MOTT COMMUNITY COLLEGE
IN-SERVICE

SEXUAL HARASSMENT

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SEXUAL HARASSMENT AND POTENTIAL LIABILITY

I. INTRODUCTION

Sexual harassment is one of the more serious and potentially costly concerns facing employers today. Educational institutions have been held liable for sexual harassment by staff and students, as well as for related or resulting inappropriate physical touching or contact. Further, employers have been held liable for negligent hiring and for the retention of employees who have documented histories of misconduct.

In general, sexual harassment in the education setting arises in one of three contexts: when an employee harasses a co-worker; when an employee harasses a student; when a student harasses another student. This outline will provide an introduction to the different types of sexual harassment and the potential liability of educational institutions and employees when adults and/or students are sexually harassed.

II. TYPES OF SEXUAL HARASSMENT

A. QUID PRO QUO: When submission to or rejection of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature is used as a condition or factor in decisions affecting an individual's employment, or is used as a condition or basis for educational decisions.

* In general, the following factors must be proved to prevail in a quid pro quo sexual harassment action:

1. The individual belongs to a protected group;

2. The individual was subject to unwelcome sexual harassment in the form of sexual advances, requests for sexual favors, or conduct or communication of a sexual nature;

3. The harassment complained of was based upon sex;

4. The individual's reaction to harassment complained of affected tangible aspects of the employee’s compensation, terms, conditions or privileges of employment, or the student's educational rights, benefits, privileges or opportunities;

5. Respondent superior.
B. **HOSTILE ENVIRONMENT:** When conduct or communication has the purpose or effect of substantially interfering with an individual's employment or ability to learn, creating an intimidating, hostile or offensive employment or learning environment. In evaluating the severity of the conduct, the educational institution should consider "the constellation of surrounding circumstances, expectations, and relationships." *Davis, infra* at 651.

* In general, the following factors must be proved to prevail in a hostile work environment action:

1. The individual belongs to a protected group;

2. The individual was subjected to unwelcome sexual harassment in the form of sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature (including demeaning or dehumanizing references to sex, gender or sexuality);

3. The harassment complained of was based upon sex;

4. The charged sexual harassment had the effect of unreasonably interfering with the employee's work performance and creating an intimidating, hostile, or offensive working environment; or had the effect of unreasonably interfering with the student's educational performance and creating an intimidating, hostile, or offensive learning environment.

5. Respondent superior.

* More specifically, the following factors should be considered in an educational institution setting:

- The degree to which the conduct affected one or more employees/students' ability to work/education (has it limited or denied the student's ability to participate in or benefit from the educational institution's program?)

- The type, frequency, and duration of the conduct (is it sustained and serious?)

- The identity and relationship between the alleged harasser and the subject or subjects of the harassment (is the harasser an authority figure over the employee/student?)
The number of individuals involved (can be committed by or on individuals or groups.)

The age and sex of the alleged harasser and the subject or subjects of the harassment.

The size of the educational institution, location of the incidents, and context in which they occurred (the smaller the educational institution, the fewer incidents it takes to make a large impact.)

Other incidents at the educational institution (a series of incidents not involving the same people could, taken together, create or show an indifference toward a hostile environment.)

Incidents of gender-based, but nonsexual harassment (these can be sufficiently severe to create a hostile environment.)

III. LAWS GOVERNING SEXUAL HARASSMENT

A. STATE LAW

Michigan’s Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq., prohibits educational institutions from discriminating against individuals on the basis of sex, including sexual harassment. The Act defines sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal physical conduct or communication of a sexual nature" when:

(1) submission to the conduct is made a condition for obtaining employment, accommodation, education or housing;

(2) submission or rejection of the conduct is a factor in decisions regarding the person’s employment, accommodation, education or housing; and

(3) the conduct "has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, education, or housing environment." MCL 37.2103(i)

Thus, educational institutions must be careful not to discriminate against employees or students on the basis of sex, and to treat each allegation of sexual harassment promptly, effectively and in accordance with required local policies and procedures.

B. FEDERAL LAW

When students began bringing claims against educational institutions based upon student-to-student sexual harassment, one basis of proposed liability was Section 1983, which provides:
Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 USCS 1983.

Fortunately, most courts have dismissed Section 1983 claims for peer sexual harassment. However, Section 1983 may still be used where there is a question of misconduct by an educational institution employee.

Likewise, Title VII of the Federal Civil Rights Act of 1964 prohibits an employer from discriminating against an individual “with respect to his compensation, terms, conditions, or privileges of employment” on the basis of sex. 42 U.S.C. § 2000e-2(a)(1).

