

SPECIAL REPORT
of the
ACADEMIC PERSONNEL POLICIES COMMITTEE
concerning
THE UNIVERSITY'S SEXUAL HARASSMENT POLICY

Presented at the
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COMMITTEE MEMBERSHIP

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A variety of organizations and constituencies have been involved in reviewing the various drafts through which the following document has passed, including the Academic Personnel Policy Committee and the Status of Women Committee of the Faculty Senate. Vice Chancellor Louis Fischer has coordinated the policy development process from which the current document has emerged.

In the nature of institutions such as the University of Massachusetts, there is no doubt that this review process could continue indefinitely, and we could look forward to a never ending succession of revised drafts. It seems apparent at this time, however, that the current draft, while not perfect, is adequate for purposes of establishing a formal sexual harassment policy with stipulated procedures for implementation should the need arise. The current document calls for a review of procedures after the completion of a one-year implementation period, by which time we will be in a better position to make a practical evaluation of the policy.

Representatives of the Academic Personnel Policies Committee and the Status of Women Committee consulted with one another while this review for the Faculty Senate was in process. On October 4, 1982 the Status of Women Committee met and unanimously approved Draft 5 (revised) of the Sexual Harassment Policy document. On October 6, 1982 the Academic Personnel Policies Committee voted to recommend the adoption of Draft 6, which incorporates several revisions but which agrees in all essentials with Draft 5 (revised) which the Status of Women Committee has approved. The most substantive revision made for Draft 6 was the revision of section IV, item 5. In Draft 5 (revised) IV.5 read:

An additional ground for review may be the contention that the Chairperson of the Board was arbitrary or unreasonable in the adjustment of the severity of the offense based on recidivism.

In Draft 6 IV.5 reads:

The contention that the Chairperson of the Panel was arbitrary or unreasonable in adjusting the severity of the Board's proposed penalty because of respondent recidivism.

The Academic Personnel Policies Committee, with the concurrence of the Status of Women Committee, therefore proposes the following motion.

MOVED: That the Faculty Senate recommend to the administration the approval of the
13-83 University's Sexual Harassment Policy as described in Sen. Doc. No. 83-012.

SEXUAL HARASSMENT 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:

Unwelcomed 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 of Massachusetts 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.

PROCEDURE

The University of Massachusetts, Amherst, will administer this policy and procedures under the Office of Affirmative Action.

I. SCOPE

These procedures are to be 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 at Amherst. 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 Ombudsperson or, where formal proceedings have been initiated, to the respondent's Vice Chancellor who shall immediately attempt to address and resolve the issues.

II. INFORMAL RESOLUTION

All individuals with sexual harassment complaints are encouraged to exercise their option to discuss them informally in the first instance with their department head to see if they can be resolved at that level. If this approach is either unacceptable or unavailing, by agreement of the parties, the Ombudsperson shall attempt an informal resolution of any sexual harassment complaint, provided it is brought within six (6) months of the alleged act. In his/her neutral capacity, the Ombudsperson shall assist the parties with any preliminary matters, including, but not limited to, an investigation and the identification of witnesses. S/he shall also inform the parties of all possible courses of action, such as mediation, formal hearing, and other campus support and counseling services. Unless mutually

agreed otherwise, the Ombudsperson shall complete his/her investigation and all efforts to arrive at a settlement within no more than twenty-one days* of receipt of the complaint.

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, if possible. Where an incident has occurred, the emphasis should be on action to provide appropriate relief for the aggrieved party while sensitizing the person at fault to the effects of such behavior, in a constructive manner. The Ombudsperson shall ensure that all communications shall be kept confidential. S/he may not be called to testify at any University hearing regarding these privileged communications unless otherwise agreed by both parties.

If the complaint is dropped by the complainant prior to resolution, no written records shall be kept. Where a resolution is reached, a dated copy of the terms of the agreement or resolution, indicating the nature of the complaint and the names of the parties, shall be kept by the Ombudsperson's Office. It shall be kept for three (3) years or until the complainant has left the purview of supervision or authority of the party at fault and his/her department, whichever comes later, before it is destroyed. During that period, the record(s) shall only be available to the Chairperson of the Sexual Harassment Hearing Panel, the respondent's Vice Chancellor, or the Chancellor for the determination of an appropriate penalty where subsequent formal sexual harassment complaint or claims of retaliation are pursued against the same person.

