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Colorado State University

Sexual Harassment Policy

Colorado State University strives to create and maintain a work and study environment that is fair, humane, and responsible so that each member of the University community is treated with dignity and rewarded for such relevant considerations as ability and performance. Abusive treatment of individuals on a personal or stereotyped basis is contrary to the concepts of academic freedom and equal opportunity. Sexual harassment is one form of such abuse and cannot be tolerated.

Sexual harassment is also illegal. It is prohibited in the employment context by Title VII of the 1964 Civil Rights Act and in the education context by Title IX of the Educational Amendments of 1972.

Therefore, this policy shall apply to all persons affiliated with the University, including its students and employees. Persons who violate this policy shall be subject to corrective action.

This policy supplants and supersedes all other policies and procedures related to issues of sexual harassment.

I. Sexual Harassment Defined

This policy prohibits "quid pro quo" and "hostile environment" sexual harassment as defined below.

A. Quid Pro Quo Sexual Harassment

Unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature by one in a position of power or influence constitutes quid pro quo sexual harassment when (1) submission by an individual is made either an explicit or implicit term or condition of academic standing or of employment or (2) submission to or rejection of such conduct is used as the basis for academic or employment decisions affecting that student or employee. As defined here, quid pro quo sexual harassment normally arises in the context of an authority relationship. This relationship may be direct, as in the case of a supervisor and subordinate or teacher and student, or it may be indirect when the harasser has the power to influence others who have authority over the victim.

B. Hostile Environment Sexual Harassment

Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature constitute hostile environment sexual harassment when such conduct is directed toward an individual because of her or his gender, is severe and/or pervasive, and has the purpose or effect of (1) creating an intimidating, hostile, or offensive academic or work environment or (2) unreasonably interfering with another's academic performance or work. Generally, a single sexual joke, offensive epithet, or request for a date does not constitute hostile environment sexual harassment; however, being subjected to such jokes, epithets, or requests repeatedly may constitute hostile environment sexual harassment.

In determining whether the alleged sexual harassing conduct warrants corrective action, all relevant circumstances, including the context in which the conduct occurred, will be considered. Facts will be judged on the basis of what is reasonable to persons of ordinary sensitivity and not on the particular sensitivity or reaction of an individual.

In cases of alleged sexual harassment, the protections of the First Amendment must be considered if issues of speech or artistic expression are involved. Free speech rights apply in the classroom and in all other education programs and activities of public institutions, and First Amendment rights apply to the speech of students and teachers. Great care must be taken not to inhibit open discussion, academic debate, and expression of personal opinion, particularly in the classroom. Nonetheless, speech or conduct of a sexual or hostile nature that occurs in the context of educational instruction may exceed the protections of academic freedom and constitute prohibited sexual harassment if it meets the definition of sexual harassment noted above and (1) is reasonably regarded as non-professional speech (i.e., advances a personal interest of the faculty member as opposed to furthering the learning process or legitimate objectives of the course) or (2) lacks accepted pedagogical purpose or is not germane to the academic subject matter.

II. Bringing a Complaint *(Last revised December 2, 1998 and June 9, 1999)*

The University can respond to harassment only if it is aware of the harassment. Any member of the University community who believes that he or she has experienced sexual harassment or reprisal shall come forward promptly with inquiries, reports, or complaints and to seek assistance from the Director or Associate Director of the Office of Equal Opportunity and Diversity.

- A. Any member of the University community who believes that he or she has been subjected to sexual harassment ("Complainant") shall contact the OEOD, to request advice and information about possible ways to proceed and to put the University on notice. Such discussion will be kept confidential to the full extent permitted by law. Complainants are advised that there are some instances in which the University has a responsibility to act even if the Complainant requests that no action be taken as, for example, where other members of the University community may be at risk. In those cases, the University may investigate and take action on the basis of facts it discovers.
- B. To avoid liability to the University and the employee and to correct problems of sexual harassment, it is critical that any employee who believes that he or she has observed an incident of sexual harassment in the University's learning and working environments involving a member of the University community or who receives a report of alleged sexual harassment from an employee or student immediately report this information to the Director or Associate Director of the OEOD or to any vice president.
- C. The initial discussion between the Complainant and the Associate Director of OEOD, will be kept confidential to the full extent permitted by law. The claim should be made as promptly as possible after the alleged harassment occurs. Complaints must be filed no later than one hundred eighty (180) days after the last incident considered to be sexual harassment. One consequence of the failure to present a complaint promptly is that it may preclude recourse to legal procedures should the Complainant decide to pursue them at a later date. (Any individual involved in a sexual harassment incident has the right to pursue the matter in Courts or before governmental agencies. The procedures herein are designed to preclude the need to utilize external agencies and to provide appropriate and effective remedies.)
- D. If the Complainant, after the initial meeting decides to proceed with a formal complaint, he or she shall submit a written statement (the "Statement") to the Director or the Associate Director of OEOD . (Cases involving sexual harassment are particularly sensitive and demand special attention to issues of confidentiality. Dissemination of information relating to the case should be limited in order that the privacy of all individuals involved is safeguarded as fully as possible.) The Statement must describe the conduct that is the basis of the complaint, including the name of the alleged offender (hereafter termed the "Respondent"), the date(s), time(s), and location(s) of the conduct, and the names of witnesses. If the Respondent is a student, the Associate Director of OEOD will refer the matter to the Director of the Conflict Resolution and Student Conduct Services in the Office of Student Affairs for resolution. (Hereafter, the Associate Director of OEOD and the Director of Conflict Resolution and Student Conduct Services are termed the "Responsible Officer".)
- E. The Responsible Officer must promptly inform the Respondent of the allegation and the identity of the Complainant and provide a copy of the written Statement of the Complaint and any related material.
- F. Reprisals against an individual who in good faith files a charge of sexual harassment are expressly prohibited and shall be treated as a separate violation of University policy. Intentionally false or malicious charges, however, are grounds for disciplinary action against the Complainant.

