


Name of Policy: <u>Sexual harassment and other forms of harassment.</u>		 Revision date: April 29, 2011 Original effective date: December 1, 2007	
Policy Number: 3364-50-01			
Approving Officer: President			
Responsible Agent: Senior Director of the Office of Institutional Diversity			
Scope: All University of Toledo Campuses			
	New policy proposal		Minor/technical revision of existing policy
<u>X</u>	Major revision of existing policy		Reaffirmation of existing policy

(A) Policy summary

The University is committed to maintaining an environment of equity and respect that is free from sexual harassment and other harassment prohibited by this policy to enable all employees and students to perform to their highest level of potential. Harassment prohibited by this policy impedes the realization of the University’s mission of distinction in education, scholarship and service. Members of the University community have the collective responsibility to eliminate harassment prohibited by this policy through education and by encouraging all members of the University community to report concerns or complaints.

Harassment prohibited by this policy by or towards a member of the University community is prohibited. Employees who violate this policy will be subject to discipline up to and including termination. Students who violate this policy will be subject to discipline up to and including expulsion. Prompt corrective measures will be taken to stop harassment prohibited by this policy whenever it occurs.

Member of the University community means any University of Toledo faculty member, student, or staff member, or other individual engaged in any University activity or program, whether on or off campus.

(B) What is sexual harassment?¹

(1) Definition

¹ Other forms of harassment are discussed in section (C) of this policy.

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

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic status.
- (b) Submission to or rejection of such conduct by an individual is used as the basis for employment or educational decision affecting such individual; or
- (c) Such conduct has the purpose or effect of interfering with the individual's work or academic performance or creating an intimidating, hostile, or offensive working or learning environment; or of interfering with one's ability to participate in or benefit from a class or educational program or activity.

Sexual harassment can occur between any individuals associated with the University, e.g., employees, supervisors, coworkers, faculty members, students and staff.

The University does not wish to interfere with anyone's personal life. However, conduct away from the University community can still affect the University community. Accordingly, the definition above and the examples of sexual harassment below apply to behavior during working hours and non-working hours, including University-sponsored programs, seminars, conferences, business trips or business related social events, and conduct that occurs directly or indirectly via telephone or other electronic communication through the internal or external mail system (including email) and other forms of communication. Additionally, this policy extends to members of the University community whether on or off campus. This includes, but is not limited to behaviors which may occur on professional practice assignments, clinical assignments, while attending activities as a representative of the University of Toledo, while representing the University in the community or at a University sanctioned or sponsored event. It also includes off-campus activities that are connected to the educational process of the University.

(2) Examples of sexual harassment

Examples of sexual harassment include, but are not limited to:

- (a) Unwelcome physical touching;
- (b) Unwelcome sexual propositions, invitations, solicitations, and flirtations;
- (c) Direct or implied threats that submission to sexual advances will be a condition of employment, work or academic status, promotion, grades, or letters of recommendation;
- (d) Direct or implied promises that submission to sexual advances will lead to employment or educational benefits of any kind;
- (e) Unwelcome verbal expressions of a sexual nature, including graphic sexual comments about a person's body, dress, appearance, or sexual activities; the

unwelcome use of sexually degrading language, jokes or innuendos;
unwelcome suggestive or insulting sounds or whistles;

- (f) The display of inappropriate sexually oriented materials in a location where others can view them or communicated through email or other forms of communication;
- (g) A pattern of conduct, which can be subtle in nature, that has sexual overtones and is intended to create or has the effect of creating discomfort or humiliation to another; or
- (h) Unwelcome remarks speculating about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history.

(C) Other prohibited harassment

(1) Introduction

The University is committed to preventing and remedying other prohibited harassment, in addition to sexual harassment.

Prohibited harassment is defined as any verbal or physical conduct of an offensive, intimidating or threatening nature when such conduct is based on or directed at an individual's sex, race, color, ancestry, national origin, religion, disability, age, military or veteran status, sexual orientation, gender identity and expression, political affiliation, genetic information, or any other unlawful or prohibited basis.

(2) Prohibited conduct

Examples of prohibited conduct may include, but are not limited to: offensive statements, insults, epithets, or jokes; physically threatening behavior directed at another individual; using any form of communication to insult, demean or threaten another individual (including email or internet postings such as on Facebook, etc.); and/or other verbal or physical conduct if any of the above conduct is based on or directed at an individual's protected classification, as listed above. All such harassment is strictly prohibited.