In order to make a complaint under Title VII, a charge must be filed with the Equal Employment Opportunity Commission (“EEOC”) within 180 days from the date of the alleged violation. The employer is notified that the charge has been filed and the EEOC investigates. The EEOC resolves discrimination charges by closing the case if the evidence does not establish that discrimination occurred or by attempting conciliation to remedy the discrimination if the evidence establishes that discrimination occurred. If the EEOC is unable to conciliate the case, the agency will decide whether to bring suit in federal court; if the agency decides not to sue, it will close the case and give the charging party notice of a ‘right to sue’ within 90 days. Under Title VII, a charging party may request a notice of ‘right to sue’ from the EEOC 180 days after the charge was first filed and may bring suit 90 days after receiving the notice. Remedies available for employment discrimination may include back pay, hiring, promotion, reinstatement, front pay, reasonable accommodation, or other actions that will make an individual ‘whole.’

Title IX of the Education Amendments of 1972, 20 USCS 1682 et seq. is another federal statute which prohibits discrimination on the basis of sex in educational programs or activities and provides as follows:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

This 35 year old statute has, in recent years, found new life. Title IX is being used as a basis to find educational institutions liable when a student sexually harasses another student or is sexually harassed by a teacher or educational institution employee. For a public educational institution to incur liability under Title IX, it must be (1) deliberately indifferent (2) to known acts of discrimination (3) which occur under its control. Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 290-91, 118 S.Ct.1989, 141 L.Ed.2d 277 (1998). For a plaintiff to proceed on a claim against an educational institution under Title IX, a plaintiff must establish a prima facie case showing that: a) she was subjected to *quid pro quo* sexual harassment or a sexually hostile environment; b) she
provided actual notice of the situation to an “appropriate person,” who was, at a minimum, an
official of the educational entity with authority to take corrective action and to end discrimination;
and c) the institution’s response to the harassment amounted to “deliberate indifference.”
Klemencic v. Ohio State University, 263 F.3d 504, 510 (6th (Ohio), 2001)

Courts have found that, although sexual harassment clearly constitutes discrimination under Title
IX, a public educational institution will only be liable for situations in which it exercises
substantial control over both the harasser and the context in which the known harassment occurs.
Specifically, the public educational institution’s deliberate indifference must either directly cause
the abuse to occur or make students vulnerable to such abuse, and that abuse must take place in a
context subject to the institution’s control. Increasingly, the focus of plaintiff’s arguments is
becoming how the educational institution reacted to allegations of sexual harassment and what, if
anything, it did to stop the harassment.

On January 16, 2001, the Office of Civil Rights ("OCR") issued its "Revised Sexual Harassment
Guidance: Harassment of Students by School Employees, Other Students, or Third Parties," notice
of availability for comment at 13 Fed. Reg. Vol. 66 at 5512. A copy of this most recent guidance
is available at http://www.ed.gov/offices/OCR/archives/pdf/shguide.pdf for your review and
reference.

Note that the Office for Civil Rights for the US Department of Education interprets the Family
Educational Rights and Privacy Act (FERPA), 20 USC 1232g, as not in conflict with the Title IX
requirement that educational institutions notify the harassed student of the outcome of its
investigation.

IV. STUDENT TO STUDENT SEXUAL HARASSMENT

The difficult task of defining sexual harassment becomes even more problematic when it is applied
to students. In general, sexual harassment is behavior of a sexual nature which is not welcome,
personally offensive, and interferes with the instructional atmosphere. Examples of sexual
harassment include the following: verbal harassment or abuse; unwanted pressure for sexual
activity; remarks about another person's clothing, body or sexual activities; unnecessary touching,
patting or pinching; constant brushing against another person's body; physical assault; sexually
suggestive actions, including gestures, whistling, insulting sounds or the use of suggestive or
graphic pictures or objects; spreading sexual rumors; spying on someone or watching someone
undress or shower.

Until recently, little consideration was given to the educational institution’s liability for student-to-
student sexual harassment. However, the current trend is toward increased liability for a school's
failure to intervene and prevent known instances of sexual harassment by anyone in the school
setting. In Davis v Monroe County Board of Education, 526 US 629 (1999), the U.S. Supreme
Court decided that a school district could be sued and held liable in a private action for monetary
damages under Title IX of the Education Amendments of 1972, for failing to stop a student from
sexually harassing another student. The Court concluded that educational institutions would be
liable where it had actual knowledge of severe harassment and acted with deliberate indifference to
it. The ruling places an obligation on educational institutions to address student-on-student sexual harassment.

