

EXECUTIVE MEMORANDUM

January 2005

P 05-02

Supersedes P 88-9, P 89-4 and P 96-3

SUBJECT: HUMBOLDT STATE UNIVERSITY POLICY AGAINST SEXUAL HARASSMENT AND SEXUAL ASSAULT

Humboldt State University is committed to maintaining an environment free from sexual harassment and sexual assault. Sexual harassment and sexual assault will not be tolerated by the University. They subvert the mission of the University and threaten the careers, educational experience, and well-being of students, faculty, and staff. Sexual harassment interferes with a student's educational performance or an employee's work and creates an atmosphere of intimidation, low morale and hostility that the University cannot permit. Sexual harassment and sexual assault also can cause long term damage to the life and health of victims.

Any behavior determined to constitute sexual harassment and/or sexual assault will be subject to disciplinary actions by the University and/or criminal and civil sanction by the appropriate courts.

Sexual assault is a form of sexual harassment. As such, those behaviors that meet the conditions of sexual assault may result in applying procedures relevant to sexual harassment as well as sexual assault. For those behaviors that meet the conditions of sexual harassment but do not meet the standards of sexual assault, procedures relevant only to sexual harassment will apply.

There may be conditions when the behavior does not meet the standards of sexual harassment or sexual assault, but is considered unprofessional conduct under the California Education Code, Section 89535 (b) which applies to all state employees, and/or the University's policy on professional responsibility for **faculty** as found in the HSU Faculty Handbook, Appendix U:

Members of the faculty will not develop sexual relationships with students enrolled in their classes or subject to their supervision. The University will regard such behavior as unprofessional, unacceptable and potentially subject to reprimand or disciplinary procedures contained in the MOU [Memorandum of Understanding].* This is true even when the relationship appears to be consensual, i.e., that both parties have consented, because the voluntary consent of the student is in doubt given the imbalance in a student-faculty relationship. When disparities in authority are present between two individuals, questions about professional responsibility and the mutuality of consent in a personal relationship may well arise.

In such cases, procedures relevant to unprofessional conduct will be applied. Conduct exhibited by students that does not meet the standards of sexual harassment or sexual assault may otherwise constitute inappropriate conduct as defined by Title 5 of the California Code of Regulations §41301 of Article 1.1 and will be responded to accordingly.

* The MOU is now titled the Collective Bargaining Agreement (CBA).

I. DEFINITION AND CLASSIFICATION OF SEXUAL HARASSMENT

For purposes of this policy, Humboldt State University defines sexual harassment in accordance with the Equal Employment Opportunity Commission's guidelines as recognized by the Supreme Court in Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986). Sexual harassment is defined as **unwelcome conduct of a sexual nature** when:

- a. submission to such conduct is made either explicitly or implicitly a term or condition of employment, instruction, or participation in other University programs or activities; OR
- b. submission to or rejection of such conduct by an individual is used as a basis for employment or academic decisions or decisions affecting participation in other University programs or activities affecting such an individual; OR
- c. 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 working or learning environment.

Sexual harassment in the context of employment is within the provisions of Title VII of the 1964 Civil Rights Act. Sexual harassment in the context of an academic program is within the provisions of Title IX of the Education Amendments.

The following consists of examples of behaviors that may lead to or constitute sexual harassment:

- verbal harassment or abuse
- unwelcome or repeated sexual advances
- remarks about one's actual or perceived gender, gender identity, marital status, sexual orientation or appearance
- persistent remarks about another person's clothing, body or sexual activities
- subtle pressure for sexual activity
- disparaging comments about a group based on their actual or perceived gender
- the use of sexist humor or jokes about sex or gender specific traits
- unnecessary touching, patting, pinching, or brushing against another person's body
- demanding sexual favors accompanied by implied or overt threats concerning one's job, grades, or letters of recommendation
- suggestive or obscene letters, notes and invitations
- physical assault
- impeding or blocking movement
- repeated and unwanted staring, comments or gestures
- display of sexually suggestive objects, pictures, cartoons, or posters (having no artistic/literary value as defined by First Amendment protections)
- repeated non-reciprocated requests for dates or sex
- offering favors of employment benefits such as promotion, favorable performance

evaluation, favorable assigned duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors

- giving employees or students more difficult assignments and/or being more critical of their work based on their gender

In determining whether any of these examples are considered sexual harassment, the context in which the alleged incidents occurred, the nature of the sexual behavior and the totality of the circumstances are all considered. Additionally, for behavior to be considered sexual harassment the behavior must be sufficiently severe and pervasive to alter the conditions of the working or learning environment. Depending on the severity of the behavior, one isolated incident may be considered sexual harassment.

