THE UNIVERSITY OF MICHIGAN

STANDARD PRACTICE GUIDE

SECTION:	Personnel	**Number:**	201.89
		Revised:	12/1/93
SUBJECT:	Sexual Harassment	**Date Issued:**	
		Attachment(s)	0
APPLIES TO:	All Regular and Temporary Faculty and Staff Members		
ISSUED BY:	University Personnel Office and Office of the Provost and Executive Vice President for Academic Affairs		

POLICY

It is the policy of the University of Michigan to maintain an academic and work environment free of sexual harassment for students, faculty, and staff. Sexual harassment is contrary to the standards of the University community. It diminishes individual dignity and impedes equal employment and educational opportunities and equal access to freedom of academic inquiry. Sexual harassment is a barrier to fulfilling the University's scholarly, research, educational, and service missions. It will not be tolerated at the University of Michigan.

Sexual harassment violates the University's long-standing policy against discrimination on the basis of sex. Sexual harassment is also illegal. It is prohibited in the employment context by Title VII of the 1964 Civil Rights Act, in the education context by Title IX of the Educational Amendments of 1972 and, in both employment and education contexts, by Michigan's Elliot-Larsen Civil Rights Act, adopted in 1976.

A claim under this policy may be brought by the University or by a faculty, staff or student member of the University community based on the conduct of any University employee. Complaints based on conduct by students who are not also employees of the University are addressed in the Interim Policy on Discrimination and Discriminatory Conduct by Students in the University Environment, which is administered by the Office of Student Services.

Sexual harassment can be a very serious matter having far-reaching effects on the lives and careers of individuals. Intentionally false accusations can have similar impact. Thus the charge of sexual harassment is not to be taken lightly by a charging party, an accused party, or any member of the University community. A person who knowingly and intentionally files a false complaint under this policy is subject to University discipline.

DEFINITION OF SEXUAL HARASSMENT

For the purposes of determining whether a particular course of conduct constitutes sexual harassment under this policy, the following definition will be used:

> Sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute harassment when:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education, living environment, or participation in a University activity;
(2) submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a University activity; or
(3) such conduct has the purpose or effect of unreasonably interfering with an individual's employment or educational performance or creating an intimidating, hostile, offensive, or abusive environment for that individual's employment, education, living environment, or participation in a University activity.

Conduct alleged to be sexual harassment will be evaluated by considering the totality of the particular circumstances, including the nature, frequency, intensity, location, context, and duration of the questioned behavior. Although repeated incidents generally create a stronger claim of sexual harassment, a serious incident, even if isolated, can be sufficient. For example, a single suggestion that academic, other educational, or employment rewards or reprisals will follow the granting or refusal of sexual favors, will constitute sexual harassment and grounds for action under this policy.

This policy addressed intentional conduct. It also addresses conduct which results in negative effects even though such negative effects were unintended. Sexually-related conduct forms the basis of a sexual harassment claim if a reasonable person, in view of all the surrounding circumstances, would consider it sufficiently severe or pervasive to interfere unreasonably with academic, other educational, or employment performance or participation in a University activity or living environment.

Sexual harassment most often occurs when one person has actual or apparent power or authority over another; however, it may also occur between individuals of equal status or rank within the University. Sexual harassment may occur between males and females and between persons of the same gender.

Although sexual harassment as described and prohibited by this policy includes a wide range of behaviors, it does not include certain discriminatory conduct even though that conduct may be otherwise unlawful, offensive, or prohibited by University policy. For example, unequal pay and denial of access to educational programs based on gender are unlawful sex discrimination not addressed by this policy. Also, not all harassment based on gender or sexual orientation may be addressed by this policy, if such conduct is not sexual in nature or sexually motivated. Some conduct which negatively emphasizes gender, gender differences or sexual orientation may violate this policy, but may also be a violation of another University policy. Harassment that is both racist and sexual in nature would be addressed by this policy and possibly by other University policies as well.