Harassment prohibited by this policy can occur during working hours and non-working hours, including University-sponsored programs, seminars, conferences, business trips or business related social events, and conduct that occurs directly or indirectly via telephone or other electronic communication through the internal or external mail system (including email) and other forms of communication.

Additionally, this policy extends to members of the University community whether on or off campus. This includes, but is not limited to behaviors which may occur on professional practice assignments, clinical assignments, while attending activities as a representative of the University of Toledo, while representing the University in the community or at a University sanctioned or sponsored event. It also includes off-campus activities that are connected to the educational process of the University.

(3) Complaint procedure

Any person who believes that he or she has been subject to harassment prohibited by this policy should follow the complaint procedures discussed in this policy. The University will follow the same procedures for other prohibited harassment as it follows for complaints of sexual harassment.

(D) Procedures

Individuals who believe that they have been subject to harassment prohibited by this policy may: 1) get information and assistance; 2) file an informal complaint; 3) file a formal complaint, or 4) file an anonymous complaint.

(1) Getting information and assistance

(a) For information and assistance, contact an office or person listed below.

Depending on the information provided, the University may be required to take further action to investigate:

- (i) The Office of Institutional Diversity: 3770 University Hall, 419-530-2508 (phone); 419-530-8402 (fax); or on the web at <http://www.utoledo.edu/office/oid/index.html>
- (ii) One of the trained Harassment Advisors. This list can be accessed at www.utoledo.edu/offices/harassmentadvisors.
- (iii) The office of the Dean of Students: 2509 Student Union, 419-530-2256.

(b) Counseling or support. The role of the offices listed below is to provide counseling or support only, not to investigate. Information shared with these offices will be considered confidential to the extent permitted by federal and state law which may require disclosure particularly in the instance when a crime may have been committed:

- (i) Any student or faculty/staff member can contact the Coordinator of the Sexual Assault Education and Prevention Program: 1810 Rocket Hall, 419-530-3431 (phone); 419-530-7263 (fax).
- (ii) Any student or faculty/staff member can contact the Catharine S. Eberly Center for Women, 419-530-8573, and ask to speak with the Licensed Independent Social Worker.
- (iii) Main campus students can contact the University Counseling Center 419-530-2426 and request a clinical consultation.

(2) How to file a complaint

The University encourages any person who believes he or she has been subjected to harassment prohibited by this policy to file an informal verbal complaint or a formal written complaint. Individuals should make every effort to file a complaint as soon as possible. Complaints must be filed within 300 days after the behavior at issue. Please note that the 300 day time frame for filing a formal, informal, or anonymous complaint with the University does not relieve an individual from the requirement of filing a charge of discrimination within the statutory time frame

applicable to the Ohio Civil Rights Commission, the Equal Employment Opportunity Commission, or any other external agencies if the individual chooses to file with those agencies.

The Office of Institutional Diversity and/or its designees are the only members of the University community who are authorized to act upon, investigate, and recommend sanction or discipline for violations of this policy. Other faculty or staff receiving complaints of harassment (except those listed above as providing counseling and support only) prohibited by this policy must immediately forward them to the Office of Institutional Diversity.

(a) Informal complaints

An informal complaint is a verbal complaint made to the Senior Director of the Office of Institutional Diversity. Upon receiving the complaint, the Director will meet with the individual lodging the complaint and together they decide upon the appropriate action. The Director of the Office of Institutional Diversity has the authority to convert the informal complaint to a written complaint.

All resolutions will be handled by the Office of Institutional Diversity. Any breach of the terms of an informal resolution agreement may result in disciplinary action or a further claim of harassment.

(b) Formal complaints

The formal written complaint form can be obtained from the Office of Institutional Diversity or online at:

<http://www.utoledo.edu/offices/oid/pdf/hcf.pdf>.

Upon receiving a formal written complaint of prohibited harassment, the Office of Institutional Diversity or its designee will consider whether any action should be taken in the investigatory phase to protect the complainant from further prohibited harassment or retaliation. This includes, but is not limited to, a change of job assignment or a change of class schedule. In making such a determination, the Office of Institutional Diversity should consult with the individual filing the complaint prior to making the determination as to the best course of action.

The complainant, respondent, and appropriate department or office will be notified by the Office of Institutional Diversity of the nature of the allegations, the University's prohibited harassment policy, and prohibitions against retaliation.