It is yet unclear who must be told in order for the “actual knowledge” component of the Court’s decision to be met. Prior OCR decisions would have the “actual knowledge” triggered by a report to any school employee. In Davis this component was satisfied because the harassment was reported to a school principal and three teachers. However, the Court did not explicitly determine how high up the chain of command the student must go before actual knowledge will be imputed to the educational institution. Some advocates in favor of the Title IX liability in this setting will argue that it is enough to tell the instructor, while more cautious proponents suggest that students inform as high a level official as possible. Meanwhile, educational institutions should advise all faculty to inform the appropriate school official of all incidents of alleged peer sexual harassment so as not to subject the College to liability.

The Appropriate Response

The next element that plaintiffs are required to satisfy under the Court’s ruling is that the educational institution acted with “deliberate indifference” to the reported sexual harassment. But like the previous component, this issue is unsettled. Certainly if an educational institution takes no action in response to the complaint, there will be liability. However, there is a gray area where an institution takes some level of action to end the harassment, which is argued to be inadequate. The Davis Court states that to satisfy the deliberate indifference standard, the recipient of actual notice of harassment “must merely respond to known peer harassment in a manner that is not clearly unreasonable.” Davis, supra at 648-649. While there was no final recommendation given on what level of action is required, educational institutions should act promptly and appropriately to claims of student on student sexual harassment. However, the Office of Civil Rights Guidance requires that school officials with actual notice of possible harassment of students, regardless of whether a student makes a complaint or requests action, “should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again.” See pg. 53, infra. Ultimately, lower courts and juries will decide what level of response shows “deliberate indifference.”

Finally, plaintiffs must show that the alleged sexual harassment was so “severe, pervasive, and objectively offensive” that students are precluded from benefiting from a public education. It is not enough to show that a student has been “teased” or “called offensive names.” Such language should serve to set the standard high enough so that immature behavior, unlike several verbal and physical misconduct, is not the basis for Title IX liability.

V. EMPLOYEE TO STUDENT HARASSMENT

There is a private right of action for monetary damages based on Title IX of the Education Amendments of 1972, 20 USC 1681 et seq., against an educational institution that, after receiving actual notice of sexual harassment, exhibits a "deliberate indifference" towards the discrimination by failing to institute corrective measures. Gebser v Lago Vista Independent
For a plaintiff to proceed on a claim against an educational institution under Title IX, a plaintiff must establish a prima facie case showing that: a) she was subjected to *quid pro quo* sexual harassment or a sexually hostile environment; b) she provided actual notice of the situation to an “appropriate person,” who was, at a minimum, an official of the educational entity with authority to take corrective action and to end discrimination; and c) the institution’s response to the harassment amounted to “deliberate indifference.” Courts have noted, in the college or university setting, notice can be particularly difficult to define. *Frederick v. Simpson College*, 149 F.Supp.2d 826, 836 (S.D.Iowa, 2001). There are often more levels of administration at a college or university than there are in an elementary or secondary school. The Court also noted that a different manner and level of oversight is provided by a college or university administration, as the students are adults and generally not children.

However, this does not preclude an educational institution from liability as seen in *Mandsager v. University of North Carolina at Greensboro*, 269 F.Supp.2d 662, 675 (N.C., 2003), where a doctoral candidate alleged that she was subjected to sexual comments, a sexual proposition, and physical contact by a professor. When she initially complained about this conduct, the Dean simply replied, “William will be William.” In addition, when she went to another Dean to complain, he suggested to her that by making a complaint against a highly regarded faculty member, she had chosen not to receive her PhD. The court determined that this Plaintiff stated a claim under Title IX and a jury could determine that the institution’s response was so inadequate that it amounted to “deliberate indifference.”

In addition to liability for the College, the teacher or staff member found to have engaged in sexual harassment could be liable to a student for their actions. In one case, the Court found there was sufficient evidence for a jury to determine that a professor’s comments to a student inside and outside of class were pervasive, severe, based on the student’s sex, and interfered with the student’s educational process. *Hayut v. State University of New York*, 352 F.3d 733, 738-739 (2nd Cir, 2003). Initially, the comments in this case consisted of the professor calling the student by the nickname “Monica,” in light of her supposed physical resemblance to Monica Lewinsky. According to the testimony of some witnesses, the student initially laughed at the nickname, rolled her eyes, or simply shrugged her shoulders, giving no outward indication that the comments troubled her. However, the professor’s use of this nickname persisted even after the student requested that he stop. The student maintained that the “Monica” comments occurred at least once per class period throughout the rest of the semester and persisted in her absence. The student also maintained that, on occasion, he addressed her as “Monica” outside of class when they happened to pass each other. In addition to the “Monica” comments, the professor referred to some of former President Bill Clinton’s and Lewinsky’s more notorious conduct, including “How was your weekend with Bill?”, which the plaintiff claimed he asked virtually every Tuesday morning class session, “Be quiet, Monica. I will give you a cigar later”, and “You are wearing the same color lipstick that Monica wears.” The court concluded that the comments were sufficiently offensive and severe and that a jury could conclude that the professor’s comments constituted sexual harassment thereby holding him liable for his harassing behavior. At the same time, the court dismissed claims made by the student against the University because she could not show that University officials were deliberately indifferent to the student’s allegations.
VI. EMPLOYEE TO EMPLOYEE HARASSMENT