III. Resolution of a Complaint *(Last revised January 27, 2006)*

The University shall take immediate and appropriate steps reasonably calculated to end any harassment that has

occurred, remedy its effects, and prevent harassment from occurring again.

A. **Informal Resolution**

Informal resolution of a sexual harassment complaint is encouraged whenever possible. The procedure might involve giving advice to the Complainant, the arrangement of a discussion between the Complainant and the Respondent in the presence of the Responsible Officer, or attempted mediation by the Responsible Officer.

Possible outcomes of an informal resolution may include explicit agreements about future conduct, changes in workplace assignments, substitution of one class for another, or other appropriate relief.

B. **Formal Resolution**

1. **Procedures**

The applicable procedure for formal resolution of a sexual harassment complaint following submission of a Statement depends upon the Respondent's status as a student, a member of the State Classified staff, a tenured faculty member, an untenured faculty member, an administrative professional, or an other non-student employee.

a. **Students**

Complaints against students will be handled in accordance with the administrative hearing procedures established in the Office of Conflict Resolution and Student Conduct Services.

Appeals of a decision by the Hearing Officer may be made to the University Discipline Committee, and the decision of that committee is final

For purposes of this policy, complaints against graduate students arising out of their employment status will follow the procedures specified for untenured faculty, administrative professionals, and other non-student employees (excepting State Classified staff).

b. **State Classified Staff**

Complaints against State Classified staff, following an objective and impartial preliminary investigation by the Associate Director of OEOD, will be handled in accordance with the procedures in the State Personnel Board Rules. Appeal rights, together with timing limitations, are described in those rules.

c. **Academic Faculty, Administrative Professional, and Other Non-Student Employees (excepting State Classified Staff)**

Complaints against academic faculty members, administrative professionals, and other non-student employees (excepting State Classified staff) shall be referred to the Associate Director of OEOD. That officer shall conduct an objective and impartial preliminary investigation with such assistance from an appropriate administrator as needed. The administrator shall be from a higher administrative unit than that of the Respondent. Pending the results of the preliminary investigation, the Respondent will be suspended or assigned to other duties in lieu of suspension, by his or her immediate supervisor, only if immediate harm to the Complainant or others is threatened by continuance. Salary will continue during the period of the suspension. Following the preliminary investigation, the Associate Director of OEOD shall notify the Complainant and the Respondent of the finding and shall attempt to effect an informal resolution of the complaint. The Complainant and the Respondent also shall be provided with a full copy of the report. If the Associate Director of OEOD cannot arrange a mutually acceptable resolution and/or if that Officer has concluded that there is reasonable cause for further action, the Respondent will be given five business days after receipt of the report to either request a hearing or to prepare a response to the report before it is forwarded to the Respondent's immediate administrative supervisor and to the senior administrative officer of the Respondent's administrative unit (the vice president or, if the Respondent is a vice president, to the President). If the Respondent requests a hearing, the report will be referred to the Hearing Committee described below or, for cases in which the Respondent is tenured faculty member, handled in accordance with E.10.7 Disciplinary Action for Tenured Faculty of the *Manual*.

2. **Sexual Harassment Panel** (Last revised May 1, 2001)

The members of the Sexual Harassment Panel are elected to three (3) year terms by their respective councils, the Administrative Professional Council and the Faculty Council. Nominations shall be solicited in February with elections conducted in April. Terms of office will begin July 1 following election. Terms shall be staggered so that approximately one-third (1/3) will be elected each year. The panel will consist of ten (10) administrative professionals from at least four (4) administrative units and ten (10) faculty members from at least four (4) colleges, including the libraries. Each member will receive annual training on sexual harassment by the Associate Director of OEOD. The Sexual Harassment Panel shall constitute a pool of individuals from which the Hearing

Committee will be drawn.

