

## POLICY ON SEXUAL HARASSMENT

### **POLICY**

It is the policy of the Jacob D. Fuchsberg Law Center of Touro College to prohibit harassment of employees or students on the basis of sex. This policy is related to and intended to be in conformity with the Equal Employment Opportunity policy of the Law Center to recruit, employ, retain and promote employees without regard to sex, age, race, color or creed. Prompt investigation of allegations will be made on a confidential basis, and prompt and appropriate corrective action will be taken.

It is a violation of this policy for any member of the Law Center community to engage in sexual harassment.

### Part I. Sexual Harassment of the Exploitative or Coercive Variety

#### **Section 1 Rationale.**

(a) Sexual harassment is reprehensible and will not be tolerated by the Law Center. It subverts the mission of the Law Center and threatens the careers, educational experience, and well-being of students, faculty, and employees. Relationships involving sexual harassment have no place within the Law Center. Sexual harassment is destructive to individual students, faculty, employees, and the academic community as a whole. When a student, employee, or

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

faculty member submits or is pressured to submit to unwanted sexual attention, the Law Center's ability to carry out its mission is undermined.

(b) Sexual harassment is especially serious when it threatens relationships between teacher and student or supervisor and subordinate. In such situations, sexual harassment unfairly exploits the power inherent in a faculty member's or supervisor's position. Through grades, wage increases, recommendations for employment opportunities, further graduate study, tenure, promotion and the like, a faculty member or supervisor can have a decisive influence on a student's, employee's or other faculty member's career at the Law Center and beyond.

(c) While sexual harassment most often takes place in situations of a power differential between the persons involved, the Law Center also recognizes that sexual harassment may occur between persons of the same Law Center status. The Law Center will not tolerate behavior between or among members of the Law Center community that creates any unacceptable working or educational environment.

#### **Section 2. Prohibited Acts.**

No member of the Law Center community shall engage in sexual harassment. For the purposes of this policy, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when

(a) Submission to such conduct is made explicitly or implicitly a

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

term or condition of an individual's employment or status in a course, program, or activity;

(b) Submission to or rejection of such conduct is used as a basis for an employment or educational decision affecting an individual; or

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or learning, or of creating an intimidating, hostile, or offensive environment for work or learning.

### **Section 3. Examples of Sexual Harassment**

Sexual harassment encompasses any sexual attention that is unwanted. Examples of the verbal or physical conduct prohibited by Section 2 above include, but are not limited to:

(a) Physical assault;

(b) Direct or implied threats that submission to sexual advances will be a condition of employment, work status, promotion, grades or letters of recommendation;

(c) Direct propositions of a sexual nature;

(d) Subtle pressure for sexual activity, an element of which may be conduct such as repeated leering;

(e) A pattern of conduct (not legitimately related to the subject matter of a course if one is involved) intended to cause discomfort or humiliate, or both, that includes one or more of the following: (i) comments of a sexual nature; or (ii) sexually explicit statements, questions, jokes, or anecdotes;

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

(f) A pattern of conduct that would discomfort or humiliate, or both, a reasonable person at whom the conduct was directed that includes one or more of the following: (i) unnecessary touching, patting, hugging, or brushing against a person's body; (ii) remarks of a sexual nature about a person's clothing or body; or (iii) remarks about sexual activity or speculations about sexual experiences.

**Section 4. Isolated and Inadvertent Offenses.**

Some types of conduct other than that proscribed by Part I Sections 2 and 3 of this policy may become sexual harassment when the person who is the subject of such behavior makes it clear that such behavior is unwanted. For example, some people may like to be patted or touched on the back or arm as a gesture of support, but it may not be universally liked when a teacher or another person in authority does this. The conduct becomes sexual harassment when a person asks another to refrain from some action or in some other way clearly indicates that the conduct is unwelcome and the individual continues to do it.

**Part II. Procedure**

**Section 1. Establishment of Committee. Investigation and Notice of Charges**

(a) Committee on Sexual Harassment Established. There is hereby established a Committee on Sexual Harassment to hear and determine

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

charges of sexual harassment in violation of this policy. The Committee shall consist of three faculty members and two students appointed by the Dean for a one year term commencing at the beginning of the fall semester. The Dean shall designate one of the faculty members as chairperson of the Committee.

(b) Report and Complaint Procedure. Any student, faculty member, or employee may informally report to the Dean any conduct that is reasonably believed to constitute a violation of this policy. A formal complaint may only be filed by one who reasonably believes himself or herself to be a victim of sexual harassment. Within five (5) days of receipt of such a complaint, the Dean shall take one of the actions listed below:

(1) In any case in which the identity of the perpetrator is unknown, the complaint shall be referred to the Assistant Dean for Student Affairs, who will conduct or direct an investigation for the purpose of identifying the perpetrator. Within thirty (30) days of the referral, the Assistant Dean for Student Affairs shall communicate the status of the investigation to the Dean.

