

 <b>SOUTHEAST MISSOURI</b> <b>STATE UNIVERSITY · 1873</b>	<b>BUSINESS POLICY AND PROCEDURE MANUAL</b>	Date Issued: 06/96	Revision Date: 12/14	Page: 1 of 1
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GENERAL STATEMENT OF POLICY

Sexual harassment and other forms of discriminatory harassment are prohibited under University policy and may also violate state and federal antidiscrimination laws. The primary goals of this policy are to prevent discriminatory harassment, provide for prompt and appropriate remedial action to be taken to address and end such harassment when it occurs, and to prevent its recurrence. This policy is intended to be consistent with applicable federal and state laws including, but not limited to, Title IX of the 1972 Education Amendments, which prohibits discrimination based on sex/gender in the University’s educational programs, activities and practices, and requires equal and fair treatment based on sex; and Title VII of the Civil Rights Act of 1964 and the Missouri Human Rights Act, which prohibit discrimination and discriminatory harassment in employment.

This policy prohibiting harassment applies to all members of the University community, and to discriminatory harassment based on any classification protected by this policy and applicable law, including race, ethnicity, religion, national origin, sex, sexual orientation, gender identity, age, genetic information, disability, or protected veteran status. Harassment of or by members of the University community based on any of these classifications is reprehensible and will not be tolerated by the University. It subverts the mission of the University and threatens the careers, educational experience, and well-being of students, faculty, and staff.

This policy also prohibits retaliation against anyone who asserts a claim of harassment, participates in a harassment investigation, or otherwise opposes unlawful harassment.

The Assistant to the President for Equity & Diversity shall be responsible for maintaining operating procedures to implement this policy.

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OPERATING PROCEDURES

**University Responsibilities -**

Southeast Missouri State University, including its officers and its employees, is responsible for maintaining a working and learning environment free from sexual harassment. The administration is responsible for making widely known that sexual harassment is prohibited both legally and by this policy, and that appropriate procedures for dealing with allegations of sexual harassment are available. Students, staff, faculty, and administrators should know that the University is concerned about such behavior and is prepared to take preventive and corrective action, and also that individuals who engage in such misconduct are subject to appropriate disciplinary action, which may range from reprimand to suspension or dismissal. The severity of the action depends on the severity, frequency, or repetition of the violation.

University administrators who do not respond to sexual harassment complaints brought to their attention are in violation of this policy.

Reprisal or retaliation against an individual for making a complaint of sexual harassment, or for using or participating in the informal or formal complaint process, is a violation of University policy, and any such action is cause for disciplinary action.

**Definition of Sexual Harassment -**

Sexual harassment is a form of sex discrimination that is illegal under Title VII of the Civil Rights Act of 1964 for employees, under Title IX of the Education Amendments of 1972 for students, and under Missouri law. Retaliation against an individual for making a complaint of sexual harassment also is considered to be sex discrimination and is therefore likewise illegal.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature when one or more of the following conditions is present.

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic status. (For example, an explicit or implicit promise or granting of educational or career advancement expressed by promotion, training, favorable academic or employment evaluation in return for sexual favors.); or
2. Submission to or rejection of such conduct by an individual is used, threatened or is suggested as the basis for employment or academic decisions. (For example, an explicit or implicit threat or action which adversely affects the academic or employment opportunities expressed as non-promotion, poor performance appraisal, transfer or reassignment if the sexual demands or requests are rejected.); or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive work or academic environment. (For example, a pattern of conduct that causes discomfort or humiliation, or both, such as sexually

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explicit statements, questions, jokes, anecdotes, ogling, visual materials or literature; unnecessary touching, patting, or pinching.)

The examples provided herein are not intended to be exhaustive. Any determination as to whether the alleged conduct constitutes sexual harassment shall take into consideration the totality of circumstances including the effects and character or nature of the behaviors complained of and the context in which the conduct occurred shall determine whether the behaviors constitute sexual harassment.

Consistent with the University's intent to provide an atmosphere and environment conducive to education and professional activities, this policy also covers those activities which, in and of themselves, do not meet the legal definition of sexual harassment, but are inappropriate in professional settings or circumstances. Interpretation of this policy will give consideration to the principles of academic freedom and freedom of speech.