Sexual harassment can involve:

- student and student
- teacher and student
- teacher and teacher
- supervisor and employee
- co-workers who are equal in status
- co-workers when one of the individuals is in a position of professional judgment over another
- A university employee or student and a contractor, consultant, vendor, visitor, or third party who deals with the employee or student in connection with university business or activities

II. DEFINITION AND CLASSIFICATION OF SEXUAL ASSAULT

For purposes of this policy Humboldt State University defines **sexual assault** in accordance with the definitions found in California Penal Code sections 261 and 243.4 and other appropriate sections:

Sexual assault is any involuntary sexual act in which a person is threatened, coerced or forced to comply against her/his will.

Violations of Humboldt State University's policy against sexual assault include, but are not limited to, the following:

Rape (sexual assault) is attempted or accomplished sexual intercourse that is perpetrated against the will of the victim or when she/he is unable to give consent (i.e., unconscious, disabled, asleep or under the influence of alcohol or other drugs) and may involve physical violence, coercion, or the threat of harm to the victim;

Acquaintance Rape is a common form of rape by a non-stranger which could include a friend, acquaintance, family member, neighbor, co-worker or someone the victim has been dating;

Sexual Battery is any unwanted touching of intimate body parts.

Consent consists of words or conduct indicating a *freely given, present agreement* to perform a particular sex act with the initiator. Consent can only be given or implied by someone who acts freely, voluntarily and with knowledge of the nature of the act involved.

Consent cannot be given if someone

- Is incapacitated by drugs, including alcohol
- Is coerced into submission
- Is not conscious
- Is physically incapacitated
- Is mentally incapacitated

Consent cannot be inferred from

- Permission for one particular act or for a series of acts
- A prior sexual, romantic or marital relationship
- An existing sexual, romantic or marital relationship

III. SUPPORT SERVICES

Any student or employee who feels that they have been the victim of any form of sexual misconduct may wish to seek confidential counseling or support from, or may report the sexual assault to, the following resources:

On campus student resources (confidential)

- HSU Counseling Center, Health Center, 2nd Floor, **826-3236**

On campus student resources (non-confidential)

- University Police Department, Student and Business Services 101 **826-3456**
- Vice President Student Affairs **826-3361** or email at judicial@humboldt.edu.
- Resident Life Assistants and Living Group Advisors
- Office of Diversity and Compliance Services, Siemens Hall 220 **826-4501**

Off campus student, faculty and staff resources

- Equal Employment Opportunity Commission (employment discrimination) San Francisco Office **415-625-5600 or 415-625-5610 (TTY)**. The toll free numbers are **1-800-669-4000 or 1-800-669-6820 (TTY)**.
- Office of Civil Rights (sexual harassment involving students in an academic setting) San Francisco Office **415-437-8310**
- North Coast Rape Crisis Team **707-445-2881** (also can accompany to hospital and other services)
- Arcata Police Department **822-2424**

University employee resources (confidential)

- Employee Assistance Program, Human Resources (referral) **826-7358**
- North Coast Rape Crisis Team **707-445-2881**

IV. PROCEDURES FOR CHARGES OF SEXUAL ASSAULT AND COMPLAINTS OF SEXUAL HARASSMENT

The University has jurisdiction to respond to incident(s) of unwelcome sexual behavior when the incident occurs on campus. When incidents of unwelcome sexual behavior occur off campus, the University has jurisdiction to respond to such incidents only when a professional relationship within the context of the University exists between the two individuals, e.g., professor and student, coach and athlete. The status of the individual (i.e., faculty, staff, student or administrator) alone is not sufficient to create jurisdiction in situations occurring off campus.

The University has authority to take disciplinary action in cases where an act is committed off campus, when the action violates the University's sexual harassment prevention policy. This occurs when the unwelcome sexual conduct is:

- a. a term or condition of employment, instruction, or participation, in other University programs or activities; or
- b. is used as a basis for employment or academic decisions or decisions affecting participation in other University programs or activities affecting the individual; or
- c. the conduct has the purpose or effect of unreasonably interfering with the individual's work or academic performance or creates an intimidating, hostile, or offensive working or learning environment.

In order for (c) to be applicable, a business, service or professional relationship must exist between the individuals in the context of Humboldt State University.