(2) Refer the matter to the Assistant Dean for Student Affairs for informal resolution. Upon receipt of a complaint for informal resolution, the Assistant Dean for Student Affairs shall:

(i) describe to the person making the complaint the available means of informal resolution, which may include meetings between the person making the complaint and the person or persons concerning whom allegations have been made, conducted by the

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

Assistant Dean for Student Affairs;

(ii) conduct such meetings and make such other referrals, including but not limited to psychological and/or educational counselors, as in the judgment of the Assistant Dean for Student Affairs the circumstances may require;

(iii) make every effort to insure the confidentiality of his/her efforts and the privacy of the person making the complaint and the person or persons concerning whom allegations have been made;

(iv) in the event no informal resolution is achieved, promptly submit a written report with recommendations to the Dean.

(v) if a matter is referred by the Committee on Sexual Harassment pursuant to Part II Section 1 (d), promptly submit a report of the disposition to the Committee.

No matter shall be informally resolved without the written consent of the person making the complaint and the Respondent.

(3) Upon receipt of a complaint regarding an alleged violation of this policy, which is not appropriate for, or which cannot be resolved through, the informal procedures described above, the Dean shall appoint a member of the administration or a faculty member to serve as Counsel, and shall report the matter to the Counsel.

(c) Investigation.

(1) The Counsel shall investigate the matter. Such investigation shall include gathering relevant evidence, interviewing the person

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

who made the complaint , the person or persons who are alleged to have violated this Policy, and any other person who may have relevant information.

(2) The Counsel shall explain to any person interviewed the procedures involved in resolving complaints of violation of this Policy.

(3) Before referring the matter to the Committee, the Counsel shall notify the person whose conduct is under investigation and shall give that person an opportunity to discuss the matter. The person whose conduct is under investigation may refuse to speak to the Counsel, and the Counsel shall inform the individual of his/her right to refuse to speak. No inference as to the truth of the allegations shall be drawn by the Counsel or the Committee from a refusal to speak.

(4) The Counsel shall make a record of conversations with persons who provide information. That record shall be presented to the provider of such information for review. If approved as a fair representation of the conversation with Counsel such a record shall be signed by the person who gave the information. Following that approval, information obtained by the Counsel shall be provided to the Committee.

(d) Procedure on Conclusion of Investigation. The Counsel shall decide, after completion of the investigation, whether to prepare a Charge for consideration by the Committee.

(1) The Counsel may decide not to prepare a Charge if he/she

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

believes that the allegations are without merit or that insufficient evidence exists to support a Charge. If the Counsel so decides, he/she shall promptly prepare and submit to the Committee a report describing the allegations, the available evidence, and the reasons for the decision not to prepare a Charge. After reviewing this report, the Committee may, by majority vote, direct the Counsel to prepare a Charge, or to refer the matter for informal resolution pursuant to Part II Section 1 (b)(2) hereof. If the Committee concurs with the Counsel's decision not to prepare a Charge, and determines that no attempts at informal resolution are advisable, the Counsel shall notify the person whose conduct was under investigation and the person who made the complaint in writing within 10 days of the Committee's decision.

(2) If the Counsel decides there is sufficient evidence to support a Charge, or if the Committee directs the Counsel to file a Charge in accordance with Part II, Section 1 (e) hereof, the Counsel shall prepare a Charge which shall set forth the conduct in question, the manner in which that conduct allegedly violates the Sexual Harassment Policy, and naming the person charged as the Respondent.

(e) Notice.

The Counsel shall give prompt written notice, by certified mail or by personal service, to the Respondent of the following:

1. A copy of the Charge and the Sexual Harassment Policy;

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

2. A list of expected witnesses and a copy of any documentary evidence;
3. The time and place of the hearing and names of the members of the Committee;
4. A statement that the Respondent may have one peremptory challenge and unlimited challenges for cause;
5. A statement that Respondent may be represented by counsel or other representative;
6. A statement that Respondent will have the right to present evidence at the hearing.

(f) Failure to give adequate notice. Failure by the Counsel to provide notice of any of the above items is not grounds for dismissal of the Charge, but it may be grounds for postponement of the hearing until a time considered appropriate by the Committee.

(g) Right to Prompt Investigation and Disposition. The investigation, Charge and hearing process shall be conducted in a prompt and expeditious manner so as not to prejudice the person whose conduct is under investigation.

(h) Complaints against the Dean or Assistant Dean for Student Affairs.