(c) Anonymous complaints

Anonymous complaints can be made to the University's anonymous reporting line 1-888-416-1308 or web link www.ethicspoint.com. The

University's options for investigating or resolving anonymous reports may be limited because of the unique challenges they present including the inability to assess the reporter's veracity and the lack of the ability to obtain additional information from the reporter. However, the University will attempt to take action on anonymous reports to the extent possible.

(3) Rights and responsibilities

(a) Retaliation prohibited

No person who files a complaint under this policy or participates in an investigation of a complaint under this policy will suffer any form of retaliation. The University is committed to preventing retaliation and complaints of retaliation will be taken seriously. Retaliation may be found even if the underlying complaint of harassment is found to have no merit. Complaints of retaliation are to be reported to and investigated by the Office of Institutional Diversity.

(b) False allegations prohibited

It is a violation of this policy to knowingly make false accusations of sexual or other prohibited harassment. Failure to prove a claim of sexual or other prohibited harassment is not equivalent to a false allegation. Sanctions may be imposed on individuals who knowingly make false accusations of sexual or other prohibited harassment or knowingly give false information during an investigation under this policy.

(c) Discrimination and harassment complaints and proceedings will be handled with discretion and respect for those involved to the extent possible, consistent with due process, University policy, and applicable federal and state law.

(4) Investigation procedure—what happens after a complaint is filed?

(a) Once the investigation is initiated, the Office of Institutional Diversity will assign one or more investigator(s).

(b) Interviews. Complainants or relevant witnesses who are interviewed may request to be accompanied by another person; however, those individuals who accompany the complainant or relevant witnesses are not permitted to participate in the interview process. In cases where bargaining unit members are being interviewed and discipline may result, the bargaining unit representative will be permitted to attend and participate.

(c) Standard of review. The investigator(s) will use existing legal standards when determining whether a violation of this policy has occurred. The investigator(s) will consider whether a reasonable person in light of all the circumstances would consider the conduct at issue so severe or pervasive as to unreasonably interfere with the complainant's employment or educational

environment. However, it is recognized that violations of institutional policies, procedures, bylaws, core values, and collective bargaining agreements may not rise to the level above. The violations will, however, be subject to investigation and individual(s) may be subject to discipline up to and including termination in accordance with those policies, procedures, bylaws, core values, and applicable collective bargaining agreements even if the above standard is not met.

All employees have a duty to participate and assist OID in conducting investigations. Employees and students have a duty to respond truthfully. Failure to comply with reasonable requests for information may subject the individual to discipline up to and including termination or dismissal.

- (5) Resolutions—what happens after the investigation?
 - (a) Investigation report and findings.
 - (i) The investigating team will prepare and submit a written summary of the investigation to the Senior Director of the Office of Institutional Diversity. The investigating team will conclude the investigation and issue a report within 60 working days of the complaint being filed. If necessary, the Senior Director of the Office of Institutional Diversity may extend deadlines by notifying the parties.
 - (ii) Findings: The Senior Director of OID will review the summary and discuss it with the appropriate administrator(s). After the summary is reviewed and discussed, the Director of OID will submit a final written recommendation.
 - (a) If the accused is an employee in a non-academic department, the recommendation will be forwarded to the Vice President for Human Resources.
 - (b) If the accused is a student, the recommendation will be forwarded to The Office of Student Conduct. The Student Code of Conduct will then be followed.
 - (c) If the accused is a member of the faculty, or an employee in an academic department, the recommendation will be forwarded to the appropriate vice president and/or the department chairperson or dean and to the provost and executive vice president for academic affairs (main campus) or to the Chancellor and Executive Vice President for Biosciences and Health Affairs (health science campus).
 - (d) If the accused is a contractor or other entity, the recommendation will be forwarded to the individual(s) with whom the university has a contracting or other relationship.

- (iii) The complainant will receive a copy of the report and findings subject to the Family Educational Rights and Privacy Act if any individuals involved are students.
 - (b) Corrective measures and discipline
 - (i) Corrective measures. If an allegation of prohibited harassment is substantiated, appropriate corrective action will follow and steps will be taken to ensure the prohibited harassment is stopped immediately. Corrective measures commensurate with the severity of the offense will be imposed in accordance with applicable University policies, procedures, bylaws and collective bargaining agreements and may include discipline up to and including termination of employment or expulsion from the university.
 - (ii) The complainant and the respondent will be notified of the final disposition of a formal complaint subject to the Family Educational Rights and Privacy Act if any individuals involved are students.
 - (iii) The University may take investigative and/or disciplinary action, even if the complaining party withdraws a complaint of alleged prohibited harassment, or the complainant requests that no formal disciplinary action be taken against the respondent.
 - (iv) In cases where the University cannot determine whether prohibited harassment has occurred, but as a result of its investigation determines that other policies have been violated, the University may impose discipline in accordance with other University policies, procedures, bylaws, core values and applicable collective bargaining agreements.
 - (vi) Discipline imposed, and investigatory materials or reports, as necessary, will become a part of an accused employee's personnel records or an accused student's student records.
- (E) Consensual romantic and/or sexual relationships
 - (1) Introduction

