

## POLICY ON SEXUAL HARASSMENT

It is the policy of Arkansas Tech University to maintain the University community as a place of work and study for staff, faculty, and students free of harassment, including sexual and gender harassment and all forms of sexual intimidation and exploitation. All students, staff, and faculty should be aware both that the University is concerned and prepared to take action to prevent and correct such behavior.

Sexual harassment by any faculty, staff or student is a violation of both law and University policy and will not be tolerated at Arkansas Tech University. The University considers sexual harassment to be a very serious issue and shall subject the offender to dismissal or other sanctions following the University's investigation and substantiation of the complaint and compliance with due process requirements.

The determination of what constitutes sexual harassment will vary with the particular circumstances, but it may be generally described as repeated and unwanted sexual behavior, such as physical contact and verbal comments or suggestions that adversely affect the working or learning environments of others.

EEOC Guidelines define sexual harassment as unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is either explicitly or implicitly made a condition of an individual's employment with the University or a factor in the educational program of a student; and/or
2. Submission to or a rejection of such conduct by an individual is used as the basis for an employment or academic decision affecting such individuals; and/or
3. Such conduct has the purpose or effect of substantially interfering with an individual's right to achieve an educational objective or to work in an environment free of intimidation, hostility, or threats stemming from acts or language of a sexual nature.

Although sexual harassment most frequently occurs when there is an authority differential between the persons involved (faculty member and student, supervisor and staff member), it may also occur between persons of the same status (e.g. faculty-faculty, staff-staff, student-student). Both men and women may be victims of sexual harassment and sexual harassment may occur between individuals of the same gender.

Because of the unique situations which exist between students, faculty, supervisors and staff, relationships in the workplace and on campus should at all times remain professional. In particular, due to the professional power differential between faculty and students, faculty members are encouraged to remain professional in all relationships with students. As teachers, professors encourage the free pursuit of learning by their students. They hold before them the best scholarly standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to assure that their evaluations of students reflects each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students. They acknowledge significant academic or scholarly assistance from them. They protect their academic freedom.

Sexual harassment may create a hostile, abusive, demeaning, offensive or intimidating environment. It is manifested by verbal or physical actions, including gestures and other symbolic conduct. Sexual harassment is not always obvious and overt; it can also be subtle and covert. A person who consents to sexual advances may nevertheless be a victim of sexual harassment if those advances were unwelcome.

If a professor's speech or conduct takes place in the teaching context, it must also be persistent, pervasive and not germane to the subject matter. The academic setting is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material.

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

- Verbal abuse of a sexual nature, which is considered to include, but is not limited to epithets, derogatory comments, sexual advances, invitations, propositions, comments, or requests for sexual favors;
- Intimate unwelcome physical contact;
- Repeated unwanted discussions of sexual matters;
- Use of sexual jokes, stories, analogies or images which are not related to the subject of the class or work situation;
- Ogling, leering, or prolonged staring at another person's body;
- Display or use of sexual graffiti or sexually-explicit pictures or objects;
- Sexually suggestive jokes, comments, e-mails, or other written or oral communications;
- Condition, explicitly or implicitly, academic or employment decisions upon an individual's submission to requests for sexual favors or conduct.

Individuals who are aware of or have been subjected to sexual harassment are encouraged to promptly contact the Affirmative Action Officer.

## **Resolution Options**

The University provides two options for reporting and resolving matters involving sexual harassment: an informal resolution process and a formal complaint process. An individual who believes that he or she has been subjected to sexual harassment and seeks to take action may use the informal resolution process, the formal complaint process, or both. First use of the informal resolution process will, in most cases, be consistent with fairness and correcting an undesired circumstance with a minimum of emotional and professional damage. The informal resolution process and formal complaint resolution process are not mutually exclusive and neither is required as a pre-condition for choosing the other; however, they cannot both be used at the same time.