CONSENSUAL RELATIONSHIPS

Romantic and sexual relationships between supervisor and employee or between faculty or other staff and student are not expressly prohibited by University policy. However, even when both

parties have consented to the development of such relationships, they can raise serious concerns about the validity of the consent, conflicts of interest, and unfair treatment of others. Similar concerns can be raised by consensual relationships between senior and junior faculty members.

In 1986 the University's Senate Assembly adopted a statement of principle concerning relationships between faculty (including teaching assistants) and students. The University concurs with the Assembly's position that sexual relationships, even mutually consenting ones, are a basic violation of professional ethics and responsibility when the faculty member has any professional responsibility for the student's academic performance or professional future.

The University's nepotism policy precludes individuals from evaluating the work performance of others with whom they have intimate familial or close personal relationships, or from making hiring, salary or similar financial decisions concerning such persons, without prior written approval. The same principles apply to staff-student or faculty-student relationships in the context of work or academic evaluation. Thus, consensual romantic or sexual relationships between faculty or staff and students also require disclosure to the appropriate administrative supervisor so that arrangements can be made for objective evaluation and decision-making with regard to the student.

Romantic or sexual relationships with students which occur outside of the instructional or supervisory context may also lead to difficulties. The Senate Assembly has concluded, and the University concurs, that the asymmetry of the faculty-student relationship means that any sexual relationship between a faculty member and a student is potentially exploitative and should be avoided. Faculty and staff engaged in such relationships should be sensitive to the constant possibility that they may unexpectedly be placed in a position of responsibility for the student's instruction or evaluation.

In the event of a charge of sexual harassment, the University will in general, be unsympathetic to a defense based upon consent when the facts establish that a professional faculty-student, staff-student, or supervisor-employee power differential existed within the relationship.

RESPONSE AND PROCEDURES

Prevention and Education. The University is committed to preventing and eliminating sexual harassment of students, faculty, and staff. To that end, this policy will be published in pamphlet form and disseminated to the University community. The pamphlets will be included in orientation materials for new students, faculty, and staff and made available in the Affirmative Action Office and other appropriate locations on each campus. In addition, appropriate educational sessions will be conducted by the University on an ongoing basis to (1) inform students, faculty, and staff about identifying sexual harassment and the problems it causes, (2) advise members of the University community about their rights and responsibilities under this policy, and (3) train personnel in the administration of this policy.

Assistance with Sexual Harassment Problems. The Affirmative Action Office is responsible for ensuring and monitoring the University's compliance with federal and state nondiscrimination laws. However, a discrimination-free environment is the responsibility of every member of the

community. The University can take corrective action only when it becomes aware of problems. **Therefore, the University encourages persons who believe that they have experienced or witnessed sexual harassment to come forward promptly with their inquiries, reports, or complaints and to seek assistance within the University.** Individuals also have the right to pursue a legal remedy for sexual harassment in addition to or instead of proceeding under this policy.

Confidential Counseling. Information about or assistance with sexual harassment issues may be obtained from a variety of University resources. Prior to or concurrent with making a report or complaint of sexual harassment, individuals may find it helpful to consult with a counselor. The following offices can advise and support victims of and witnesses to sexual harassment in a confidential setting. Discussions with representatives of these offices will not be considered official reports to the University and will not, without additional action by the complainant, result in intervention or corrective action.

Counseling Services (available to students on each campus)
Faculty and Staff Assistance Program (available to faculty and staff on each campus)
Lesbian-Gay Male Programs Office (in Ann Arbor but available to students, faculty, and staff from Dearborn and Flint)
Sexual Assault Prevention and Awareness Center (in Ann Arbor but available to students, faculty, and staff from Dearborn and Flint)

Inquiries about Sexual Harassment. Inquiries about sexual harassment and this policy may also be made to the University representatives listed below. Such inquiries will not be acted upon until an informal or formal complaint is made.

Informal Resolution Process. At the complainant's option, a sexual harassment report or complaint can be made centrally or locally on the Ann Arbor, Dearborn and Flint campuses. Centrally, informal reports or complaints may be received by representatives of the Affirmative Action Office, the Office of the Ombudsperson (students only), the Office of Student Affairs (students only), Dean's Office of the Horace H. Rackham Graduate School (graduate students only), Center for the Education of Women, Department of Public Safety, and appropriate Personnel Office.

