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**FACULTY SENATE
RECOMMENDATION**

SR-92-93-(112)258(FS) REVISED

That the attached "SEXUAL HARASSMENT POLICY" be approved.

FACULTY SENATE PRESIDENT:

APPROVED BY SENATE: Robert Sawrey DATE: 4-29-93

DISAPPROVED BY SENATE: _____ DATE: _____

UNIVERSITY PRESIDENT:

APPROVED: [Signature] DATE: 6-9-93

DISAPPROVED: _____ DATE: _____

COMMENTS:

Amended by the Faculty Senate.

SEXUAL HARASSMENT POLICY

Section 1. GENERAL

1.1 **Scope.** This policy defines sexual harassment, provides guidelines for the filing and processing of complaints, provides for disciplinary action and administrative remedy in case of sexual harassment, and outlines educational programs aimed at preventing and/or eradicating sexual harassment.

1.2 **Authority.** Policy Bulletin No. 9 issued by the West Virginia Board of Regents on May 17, 1987.

1.3 **Coverage.** This policy applies to situations where the alleged harasser is an applicant for employment, an employee, an invitee or licensee, or a contractor of the University and where the complainant is an applicant to an educational program, a student, an applicant for employment, an employee, an invitee or licensee, or a contractor of the University.

It does not apply to situations where the alleged harasser is a Marshall student; such situations are covered by the Student Code of Conduct.

1.4 This policy shall be construed in a manner consistent with academic freedom, as well as with the rights to free speech, privacy, and association.

1.5 **Effective Date . . .**

Section 2. SEXUAL HARASSMENT POLICY STATEMENT

2.1 Sexual harassment is prohibited by federal and state legislation. In the employment context, it is prohibited by Title VII of the Civil Rights Act of 1964; in the education context, it is prohibited by Title IX of the Education Amendments of 1972; and it is prohibited in both employment and public accommodation contexts by the West Virginia Human Rights Acts of 1961, as amended. Sexual harassment in any manner or form is expressly prohibited by the University. The University is committed to the prevention and/or eradication of sexual harassment. It is the responsibility of students, employees, and contractors of the University to maintain a work and educational environment free from sexual harassment. It is the responsibility of all academic and administrative supervisory employees to provide educational opportunities to foster such environment; it is also their responsibility to take immediate action whenever sexual harassment is reported or becomes known.

Section 3. SEXUAL HARASSMENT DEFINITION

3.1 Sexual harassment is a form of sex discrimination. For the purpose of this policy, it is defined in conformity with the guidelines published by the U.S. Department of Education, and the U.S. Equal Employment Opportunity Commission. Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

3.1.1 submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education;

3.1.2 submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual; or when

3.1.3 such conduct has the purpose or effect of:

3.1.3.1 unreasonably interfering with an individual's academic or work performance, or

3.1.3.2 creating an intimidating, hostile or offensive working or educational environment.

3.2 Examples of acts that may, in the work or educational environment, rise to the level of sexual harassment include, but are not limited to:

3.2.1 display of sexually suggestive or derogatory materials;

3.2.2 inquiries about a person's sex life by her/his instructor or supervisor;

3.2.3 hazing, slurs, or jokes which convey insulting, degrading, demeaning and offensive sexist attitudes;

3.2.4 unwelcome brushes, touches or other physical contacts of a sexual nature.

3.3 In determining whether alleged conduct constitutes sexual harassment, the University will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances, the context, the relative status of the parties, the frequency or seriousness of the alleged incidents reported by each complainant. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

3.4 Examples of acts that constitute sexual harassment include, but are not limited to:

3.4.1 sexual coercion, threats or insinuations that granting of employment or educational rights will be a function of submission to request for sexual favors;

3.4.2 insinuations that refusal to grant sexual favors may result in reprisal;

3.4.3 sexual assault.

Section 4. FILING AND PROCESSING OF COMPLAINTS

4.1 Any student, employee, applicant, invitee or licensee, or contractor of the University who believes s/he has been sexually harassed must follow the Sexual Harassment Complaint Procedures published by the Office of Affirmative Action. The Procedures may be obtained from deans, directors, academic chairpersons, area coordinators, hereafter referred to as academic and administrative supervisors, members of the Equal Opportunity Grievance Panel, or the Office of Affirmative Action.

