



The University of Scranton

POLICY ON SEXUAL HARASSMENT

I. Statement of Commitment

The University of Scranton aspires to the kind of community for students, faculty, and staff in which learning and working together will lead to personal growth and development. The University understands that respect for the rights and dignity of all people must be protected for those hopes to be fulfilled. These values undergird all aspects of University life, as essential qualities of the learning environment and of an academic community with a distinctive educational mission, rooted in its Catholic and Ignatian identity.

As such, The University of Scranton is committed to providing an educational and work environment that is free from discrimination in the form of sexual harassment. In keeping with this commitment, the University will strictly enforce its sexual harassment policy. An employee or student of the University found to have violated this sexual harassment policy shall be subject to disciplinary action up to and including discharge/expulsion.

Sexual harassment is a form of illegal discrimination. Sexual harassment violates Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, Title IX of the Education Amendments of 1972, and the Pennsylvania Human Relations Act. Under certain circumstances, sexual harassment and sexual violence may constitute sexual assault. Sexual assault violates the Campus Security Act and criminal law. (Sexual assault cases between students will be handled through the student judicial system.)

II. Definition of Sexual Harassment

Sexual harassment is unwanted sexual or gender based behavior that creates an environment that would reasonably be perceived and is perceived by the complainant as hostile or abusive.

As stated in the EEOC guidelines,

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes 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 advancement;***
- 2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions or academic decisions affecting such individual; or***
- 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance by creating an intimidating, hostile, or offensive working or academic environment.***

(1984 EEOC Policy Statement on Sexual Harassment)

Examples of sexual harassment include, but are not limited to, the following:

1. Sexual advances that imply that refusal will result in reprimand, work sabotage, firing or other job related threats; or intimidation of students.
2. Remarks of a sexual nature about dress or physical appearance.
3. Abusive sexual language and jokes.
4. Derogatory expressions of a sexual nature.
5. Discussions of personal sexual exploits.
6. Inappropriate physical contact.
7. Displaying sexually suggestive pictures for no legitimate academic purpose.
8. Degrading or insulting remarks based on one's gender.
9. Harassing behavior of a sexual nature using telephonic or electronic means.
10. Written communications of a sexual nature creating a hostile environment.
11. Sexual assault (sexual assault is defined as any non-consensual attempted or completed sexual intercourse (oral, anal, or vaginal) with a body part and/or object).

Sexual harassment is demeaning and degrading. It affects an individual's self esteem and can have a negative impact on performance at work or in class. It can make an individual feel angry, powerless, and fearful. Sexual harassment doesn't affect only the individuals directly involved; it affects family, friends, and co-workers. The fact that someone did not intend to harass sexually an individual is usually not a defense to a complaint of sexual harassment. In most cases, it is the effect and characteristics of the behavior that determine if the behavior constitutes sexual harassment.

Glossary

In addition to "Sexual Harassment" which has been defined, this policy uses the following terms:

Accused (n): Any individual(s) accused of violating this policy who is a member of the University community.

Complaint: An assertion that a named individual has violated this policy.

Complainant: Any individual(s) making a complaint under this policy who is a member of the University Community.

Faculty: All members of the University Community who teach on a full or part-time basis.

Member of the University Community: Any person who is a student or a faculty member, staff member, administrator or any other person employed by the University.

Policy: set of agreed upon procedures (or definite course of action) adopted with regard to a particular issue (in this case, sexual harassment).

Staff: All employees of the University Community whose primary job responsibility is not teaching.

Student: Any person who is enrolled in the University, either on a full or part-time basis.

Supervisor: Any employee of the University having authority to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees or having the authority to recommend such actions.

Consensual Relationships

Because the relationships between student and teacher and supervisor and employee are central to the mission of the University and to the sense of community, no non-academic work or personal ties should be allowed to interfere with the academic/work integrity of the relationships. With respect to sexual relations in particular, what might appear to be consensual even to the parties involved, may in fact not be so. These situations often create a conflict of interest and can easily lead to abuse of power. In addition, such relationships carry the appearance of bias or preferential treatment. Such situations and relationships can seriously endanger the sense of community, the openness of communication, or the presumption of fairness and consequently can seriously threaten the foundation of the University's mission.