To hold an employer liable for sexual harassment by one employee to another employee under the Elliott-Larsen Civil Rights Act, the plaintiff must demonstrate that "either a recurring problem existed or a repetition of an offending incident was likely and that the employer failed to rectify the problem on adequate notice." Chambers v Trettco, Inc, 244 Mich App 614, 618 (2001). Notice occurs based on an objective standard of whether in the "totality of the circumstances," a "reasonable employer would have been aware of the substantial probability that sexual harassment was occurring." Id. The Court in Chambers held that the plaintiff's general indication to her regional director over the phone that "something was wrong" did not sufficiently alert him to the alleged occurrences of sexual harassment. Id. at 614.

The Michigan Supreme Court has held that an agent who sexually harasses an employee in the workplace can be held individually liable under the Act. Elezovic v Ford Motor Co, 472 Mich 408, 411 (2005).

VII. SAME-SEX SEXUAL HARASSMENT AND SEX-STEREOTYPING


Further, according to the Office of Civil Rights Guidance, harassing a student because he/she does not conform with stereotyped notions of masculinity and femininity can violate Title IX "if it is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program." If a student heckles another student regarding his sexual orientation but does not make comments of a sexual nature, the actions would not necessarily violate Title IX (although the student could certainly be disciplined under anti-bullying and other policies.) On the other hand, if a student committed severe verbal, nonverbal or physical acts of aggression, intimidation or hostility based on sex or sex-stereotyping, the conduct could form the basis for a Title IX claim.

Consequently, schools should respond to complaints from a student regarding alleged same-sex sexual harassment just as it would if the victim were heterosexual.

VIII. INVESTIGATING SEXUAL HARASSMENT ALLEGATIONS

In addressing allegations of sexual harassment, it is important for employees to be aware of some of the barriers that may prevent an employee/student from complaining about sexual harassment from peers or from a faculty member:

A. They may be confused or not understand what it means to be sexually harassed and may not feel that the definition or concept of sexual harassment applies to them or their situation;
B. They may fear that the harasser will retaliate against them; that others will not believe them, or may ridicule them or blame them for the harassment;

C. They may want to avoid conflict or may not want to hurt anyone, especially a respected authority figure;

D. They may be confused about the educational institution's procedures for dealing with allegations of sexual harassment and may feel that they are not prepared to take actions required by the educational institution's procedures;

E. They may feel that they are in some way responsible for provoking the harassment;

F. They may like the extra attention he or she is receiving from the harasser.

Bearing these factors in mind, the following are some suggestions for addressing complaints of sexual harassment in an effective, efficient manner which will lower the risk of the educational institution and individual employee liability for sexual harassment under state and federal laws:

- Develop a sexual harassment policy and distribute it to all staff and students;

- Develop and distribute a sexual harassment complaint procedure that permits alternative avenues for employees/students to express concerns. Remember, the alleged harasser could be the employee's immediate supervisor or the student's teacher or principal;

- Develop an effective and sensitive procedure for conducting investigations of alleged sexual harassment;

- Provide training for all staff and students on the issue of sexual harassment;

- Treat all allegations seriously;

- Investigate all allegations immediately.

  * Be guided by due process and just cause.
  * Base confidentiality on a "need to know" basis.
  * Meet with an interview staff, students and parents who may have information regarding the allegations.
  * Review all available records, such as student and personnel records, previous complaints, calendars, etc.

- If necessary, recommend appropriate remedial action, including discipline and possible suspension or termination.

- Follow-up and make sure the problem has been corrected.
- Keep a detailed record of your investigation and any subsequent action taken.

Make sure you tell the complainant how the matter was resolved.
5201 Sexual Harassment

General: Sexual harassment is unlawful discrimination on the basis of sex and is a form of misconduct which undermines the integrity of the employment and student relationship. All students, faculty and staff must be allowed to work in an environment free from unsolicited and unwelcome sexual overtures. Sexual harassment does not refer to occasional compliments. It refers to behavior which is not welcome, which is personally offensive, which weakens morale, and which, therefore, interferes with the academic or work effectiveness of its victims as well as co-workers and students.