4.2 Complaints of sexual harassment must be filed within one hundred and sixty working days (160) of the alleged incident. The time period for filing may be extended by the Office of Affirmative Action, for good cause.

4.3 Third party may file a complaint under this policy when sexual harassment of another person has the effect of:

4.3.1 unreasonably interfering with that third party's academic or work performance, or

4.3.2 creating an intimidating, hostile or offensive working or educational environment for the third party.

4.4 The University reserves its right to assume the role of a complainant and investigate sexual harassment incidents, whenever it deems appropriate.

4.5 The Sexual Harassment Complaint Procedures, published by the Office of Affirmative Action of the University, will be used to process sexual harassment complaints.

4.6 Deans, directors, department chairpersons, area coordinators, hereafter referred to as academic and administrative supervisors, and supervisory employees shall receive training in the processing of informal complaints.

4.7 Members of the Equal Opportunity Grievance Panel shall receive training in the processing of informal and formal complaints.

4.8 Nothing in this policy shall affect the right of the complainant to file his/her complaint with external law enforcement agencies. Complaints may be filed concurrently with external agencies, to meet state and federal agency deadlines, without jeopardizing complainant's rights to an investigation by the University.

e.g., Huntington Human Relations Commission, West Virginia Human Rights Commission, U.S. Equal Employment Opportunity Commission.

Section 5. DISCIPLINARY ACTIONS AND ADMINISTRATIVE REMEDIES

5.1 At the discretion of the President, appropriate corrective and/or disciplinary actions will be taken against:

5.1.2 any academic or administrative supervisor who failed to take corrective action when there is probable cause to believe that s/he knew that one of the persons protected by this policy was being or had been subjected to sexual harassment by one of his/her invitee or licensee, employees, or contractors.

5.1.3 any applicant, invitee or licensee, contractor or employee when there is probable cause to believe that s/he had sexually harassed any person protected by this policy;

5.1.4 any employee who breached the confidentiality of matters pertaining to a sexual harassment complaint;

5.1.5 any complainant found to have been dishonest in making an allegation of sexual harassment; and

5.1.6 any person who retaliated against an individual because that individual complained of sexual harassment, testified on behalf of someone who filed a complaint, or assisted in the implementation of this policy.

5.2 The nature of the corrective and/or disciplinary actions must be commensurate with the nature of the violation of the policy.

Section 6. RECORD KEEPING

6.1 All files pertaining to formal complaints of sexual harassment will be kept, in strict confidence, in the Office of Affirmative Action. Copies of informal complaints will be forwarded to the alleged harasser, but not kept on file.

6.2 Copy of the decision of the President and of all appeal decisions will be filed in the personnel folder of the alleged harasser.

6.3 All formal complaints and all paperwork associated with such complaints will be destroyed after three (3) years unless there is compelling evidence that there is a pattern of activities on the part of the named individual. The Affirmative Action Officer will have the responsibility to notify the named individual whether the files are being destroyed or retained within 30 days of the third anniversary of the complaint. If the files are retained, the named individual has the right to file additional comments relative to the complaint. Files that are retained will be reviewed after an additional three (3) years to determine whether the pattern of activities still exists and, if not, the files will be destroyed. The named individual will be notified of the disposition of the files in accordance with the guidelines set down in this section.

Section 7. DISSEMINATION AND IMPLEMENTATION

7.1 The Office of Affirmative Action is, hereby, charged with the responsibility of developing and monitoring a program for the dissemination and implementation of this policy. The program should include, but should not be limited to:

7.1.1 dissemination of this policy to employees and students by directors, academic chairpersons, area coordinators, hereafter referred to as academic and administrative supervisors, supervisory employees, and the Department of Human Resources;

7.1.2 educational programs organized by the Office of Affirmative Action upon requests of vice-presidents, deans and directors;

7.1.3 establishment and administration of standing operating procedures for responding to sexual harassment complaints;

7.1.4 workshops on the processing of informal complaints of sexual harassment organized by the Office of Affirmative Action upon requests of vice presidents, deans and directors; and

7.1.5 workshops on the processing of formal and informal complaints organized by the Office of Affirmative Action for the members of the Equal Opportunity Grievance Panel.

Section 8 NON-RETALIATION

8.1 Any retaliatory action of any kind taken against someone because s/he has filed a complaint under this policy, or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this policy, is prohibited. Said retaliatory action shall be regarded as a separate and distinct grievable matter.