Of greatest concern are those romantic and/or sexual relationships between teacher and student and between supervisor and employee. This includes but is not limited to any teacher, graduate student, administrator, coach, program director, advisor, counselor, or residence life staff member who has supervisory responsibility for students or employees. Romantic and/or sexual relationships that might be acceptable in other circumstances always pose inherent risks that they will result in sexual harassment when they occur between members of the University community where a significant power or status differential between the parties exists. Voluntary consent by a student or a subordinate in a dating relationship, even if present, is always suspect, given the fundamentally asymmetrical nature of status and power. This is true even when the parties are not in a direct supervisory/subordinate situation. Professionalism is threatened by any relationship where one party has professional responsibility for the other; such relationships place, or seem to place, the person with the power or status advantage in a position to favor or advance the other party's interests at the expense of others and implicitly make, or seem to make, obtaining benefits contingent on amorous or sexual favors. Professionalism within the University demands that those with authority not abuse, nor seem to abuse, the power with which they are entrusted.

With respect to such relationships, the University takes the position that such relationships are ill-advised and inherently unethical. Therefore, the University will not tolerate them. Participation in such relationships can ruin the careers and reputations of both participants in the relationship. Such participation can also adversely affect the University's sense of community and the integrity of the learning environment. Faculty and supervisors should understand that complaints of sexual harassment can follow them years after the relationship (almost inevitably) ends.

III. Scope of Coverage

This policy covers all persons: administrators, faculty, teaching assistants, part-time faculty, staff, and students. It includes harassment of any member of the University community by any other member of the University community.

This policy covers harassment of females by males, males by females, and same-sex harassment.

This policy also covers sexual harassment that occurs off campus, such as at school sponsored events or programs, athletic events, and non-University sponsored activities that result in a hostile working/learning environment.

Visitors who are charged with sexual harassment will be informed of the allegations by the Director of Equity and Diversity or other appropriate administrator. An investigation will take place. If charges are found to be true, the visitor may be banned from the campus.

IV. Filing a Harassment Complaint

Sexual harassment complaints can be made informally or formally, but must be in writing. If an individual files an informal complaint, he/she can still file a formal complaint and file charges under federal and state law.

All formal complaints of sexual harassment filed with the Director of Equity and Diversity will be investigated. If it is found that the complaint filed is unwarranted, the person filing the complaint may be subject to sanctions if it is determined that the complainant knowingly misrepresented the facts or acted with malicious intent.

The anonymity of a party reporting sexual harassment will be preserved provided it does not interfere with the institution's ability to investigate or take corrective action or interfere with the ability of the person complained of to respond.

Retaliation against anyone reporting or thought to have reported sexual harassment is prohibited. Such retaliation shall be considered a serious violation of this policy, independent of whether a formal or informal complaint of sexual harassment is substantiated. Encouraging others to retaliate also violates this policy.

PROCESS: If a person feels she/he has been sexually harassed she/he may discuss it with a sexual harassment contact person (persons trained as resource people for individuals who have a complaint or injury) or the Director of Equity and Diversity.

The contact person's functions include the following:

1. Provide information on sexual harassment and options for addressing it;
2. Inform the complainant regarding applicable University policies and procedures;
3. Inform the complainant about strategies she/he could implement on her/his own to stop the harassing behavior;
4. Inform the complainant of mechanisms outside the University;
5. Encourage and assist the complainant in contacting the Equity and Diversity Office and/or refer complainant to other services such as the Counseling Center;
6. Record the complaint and send to the Equity and Diversity Office.

Information on informal and formal complaints is kept in the Equity and Diversity Office files. All persons accused of sexual harassment will be informed both orally and in writing of the nature of the complaint (with steps taken to preserve anonymity if the complainant has so requested and it is possible given the circumstances) and be accorded an opportunity to respond to it in writing, with the response also filed. Information

which indicates the complaint is without basis will be included in the file. Information in the Equity and Diversity Office files will remain confidential and will not be inserted into personnel or evaluation files; access will be only on a "need-to-know" basis as determined by the Director of Equity and Diversity.

The University will act upon all incidents of sexual harassment of which it has knowledge. Therefore, if the individual decides to deal with the harasser on her/his own, the contact person needs to report the incident and action taken to the Equity and Diversity Office. The Equity and Diversity Office will notify the accused that an informal complaint has been filed, but not a formal complaint.

If the person who alleges being harassed states that she/he wants no action taken, the contact person must explain to the individual that minimally the accused will be informed that an informal complaint was lodged.

