which review is sought. The Vice Chancellor shall immediately forward a copy of the petition to the Sitting Panel and the other party. Upon review, the Vice Chancellor may affirm the decision of the Panel; request specific findings from the Panel; remand the matter for further hearing (either for reconsideration or because additional evidence has been presented which, for good reason, could not be presented at the hearing); or, following due consultation with the Sitting Panel, set aside or modify the decision, if he/she determines that the substantial rights of any party may have been prejudiced because the Panel's decision is:

- a. unsupported by substantial evidence; or
- b. in violation of constitutional provisions, academic freedom, or these procedures; or
- c. arbitrary, in abuse of discretion or in excess of the Panel's powers; or
- d. reflective of arbitrary or unreasonable adjustment in severity by the Sexual Harassment Officer on the basis of respondent recidivism.

The Vice Chancellor shall make his/her determination upon consideration of the entire record, indicating specific reasons for any change of the Panel's decision. Within twenty-one (21) calendar days of the request for review, his/her final written decision shall be sent to the complainant, the respondent and the Sitting Panel. This 21-day period shall include any time allotted to the Panel upon request of the Vice Chancellor for specific findings or further hearings. The final decision of the Vice Chancellor shall be implemented without delay.

4. Reconsideration by the Chancellor

Either party may request reconsideration within ten (10) calendar days of the date of the Vice Chancellor's decision by filing a written petition with the Chancellor. The provisions and procedures of the Vice Chancellor's review (see previous section) shall apply to the Chancellor's reconsideration. The decision of the Chancellor shall constitute final University disposition of the matter, and the parties shall, upon the rendering of the Chancellor's final decision, have exhausted their administrative remedies within the University.

5. Retaliation

No reprisal or retaliation of any kind shall be taken against any person participating in these procedures. Where there is an allegation that retaliatory action has been taken, immediate review of such allegation shall be granted by the respondent's Vice Chancellor. The person alleging retaliatory action shall set forth in detail, in a written petition, the facts which are the grounds for the allegation and the relief sought. The Vice Chancellor shall immediately notify the respondent of the charge and request a written response. If a case of retaliatory action is established to the satisfaction of the Vice Chancellor, in consultation with the Sitting Panel, the Vice Chancellor shall take immediate action to redress any and all negative consequences resulting from such retaliatory action.

6. Retention of Records

Records of the hearing process and any review or reconsideration shall be kept by the Affirmative Action Office for eight years. During that period, the records shall be available only to the Sexual Harassment Officer, the respondent's Vice Chancellor or the Chancellor. The records are also available pursuant to a judicial subpoena, subject to the provisions of the University's Fair Information Practices Regulations (Doc. T77-059).