### **Informal Resolution**

An individual who believes that he or she has been subjected to sexual harassment should contact the Affirmative Action Officer who will review the facts presented. The individual, if they are a faculty member, may additionally contact the Faculty Welfare Committee representative. No person shall be subject to restraints, interference or reprisal for action taken in good faith to report or to seek advice in matters of sexual harassment.

Informal resolution may be appropriate when the conduct complained of is not of a serious or repetitive nature and disciplinary action is not required to remedy the situation. As there is no formal investigation involved in the informal resolution process, there is no imposition of discipline. University methods for resolving complaint informally include, but are not limited to:

- Mediating between the victim and the individual who is engaging in the offensive conduct;
- Aiding in the modification of the situation in which the offensive conduct occurred;
- Assisting a department or division with the resolution of a real or perceived problem; or
- Arranging for a documented meeting between the person allegedly engaged in the offensive conduct and a University official that involves, at a minimum, a discussion of the requirements of the Sexual Harassment policy.

The University will document any informal resolution. The documentation will be retained by the Affirmative Action Officer and, if a faculty member is involved, and so requests, the Faculty Welfare Committee representative. The documentation will be kept confidential to the extent permitted by law. If a complaint is filed in a faculty or staff's permanent record, the faculty or staff member must be notified. An informal resolution meeting is not a precondition for filing a formal written complaint.

### **Formal Complaint**

An individual who believes that he or she has been subjected to sexual harassment may submit a written formal complaint setting forth all pertinent facts to the Affirmative Action Officer who will review and investigate the facts presented. The individual, if they are a faculty member, may also request that a copy of the complaint be sent to the Faculty Welfare Committee representative. No person shall be subject to restraints, interference or reprisal for action taken in good faith to report or to seek advice in matters of sexual harassment.

## **Investigation**

A formal investigation will be initiated if the complaint articulates sufficient specific facts which, if determined to be true, would support a finding that the University's policy was violated. The Affirmative Action Officer will give the alleged offender a copy of the complaint. The alleged offender is also provided with an opportunity to respond to it within five (5) working days (ten working days if school is not in session) of receipt by the alleged offender. The letter will include a statement advising the alleged offender that retaliation against the individual who filed the complaint is prohibited and will subject the alleged offender to appropriate disciplinary action if retaliation occurs.

Both the individual submitting the complaint and the alleged offender will be individually interviewed as a part of the official investigation as will any witnesses or persons who have information related to the complaint. Documents relevant to the complaint will also be examined. Facts will be considered on the basis of what is reasonable to persons of ordinary sensitivity and not on the particular sensitivity or reaction of an individual. In the course of a complaint investigation, the University will attempt to maintain confidentiality for all parties involved. However, there can be no guarantee of confidentiality and anonymity based upon the course and scope of the complaint investigation.

Findings will be based on the totality of the circumstances surrounding the conduct complained of, including, but not limited to:

- the context of the conduct;
- the severity;
- the frequency; or
- whether the conduct was physically threatening, humiliating, or was simply offensive in nature.

## **Representation**

During the complaint process, the individual making the complaint and the alleged offender may designate and thereafter be accompanied by an advisor of his or her choosing at meetings and interviews at which he or she is present; however, no representative may examine witnesses or otherwise actively participate in a meeting or interview.

### **1. Report of Findings and Recommendation – Complaints Against Non-Students**

The Affirmative Action Officer will provide a proposed statement of findings, copies of relevant documents, and any physical evidence considered to the appropriate vice president within ten (10) working days (twenty working days if school is not in session) of receipt of the statement from the person whose conduct was complained about.

The appropriate vice president will promptly notify the individual bringing the complaint and the alleged offender that the investigation has been completed and attach a copy of the proposed statement of findings. A student's identifiable information, if any, which is confidential by law, will be redacted. Within five (5) working days (ten working days if school is not in session) from the date of notification, the individual bringing the complaint and the alleged offender may each submit, for consideration by the appropriate vice president, such comments and corrections as they may have. Within ten (10)-working days (twenty working days if school is not in session) from the date of notification, the Vice President shall take one of the following actions:

- Dismiss the complaint if the result of the completed investigation is inconclusive or there is insufficient reasonable, credible evidence to support the allegation(s); or
- Find that the Sexual Harassment policy was violated.