In either case, no further action will be taken by the Equity and Diversity Office unless the accused has a history of offenses. In this case, the University may file a formal complaint or seek to solve the problem through informal channels. When the complainant is the University, the Director of Equity and Diversity will not act as the complainant. The President will appoint a person to serve as the complainant for the University.

V. Informal Process

If the incident is not so serious that the institution feels it must intervene in a formal way and if the complainant indicates that she/he does not want to pursue a formal complaint but simply wants the harassment to stop, then informal resolution may be the preferred way to handle a sexual harassment complaint.

The informal process is aimed at stopping the behavior rather than determining culpability or intent. The informal complaint must be filed in writing with the Equity and Diversity Office.

The Director of Equity and Diversity will listen to the complaint and discuss with the individual the expected outcome. The Director of Equity and Diversity will notify the alleged harasser and his/her supervisor of the complaint. The Director of Equity and Diversity will inform the accused that retaliation against the accuser is prohibited. In cases dealing with faculty, the faculty member will be told that he/she may want to notify the FAC grievance officer. In cases dealing only with students, the Executive Assistant to the Vice President for Student Affairs will be notified. The alleged harasser will have an opportunity to give his/her account of the complaint. If the accused confirms the complaint, sanctions may be put in place ranging from a simple apology to counseling to a reassignment of duties to a voluntary resignation/withdrawal. If the accused disagrees with the complaint but agrees to stop the behavior, no further action will be taken.

The results of the informal process, if sanctions are imposed, will be placed in the Human Resources personnel file of the staff or faculty member or the Student Affairs file of a student. If no sanctions are imposed, a record of the complaint and action will be kept on file in the confidential files of the Equity and Diversity Office, and such records

will be kept confidential in that office unless a valid subpoena or court order for those records is received. Student-to-student sexual harassment records will be destroyed upon graduation or nine months beyond graduation date if the incident occurred during the terminal semester. If the complainant agrees that sexual harassment has not taken place, the complaint will be withdrawn and no record kept. If there is no mediated solution after 30 days or if the accused does not comply with the mediated solution, the complainant may withdraw the complaint or initiate the formal process.

VI. Formal Process

The individual claiming harassment may file a formal complaint at the outset, if the outcome of the informal process is not satisfactory, or while the informal process is under way.

The formal process requires that a complaint be put in writing, that there be an investigation, and that a hearing be conducted.

TIME FRAME: The complaint should be filed within 30 days of the harassing incident. The investigation should be completed within 30 days of the filing of the charges. The hearing should be completed within 60 days of the filing. The decision of the hearing panel will be communicated to the complainant and the accused within 72 hours of the hearing. Both the accused and the complainant have 14 days from the date of the notice of the decision in which to file an appeal to the Appellate Board on either the decision or process in writing, including any new evidence, and submit it to the Equity and Diversity Office. The decision of the Appellate Board should be rendered no later than 30 days from the filing of the appeal. The decision of the President or the Vice President for Student Affairs should be rendered no later than 14 days from the filing of that appeal. Adjustments to the time frame can be made to accommodate intersession, summer, and holiday periods. In addition, these time limits may be tolled if the complainant wants to wait until her or his proximity with the accused ends, i.e., the end of the semester. Finally, for good cause, the time limits may be extended at the discretion of the Director of Equity and Diversity.

FILING A COMPLAINT: The formal complaint must be filed in writing with the Office of Equity and Diversity.

INVESTIGATION: After the Director of Equity and Diversity informs the accused in writing of the complaint, the Equity and Diversity Office will conduct the investigation. The Director of Equity and Diversity will also inform the accused that retaliation against the complainant is prohibited. If a complaint involves a Vice President, the President will be informed; if a complaint involves the President, the Chair of the Board of Trustees will be notified. In cases involving faculty, the FAC chair as well as the appropriate dean will be notified. In cases involving staff members, the appropriate supervisor will be informed. In cases involving students, the Vice President for Student Affairs will be notified.

The accused may respond in writing to the complaint. If the accused admits to the complaint, the investigation will cease, and sanctions will be imposed by the Vice President who supervises the accused, or by the President if the Vice President is the accused, or by the Board of Trustees if the President is the accused, all in consultation with the Director of Equity and Diversity. If the accused denies the complaint, the investigation will continue and a hearing will be held.