At the local level, persons designated to receive informal reports or complaints are any dean, director, department head, and/or their designees. Each School/College or other unit shall be certain that at least one of the persons designated to receive complaints is a female.

The person who receives a sexual harassment report or complaint will advise the complainant about the informal and formal resolution alternatives available under this policy. At the complainant's option, the intake person can (1) provide information about sexual harassment and this policy, (2) help the complainant deal directly with the alleged offender, (3) assist with or mediate a resolution of the problem within the unit, and/or (4) help the complainant prepare a written complaint and pursue a formal investigation. Informal resolution measures should be custom-designed to address the particular circumstances. If the complainant wishes, the intake person can, in consultation with a representative of the appropriate Personnel Office and/or the

Affirmative Action Office, conduct an informal inquiry into the reported incident and assist in resolving it. The person to whom an informal complaint is brought will not inform the accused of the complainant's action or identity without the consent of the complainant.

Formal Investigation. Either subsequent to or instead of following an informal process, a complainant may elect to make a formal charge of sexual harassment and have it pursued. The University will investigate all formal charges of sexual harassment.

Faculty and staff complainants have two internal mechanisms available to pursue a formal charge and their availability depends on the employment status of the complainant. All employees represented by a union must pursue a formal charge through the grievance procedure in the relevant collective bargaining agreement. All other employees may pursue a formal charge through the use of the appropriate faculty or staff grievance procedure set forth in the Standard Practice Guide or, in the alternative, through the procedures set forth in this Policy. A student complainant may elect to pursue a formal charge through the appropriate student grievance procedures or, in the alternative, through the procedures set forth in this policy.

Formal charges under this Policy's procedures should be made in writing and filed either with a dean or director, the Affirmative Action Office, or the appropriate Personnel Office. If a formal investigation is initiated, the person accused of sexual harassment must be notified of the charge and given the opportunity to respond to any allegations before disciplinary actions are taken.

The purpose of an investigation, which will include interviewing the parties and witnesses, is to gather and verify facts about the case. Formal investigations will be conducted in consultation with the Office of the General Counsel, by a three-person team consisting of a representative from the appropriate Personnel Office, the Affirmative Action Office, and the office of the dean or director. Investigation of a complaint against a dean or director will include a representative from the office of the appropriate Vice President or Vice Chancellor in place of a representative from the office of that dean or director. Faculty and student participants in an investigation may elect to have a peer representative included on the investigatory team. Student or faculty peer representatives will be drawn by lot from the student panel which hears complaints under the Interim Policy on Discrimination and Discriminatory Conduct by Students in the University Environment or from the faculty cognate panel for the faculty grievance procedure, respectively, on the Ann Arbor campus, and from an equivalent representative pool on the Dearborn and Flint campuses.

Investigations will be conducted promptly, thoroughly, and fairly, affording both the complainant and the accused a full opportunity to participate. Possible outcomes of an investigation are (1) a finding that the allegations are not warranted or could not be substantiated, (2) a negotiated settlement of the complaint, (3) a finding that the allegations are substantiated and, if so, (4) recommendations to appropriate supervisor regarding corrective action to be taken. If an allegation of sexual harassment is substantiated, appropriate corrective action will follow. The University utilizes a disciplinary system for this and other misconduct in which the extent of the disciplinary action taken depends on all the facts and circumstances available at the time the decision is made. The severity of the punishment will depend on the frequency and severity of the offense. Corrective action could include a requirement not to repeat or continue the harassing

conduct, a reprimand, denial of a merit pay increase, reassignment, and suspension. A finding of sexual harassment may be cause for the separation of the offending party from the University, in accordance with University procedures, including, for qualified faculty, the procedures set forth in Regents' Bylaw 5.09. Every effort will be made to assure University-wide uniformity of sanctions. The complainant and the person complained against will be notified in writing of the final disposition of a formal complaint. In the event the allegations are not substantiated, all reasonable steps will be taken to restore the reputation of the accused if it was damaged by the proceeding.

