

## **POLICY AND PROCEDURE ON SEXUAL HARASSMENT**

This policy is the product of the collaborative efforts of the Faculty Personnel Matters Committee, Personal Safety Committee, and is also informed by the State University of New York's manual on Internal Discrimination Grievance Procedure.

### **Rationale**

It is the moral and legal obligation of the college to respect and protect the potential of the entire campus community. Harassment of employees or students on the basis of sex is a violation of Federal and State Law. According to Title VII, an employer is responsible for the acts of its agents when they transgress specific policies. The college is responsible as such if it "knows or should have known" of any instances of harassment. The college is liable for the occurrence and effects of such conduct.

In addition to the preservation of its integrity, the college may limit its liability for the behavior of its agents by offering a specific written policy against sexual harassment for the purpose of preventing such conduct. Liability is also likely to be reduced if the college informs campus community of their rights, formulates a grievance procedure for the aggrieved individual to use, provides for a timely investigation, and takes corrective and compensatory action. (Ledvinka & Scarpello: 1991)

The American Council of Education (1984) and the EEOC (1980) recommend that institutions of higher education take steps to prevent and curtail sexual harassment of employees and of students, protect the integrity of the institution, and offer a credible defense in potential litigation. These guidelines are in agreement in recommending that the college do all of the following:

1. Train and otherwise sensitize employees to the issues and behavior constituting sexual harassment. Issue a statement condemning such harassment.
2. Define sexual harassment so that instances of it are identifiable.
3. Develop and distribute a written policy to all employees and students.
4. Formulate a mechanism for complaints.
5. Communicate the policy and complaint procedure to all members of the college community.

## **Sexual Harassment Policy Statement**

The unifying theme that has given the mission of the College of Old Westbury's its unique role and vitality has been a commitment to the advancement of human justice. Harassment of any type runs counter to this commitment which has guided and shaped the College throughout the years. It is the policy of this College that its employees as members of an academic community and officers of the state of New York conduct themselves in the delivery of services in a manner consistent with the college's mission.

Every person working or attending the college is entitled to an environment free from sexual harassment. Sexual harassment of employees or of students is a form of misconduct and sanctions with disciplinary actions will be enforced against both individuals engaging in it and supervisory and managerial personnel who knowingly allow it to continue.

Harassment of employees or students on the basis of sex is a violation of Federal and State Law. Recent Supreme Court rulings allow employees as well as students who claim sexual harassment to sue for damages under the Civil Rights Act of 1991 and Title IX of the Education Amendments of 1972. Sexual harassment may be prosecuted under state laws of harassment and aggravated harassment, ranging from a violation to a felony.

### **Definition**

The EEOC defines sexual harassment as any "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature." Sexual harassment of employees includes instances when:

1. sexual conduct is either explicitly or implicitly a term or condition of an individual's employment;
2. submission or rejection of the conduct is used as a basis for employment decisions;
3. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

Sexual harassment of students includes instances when:

1. sexual conduct is explicitly or implicitly a term or condition for the acceptance or rejection of the student into any university-related activities, including but not limited to a program of study, class, independent study project, and teaching or non-teaching employment on campus;
2. such conduct is the basis for academic evaluation such as a grade, financial aid, residence, approval graduation, suitability for graduate work, external and internal letters and/or verbal recommendation for employment, fellowships, etc.;
3. the creation of an intimidating, offensive "hostile environment" for the student inside or outside the classroom or anywhere on campus.

Such conduct consists of and is not limited to the following actions:

- verbal harassment or abuse
- subtle pressure for sexual activity
- remarks about clothing, body of sexual activity
- unnecessary touching, patting, pinching, leering or ogling at a person's body
- constant brushing against another's body
- demanding sexual favors
- physical assault

Sexual harassment operates against those qualified persons who are denied "opportunity or benefit" in favor of another individual who gain such opportunities by complying with requests for conduct of a sexual nature.

The university is obligated to provide a complaint procedure through which students and employees who believe they have been victimized by sexual harassment can seek relief and redress.

Any charges of sexual harassment against employees will be pursued in accordance with SUNY's Manual on Internal Discrimination Grievance Procedure. Charges of sexual harassment against students will be subject to the student grievance procedure of the Campus Rules and Regulations.



