

THIS DOCUMENT, AS FURTHER AMENDED BY THE FACULTY SENATE AT ITS MEETING ON MAY 13, 2005, WAS ENDORSED PURSUANT TO SUBSTITUTE RESOLUTION 05/1.

PEAF Committee Comments 5/10/05

SEXUAL HARASSMENT POLICY AND PROCEDURES

As unanimously adopted by the University Committee on Sexual Harassment Policy on April 19, 2005

First principles of this policy

The George Washington University is committed to maintaining a positive climate for study and work, in which individuals are judged solely on relevant factors, such as ability and performance, and can pursue their activities in an atmosphere that is free from coercion and intimidation. The University mission statement provides that the University "values a dynamic, student-focused community stimulated by cultural and intellectual diversity and built upon a foundation of integrity, creativity, and openness to exploration of new ideas." The University is committed to free inquiry, free expression, and the vigorous discussion and debate on which advancement of its mission depends. Sexual harassment is destructive of such a climate and will not be tolerated in the University community.

Objectives

This policy and these procedures aim to inform members of the University community what sexual harassment is and what they can do should they encounter or observe it. The University prohibits sexual harassment by any student, staff member, faculty member, and others in the University community; encourages reporting of sexual harassment before it becomes severe or pervasive; identifies accessible persons to whom sexual harassment may be reported; prohibits retaliation against persons who bring sexual harassment complaints; assures confidentiality to the full extent consistent with the need to resolve the matter appropriately; assures that allegations will be promptly, thoroughly, and impartially addressed; and provides for appropriate corrective action.

The ultimate goal is to prevent sexual harassment, through education and the continuing development of a sense of community. But if sexual harassment occurs, the University will respond firmly and fairly. As befits an academic community, the University's approach is to consider problems within an informal framework when appropriate, but to make formal procedures available for use when necessary.

What sexual harassment is

The University has adopted the following definition of sexual harassment, substantially derived from Equal Employment Opportunity Commission and Department of Education statements:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is explicitly or implicitly made a term or condition of academic participation or activity, educational advancement, or employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions that affect the individual; (3) such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance or limiting participation in University programs; or (4) the intent or effect of such conduct is to create an intimidating, hostile, or offensive academic or work environment. Sexual harassment may occur without regard to either party's gender.

This policy addresses only sexual harassment and does not deal with other forms of gender discrimination. For other University policies dealing with gender discrimination, consult The George Washington University Office of Equal Employment Opportunity.

Nothing in this policy limits academic freedom, guaranteed by the Faculty Code, which is a pre-eminent value of the University. This policy shall not be interpreted to abridge academic freedom. Accordingly, in an academic setting expression that is reasonably designed or reasonably intended to contribute to academic inquiry, education or debate on issues of public concern shall not be construed as sexual harassment.

A person who commits sexual harassment in violation of this policy will be subject to disciplinary action, up to and including expulsion or termination.

Prevention; dissemination of information

The University is committed to preventing and remedying sexual harassment of students, faculty, and staff. To that end, this policy and these procedures will be disseminated in the University community. In addition, the University will sponsor programs to inform students, faculty, and staff about sexual harassment and the problems it causes; advise members of the University community of their rights and responsibilities under this policy and these procedures; and train personnel responsible for the administration of the policy and procedures. In particular, the University shall assure that the Sexual Harassment Response Coordinator (in the Office of the Vice President and General Counsel) who is

designated by the University to conduct the consultation and the administrative review processes described below and other personnel involved in responding to allegations of sexual harassment receive formal training by one or more individuals with appropriate expertise.

Consensual relationships

Relationships that are welcomed by the parties do not entail sexual harassment, and are beyond the scope of this policy. Whether a relationship is in fact welcomed will be gauged according to the circumstances; special risks are involved when one party -- whether a faculty member, staff member or student -- is in a position to evaluate or exercise authority over the other. It is inappropriate for a faculty member or teaching assistant to have sexual relationships with a student who is currently in his/her course or is subject to his/her supervision or evaluation. It is similarly inappropriate for someone in a supervisory position to have a sexual relationship with an individual in a subordinate position. Even when both parties previously consented to a sexual relationship, a charge of sexual harassment may be based on subsequent conduct that one of them does not welcome. Members of the University community are cautioned that consensual relationships can in some circumstances entail abuse of authority, conflict of interest, or other adverse consequences that may be addressed in accordance with pertinent University policy and practice.