University Action. At the request of a complainant or with the consent of one or more complainants who agree to participate as witnesses, or in other appropriate circumstances, the University may assume the role of a complainant and pursue a report or complaint of sexual harassment, either informally or formally. The University may respond to complaints or reports by persons external to the University community about conduct of University employees alleged to be sexual harassment.

If an accused is a faculty member to whom Regents' Bylaw 5.09 applies, the Provost or executive authority of the relevant unit may initiate the procedures of Bylaw 5.09 at any stage in the process, if the circumstances indicate that such action is warranted.

Appeals Process. Complainants as well as faculty and staff members against whom corrective action is taken may use the relevant grievance procedure to appeal the appropriateness of the corrective action and the procedures followed. A student complainant who is not satisfied with the outcome of a formal investigation may appeal the outcome to the Provost and Vice President for Academic Affairs (if person complained against is a faculty member or teaching assistant) or relevant Vice President (if person complained against is a staff member). On the Dearborn and Flint campuses student complainants should utilize the appeals process specific to their own campus.

Reporting Requirements. To assure University-wide compliance with this policy and with federal and state law, the Affirmative Action Office must be advised of all reported incidents of sexual harassment and their resolution. Reports in which the complainant's and/or the accused's names are not revealed should be reported generically. The Affirmative Action Office will use this information to prepare annual statistical reports for the campus community on the incidence of sexual harassment. The Office of the General Counsel will monitor repeated complaints within the same unit or against the same individual, where appropriately identified, to assure that such claims are appropriately handled.

General. In all cases, a person who (1) reports or complains, (2) participates in an inquiry or investigation, or (3) is accused of sexual harassment incidents may be accompanied by an individual of his or her choice who shall be permitted to attend, but not participate in, the proceedings.

The University will take appropriate steps to assure that a person who in good faith reports, complains about, or participates in an informal resolution or formal investigation of a sexual harassment allegation will not be subjected to retaliation. The University also will take

appropriate steps to assure that a person against whom such an allegation is made is treated fairly. The University will also undertake appropriate follow-up measures to assure compliance with settlements and the goals of this policy.

Inquiries and complaints of sexual harassment shall be treated with the maximum degree of confidentiality. Only when required by law, or when personal safety is at risk will confidential information be acted upon or disclosed to others without a complainant's consent.

Sexual harassment complaints should be made promptly and resolved as quickly as possible, generally within two weeks of the date the complaint is made. Formal investigations should be concluded within thirty (30) days from the date of the complaint. The complainant and the accused should be kept apprised of the progress of the investigation as well as the ultimate outcome.

The University will make every effort to accommodate parties who are unable to participate in a formal investigation because of physical incapacity or geographical location.

Complaint Handling Guidelines. The University will issue and make available to persons entrusted with administering this policy and other interested parties, appropriate complaint-handling guidelines, consistent with this policy. All guidelines shall be reviewed and approved by the Office of the Provost and the Office of the General Counsel. These guidelines shall be issued within ninety (90) days of the effective date of this policy.

Revisions. This policy and these procedures are subject to revision as determined necessary or desirable in view of experience or changes in the law.

SUMMARY OF PROCEDURES

RESPONSIBILITY		ACTION
Informal Process		
Complainant (faculty/staff)	1.	Report harassment to intake person.
Intake Person	2.	Advise complainant of informal and formal resolution alternatives.
	3.	If informal resolution is accomplished recommend disciplinary action if appropriate.
Formal Process		
Complainant	1.	Submit written complaint.
Complaint-Handler	2.	Consult with the Office of the General Counsel and form an investigative team.

RESPONSIBILITY		ACTION
Investigative Team	3.	Interview complainant(s) and advise of expected scope and schedule of investigation.
	4.	Advise accused person of the investigation and provide an opportunity to respond.
	5.	If it is determined that sexual harassment has occurred, recommend appropriate corrective action to unit management.
Dean or Director	6.	Review findings and recommendations, and take action.

Reporting

Intake Person, Dean or Director	1.	Advise Affirmative Action Office of all reported incidents of sexual harassment and their resolution.
Affirmative Action Office	2.	Prepare annual statistical reports for the University community.