Romantic and/or sexual relationships between individuals in a supervisory, teaching, evaluation, advising, coaching, or counseling relationship may constitute a conflict of interest. The person in the position of higher institutional authority has the responsibility to eliminate the conflict of interest. The conflict of interest must be eliminated in a way which minimizes potential for harming the person with lower institutional authority. Recognizing the spontaneity with which consensual relationships may develop, the timing of remedial action must demonstrate compliance with the intent of this paragraph.

When the facts establish that an institutional power differential existed within the relationship and an allegation of sexual harassment results, the University will closely scrutinize a defense that the relationship was consensual.

(2) Prohibited Relationships

(a) Involving Students, Residents, Interns, and Fellows

Romantic and/or sexual relationships are prohibited whenever there are supervisory, teaching, evaluation, advising, coaching, or counseling responsibilities between: 1) administrators, faculty, staff, graduate or undergraduate teaching assistants and students; 2) attending physicians and medical residents, interns, or fellows or 3) medical residents and medical students. Alternative academic and/or supervisory arrangements must be made to avoid being in a prohibited relationship; if alternative arrangements are not feasible, the relationship cannot continue.

(b) Involving Employees

Romantic and/or sexual relationships between supervisor and employee are prohibited. No person involved in a romantic and/or sexual relationship will have direct responsibility for evaluating the performance or for making decisions regarding the hiring, promotion, tenure, compensation, discipline, or termination of the other party to the relationship. Supervisors, including faculty supervisors, must take immediate steps to make alternative arrangements regarding their supervisory responsibility for the other party to avoid a conflict of interest. If alternative arrangements are not feasible, the relationship cannot continue.

(c) Alternative Arrangements

Alternative arrangements include removing any supervisory, teaching, evaluation, advising, coaching, or mentoring relationships between the person with institutional power and the student or employee. The alternative arrangements should avoid negative consequences for the student or employee. If alternative arrangements are not feasible, the relationship cannot continue.

(3) Important Advisory Statement on Romantic/Sexual Relationships

Even if the relationship is not prohibited by the above provisions, individuals in positions of power should be aware that romantic or sexual relationships with students or employees pose a legal risk to both the individual and the institution and may result in either disciplinary action up to and including termination or removal.

There are special risks in any sexual or romantic relationship between individuals in inherently unequal positions of power. These relationships may be subject to

concerns about the validity of consent and unfair treatment of other students or employees. Such relationships can undermine the atmosphere of trust essential to the educational process and the employment relationship. They may, moreover, be less consensual than the individual whose position confers power believes. The apparent consensual nature of the relationship is inherently suspect due to the fundamental asymmetry of power in the relationship and it thus may be difficult to establish consent as a defense to a complaint of sexual harassment. Even when both parties consented at the outset to a romantic or sexual involvement, this past consent does not remove grounds for or preclude a charge or subsequent finding of sexual harassment based upon subsequent unwelcome conduct.

For all of these reasons, the University discourages all romantic and/or sexual relationships between faculty and students, even when those relationships do not officially violate this policy.

<p>Approved by:</p> <p>/s/ laj</p> <hr/> <p>Lloyd A. Jacobs, M.D.</p> <p>President</p> <p>April 29, 2011</p> <hr/> <p>Date</p> <p><i>Reviewed by:</i></p> <p><i>Sexual Harassment Task Force</i></p> <p><i>Office of Institutional Diversity</i></p> <p><i>Office of Legal Affairs</i></p>	<p>Policies Superseded by This Policy:</p> <p><i>Previous 3364-50-01 Sexual harassment and other forms of harassment, effective 12/1/07</i></p> <p><i>Former Health Science Campus policy 01-075 Harassment, previous effective date November 21, 2005</i></p> <p><i>Former Main Campus policy 3360-50-01 Unlawful Harassment, previous effective date December 15, 2004</i></p> <p>Initial Effective Date: December 1, 2007</p> <p>Review/Revision Date: April 29, 2011</p> <p>Next Review Date: April 29, 2014</p>
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