What to do

Three possible levels of procedural redress are available to members of the University community who believe that sexual harassment has occurred – consultation, administrative review, and formal hearing. Often, concerns can be resolved through consultation or after administrative review. If the matter is not satisfactorily resolved through the consultation or administrative review procedure, a formal hearing may be initiated.

Consultation

A member of the University community who is uncomfortable with one or more instances of conduct of a sexual nature that may be inappropriate (even if the person is unsure whether the conduct constitutes sexual harassment), may discuss the matter with the person who has engaged in the behavior or with his or her department chair, dean or staff supervisor; the Associate Vice President and Dean of Students; the Director of the Office of Equal Employment Activities; the Assistant Vice President for Faculty Recruitment and Personnel Relations; or the Sexual Harassment Response Coordinator (“Coordinator”) who shall be consulted when appropriate by any of the foregoing persons. Any of the foregoing University officials who receives a report of possible sexual harassment shall advise the reporting person of the availability of consultation with the Coordinator, and shall provide a written account of the report to the Coordinator. (See “Confidentiality” paragraph below.) In response to a request for consultation, the

Coordinator will provide a copy of the sexual harassment policy and procedures, respond to questions about them, assist in developing strategies to deal with the matter, and work in accordance with the procedure set forth in Appendix A.

Administrative review

An administrative review, which is initiated in the same manner as a consultation, entails an investigation by the Coordinator of the charges in accordance with Appendix B.

Formal hearing procedure

The formal hearing procedure is available when the administrative review procedure fails to resolve satisfactorily the allegation of sexual harassment. The person who made the allegation of sexual harassment (the "Complainant") or a responsible University official may initiate a formal hearing against the person who allegedly engaged in sexual harassment (the "Respondent").

A formal hearing is initiated by the Complainant or a responsible University official by written request submitted to the Associate Vice President for Human Resources or his/her designee ("AVPHR"). The request to proceed with a formal hearing is due within 30 days after receipt of information from the responsible University official of the disposition of the administrative review procedure. The AVPHR will inform the requesting party of the process that will be followed and provide a copy of the applicable procedure.

The Code of Student Conduct will govern the formal hearing procedure when both parties are students. The applicable staff grievance procedures will govern the formal hearing procedure when both parties are staff members. The formal hearing will be held in accordance with the Formal Hearing Procedures set forth in Appendix C, when:

- (a) the Complainant is a student and the Respondent a faculty or staff member;
- (b) the Complainant is a faculty member and the Respondent a staff member or student;
- (c) the Complainant is a staff member and the Respondent a faculty member or student; or
- (d) the Complainant and Respondent are faculty members.

Outcomes

If the administrative review procedure or formal hearing procedure results in a determination that sexual harassment occurred, the findings and recommendations shall be referred to the appropriate University official for imposition of corrective action, including sanctions that the official is authorized to impose; provided, however, that no final sanction except for a written reprimand may be imposed based on an administrative review without the Respondent's written consent. A range of relevant considerations should be taken into account in determining the extent of sanctions, such as the severity of the offense, the effect of the offense on the victim and on the University community, and the Respondent's record of past offenses, if any. Sanctions may include, but are not limited to, a written reprimand, suspension, expulsion, or termination of employment; provided that a tenured faculty member may not be dismissed except in accordance with the procedures set forth in Section F of the Procedures for the Implementation of the Faculty Code. The University may impose interim corrective action at any time, if doing so reasonably appears required to protect a member of the University community.

Redress of disciplinary action

Nothing in this policy or these procedures shall be deemed to revoke any right that any member of the University community may have to seek redress of a disciplinary action, such as a faculty member's right to maintain a grievance under the Faculty Code.

Confidentiality

The Coordinator and other investigators and decision-makers will strive to maintain confidentiality to the full extent appropriate, consistent with the need to resolve the matter effectively and fairly. The parties, persons interviewed in the investigation, persons notified of the investigation, and persons involved in the proceedings will be advised of the need for discretion and confidentiality. Inappropriate breaches of confidentiality may result in disciplinary action.