In the event the person whose conduct is under investigation is the Assistant Dean for Student Affairs, the Dean shall notify the Committee on Sexual Harassment, and the Committee on Sexual Harassment shall designate a tenured member of the faculty to perform the duties that would otherwise be performed under this

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

policy by the Assistant Dean for Student Affairs. In the event the person whose conduct is under investigation is the Dean, the Committee on Sexual Harassment shall designate three (3) tenured members of the faculty to function as a review panel and to perform the duties that would otherwise be performed under this policy by the Dean. This panel shall decide matters within its responsibility by at least a 2 to 1 vote.

Section 2. Rights of the Respondent

(a) A person charged with violating this Policy has the following rights:

- (1) To receive the information listed in Part II, Section 1(e).
- (2) To present a written response to the Charge.
- (3) To present witnesses and other relevant evidence at the hearing described in Part II Section 3.
- (4) To retain counsel or other representative for assistance at the hearing. If the Respondent cannot afford counsel or another representative, the Committee will assist Respondent to the best of its ability in obtaining counsel or another representative.
- (5) To be present at the hearing. If Respondent decides not to be present, the Respondent shall notify the Committee in writing at least five days before the scheduled hearing date, and the hearing may proceed in the Respondent's absence.

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

- (6) To question any witness at the hearing.
- (7) To refuse to speak at the hearing. The Committee shall draw no inferences from such refusal.
- (8) To forego a hearing on the merits by admitting the allegations of the Charge.
- (9) To make a statement and present evidence on the issue of the imposition of sanctions.
- (10) To waive any right or procedure otherwise provided by this policy.
- (11) To have copies of all documentary evidence.
- (12) To have the hearing recorded on audiotape, or by such other method (including videotape or stenographic transcription) as the Committee may direct.
- (13) To appeal any adverse determination of the Committee to the Dean, in accordance with Part II Section 5.

### **Section 3. The Hearing**

#### (a) Challenges to Committee Members

(1) Any member of the Committee who is directly involved in the alleged misconduct or who believes his/her participation in the hearing would otherwise be improper shall promptly recuse himself/herself from the hearing.

(2) The Respondent and the Counsel may challenge any Committee member for cause. Any such challenge shall be resolved by the Committee. The Respondent and the Counsel shall each have one peremptory challenge. Any party wishing to exercise a

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

peremptory challenge shall notify the Dean at least 5 days prior to the scheduled hearing date.

(3) In the event of recusal, a peremptory challenge, or a finding of cause on any other challenge, the Dean shall appoint an alternate member to the Committee. A faculty member of the Committee shall be replaced with another faculty member. A student member of the Committee shall be replaced with another student. Any alternate member shall be subject to challenge for cause as provided in Part II Section 3(a) (1)-(3).

(b) Timing. The hearing shall take place no earlier than ten days after the Respondent has received notice of the information listed in Part II Section 1(e). The Respondent shall be entitled to a continuance of up to 10 days. The request for a continuance must be made in writing to the Committee Chairperson at least five days prior to the scheduled hearing date.

(c) The hearing shall not be held unless all members of the Committee are present.

(d) The Committee Chairperson shall preside at the hearing.

(e) The hearing shall be closed to all persons who are not required for the hearing.

(f) All witnesses shall be excluded from the hearing unless the Counsel, Respondent, or the Committee has called upon him/her to testify, or unless the Committee decides otherwise.

(g) A witness shall disclose nothing about the hearing, except with the permission of the Committee.

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

(h) The hearing shall be recorded on audiotape, or by such other method (including videotape or stenographic transcription) as the Committee may direct.

(i) The Rules of Evidence are not binding on the Committee. The Chairperson shall determine the order of presentation of evidence and testimony.

(j) The Counsel shall present the evidence, including that which supports and negates the allegations of the Charge and that which is relevant to the merits or to the imposition of sanctions. The Respondent may then present evidence which is relevant to the merits of the Charge or to the imposition of sanctions. The Committee and the Respondent may question any witness. The Committee may decide, in its discretion, to consider any evidence as to the imposition of sanctions.

(k) The Committee does not have the power to compel testimony or the production of documents. Nevertheless, any student, faculty member, or employee called by the Counsel, the Respondent or the Committee is urged to cooperate with requests from any party for testimony or the production of any document.

(l) The Counsel may, with permission of the Committee, amend the Charge to conform with the evidence adduced. If the Counsel so requests, the Respondent shall be notified of that request and given an opportunity to object before the Committee rules on the request. If the Charge is amended, the Respondent shall have the opportunity to present any evidence relevant to the Charge as

amended. In that instance, the Committee may grant a five day continuance if the Respondent so requests.

(m) The Respondent is presumed innocent until a charge is proven by clear and convincing evidence.