The College is committed to providing a safe, healthy environment for all students, employees and individuals associated with the College, one which promotes respect, dignity, and equality. It is the purpose of this policy to create and preserve an educational environment free from unlawful sexual harassment and/or discrimination on the basis of sex.

The following general policy statements apply:

1. All sexual harassment complaints will be treated seriously. However, any frivolous or false complaint that is made in bad faith or is malicious in intent will also be treated seriously and individuals making such complaints will be subject to discipline, up to and including termination. This policy applies to all persons in the College community. College community is defined as the Board, Administration, faculty, employees, students and/or third-parties (i.e. College visitors, vendors, contractors, consultants, agents, maintenance workers, etc.).

2. The College strictly prohibits any form of sexual harassment on College grounds, in College vehicles, and/or at all College-sponsored activities, programs, and events, including those that take place at locations outside the College. The College also strictly prohibits all forms of sexual harassment against individuals associated with the College, whether or not the harassment occurs on College grounds.

3. The College encourages and expects all victims of sexual harassment and persons with knowledge of sexual harassment to report the harassment immediately. All complainants have the right to be free from retaliation of any kind.

4. The College will investigate all formal, informal, verbal and/or written complaints of sexual harassment of which it becomes aware in a timely manner, and, if substantiated, take appropriate corrective action as necessary to end the harassment, up to and including termination of the person or persons guilty of harassment.

5. Complaint and investigation procedures will be developed under the guidance of the President and his/her designees to ensure enforcement of this policy. The procedures developed will be published and made available to all individuals affected by these policies, as required by law.

Policy Addendum:

1. Definitions and Examples of Prohibited Conduct: Sexual harassment is any unwelcome sexual advance, requests for sexual favors or other behavior of a sexual nature and other verbal or physical conduct of a sexual nature when:
   a. Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual's employment; or
   b. Submission to or rejection of conduct is used as a basis for a decision affecting an individual's employment; or
   c. Conduct or communication which has the purpose or effect of unreasonably interfering with an individual's work; or
   d. Conduct that has the purpose or effect of creating an intimidating, hostile, or offensive work environment.
Sexual harassment encompasses any unwanted sexual attention. Examples of behavior encompassed by the above policy include, but are not limited to, the following:

1. Quid Pro Quo or "something for something" harassment can occur when an individual's behavior is such that a reasonable person would believe that the granting or withholding of tangible academic or job benefit will be based upon the granting of sexual favors.

2. Hostile Work Environment may be created by unwelcome conduct of a sexual nature, including but not limited to the following:
   a. Threats or insinuations which would cause a reasonable person to believe that sexual submission or rejection, will affect his/her reputation, employment, advancement or any condition which concerns the College;
   b. Direct propositions of a sexual nature;
   c. Subtle pressure for sexual activity, an element of which may be conduct such as unwelcome sexual leering, or repeated requests for dates;
   d. Conduct (not legitimately related to subject matter of work in which one is involved) intending to or having the effect of discomforting and/or humiliating a reasonable person at whom the conduct is directed. This may include, but is not limited to, comments of a sexual nature or sexually explicit statements, displaying sexually suggestive objects, or pictures, using crude or offensive language, questions, jokes or anecdotes, and unnecessary touching, patting, hugging or brushing against another person's body.
   e. Physical assault, of a criminal sexual nature. Examples include forcible sexual abuse, or taking indecent liberties with another individual.

3. Confidentiality: It is College policy to respect the privacy and anonymity of all parties and witnesses to complaints brought under this policy. However, because an individual's need for confidentiality must be balanced with the College's obligations to cooperate with police investigations or legal proceedings, to provide due process to the accused, to conduct a thorough investigation, or to take necessary action to resolve a complaint, the College retains the right to disclose the identity of parties and witnesses to complaints in appropriate circumstances to individuals with a need to know.

4. Retaliation Prohibited: Any act of retaliation against any person who opposes sexually harassing behavior, or who has filed a complaint, is prohibited and illegal, and therefore subject to disciplinary action. Likewise, retaliation against any person who has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of a sexual harassment complaint is prohibited. For purposes of this policy, retaliation includes but is not limited to the following: verbal or physical threats, intimidation, ridicule, bribes, destruction of property, spreading rumors, stalking, harassing phone calls, and/or any other form of harassment. Any person who engages in retaliation is subject to immediate disciplinary action, up to and including termination.