The identity of the Complainant need not be disclosed to the Respondent at the initial consultation or at the administrative review stages, but such disclosure will be necessary at the formal hearing stage. University officials initially consulted by the Complainant, including the Coordinator, and other investigators and decision-makers may, at the Complainant's request, agree to keep the Complainant's identity confidential and such agreement will be binding throughout the consultation and administrative review stages. The Complainant whose identity has not been released earlier will be required to permit release of such information to the Respondent in order to initiate the formal hearing procedure.

Retaliation

Retaliation against a person who reports or complains of sexual harassment or who provides information in a sexual harassment investigation or proceeding is prohibited. Alleged retaliation will be subject to investigation and may result in disciplinary action up to and including termination or expulsion.

False claims

A person who knowingly makes false allegations of sexual harassment, or who knowingly provides false information in a sexual harassment investigation or proceeding, will be subject to disciplinary action.

Time limits

The University aims to administer this policy and these procedures in an equitable and timely manner. Established time limits may be extended for good cause, upon request. Persons making allegations of sexual harassment are encouraged to come forward without undue delay.

Interpretation of policy

The Office of the Vice President and General Counsel is available to provide advice on questions regarding interpretation of this policy and these procedures.

Appendix A: Consultation Procedure

1. The consultation consists of one or more meetings between the Coordinator and the person who requests the consultation based on one or more instances of a sexual nature that may be inappropriate.
2. The Coordinator will provide a copy of the sexual harassment policy and procedures and respond to questions about them. The Coordinator may address and clarify the matter with the person, assist in developing strategies to deal with the matter, recommend counseling or other assistance, determine that no further action is necessary, or initiate the administrative review procedure under Appendix B.
3. The Coordinator will prepare a record of the consultation, which will be maintained by the Office of the Vice President and General Counsel. The record will be considered confidential to the full extent consistent with fairness and the University's need to take preventive and corrective action (see also "Confidentiality" above). If the record of the consultation includes an allegation of sexual harassment against a person named in the record, the record will not be disclosed to any person outside the office of Vice President and General Counsel, unless the person so named is notified in writing, and absent compelling reasons to the contrary, the notification will precede the disclosure.
4. When the Coordinator has reason to believe that criminal conduct may have occurred or that action is necessary to protect the health or safety of any individual, the University may, as the Office of the Vice President and General Counsel determines, refer the matter to appropriate authorities.
5. Although consultation may be requested and an administrative review procedure pursued within any reasonable time after the events giving rise to the consultation or administrative review procedure, persons who believe they have been subjected to or who otherwise have observed sexual harassment are encouraged to seek assistance from the University through these procedures promptly.

Appendix B: Administrative Review

1. Following consultation, a person who alleges sexual harassment (the “Complainant”) has the right to pursue an administrative review procedure if not satisfied with the results of the consultation.
2. The Coordinator will ask the Complainant to provide a factual account of the alleged harassment. The Coordinator may assist the Complainant to prepare a signed statement. If the Complainant declines to provide a signed statement, the Coordinator will prepare a written summary of the Complainant’s oral allegations (see “Confidentiality” above).
3. The Coordinator will inform the Respondent of the allegations in sufficient detail to permit an informed response, including providing the Respondent with a written summary of the material allegations.
4. The Coordinator will investigate the alleged harassment as promptly as circumstances permit, will afford the Respondent a reasonable opportunity to respond to the allegation, and will advise the parties and persons interviewed or notified about the alleged harassment of the need for discretion and confidentiality.
5. Upon initiating an investigation, the Coordinator may inform the University officials who would be charged with recommending corrective and disciplinary action (“responsible University officials”) of the administrative review procedure.
6. Upon concluding the investigation, the Coordinator will report his or her findings on the matter to the responsible University official. The Coordinator will make every effort to resolve the matter informally among the parties, subject to the approval of the responsible University official. The informal resolution of the matter may include corrective or disciplinary action; provided, however, that no final corrective action except for a written reprimand may be taken based on an administrative review procedure without the Respondent’s written consent. Any such corrective or disciplinary action shall be imposed by the responsible University official and be within his or her discretion and consistent with his or her authority. The University may take interim corrective action at any time if doing so reasonably appears to be required to protect a member of the University community.
7. If the Coordinator is unable to resolve the matter informally, the responsible University official shall determine, based on the report obtained from the

Coordinator, whether or not to recommend the imposition of one or more final sanctions against the Respondent. If the recommended disposition involves a final sanction other than a written reprimand, and if the Respondent does not give written consent to the imposition of such sanction, the responsible University official shall determine whether to initiate a formal hearing against the Respondent.