## **Proposed Grievance Procedure for Sexual Harassment of Students**

The following grievance procedure is to be published in the Campus Rules and Regulations and made available to all students.

### **Definition of Agents**

This grievance procedure is intended to cover all agents of the university who are directly involved in providing services related to the education of the students attending the college. Included as service providers are individuals occupying teacher positions as full time, temporary, and part time appointees, adjunct faculty, teaching assistants, tutors, graduate assistants, laboratory instructors as well as all those otherwise concerned with providing educationally related services of admission, financial aid, registration, residential life, etc.

### **Definition of Students**

A student is someone currently enrolled full-time or part-time for one or more classes, independent study projects or is completing work towards the resolution of an incomplete grade. A student who takes a leave of absence and intends to return should also be considered a student for the purposes of this policy.

### **Specific Policy Statement Regarding Sexual Harassment of Students**

The verbal, nonverbal and/or written communication between instructor or college service provider and student should not include any of the conduct described above. Simply, students are not available for any type of contact or relationship of a sexual nature. The faculty (or service provider) as the power holder in the teaching relationship has the responsibility to maintain proper standards of decorum befitting a member of the university.

### **Procedure**

#### **Step 1**

The complaint (student) must file a grievance within 45 calendar days following the alleged act of harassment or 45 calendar days after a final grade is received, if that date is later. Students may consult with a student counselor, however, the grievance must be filed with the Affirmative Action Officer.

The Affirmative Action Officer shall assist the complainant in defining the charge and shall provide the complainant with information about the various internal and external mechanisms through which the complaint may be filed, including applicable time limits for filing with each agency.

#### **Step 2**

If the complainant chooses to use the College at Old Westbury's internal Grievance Procedure for review of the act of harassment, the Affirmative

Action Officer shall assist the complainant to fill out the appropriate form, signing and dating a copy of the completed form for the complainant.

### Step 3

The Affirmative Action Officer, in the case of a student filing a grievance, in consultation with the Chair of the Faculty Senate, may offer to resolve the complaint informally and shall have the right to all relevant information and to interview witnesses, including bringing together complainant and respondent, if desirable. If a resolution is reached within 14 days which is satisfactory to both the complainant and respondent the Officer, again in matters having to do with a student complainant against a faculty member, in consultation with the Chair of the Faculty Senate shall close the case, sending a written notice to that effect to the complainant and respondent. The written notice, a copy of which shall be attached to the original complaint form in the Officer's file, shall indicate the agreement reached by complainant and respondent and shall be signed and dated by the complainant, respondent, the Affirmative Action Officer, and when appropriate the Chair of the Faculty Senate.

### Step 4

If the Affirmative Action Officer is unable to resolve the complaint to the mutual satisfaction of the grievant and respondent within 14 calendar days, the Officer shall so notify the grievant, advising the grievant of his or her right to proceed to the next step internally or file with appropriate enforcement agencies immediately.

### Step 5

If a formal complaint with a state or federal agency or a court action is filed by a grievant, any internal investigation or review under way on the same complaint will terminate without conclusion.

### Step 6

If the grievant chooses to proceed through the internal grievance procedure, the grievant shall notify the Affirmative Action Officer in writing within 10 calendar days from the time of notification by the Affirmative Action Officer that the issue cannot be resolved internally.

### Step 7

(a) In the case of a student filing a grievance against a member of the faculty, the grievant's statement, together with a statement from the Affirmative Action Officer indicating that informal resolution was not possible, shall be forwarded to the Chair of the Faculty Senate. In consultation with the Chair of the Faculty Personnel Matters Committee, the Chair of the Faculty Senate will form an ad hoc Hearing Committee to investigate allegations. It will be the responsibility of the Chair of the Personnel Safety Committee and Faculty Personnel Matters Committee to ensure that the hearings are done in a timely manner and with full confidentiality.

The ad hoc Hearing Committee will consist of one tenured member of the faculty chosen by the Chair of the Faculty Senate from a preselected list of six tenured faculty members, one member chosen by the grievant from a preselected panel of employees from the Offices of Student Counseling and Student Affairs, and these two hearing committee participants will choose the third member of the hearing committee from the preselected panel of faculty who will serve as chair of the hearing committee.