5. Policy Awareness, Dissemination and Review: A summary of this Policy and procedures shall be posted in a prominent place in College facilities where employee information is ordinarily displayed.

The Policy will also be published in student registration materials and other appropriate College publications, as directed by the President.

All new employees will receive information about this policy at new employee orientation. All other employees must periodically be provided information regarding this policy, its related procedures and the College's commitment to a harassment-free learning and working environment.

Supervisors and managers who have specific responsibilities for investigating and resolving complaints of sexual harassment are to receive periodic training on this Policy and related legal developments. Individuals acting in a supervisory role must avoid any apparent or actual conflict between their professional responsibilities and personal relationships with those they supervise or who are in their chain of command. Engaging in romantic or sexual
relationships with persons reporting to a supervisor or in the supervisor's chain of command constitutes unprofessional conduct subject to discipline, up to and including discharge, in accordance with the terms of an applicable collective bargaining agreement.

Members of the College community are responsible for knowing and understanding the College's Policy prohibiting sexual harassment. Faculty and staff who do not understand the Policy should contact their immediate supervisor. Supervisors and all others who need assistance in understanding, interpreting or applying the policy should contact the Office of Human Resources for clarification.

Each employee in a supervisory position has the responsibility to prevent illegal activity and must treat every complaint of sexual harassment seriously. Supervisors are required to immediately report incidences or complaints of sexual harassment to the Office of Human Resources. Any employee who is aware of sexually offensive behavior is also responsible for reporting this behavior to the Office of Human Resources.

LEGAL REF: 42 U.S.C. 2000e et seq., MCL 37.2101 et seq., as amended

Reviewed: June 22, 2009
Reviewed: October 19, 2009
Approved: October 26, 2009
Mott Community College
Procedure for Reporting and Investigating
Sexual Harassment and Other Unlawful Harassment Claims

(This procedure ONLY applies to complaints of Sexual and Unlawful Harassment involving employees, students, and any other individuals associated with the College.)

Appropriate Office for Reporting:

• If you are a student who has been harassed by another student, you should submit your complaint to the Registrar in the Student Services Office
• All other complaints of harassment against an employee (faculty, staff, administrators) or any other individual associated with the College should be directed to the Human Resources Office.

Step 1 – The person alleging that sexual harassment (or any type of unlawful harassment) has occurred ("the Complainant") must go to the appropriate office (see above) and complete the proper complaint form. The appropriate office (see above) will assist the Complainant, if needed/requested. A representative or designee of the appropriate office will then conduct an initial interview with the person making the complaint to ascertain the relevant facts.

If the Complainant initially reports the complaint to someone other than a representative or designee from the appropriate office i.e., that person should respond as follows: listen carefully, do not jump to conclusions or take sides, document the facts as given, direct the person to go to the appropriate office (see above), and promptly follow-up with that office to notify them of the complaint and provide them with your documentation. Persons with knowledge of and/or facts pertaining to a complaint must maintain confidentiality as much as possible and must not disclose the information to unnecessary third parties.

Step 2 – The representative or designee will conduct any necessary or appropriate preliminary investigation and may appoint an outside investigator(s) to conduct a portion of or the entire investigation. When the preliminary investigation has produced sufficient information to warrant notice, the appropriate office or its designee will notify the person accused of harassment and his/her labor representative, if applicable, of the complaint.

Step 3 – Following the preliminary investigation, the representative or designee will promptly meet with the person accused of harassment and his/her labor representative, if applicable, to discuss the basis for the complaint and to document his/her response. The person accused will be given the opportunity to present facts and/or evidence that supports his/her response. The representative or designee will also discuss the non-retaliation provision of the Sexual Harassment policy with the accused person.

Step 4 – The representative or designee will complete its investigation which may include but is not limited to the following: interviewing witnesses to the alleged harassment; interviewing witnesses/individuals who may have relevant information regarding the alleged harassment; re-interviewing witnesses/individuals; and using all investigative methods available to determine what action should be taken, if any. Only those details that are absolutely necessary to be discussed will be
revealed to witnesses during interviews. Confidentiality will be maintained as much as possible throughout the investigation.

**Step 5** – If the results of the investigation support that disciplinary action is warranted, the representative or designee will meet with the alleged harasser’s supervisor (if a College employee), discuss the results of the investigation, and recommend the appropriate disciplinary action. If the alleged harasser is a vendor, appropriate notice and action will be taken with the vendor firm. If the alleged harasser is a student, action will be taken under the Student Code of Conduct framework and procedures. The representative or designee will notify the Complainant of the net results of the investigation.