8. A responsible official will notify the parties in writing of the disposition of the administrative review procedure; provided, that the official may omit from the notice portions of the foregoing information that the University is required by law to treat as confidential. (See “Confidentiality” above for restrictions on disclosure of information.)
9. If dissatisfied with the disposition of the administrative review procedure, the Complainant may initiate the formal hearing procedure.
10. If dissatisfied with the disposition of the administrative review procedure, the Respondent may pursue applicable grievance procedures.

Appendix C: Formal Hearing Procedure -- Special Panels

A. Initiation of special panel procedure

1. The Complainant or a responsible University official must file a written request with the Associate Vice President for Human Resources or his/her designee ("AVPHR") in order to initiate a formal hearing. The request must be filed within 30 days after receipt of information from a responsible University official of the disposition of the administrative review (See Appendix B). The written request for a formal hearing (the "complaint") must include a description of the material facts related to the alleged sexual harassment, must state why the disposition of the matter should be modified or overturned, and may include a statement of the relief requested.
2. The AVPHR will send a copy of the complaint, including the name of the person alleged to have been sexually harassed, to the responding party.
3. An aim of the special panel process is to complete, if feasible, the formal complaint procedure within 45 business days of the AVPHR's receipt of the formal complaint request.

B. Establishment of special panels

1. A complaint filed under Appendix C will be heard by a six-member panel selected by lot by the AVPHR as described in Section C. Panelists will be selected from a pool of 18, six of whom are faculty members appointed by the Executive Vice President for Academic Affairs, with the concurrence of the Council of Deans and the Faculty Senate Executive Committee. If the concurrence does not occur within 30 days, the Executive Vice President for Academic Affairs ~~shall select the faculty panel members~~ and the Council of Deans shall select three of the faculty panel members and the Faculty Senate Executive Committee shall select the remaining three faculty panel members. Six members of the pool shall be staff employees appointed by the AVPHR; and six members of the pool shall be students appointed by the Associate Vice President and Dean of Students.
2. Each appointee to the pool ordinarily will serve a two year term. The appointing official should stagger the appointments so that, if feasible, the terms of not more than five of his or her appointees expire in any year.

3. An appointee to the pool may be removed and replaced at any time, at the discretion of the appointing official. The appointing official should promptly fill vacancies in the pool according to the procedure in Section B.1 above.
4. The AVPHR will conduct mandatory training of all appointees to the pool at the time of appointment and periodically thereafter. No pool member shall receive such training while serving on a special panel. Training will address roles and responsibilities of panel members, hearing procedures, applicable policies, and other techniques and standards pertinent to the complaint and hearing process.

C. Selection of panel

1. Within five business days after receiving the written request to proceed with a formal complaint (see A.1, above), the AVPHR will select by lot the six-member panel from the pool. Two of the panel members will be drawn from the same status group as the Respondent; two panel members will be drawn from the same status group as the Complainant; and two panel members will be drawn from among the pool members in the remaining status group(s). No member of a faculty member's department or of a staff member's administrative department may serve on the special panel.
2. The AVPHR will notify the parties of the panelists' names. Within three business days of receipt of the notice, either party may submit to the AVPHR a written objection to designation of any panel member. The objection must clearly state the reasons for the objection. The AVPHR may, at his or her discretion, replace a challenged panelist with another member of the pool from the same status group.
3. A designated panelist who at any time has or may reasonably be perceived as having a conflict of interest or is otherwise unable to serve on a special panel shall recuse himself or herself, and notify the AVPHR of the recusal. For sound reasons, which shall be disclosed to the parties and panel members, the AVPHR, in his or her discretion, may replace a panel member. The successor panel member shall be selected by lot by the AVPHR from among pool members of the recused or replaced panel member's status group.