Under this policy, sexual harassment can be verbal, visual or physical. It can be overt, as in the suggestion that a person could get a higher grade or a raise in salary by submitting to sexual advances. The suggestion or the advance need not be direct or, explicit--it can be implied from the conduct, circumstances, and relationship of the persons involved. Sexual harassment can also consist of persistent, unwelcome attempts to change a professional or academic relationship to a personal one. It can range from unwelcome sexual flirtations and inappropriate put-downs of individual persons or classes of people to serious physical abuses such as sexual assault. Examples include, but are not limited to, unwelcome sexual advances; repeated sexually-oriented kidding, teasing, joking, or flirting; verbal abuse of a sexual nature; commentary about an individual's body, sexual prowess, or sexual deficiencies; derogatory or demeaning comments about women or men in general, whether sexual or not; leering, touching, pinching, or brushing against another's body; or displaying objects or pictures which are sexual in nature and which create a hostile or offensive work or living environment.

**Consensual Relationships -**

Sexual relationships between persons in an unequal power relationship that appear to be voluntary and welcome may nonetheless constitute sexual harassment under this definition. Relationships between faculty and subordinate faculty or staff, between a supervisor and those employees whom he or she supervises, or between a faculty member or teaching assistant and a student may give rise to legal and ethical concerns or to conflict between personal and professional interests and concerns as to whether the relationship is actually consensual. Although such a relationship may be viewed by the parties involved as consensual or viewed by one of the parties to be consensual, that fact alone does not mean that no sexual harassment exists.

Although apparent, consensual relationships between persons in an unequal power relationship do not *per se* constitute sexual harassment, such relationships may give rise to claims of sexual harassment where (1) third parties are adversely affected in academic or employment matters because of a consensual relationship between others; (2) where a consensual relationship creates a hostile and intimidating work or learning environment for third parties; (3) when a consensual relationship ends, and one of the parties continues

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behavior which the other party has made clear is now unwelcome; or (4) when the subordinate does not truly consent to the relationship but does permit the relationship to occur because of the power held by the superior.

It should be understood by all members of the university community that consenting amorous relationships that occur in the context of educational or employment supervision and evaluation present serious ethical concerns. The element of power implicit in such relationships between a teacher and student, supervisor and subordinate, or senior and junior colleagues in the same department or unit, create an environment charged with potential conflict of interest.

If a close relationship with emotional ties should develop between an instructor and a student, or between a supervisor and an employee, or between an employee and student, University personnel policy requires the instructor to report the matter immediately to the department chair; a teaching assistant to the professor in charge of the course; a supervisor to his/her supervisor; an employee to his/her supervisor, so that suitable arrangements can be made for the objective evaluation of the student, employee, or prospective employee.

Faculty and supervisors should be aware that any such involvement with their students or employees makes them liable for formal action if a complaint is initiated against them. Complaints alleging sexual harassment, as defined above, may be filed by either party of the consensual relationship.

**Prohibition Against Retaliation -**

Any person who files a complaint, investigates, counsels or otherwise assists or provides information related to this policy and its procedures and/or the filing of a complaint under this policy shall be free from any retaliation, restraint, interference, coercion or reprisal for having done so. Any person who believes that they have been disadvantaged because of their conduct or actions, as referenced herein, shall have the right to file a complaint under these procedures; the procedures herein shall be applicable in all instances to such a complaint. Retaliation shall be considered a serious violation of this policy independent of whether a complaint of sexual harassment, formal or informal, is substantiated. Encouraging others to retaliate also violates this policy.

**Complaint Resolution Procedures -**

Southeast Missouri State University has established both formal and informal procedures to resolve sexual harassment complaints. Anyone who believes that he or she has been subjected to sexual harassment should make this known to appropriate University personnel (described below) so that the behavior can be evaluated and immediate appropriate corrective action taken. Although not required, persons who have been subjected to sexual harassment are encouraged to inform the alleged offender, through either verbal or written communication, that the behavior is unwelcome and should cease. The resolution procedures described below, if invoked, will be implemented with discretion and sensitivity, giving careful consideration to the rights of all parties to due process and confidentiality.