III. HEARING PROCESS

A. FILING A COMPLAINT

If the parties do not agree to use the informal proceedings, or if it does not result in a settlement, or if the resolution agreed upon is not carried out, the Ombudsperson shall advise the aggrieved party of his/her right to a formal hearing. The Ombudsperson shall review the formal procedures for both parties. If the complainant decides to proceed with a formal hearing, a 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 one working day the complaint shall be forwarded by the Vice Chancellor to the Chairperson of the Sexual Harassment Hearing Panel and to the respondent with notice that an answer shall be filed with the Vice Chancellor within seven days. The answer shall contain full, direct and specific responses to each claim in the complaint admitting, denying or explaining the material facts. The Vice Chancellor shall forward the answer to the Chairperson of the Hearing Panel and the complainant within one working day. It shall be the Chairperson's responsibility to contact the appropriate Board members, schedule a hearing date, and notify the respective parties at least fourteen (14) days before the hearing. The hearing will be scheduled and held no later than twenty-one (21) days after the complaint has been filed, unless continued by the Board pursuant to Section D, ii, Numbers 6 and 7 below.

* "Days" mean working days throughout this document.

B. COMPOSITION OF THE HEARING PANEL

The Chancellor shall appoint a thirteen member Sexual Harassment Hearing Panel. The Hearing Panel shall be comprised of two faculty members, two members of the professional staff, four classified employees, two undergraduate students, two graduate students, and one administrative representative. With the exception of the administrative representative, the Chancellor will be guided by recommendations from the appropriate governing bodies of the respective groups. The Chancellor's appointments will also be guided by considerations of continuity, experience, affirmative action, and sensitivity to the concerns of those most profoundly affected by sexual harassment, including women students and members of minority groups. The administrative representative shall be drawn from the Chancellor's staff and shall act as the Chairperson of the Panel. The members are to serve for staggered terms of up to three (3) years. The members of the Panel shall act at all times to preserve the confidentiality of the complainants and respondents. Once each year, new panel members shall participate in a sexual harassment training workshop designed to sensitize them to the issues encompassing sexual harassment and the hearing procedures herein, including confidentiality. The training will include a simulated sexual harassment hearing and provide the panel with an opportunity to role-play, as well as other techniques.

C. THE HEARING BOARD

Upon notice of a formal complaint, the Chairperson of the Hearing Panel shall designate a Presiding Officer and two (2) other members of the Panel to serve as a Hearing Board, on a fair basis. At least one (1) member of each Board shall be drawn from the complainant's and respondent's respective constituencies.

The function of a Hearing Board 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 BOARD

- i. The Presiding Officer shall have the following specific duties:
 1. administer the oath of affirmation to anyone who will testify at the hearing;
 2. ensure an orderly presentation of the evidence and issues;
 3. ensure a record is made of the proceedings; and
 4. see that a fair, independent, impartial decision based on the issues and evidence presented at the hearing is issued by the Board no later than ten (10) days, (or twenty-one (21) days where briefs are submitted) after the conclusion of the hearing.

- ii. **The Board shall have the following specific duties:**
1. **conduct a fair hearing to ensure that all the rights of the parties are protected;**
 2. **define issues;**
 3. **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. **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. **ensure that all parties have full opportunity to present their claims orally, or in writing, and to secure witnesses and evidence to establish their claims;**
 6. **continue the hearing to a subsequent date to permit either party to produce additional evidence, witnesses, and other materials;**
 7. **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. **in its discretion, permit the parties or their representatives to submit briefs within fourteen (14) days from the conclusion of the hearing; and**
 9. **by majority vote rule on all questions of fact, interpretations of rules, regulations and policies, penalties and relief and any requests that are made during the hearing.**

E. HEARING PROCEDURE

1. **Unless otherwise agreed by a majority of the Board pursuant to Section D, ii, Numbers 6, 7 or 9 above, a closed hearing shall be held within twenty-one (21) days from the receipt of the formal complaint by the Chairperson.**
2. **The parties shall be afforded the opportunity to hear all the testimony, to examine all the evidence, to respond to any adverse testimony, and to present evidence and witnesses and advance any pertinent arguments on their own behalfs.**
3. **Each party shall have the right to be accompanied, advised and/or represented by two representatives at any stage of the proceedings. However, neither party shall be represented by an attorney at this hearing but either may be accompanied, if they so wish, by an advisor who may be an attorney.**

4. The hearing shall be tape recorded by the Hearing Board with the tape remaining the property of the University. Subsequently, either party shall have supervised access to the tape or a copy thereof through the Affirmative Action Office. Parties may also do their own taping.
5. The proceedings before the Board shall be as follows unless waived or modified by the parties or when the respondent admits his/her guilt:
 - a. the Presiding Officer shall read the charge(s) and allow the respondent to either admit or challenge the allegations;
 - b. the complainant may present a brief opening statement, followed by the same from the respondent;
 - c. the complainant will present any and all evidence germane to the allegations, with the following provisions:
 - (i) the respondent may question evidence and testimony introduced;
 - (ii) the complainant may rebut any inference made;
 - (iii) the responde nt may rebut any inference made.
 - d. the respondent may present any and all evidence and testimony germane to the allegations, with the following provisions:
 - (i) the complainant may question evidence and testimony introduced;
 - (ii) the respondent may rebus any inferences made;
 - (iii) the complainant may rebut any inferences made.
 - e. the complainant may briefly summarize his/her case to the Board, following by the respondent who may do the same.