HEARING: A hearing will be held within 60 days of the complaint being filed. A five-member panel will conduct the hearing. The Director of Equity and Diversity will read the complaint and present the results of the investigation. The accused and the complainant will be allowed to speak. Both may present occurrence witnesses who can speak to the complaint. (Character witnesses are not allowed). Written summary statements of occurrence witnesses and any other related materials must be provided to the Equity and Diversity Office at least 48 hours before the hearing. Neither party may have a lawyer or family member present, although either party may request assistance from the University community in presenting her/his case. The complaint, witness summaries and any related investigative materials will be distributed to the Hearing Panel, the complainant, and the accused at least 24 hours before the hearing.

HEARING PANEL: The hearing panel pool shall consist of twelve trained full-time faculty and staff. The six faculty members will be selected by the Faculty Senate, two from each college with faculty. The six staff members will be selected by the Staff Senate, three from the professional staff and three from the hourly staff. Each will be appointed for a renewable two year term. When possible, the terms will be staggered so that no more than one-third of the pool is new in any one year. Once a formal complaint is filed, the Office of Equity and Diversity shall determine which members of the hearing panel pool will serve on a particular hearing panel. Five members selected from the pool by the Office of Equity and Diversity shall constitute the hearing panel for a case, two from the faculty and two from the staff, the fifth from either faculty or staff. The panel will then receive training on sexual harassment, hearing procedures, and evidence. The five members of the panel will elect one person to convene and preside over the hearing.

STANDARD OF EVIDENCE: The standard is not that of a criminal case - beyond a reasonable doubt. The standard is that of a "preponderance of evidence" - that is, a reasonable person would assume that the events did or did not occur, given the preponderance of the evidence.

PENALTY: The hearing panel will make a decision as to culpability and communicate it to the Director of Equity and Diversity. The hearing panel will recommend sanctions. The Director of Equity and Diversity will consult with the chair of the Board of Trustees if the President is found culpable, with the President if a vice president or person directly reporting to the President is found culpable, and with the appropriate vice presidential division head if a faculty member or any other employee is found culpable, to determine

appropriate sanctions. If a student is involved, the Director of Equity and Diversity will consult with the Vice President for Student Affairs to determine appropriate sanctions.

APPEAL PROCESS: The appeal must be filed in writing with the Equity and Diversity Office and must explain on what grounds an appeal is warranted. If the accused has new evidence to substantiate his/her innocence it should be presented in the appeal document.

An appeal must be based on one or more of the following grounds:

1. A substantial procedural error occurred prior to or during the hearing that unreasonably impaired the Hearing Board's ability to render a fair decision.
2. The decision reached was not based on substantial evidence.
3. New evidence, sufficient to alter a decision, or other relevant facts not available at the time of the original hearing.
4. Inappropriateness of the sanction(s) imposed.

All appeals will go to the Appellate Board for disposition. The hearing panel pool chair will appoint the Appellate Board will consist of three voting members chosen from the faculty and professional staff in the hearing panel pool and one non-voting chairperson appointed by the VPAA from the administrative or professional staff within Academic Affairs. The three voting members will include at least one professional staff and one faculty member. The Appellate Board will accept or reject the appeal based on the written appeal submitted. If the Appellate Board believes the appeal has merit the Appellate Board will examine the findings and rationale of the Hearing Panel's decision and all documents available to the Hearing Panel and interview persons with information pertinent to the appeal. The Appellate Board should not substitute its judgment for the Hearing Panel. The Appellate Board will either affirm the decision or remand the case to the Hearing Panel. If an appeal is based on procedural error or that the decision reached was not based on substantial evidence, the Appellate Board may remand the case to either the original panel or a new review board. If an appeal is based on new evidence the Appellate Board must remand the case to the original board. If an appeal is based on inappropriateness of the sanction, the Appellate Board must remand the case to the President, or to the Vice President for Student Affairs if the accused is a student.

The final decision and/or sanctions against a student may be appealed to the Vice President for Student Affairs whose decision is final. The final decision and/or sanctions against a faculty member, staff member, or administrator may be appealed to the President, whose decision is final. In the case of a final decision and/or sanctions against the President, appeal may be made to the Board of Trustees.