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Harassment complaints are best resolved if addressed early. The University urges those who have complaints to bring them forward as soon as possible. As time passes, it becomes more difficult to investigate and resolve complaints. In addition, there are time limitations for filing external complaints with state and federal agencies.

Information about the University's sexual harassment policy and resolution procedures may be obtained from several offices. Students may obtain information from the Dean of Students (Office of Student Development); employees may obtain information from the Office of Equity & Diversity Issues.

A complaint of sexual harassment against an undergraduate or a graduate student who is not acting in a teaching, advising, or supervisory role should be filed with the Office of Judicial Affairs regardless of the status of the complainant (i.e., student, faculty, or staff). The complaint will be investigated in accordance with procedures described in the Code of Student Conduct.

### **How to Initiate a Complaint -**

Anyone who believes that she or he has been subjected to sexual harassment may elect to proceed informally by bringing the complaint directly to the attention of an appropriate administrator, or by filing a complaint with the Office of Equity & Diversity Issues. As described below, the University has designated and trained certain disinterested individuals to assist a potentially injured person in deciding if and how to proceed and in carrying out that decision. An individual who elects initially to proceed informally may thereafter elect at any stage to file a formal complaint.

**Confidentiality** - Persons seeking general information or guidance about sexual harassment may be concerned about whether the information they share with another person will be confidential. While the University is eager to create a safe environment in which individuals can be unafraid to discuss concerns and make complaints, legal obligations may require the University to take some action once it is informed that sexual harassment may be occurring. Because of their positions of authority, University administrators--i.e., central administrators, deans, directors, and department chairs--are particularly obligated to take action when they receive a complaint of sexual harassment. Although the confidentiality of the information received and the privacy of the individuals involved cannot be guaranteed, they will be protected to as great of an extent as is legally possible. The expressed wishes of the complainant regarding confidentiality will be considered in the context of the University's legal obligation to act upon the charge and the right of the charged party to be informed concerning the charge.

**Assistors** - The University has designated several offices to provide assistance through persons designated as Assistors to help anyone who believes she or he may have been subjected to sexual harassment or who wishes to make an inquiry concerning sexual harassment. Assistors have information about University policies and procedures and about options available for the resolution of complaints, but they are not responsible for resolving complaints. Lists of designated Assistors are available from the Dean of Students (Office of Student Development), and the Office of Equity & Diversity Issues. The Assistor's functions include the following:

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1. Providing information about sexual harassment and options for addressing it.
2. Informing the complainant regarding applicable University policies and procedures and outlining various options, both informal and formal, for resolving the complaint. In addition to providing the employee with a written copy of the University's sexual harassment policy, the Assistor will provide information as to various strategies that the complainant may use if he or she wishes to attempt resolution personally, such as confronting the alleged offender, writing a letter to the alleged offender, or utilizing the services of a third party as an intervener.
3. Accompanying the complainant to informal resolution sessions, if requested by the complainant. The Assistor does not, however, function as an advocate or spokesperson for the complainant, nor does the Assistor act in lieu of a complainant.
4. Maintaining notes necessary for statistical reporting. Assistors are required to forward to the Assistant to the President for Equity & Diversity Issues, on an annual basis, information on the number and nature of complaints that have been received. These data shall not contain information that would identify the complainant or the person accused in the complaint.

**Informal Resolution -**

As noted earlier in this policy, the University's primary goal is to prevent or stop sexually harassing behavior whenever it occurs. Therefore, Southeast Missouri State University has adopted an informal process by which sexual harassment complaints may be resolved by mutual agreement between the complainant and the person accused of sexual harassment. If informal resolution fails to resolve the matter to the complainant's satisfaction, the complainant may file a formal complaint with the Assistant to the President for Equity & Diversity Issues. The implementation of this informal process is the responsibility of all central administrators, deans, directors, and department chairs - hereinafter referred to collectively as "administrators."