3. Hearing Committee

A committee of five members of the Sexual Harassment Panel will be chosen by lot by the Chair of Faculty Council if the Respondent is an untenured faculty member and by the Chair of the Administrative Professional Council for administrative professionals and other non-student employees (excepting State Classified staff). The Hearing Committee for an untenured faculty member will be composed of faculty members and for administrative professionals of administrative professionals. Hearing Committees for other non student employees (excepting State Classified staff) will be selected by lot from the entire Panel.

Any person from the same administrative unit or department as either the Complainant or the Respondent will be replaced by another drawn by lot. Members deeming themselves disqualified for bias or interest will remove themselves from the case. The Complainant and the Respondent will have a maximum of one (1) challenge each without stated cause.

4. Formal Hearing Procedures

- a. Hearings will commence no later than ten (10) working days after the Hearing Committee chair notifies the Complainant and the Respondent. The Hearing Committee shall elect its own chair from among its members and shall be advised by legal counsel for the University or from the Colorado Department of Law.
- b. The Hearing Committee may hold organizational meetings in private, which may include meetings with the Respondent and Complainant as needed to (1) clarify the issues, (2) effect stipulations of facts, (3) provide for the exchange of documentary or other information, (4) formulate a list of potential witnesses, and (5) achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious.
- c. The Associate Director of OEOD will be called first to present the results of the preliminary investigation. The committee also may conduct its own informal inquiry, call witnesses, and gather whatever information it deems necessary to assist it in reaching a determination on the merits of the allegations. The hearing shall be closed, and the proceedings shall remain confidential to the extent permitted by law.
- d. Excepting pre-hearing organizational meetings and those for final deliberation, finding of fact and preparation of recommendations, the Respondent is permitted to be present during all meetings of the committee, to call witnesses, to confront and cross-examine any adverse witnesses, and to be accompanied by an advisor and/or legal counsel. Such advisor or counsel is free to advise the Respondent fully throughout the proceedings, to assist in formulating any required written documentation, and to help prepare for any oral presentation, but they may not actively participate in the proceedings such as making objections and attempting to argue the case. A full verbatim record of the hearing will be kept and made available to the Respondent upon request.

5. Recommendations Following Formal Hearings

At the conclusion of the hearing, the Hearing Committee shall meet privately for final deliberation, finding of fact, and preparation of recommendations. These deliberations shall remain confidential to the extent permitted by law. The committee shall decide, by majority vote and by the preponderance of the evidence (more likely than not) whether (1) the complaint is substantiated, (2) the complaint is unsubstantiated, or (3) the complaint is intentionally false or malicious. The finding, together with the basis for this finding, and recommendations shall be communicated in writing to both parties, the Associate Director of OEOD, the Respondent's immediate administrative supervisor, and the senior administrative officer of the Respondent's administrative unit (the vice president or, if the Respondent is a vice president, to the President).

A finding by the majority of the Hearing Committee that the Respondent has, more likely than not, violated the Sexual Harassment policy must be accompanied by recommendations for remedial action reasonably calculated to stop the harassment or disciplinary sanctions up to and including termination of employment. If the committee finds that the complaint was deliberately false and malicious, this finding, together with a recommendation for appropriate disciplinary action against the Complainant, shall be forwarded to the senior administrative officer of the Complainant's administrative unit.

6. Administrative Action Following the Hearing Committee Recommendations *(Last revised January 27,*

2006)

The senior administrative officer may accept the recommendations of the Hearing Committee or may recommend disciplinary actions more or less severe than those recommended by the Hearing Committee for persuasive reasons that shall be stated in writing to the Respondent and the Hearing Committee. If the Respondent accepts the recommendation of the senior administrative officer, the remedial action or disciplinary sanction shall be implemented without further review by the President. If the Respondent rejects such officer's recommendation, the President shall review the case and recommendation and shall make the final decision on the disposition of the case. Since the procedures herein are designed to provide appropriate relief and due process, appeals through other grievance procedures such as Section K of the *Manual*, cannot be made by either party.

IV. Expectations for Members of the University Community *(new section added December 14, 2004)*

- A. Cooperation and participation by the members of the University community in the resolution of a complaint under these procedures is necessary.
- B. The Complainant, Respondent, and all witnesses shall be truthful in their testimony. Failure to comply with this expectation may result in the imposition of University sanctions.
- C. No person shall restrain, interfere with, coerce, attempt to intimidate, or take any reprisal against a participant under these procedures. Failure to comply with this expectation may result in the imposition of University sanctions.

Consensual Relationship

The University does not interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University. However, consensual romantic or sexual relationships in which one party retains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships shall assure that decisions and evaluations concerning the person of lesser authority are conducted by another person.

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent does not remove grounds for a charge of a violation of applicable parts of Section D.9; Code of Ethical Behavior, or sexual harassment based upon subsequent unwelcome conduct.

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