D. Special panel organization

1. Within five business days after their appointment, special panel members will select a chairperson and review the request for a hearing.

2. The special panel may request clarification or additional information from the AVPHR or the parties. Panel members may not communicate with either party outside the presence of the other party. The special panel shall provide both parties with copies of all written communications sent to either party.

E. Scheduling hearing

1. The special panel will set a hearing date and time. The panelists will meet within a reasonable time, normally within five business days after their appointment, to select a chairperson and set the hearing date and time. The hearing will be held within a reasonable time, normally within 20 business days after the special panel is appointed.
2. The special panel chairperson will notify the parties of the hearing date, time, and location at least ten business days before the hearing. Within two business days after receiving notice of the hearing, a party with a scheduling conflict may submit to the chairperson a request for postponement. The chairperson, after consulting the special panel members, has discretion to reschedule the hearing. All parties will be notified as soon as feasible if the hearing is rescheduled.
3. If a party does not appear for the hearing within 30 minutes after the scheduled time, the special panel will decide whether to reschedule the hearing or proceed.

F. Conduct of hearing

1. The special panel chairperson will preside at the hearing and decide procedural issues. Only persons participating in the proceeding may be present during the hearing except as otherwise provided in these procedures. The hearing will be conducted in the following sequence:
 - (a) Preliminary matters. The chairperson will introduce the parties, their counsel or advisors, and the special panel members; review the order of proceedings; explain procedures that govern use of the tape recorder; and present a brief summary of the complaint.
 - (b) Opening statements. The party who requested the hearing may make an opening statement. The responding party may then make an opening statement. Each opening statement shall not exceed 15 minutes.

- (c) Presentation of complaint. The party who requested the hearing may present to the panel testimony, witnesses, documents or other evidence. Following the testimony of the party who requested the hearing, and of each witness, the responding party may ask questions.
 - (d) Response to complaint. The party who responded to the complaint may present testimony, witnesses, documents or other evidence to the panel. Following the testimony of the responding party, and of each witness, the party who requested the hearing may ask questions.
 - (e) Closing statements. The party who requested the hearing may make a closing statement. The responding party may then make a closing statement. Each closing statement shall not exceed 15 minutes.
- 2. Special panel members may ask questions of parties or witnesses at any time during the hearing.
 - 3. The hearing will not be conducted according to strict rules of evidence. However, the special panel chairperson may limit or exclude irrelevant or repetitive testimony, and may otherwise rule on what evidence may be offered. To determine whether a persistent pattern of harassment exists, the special panel may request that appropriate University officials (in consultation with the Office of the Vice President and General Counsel) provide evidence of prior written reprimands and/or sanctions imposed against the Respondent based on past incidents of sexual harassment as a part of the hearing record.
 - 4. When the hearing cannot be completed in one session, the special panel chairperson may continue the hearing to a later date and time.
 - 5. The hearing will be recorded on audiotape. Either party may obtain from the AVPHR a copy of the recording at reasonable cost, on written request.

G. Witnesses

- 1. Each party (and the panel) may ask witnesses to testify at the hearing, but no person may be compelled to testify. However, each party shall have a right to know prior to the hearing the contents of and the names of the authors of any written statements that may be introduced against him or her, and the right to rebut unfavorable inferences that might be drawn from such statements.
- 2. At least three business days before the hearing, each party must provide the

chairperson, the AVPHR and the other party a list of witnesses he or she intends to present at the hearing.

3. The special panel may request that additional witnesses appear. The AVPHR will, if feasible, arrange for the appearance of these witnesses.
4. Each party is responsible for notifying its witnesses of the hearing date, time, and location. A hearing will not necessarily be postponed because a witness fails to appear.
5. In identifying persons to appear as witnesses, parties should be aware that live testimony is preferred and that the panel may give less weight to the evidence of a witness who is able but unwilling to appear.
6. All witnesses (except for the Complainant and the Respondent) will be excluded from the hearing before and after their testimony. A witness may be recalled at the discretion of the special panel chairperson.
7. A University employee must obtain permission from his or her supervisor to be absent from work to appear at a hearing. Employees will be paid for reasonable time spent while preparing for or while appearing at a hearing during working hours, but not for other time spent on the complaint ~~during or~~ outside working hours.
8. A student must obtain permission from his or her professor to be absent from class to appear at a hearing.
9. Supervisors and professors should be aware of the importance of hearings and not unreasonably withhold permission to appear at a hearing. If an employee or student needs assistance in obtaining permission to appear at a hearing, he or she should contact the AVPHR.