**Step 6** – If the results of the investigation support that disciplinary action is not warranted, or if the results of the investigation are inconclusive, both the complainant and the person accused will be notified accordingly by the representative or designee of the appropriate office.
Mott Community College

Sexual Harassment & Other Unlawful Harassment Complaint Form
(This form should only be used to report incidents of suspected sexual or unlawful harassment. Please bring or forward this form to the appropriate office as described immediately below.)

Appropriate Office for Reporting:
- If you are a student who has been harassed by another student, you should submit your complaint to the Registrar in the Student Services Office
- All other complaints of harassment against an employee (faculty, staff, administrators) or any other individual associated with the College should be directed to the Human Resources Office.

Name: ________________________ Date of Incident: ________________________

Job Title (if applicable): ________________________

Department: ________________________ Supervisor: ________________________

Statement of what happened (Include as many details as possible and use back of form if necessary):

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

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________________________________________________________________________

________________________________________________________________________

Names of people who witnessed the incident or who may have knowledge of the incident:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Signature: ________________________ Date: ________________________
Dos and Don’ts Regarding Sexual Harassment: A Checklist for Supervisors

Sexual harassment remains a prevalent problem in the workplace. Employers need to establish workable policies and train supervisors to respond appropriately to complaints about sexual harassment. Some of the largest jury awards in employment-related litigation result from employers’ failure to establish these policies or respond in a timely, effective way to complaints of sexual harassment.

Common mistakes about sexual harassment:

1) “Sexual harassment is only about women.” No. The law protects both men and women from sexual harassment. Although most complaints result about a man’s actions towards a woman, employers have responsibility about complaints involving men to men, women to women and women to men.

2) “It is a he said – she said situation, so we can’t do anything about it.” Many complaints about sexual harassment do not involve independent witnesses. That does not mean that an improper act did not occur. Employers need to make judgments about sexual harassment complaints, even when no independent corroborating evidence may occur.

3) “He is too valuable to the organization, so I can’t fire him.” Sometimes there are effective remedies to prevent future incidents of sexual harassment, other than termination. However, if there are substantiated incidents of sexual harassment that the employer is aware of, the employer must take appropriate action. Hoping it won’t happen again or not taking significant discipline
because of the role of the employee in the organization does not adequately address the situation.

4) “It’s a customer, not an employee, who is misbehaving, so we can’t do anything”. Employees are protected by the law from sexual harassment not only from fellow employees, but from customers and vendors. If a customer of an employer is acting improperly, the employer must take affirmative steps to prevent its reoccurrence.

DO’S:

(1) Meet with all subordinates and explain what sexual harassment is, that it is illegal and against the employer’s policy.

(2) Distribute the employer’s policy on Sexual Harassment to all employees, explain how a complaint is filed, how an investigation will be conducted, and what recourse will be taken.

(3) Promptly investigate all complaints of sexual harassment.

(4) Discourage employees from using profane language or displaying sexually suggestive posters, calendars, and other similar material.

(5) Record all complaints or incidents of sexual harassment and the final action taken.

(6) Train supervisors that report to you to be aware of potential problems and immediately call your attention to any suspect activity.

DON’T’S:

(1) Do not ignore complaints of employees.

(2) Do not assume that an employee who complains of sexual harassment provoked the behavior through her dress, office demeanor or horseplay with other employees.

(3) Do not assume that what an employee initially finds acceptable will continue to be unoffensive.
(4) Do not ignore things you see or hear that might either be or lead to sexual harassment just because no one has complained about it.

(5) Do not assume the complaining employee is the only person who might have been offended or harassed.

(6) Do not be insensitive to how a person of a different sex, generation or background will view words or actions by other persons.

(7) Do not ignore any hint of favoritism or bias in exchange for sexual conduct.

Recognition that sexual harassment in the workplace is a significant problem is the first step in preventing liability and avoiding human resource problems. Employers should review the adequacy of their sexual harassment policies and management practices to avoid this liability.
The 'new' sexual harassment is more subtle
The new sexual harassment is much more subtle, and harder to confront
By Kirk Blakeley
Forbes
updated 7:41 a.m. ET, Tues., Aug 11, 2009

When her hotel room phone rang at 2 a.m., Megan McFeely assumed it was an emergency. Maybe a friend or family member was hurt or in trouble. Worried, she sleepily picked it up, only to hear a male co-worker on the other end. Not a superior, he was someone with "definitely more power than I had," urging her to come back down to the hotel bar. It was obvious he was drunk.

"I was astounded," says McFeely, who was in New York with several colleagues for a work conference. "He asked me what I was doing in bed, why wasn't I down there partying with them." McFeely told the man she needed to get some sleep and hung up the phone. But the call continued to weigh on her. "When you're not the one in power, and someone does something like that, you just feel unsafe."