If the Vice President determines that this policy was violated, he or she shall determine a disciplinary action that is appropriate for the severity of the conduct. The Vice President shall inform the individual bringing the complaint, accused individual and the appropriate dean or department head of his or her decision, and shall attach a copy of the final statement of findings. Copies of the Vice President's letter, the attached statement of findings, and relevant documents shall also be sent to the Affirmative Action Officer.

Disciplinary action may be appealed by the employee who is disciplined. Appeals for faculty shall be made, pursuant to the Faculty Handbook, to the Faculty Welfare Committee. Appeals for non-faculty shall be made, pursuant to Classified Employee Handbook, in the form of a formal grievance hearing.

## **2. Report of Findings and Recommendation – Complaints Against Students**

The Affirmative Action Officer will provide a proposed statement of findings, copies of relevant documents, and any physical evidence considered to the Vice President for Student Services for a determination pursuant to Article IV of the Arkansas Tech University Student Code of Conduct.

### **Filing of a False Complaint**

Individuals whose complaint is found to be both false and have been made with malicious intent will be subject to disciplinary action, which may include, but is not limited to, demotion, transfer, suspension, expulsion or termination of employment.

## **POLICY ON CONSENSUAL RELATIONS**

Sexual relations between students and faculty members with whom they also have an academic or evaluative relationship are fraught with the potential for exploitation. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in an academic or evaluative role, make voluntary consent by the student suspect. Even when both parties initially have consented, the development of a sexual relationship renders both the faculty member and the institution vulnerable to possible later allegations of sexual harassment in light of the significant power differential that exists between faculty members and students.

In their relationships with students, members of the faculty are expected to be aware of their professional responsibilities and to avoid apparent or actual conflict of interest, favoritism, or bias. When a sexual relationship exists, effective steps should be taken to ensure unbiased evaluation or supervision of the student.

An employee, whether faculty or staff, should not develop a dating or sexual relationship with a student whenever the employee is in a “position of authority” over that student. An employee is in a “position of authority” whenever he or she is that student’s teacher, or when the employee is either evaluating or supervising the student. The “position of authority” may also include formally advising the student or when that student is a major in the employee’s department.

A supervisor, whether faculty or staff, should also not develop a dating or sexual relationship with an employee when the supervisor has a “position of authority” with respect to the employee.

Should a dating or sexual relationship develop or exist, the person with the greater position of authority must consult with an appropriate supervisor. The supervisor, with advice from University Counsel, shall develop a mechanism to ensure that objective evaluation is achieved, that conflicts of interest are avoided, and that the interest of the other individual and University are fully protected. If this policy is violated, any discipline, if necessary, shall be reviewed on a case by case basis.

#### \*CONFLICTS OF INTEREST

All members of the Arkansas Tech University community, including faculty, staff and members of the Board of Trustees, should remain free from conflicts of interest. The following describe areas of possible conflict of interest:

- Using or attempting to use their official position to secure special privileges or exemptions for themselves or their spouses, children, parents, or other persons standing in the first degree of relationship, or for those with whom they have a substantial financial relationship that are not available to others except as may be otherwise provided by law.
- Accepting employment or engaging in public or professional activity while serving as public officials and in which they might reasonably expect would require or induce to them to disclose any information acquired by them by reason of their official positions that is declared by law or regulation to be confidential.
- Disclosing or using information gained by reason of their position for their personal gain or benefit.
- Receiving gifts for the performance of the duties and responsibilities of their position. This does not apply to gifts from friends, professional associates and relatives that are not work related or to awards recognizing achievement. Nominal gifts (having a value of \$100 or less) among faculty, staff and students are also excluded.

\*Approved Board of Trustees 10/21/10