H. Advisors

1. The University shall constitute a committee consisting of faculty with law degrees willing to advise pro bono either party to a sexual harassment complaint during the formal hearing. If a pro bono attorney is not available, the University shall provide an attorney-adviser at its expense upon request of a party.
- ~~4.2.~~ Each party may be accompanied by not more than two advisors, who may be

University employees or other persons the party selects; provided that not more than one of the advisors shall be acting in an attorney capacity.

- ~~2.3.~~ No advisor, including an attorney who may be acting as an advisor, may speak on behalf of the party, make an opening or closing statement, present testimony or examine witnesses. The advisor's role is limited to assisting the party to prepare for the hearing and providing the party private advice during the hearing.
- ~~3.4.~~ A Complainant or Respondent who plans to be accompanied by an attorney or other advisor at the hearing must notify the panel chairperson and the other party at least five business days before the hearing.
- ~~4.5.~~ The special panel may request or the University may provide a University-furnished attorney or other advisor to be present at any hearing to advise the special panel.
- ~~5.6.~~ The University may have an observer present at any hearing.

I. Decision after hearing

1. After the hearing, the special panel will meet in closed session to review the hearing and make a decision on the complaint. In order to make a determination that sexual harassment occurred, the decision must be supported by the preponderance of the evidence and approved by a majority of the special panel members.
2. The special panel's report of its decision must be in writing and set forth findings of fact, conclusions, and, where appropriate, recommendations for corrective or disciplinary action that are approved by a majority of the special panel members.
3. The special panel will submit the report of its decision to the AVPHR within ten business days after the hearing ends. The AVPHR shall send a copy of the special panel report to the Complainant and to the Respondent (at their home addresses of record, by courier, overnight mail or certified mail, return receipt requested) except for portions that the University is required by law to treat as confidential. The AVPHR shall also send copies of the special panel report to the responsible University officials, including the vice president(s) responsible for oversight of the status group(s) to which the parties belong.
4. If the special panel concludes that sexual harassment occurred, the AVPHR

will forward a copy of the special panel report to a University official responsible for implementing corrective or disciplinary action. After reviewing the special panel report, a responsible University official will decide whether to impose corrective or disciplinary action, consistent with that official's authority. A responsible University official will notify the parties in writing of the disposition, and the basis for that disposition.

J. Review of special panel decision

1. A party dissatisfied with a special panel decision may submit a request for review to the AVPHR, who will transmit the request to the vice president(s) responsible for oversight of the status groups to which the parties belong. For example, when the Complainant is a staff member and the Respondent a faculty member, the AVPHR and the Executive Vice President for Academic Affairs will jointly review the matter; when Complainant and Respondent are both faculty members, the Executive Vice President for Academic Affairs will review the matter.
2. The request for review must be in writing and set forth reasons why the special panel decision should be modified or overturned. The request for review must be based on the hearing record and may not present new evidence or testimony.
3. The request for review must be submitted within 15 business days after the party's receipt of the special panel decision. If the request is not received by then, the special panel decision will be the final University decision on the complaint.
4. The Vice President(s) will strive to issue a final decision on the review, based on the hearing record, within 20 business days following submission of the request for review. The decision of the Vice President(s) shall be the final decision on the complaint within the University.
5. When a special panel decision that includes a finding of sexual harassment is

final, or when the final decision on a review is issued, the AVPHR will provide a copy of it to the University official(s) responsible for implementing corrective or disciplinary action. Any corrective or disciplinary action taken shall be within the discretion and consistent with the authority of the responsible University official. A range of relevant considerations should be taken into account in determining the extent of sanctions, such as the severity of the offense, the effect of the offense on the victim and on the University community, and the Respondent's record of past offenses, if any. Respondent will be promptly notified of the outcome.

6. A responsible University official shall send a copy of the final decision to the parties (at their home addresses of record, by courier, overnight mail or certified mail, return receipt requested) except for portions that the university is required by law to treat as confidential.