The preselected panel of faculty will be made up of six tenured members of the Faculty Senate. The Chair of the Faculty Senate in consultation with the Chair of the Faculty Personnel Matters Committee will be charged with identifying and maintaining the preselected faculty panel. In choosing faculty to serve on the ad hoc Hearing Committee, the Chair of the Faculty Senate will be careful to avoid any potential conflict of interests that may arise regarding that faculty member's participation.

(b) In the case of a student filing a grievance against a campus employee other than a member of the faculty, the grievant's statement, together with a statement from the Affirmative Action Officer indicating that informal resolution was not possible, shall be forwarded to the Chair of the Affirmative Action Committee. In consultation with the Chair of the Personal Safety Committee, the Chair of the Affirmative Action Committee will form an ad hoc Hearing Committee to investigate allegations. It will be the responsibility of the Chairs of the Personnel Safety Committee and Affirmative Action Committee to ensure that the hearings are done in a timely manner and with full confidentiality.

The ad hoc Hearing Committee will consist of one member of the Affirmative Action Committee chosen by the chair of the Affirmative Action Committee, one member chosen by the grievant from a preselected panel of faculty and employees from the Offices of Student Counseling and Student Affairs, and these two hearing committee members will choose the third member from the preselected panel of the campus employees who will serve as the chair of the committee.

All employees, instructional or noninstructional, serving as members of the preselected panels mentioned above will be encouraged to familiarize themselves with the varied patterns of behavior exhibited by perpetrators and victims of sexual harassment. It is recommended that these employees attend workshops, offered on a yearly basis, by the Personal Safety Committee on sexual harassment.

#### Step 8

The Hearing Committee shall review the matter, as appropriate and shall have the right to all relevant information and to interview witnesses, including the right to bring together complainant and respondent, if agreeable to both. The testimony of all witnesses and the complainant and respondent will be tape recorded and the tape will become the property of the University. Both complainant and respondent shall be permitted rebuttal to the written record compiled by the committee.



#### Step 9

Within 21 days from the formation of the committee, the Chairperson of the Hearing Committee shall submit an opinion to the campus President as to whether or not harassment has occurred.

#### Step 10

If an ad hoc Hearing Committee cannot be selected within seven days because the grievant cannot select a member of the panel the Chairs of the Faculty Senate or Affirmative Action Committee, (Faculty Personnel Matters Committee, in the case where a faculty member is involved), and the Personal Safety Committees shall be notified within that period. The grievant may, in such cases, request an outside hearing officer review the charge. Such a request must be made in writing by the grievant to the Affirmative Action Officer and the Chair of the Faculty Senate or Chair of the Affirmative Action Committee within five days from notification that an internal campus committee cannot be formed. Requests for an outside hearing officer shall follow the procedure laid out in the SUNY's Internal Discrimination and Grievance Procedure. (Steps 14-16)

#### Step 11

The President or designee shall communicate the opinion of the Hearing Committee or of the hearing officer verbatim and in writing to the grievant and to the campus Affirmative Action Officer within seven calendar days together with a statement indicating his/her acceptance or rejection of the committee's recommendation. The President will indicate his/her decision either to dismiss the charge for lack of evidence that unlawful harassment has occurred or to discuss appropriate redress with the grievant if unlawful harassment has been found.

#### Further Provisions

1. If the allegations are found to be without merit, no mention of the charges are to be placed in the faculty member's personnel file. However, the records will be kept on file by the Affirmative Action Officer and will be treated with unusual confidentiality.
2. All of the time limits contained above, with the exception of the 45 day limit on the initial filing of grievance, may be extended by mutual agreement of the grievant and the Chairs of the Faculty Personnel Matters, and Personal Safety Committees.
3. If the grievant fails to respond within the time limits provided, the grievance shall be deemed to have been withdrawn.
4. In the event of a question of the timeliness of an grievance, grievance appeal or response, the dating and signing of the document shall be determinative. Any notices or documents sent by mail must be sent as certified mail and date receipt shall be determinative.