In situations where the University does not have authority to take disciplinary action the victim is encouraged to report the incident to appropriate authorities which would allow the individual to proceed with criminal and/or civil action.

A report of sexual harassment/sexual assault is forwarded to the Office of Diversity and Compliance Services and the University Police Department for the purpose of federally mandated statistical reporting. Such reporting includes place, date, time, and type of incident and status of those involved.

A. Criminal Charges for Sexual Assault

Humboldt State University encourages any member of the campus community who believes they have been subject to a sexual assault to immediately report the incident to the police agency of jurisdiction.

If sexual assault occurs on the University campus, the appropriate police agency for reporting the incident is the **University Police Department**. If a sexual assault is reported to the Department of Public Safety, the investigating officer shall advise the victim/survivor of services available on campus and in the community.

If the assault occurred off-campus, the incident should be reported to the appropriate city or county agency. A victim/survivor has the right under California law to be assisted by an advocate, in making a decision to report as well as in all aspects of a prosecution. Timely reporting to the police is an important factor in a successful investigation and prosecution of sexual assault cases.

A victim is not required to pursue criminal prosecution as a result of reporting a crime to a police agency, although it may be the case that the reporting of sexual assault to the police agency may prevent others from being victims. The police agency will investigate the complaint and initiate any criminal action. The Humboldt County District Attorney's Office will ultimately decide whether to prosecute. Civil charges may be filed by the victim through a privately retained attorney.

B. Internal complaint procedure for sexual harassment, including sexual assault

Complaints of sexual assault or sexual harassment may be made to:

Students

- Living Group Advisors (residence halls)
- Office of the Vice President for Student Affairs, Nelson Hall East 216, **826-3361** or email at judicial@humboldt.edu
- Office of Diversity and Compliance Services, Siemens Hall 220, **826-4501** or email dc@humboldt.edu
- HSU Counseling Center, Health Center, 2nd Floor, **826-3236**
- North Coast Rape Crisis Team **707-445-2881** (also can accompany to hospital and other services)

Faculty or staff members

- Human Resources Office, Siemens Hall 211 **826-3626**
- Employee Assistance Program, Human Resources (referral) **826-7358**
- Office of Diversity and Compliance Services, Siemens Hall 220 **826-4501**
- North Coast Rape Crisis Team **707-445-2881**

If a complaint is made to anyone else, the complainant risks the possibility that it will not come to the attention of the proper college officials and may, therefore, not be acted upon.

Reminder: confidential resources are members of the Counseling Center , the Employee Assistance Program and the North Coast Rape Crisis Team. All other employees cannot guarantee confidentiality.

Complaints of sexual assault or sexual harassment committed by a student, faculty member or staff member against any student, faculty member or staff member will be investigated promptly.

In general, investigations will be done by a designee from the Office of the Vice President for Student Affairs if the respondent is a student, and by a representative of the Office of Diversity and Compliance Services if the respondent is a faculty member or a staff member.

The complainant may file a formal grievance through established California State University disciplinary, grievance or other complaint procedures, including those found in various collective bargaining agreements.

A report of sexual harassment/sexual assault is forwarded to the Office of Diversity and Compliance Services for purposes of federally mandated statistical reporting. Such reporting includes place, date, time, type of incident, and status of those involved.

There may be occasions when an administrator will initiate a formal investigation of sexual harassment allegations even though a member of the campus community has not filed a formal complaint. When administrators become aware of a potential case of sexual harassment and take immediate action, the University's risk of legal liability is decreased. As such, prompt investigation and action for redress will occur when appropriate.

C. External procedures for filing a complaint

- Civil charges against the perpetrator through the civil legal system
- Criminal charges, in cases of sexual assault
- In addition, complaints may be filed through Federal and State agencies (generally, within 180 days following the event) including:
 - Equal Employment Opportunity Commission (employment discrimination) San Francisco Office **415-625-5600 or 415-625-5610 (TTY)**. The toll free numbers are **1-800-669-4000 or 1-800-669-6820 (TTY)**.
 - Office of Civil Rights (sexual harassment involving students in an academic setting) San Francisco Office **415-437-8310**
 - California State Department of Fair Employment and Housing **1-800-884-1684** <http://www.dfeh.ca.gov/Contact/contactdfeh.asp>

An applicant for admission or an applicant for employment may file a formal complaint through the above stated federal and state agencies.

Distribution: All faculty and staff