Welcome to the new sexual harassment. It's (usually) not about the stuff you see on Mad Men, and it's not chasing the secretary around the desk. "It's rare now that somebody in the office says, 'Sleep with me or you're fired,'" says David Bowman, a labor and employment partner at the Philadelphia office of Morgan, Lewis & Bockius. "Now it's about managers being very flirtatious at the holiday party. It's about getting drunk together at happy hour and something inappropriate being said or done. People are now aware that certain things are not acceptable, but they still stumble over the subtle areas."

Those subtle areas can include everything from flirtation at a company party to a complimentary text message or an unwelcome invitation to discuss the latest project over dinner or drinks. "There's been a new generation of confusion in this area," says Jay Zweig, an employment lawyer with Bryan Cave in Phoenix.

"Twenty years ago, it was, 'Sleep with me if you want the promotion.' Now most sexual harassment claims have to do with a hostile work environment, someone saying, 'This person is bothering me. I can't do my work. I'm distracted and uncomfortable.'"

Much of the problem is that newer technology — e-mail, IM, texting or posting on social-networking sites — makes it much easier for comments to be misconstrued on many levels. Says Bowman: "When you talk in person, 80 percent of what you say is in your tone and body language. With technology, all of that is gone." If you admire an employee's new haircut while she is in your office, she can read your tone and body language; and you can read hers. However, a late-night text message admiring your employee's new haircut can take on a lascivious tone, even if that is not the intention.

A 27-year-old professional woman tells the story of how one of her superiors, a flirty married man with children, who, after overhearing a previous comment she'd made to a female co-worker about buying a new dress, sent her a late-night e-mail from his personal account, telling her he couldn't wait to see her in the dress.

"I'm sure you will look amazing in it," he wrote. The woman responded that she didn't appreciate him sending an e-mail like that to her work account, and he claimed it was a mistake and "half-apologized." Later, he sent her an IM that she feels was "completely inappropriate." She remembers telling her co-workers she would have to block him.

The woman says she never reported the incidents to her direct superior or human resources. "With a staff that small, I knew that any complaint would be public knowledge within seconds," she says, "and I didn't have someone I could go to and feel safe talking about a sexual harassment policy."

Says Zweig: "Sometimes employees don't understand that if you are at home, and send something from a private e-mail account to a co-worker, that it can still be used against you."

http://www.msnbc.msn.com/id/32365068/ns/business-forbescom/from/ET/print/1/display...
And because electronic conversation is such an integral part of office communication, people might feel compelled to respond to it, even if the message makes them uncomfortable. "Someone might write back 'LOL' just to say something, and then the person thinks what they wrote is welcomed," says Bowman, who adds that emoticons can also be a source of misunderstanding: "People use those little winks. Those things can be completely misconstrued, on both ends."

Rick Brenner, a management consultant and workplace politics expert in Cambridge, Mass., says that while a one-time unwelcome electronic message may just be an aberration, a pattern of them, with you or with other employees, could spell problems. Rather than running to human resources, Brenner suggests tactfully trying to find out if this person has a history of this kind of thing.

But he acknowledges that if there is a long-standing history of this issue, management may already know about it and have chosen not to act. In this case, he says, you might want to consider finding another job. "The legal path is not for the faint of heart," he says. "You need emotional and financial resources. It depends how you want to spend your life."

Social-networking sites like Facebook and MySpace can be another potential source of trouble. "Sites like this can become fertile ground for someone's fantasy life," says Brenner. "If you're trying to maintain a professional stance at work and don't want any entanglements, be careful about what you put up." Innocent vacation photos of you in your bikini may unwittingly draw unwanted attention at work. Brenner recommends having separate profiles for professional and personal contacts, or just sticking to a professional site like LinkedIn for your work colleagues.

Another gray area is office affairs. Even though they may be consensual, the aftermath of an affair gone wrong can be messy for all around. No doubt the married head of surgery at Brooklyn's Maimonides Medical Center, Dr. Patrick Borgen, learned this the hard way.

When a female doctor, Dr. Petra Rietschel, with whom he was reported to have had a two-year affair, was fired two months after their relationship ended, she filed sexual harassment charges in Brooklyn Supreme Court. Though she and Borgen worked in separate departments, and he was not her supervisor, experts say the burden of proving that she was fired for legitimate work reasons will still be with the hospital, given the suspect timing of her termination. Says Zweig: "I advise companies to consider non-fraternization policies. Workplace relationships can be volatile whether they are clandestine or open. Invariably, when they end, it's hard to go back to just being friend and co-worker."

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