Results of the hearing will be kept on file in the Equity and Diversity Office. A record of sanctions against a staff or faculty member will be placed in that person's personnel file kept in the Human Resources Office. A record of the sanctions against a student will be placed in the student's file in the Student Affairs Office. A record of sanctions in a student's file will be destroyed upon graduation or nine months after graduation if the incident occurred within one month of graduation.

Rights of Complainant in Formal Process

1. To have an advisor, except a lawyer or family member, of their choice accompany them throughout the hearing;
2. To present occurrence witnesses - not character witnesses, family members, or the advisor;
3. To remain present during the entire hearing;
4. To give to the hearing panel chair one or more questions to be asked of the accused. (It is within the discretion of the chair to ask the question(s).);
5. Not to have their past sexual history discussed during the hearing, except for evidence of a past consensual relationship with the accused;
6. To make a "complainant impact statement" after culpability for a violation is determined and before a sanction is imposed;
7. To seek appropriate remedies that might include:
 - (a) alternative work assignments,
 - (b) alternative class assignments, or
 - (c) alternative living arrangements;
8. To have a privacy screen at the hearing so that the complainant does not have to see the accused during the proceedings;
9. To appeal the outcome of the hearing as described in the Appeal Process section above; and
10. To be informed within seventy-two (72) hours of the outcome of the hearing.

Rights of Accused in Formal Process

1. To be informed about a specific complaint in writing;
2. To have an advisor, except a lawyer or family member, of their choice accompany them throughout the hearing;
3. To written notice and an opportunity to be heard, as defined by this policy, if a hearing is conducted;
4. To present information and rebut evidence;
5. To give to the hearing panel chair one or more questions to be asked of the complainant. (It is within the discretion of the chair to ask the question(s).);
6. To present occurrence witnesses - not character witnesses, family members, or the advisor;
7. To a presumption of innocence;
8. To have a summary of the his or her disciplinary history shared with the Hearing Board in the sanctioning phase of a hearing only if a finding of culpability is rendered;
9. To appeal the outcome of the hearing as described in the Appeal Process section above; and
10. To be informed within seventy-two (72) hours of the outcome of the hearing.
11. In the case of faculty accused, to have a FAC officer present at any meeting or hearing at which sanctions are or could be imposed.

VII. Sanctions

Any of the following sanctions up to and including immediate termination may be imposed:

1. Letter in Human Resources personnel file or Student Affairs official student file;
2. Written warning;
3. Loss of choice assignments;
4. Loss of travel dollars;
5. An apology to the complainant;
6. Change of job or class assignment (in addition, counseling may be suggested or required);
7. Required attendance at a sexual harassment training program;
8. Police notification, where sexual assault or sexual abuse is involved;
9. Suspension, probation, termination, or expulsion.

Note: If the sanctions of suspension or dismissal are recommended for a full-time faculty member, the procedure found in Appendix III of the Faculty Handbook will be followed, with the above procedure substituting for the pre-hearing dismissal procedure in Appendix III.

Additional Sanctions for Students

1. Transferring the student to another class;
2. Transferring the student to different housing or not allowing him or her to live in or visit University housing facilities;
3. If drugs or alcohol were involved, requiring attendance at a program on substance abuse;
4. Requiring relevant community service, such as preparing posters or disseminating information about peer harassment or sexual harassment;
5. Requiring perpetrator(s) to attend workshops on peer harassment.
6. Prohibiting the student from holding office or participating in student activities, including sports, for a specified time; and
7. Putting student on disciplinary probation, disbanding or suspending student group involved in sexual harassment.

VIII. Other Legal Remedies Available to Complainants

A person being harassed can file a complaint with the Pennsylvania Human Relations Commission or the federal Equal Employment Opportunity Commission, or take legal action in the civil courts. Filing an informal or formal complaint with the University is not a prerequisite but may be beneficial.

IX. False Complaints

Students or employees who file false complaints of sexual harassment against another student or employee will be subject to the same process and sanctions outlined above in sections IV, V, VI, and VII. False complaint is defined as lying about the incident(s).

X. Frequently Asked Questions

Q: Why do we have a policy on sexual harassment?

A: The University of Scranton is required by law to act on all cases of sexual harassment, to have a policy, and to make the policy readily available.

Q: Whom does the policy cover?

A: It covers all employees and students of the University.

Q: As a student, can I be found culpable of sexual harassment?

A: Yes. If a student is found culpable of sexual harassment, sanctions up to and including dismissal can be used.