F. DECISION OF THE HEARING BOARD

After the hearing, the Board shall convene for private deliberations to determine whether the University's policy on sexual harassment has been violated. If so, the Board will decide on findings of fact, proposed penalty and relief for the aggrieved party. The findings of fact, proposed penalty and relief shall be based solely on the testimony and evidence presented at the hearing. In making its determination, the Board will examine the totality of the circumstances, such as the nature of the sexual harassment and the context in which the alleged incident occurred. Where an individual is found to have violated the sexual harassment policy, the penalty should reflect the severity of the incident. The penalties shall include, but not be limited to, verbal admonition, written warning to be

included in the individual's personnel file, probation, suspension with or without pay, involuntary demotion, removal from administrative duties within a department, obtaining appropriate professional counseling, and dismissal. The relief shall attempt to reinstate, restore and, as much as possible, make the aggrieved party whole. The Chairperson of the Panel shall review the Board's proposed penalty in conjunction with any records of past sexual harassment violations by the respondent by consulting the Ombudsperson's Office and shall adjust the severity of the Board's proposal to reflect any recurrence of the offense. It shall then become a part of the Board's decision.

Within ten (10) days, or, if briefs are to be submitted, within twenty-one (21) days from the hearing, the Board's written decision (including findings of fact, penalty and relief, if any) shall be forwarded to the complainant and the respondent, together with Notice of Procedures for requesting review by the respondent's Vice Chancellor. The Board's decision shall be implemented within ten (10) days unless review is requested within that period.

IV. STANDARD OF PROOF

A violation of this policy on sexual harassment shall be found only where there is a preponderance of evidence that a violation occurred. The Hearing Board, Vice Chancellors, and the Chancellor shall be bound to make their determinations based on this standard of proof.

V. VICE CHANCELLOR'S REVIEW

Either party may request review within ten (10) days of the date of the Board'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 Hearing Board and the other party. The Vice Chancellor may grant review and affirm the decision of the Board, or request specific findings from the Board or remand the matter for further hearing or set aside or modify the decision, if s/he determines that the substantial rights of any party may have been prejudiced because the Board's decision is:

1. unsupported by substantial evidence; or
2. in violation of constitutional provisions, academic freedom, or these procedures; or
3. unwarranted by additional evidence and there was good reason for the failure to present it in the hearing; or
4. arbitrary, an abuse of discretion or in excess of its powers; or
5. the contention that the Chairperson of the Panel was arbitrary or unreasonable in adjusting the severity of the Board's proposed penalty because 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 Board's decision. Within fifteen (15) days of the request for review, his/her final written decision shall be sent to the complainant, the respondent and to the Hearing Board. Within the period, remand or a request for specific findings shall have been made to the Board, where appropriate. Upon notice from the Vice Chancellor, the Board shall immediately reconvene to consider and respond to new evidence or a request for specific findings. The final decision of the Vice Chancellor shall be implemented without delay.

VI. RETALIATION

No reprisal or retaliation of any kind shall be taken against any person for participating in these procedures. Where there is an allegation that retaliatory action is or has been taken against a complainant resulting from participation in these proceedings immediate review of such allegation shall be granted by the respondent's Vice Chancellor. The petition shall set forth in detail the facts which are the grounds for the allegation and the relief sought. Where the complainant establishes a prima facie case of retaliatory action, the Vice Chancellor shall take immediate action to redress any and all negative consequences resulting from such retaliatory action.

VII. RECONSIDERATION BY THE CHANCELLOR

Either party may request reconsideration within ten (10) 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 (Section IV above) 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 with the University. Beyond that they may seek remedies in the courts or through other relevant administrative procedures.

Records of the hearing process and any review of reconsideration shall be kept by the Ombudsperson's Office for eight years. During that period, the records shall only be available to the Chairperson of the Sexual Harassment Hearing Panel, the respondent's Vice Chancellor or the Chancellor for a determination of an appropriate penalty where subsequent formal sexual harassment complaints or claims of retaliation are pursued against the same person. Of course, the records are always available pursuant to a judicial subpoena.

VIII. REVIEW

It is understood that these procedures will be reviewed after a one-year implementation period and modified as necessary upon consultation with interested groups on campus.