Under the informal process, the complainant brings the complaint, either verbally or in writing, to an administrator with authority over the person against whom the complaint is directed. The administrator is expected to review the complaint and explore avenues for resolution with the complainant. The University recognizes that it must balance the complainant's right of privacy and the need to be fair to the alleged offender by notifying him or her of the allegation. The administrator has the discretion to determine when the situation requires notification of an alleged offender. The administrator also has the discretion to determine whether the situation warrants a meeting, either with the complainant and the alleged offender both present or with the complainant and alleged offender separately. Finally, the administrator has the discretion to determine whether investigation of the complaint requires interviewing other persons who may have witnessed the behavior in question.

Administrators should attempt to resolve complaints expeditiously, but consistent with the severity or complexity of the matter. It is expected that the informal resolution process will be completed within three

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weeks after receipt of the complaint. The Affirmative Action Officer is available for guidance in this process.

For purposes of annual reporting, the administrator shall maintain a written record of the complaint and of the informal resolution process undertaken, taking care to preserve the privacy rights of both the complainant and the alleged offender.

**Formal Complaint -**

A student or employee who believes that she or he has been subjected to sexual harassment may file a formal complaint with the University's Office of Institutional Equity and Diversity (OIED). A formal complaint involves the submission of a written statement to the OIED describing the incident or incidents as completely as possible. Specific guidelines for the submission of a complaint may be obtained from the OIED, and the complainant may visit with the OIED prior to filing a formal complaint.

Once a signed complaint is filed with the OIED, the OIED will investigate the complaint or direct that the complaint be investigated by an appropriate investigating officer. The investigating officer and the accused shall be from the same segment of the University community. Recommended investigating officers include: Director of Human Resources, Department Chair or Academic Dean (a complaint against the President will be referred to the Board of Regents for investigation and disposition). The person against whom the complaint is filed will be notified. The investigation will include interviews with the complainant or complainants, with the person against whom the complaint has been brought, and with anyone else who might have information that would be helpful. Based on this investigation, the OIED will submit findings of facts, as well as a recommendation with respect to appropriate action to resolve the complaint, to the unit administrator of the person against whom the complaint was filed, with a copy to be provided to the alleged offender. Any employee against whom disciplinary action is taken as a result of a formal complaint may appeal that action in accordance with the appeals procedure defined in the appropriate employee handbook.

The unit administrator to whom the OIED report has been submitted must notify the OIED in writing as to whether he or she accepts the report as well as what action, if any, has been or will be taken. If the unit administrator does not accept the recommendation of the OIED, the OIED shall submit a copy of the findings and recommendations to the President of the University, who shall in turn take whatever action he or she believes to be necessary in the matter.

The investigation will be conducted expeditiously, but in a manner consistent with the complexity and severity of the matter. The OIED will attempt to issue its summary of facts and recommendation within ninety days of initiation of the formal complaint.

The investigator shall notify the complainant in writing of the results of the investigation and the actions taken, if any, by the University to resolve or otherwise address the complaint. If the OIED's investigation reveals no violation of the University's sexual harassment policy, the complainant may, within ten calendar days from the date of notification by the OIED, appeal to the President.

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**Direct Institutional Action -**

If a University administrator, i.e., central administrator, dean, director, or department chair becomes aware of information which he or she deems may raise a serious question of risk for an employee or a student, or which he or she deems may subject the University to immediate risk or potential liability, the administrator should take appropriate action to investigate or seek to address the situation. If the information concerns allegations arising from a unit for which the administrator is not responsible, he or she shall refer it to an appropriate administrator who has supervisory responsibility. If the matter is complex or if the administrator is not able to bring the case to resolution, the matter must be brought to the attention of the Office of Institutional Equity & Diversity (OIED). The OIED may determine that further action is unnecessary, may provide support to the administrator's continuing efforts, or may initiate a formal investigation. Where an administrator is unsure of the seriousness of the matter, he or she should seek the assistance of the Office of Institutional Equity & Diversity.

**External Actions -**

In addition to University channels, a person who believes that she or he has been subjected to sexual harassment may file a charge with the Missouri Commission on Human Rights, the Equal Employment Opportunity Commission, or the U.S. Office of Civil Rights. Information on filing charges with any of these agencies may be obtained from the University's Office of Institutional Equity & Diversity.