(n) The Committee shall decide by at least 3 votes on the merits of the Charge. If there is a finding that the Respondent has violated this Policy, the Committee shall recommend the imposition of a sanction or sanctions by at least three (3) votes. The Committee shall prepare a report within ten days after the hearing, which shall state the Committee's findings of fact, its conclusions and the reasons therefor, and, where appropriate, shall make a recommendation to the Dean as to the imposition of sanctions, and the reasons therefor. A concurring or dissenting member of the committee may prepare a concurrence or dissent to the Committee Report explaining his/her position.

(o) Immediately upon its completion, the Committee shall refer its Report to the Dean, and provide a copy of the Report to the person who made the allegations and to the Respondent by delivering the same in person or by mailing it via certified mail.

#### **Section 4. Action on Committee Report.**

(a) After Dismissal of Charge. If the Committee dismisses the Charge, the record shall be kept confidential except to the extent disclosure may be required by law. To avoid any harm or damage to the reputation of a respondent, the Committee may, with the

Respondent's consent, issue and make public a report which identifies the Respondent, briefly describes the nature of the Charge (but without identifying the person who made the allegations) and indicates that the Charge has been dismissed.

(b) After a Charge is Sustained. If the Committee finds that a Charge has been sustained in any respect, the Dean shall make the determination as to the imposition of sanctions. The Respondent shall have the right to appear before the Dean, and/or to submit written material on the issue of the imposition of sanctions.

(c) The Dean shall make his/her determination as to an appropriate sanction based upon the Committee Report, the Committee's recommendation as to the imposition of sanctions, and the Respondent's appearance and written submission, if any.

(d) The Dean may not impose a sanction greater than the sanction recommended by the Committee.

(e) The Dean may reduce or otherwise modify the sanction recommended by the Committee, but only after consultation with the Committee.

(f) The Dean shall prepare his/her determination of sanction within ten days of receiving the Committee Report. The Committee, the person who made the allegations, and the Respondent shall receive a copy of the Dean's determination, the respondent by personal delivery or by certified mail.

#### **Section 5 Appeal.**

(a) All appeals from the Committee's action after a hearing shall

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

be to the Dean.

(b) Neither the Counsel nor the person who made the allegations may appeal from the Committee's determination. The Respondent may appeal from any adverse determination, whether on the merits or with respect to a recommended sanction.

(c) Notice of Appeal shall be filed with the Committee Chair and with the Dean within five (5) days of notification of the action from which the appeal is taken.

(d) Within five (5) days of the filing of the Notice of Appeal, the Committee Chair shall forward to the Dean the entire record of the proceedings on the Charge.

(e) The Dean's determination on an appeal shall be in writing, and shall be served on the Committee and the Respondent. The Dean may affirm the Committee's action, or reverse it and return it for further proceedings by the Committee. A decision by the Committee to adhere to its original action, after reversal and return by the Dean, shall not be further appealable. The Committee's determination on reconsideration after reversal by the Dean shall be in writing and served upon the Dean and the Respondent.

(f) Where the Dean affirms a Committee action sustaining a Charge, or where the appeal is limited to a recommended sanction, the Dean may reduce but may not increase the sanction recommended by the Committee.

#### **Section 6. Records and Reports**

(a) Annual Report. The Dean shall prepare an annual written

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

report of activity under this policy. The report shall contain a brief statement of the Committee's action on each complaint submitted to it. The statement shall set forth the nature of the complaint, its referral for formal or informal disposition, and its final disposition. The statement shall not contain the names of any parties, or identifiable details of factual allegations.

(b) Confidentiality. Except as provided in Section 6(b)(1) below, the fact of the making of an allegation of violation of this policy, and all records and proceedings thereon, whether formal or informal, shall be kept confidential by the Counsel and members of the Committee, by the Dean and all faculty, administrators, employees and students who have official responsibility under this policy. The only exceptions to this confidentiality policy are:

(1) Where the Committee has determined that a respondent has violated this policy, and the Dean has affirmed the Committee's determination, or the Committee has adhered to its original determination after the Dean has reversed a determination and returned the matter for review under Part II Section 5(e), the Committee shall have discretion to publicize the names of the person who made the allegations of violation of this policy and the Respondent, as well as details of the Charge, unless the person who made the allegations does not want his/her name disclosed. In such case, the Committee shall have discretion to disclose only the name of the Respondent and the details of the

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

Charge, but without identifying the person who made the allegation. The Committee may exercise the discretion conferred by this paragraph only by unanimous vote.

(2) Where the Committee has dismissed all charges against a Respondent, the Committee may, pursuant to Part II Section 4(a), and for the purpose of avoiding reputational harm to the Respondent, with the consent of the Respondent, issue and make public a report which identifies the Respondent, briefly describes the nature of the Charge (but without identifying the person who made the allegations) and indicates that the Charge has been dismissed.

(3) As provided for in Part II Section 6(d), concerning entries made in the official Law Center file of a Respondent found to have violated this policy.

(c) Disposition of Records. When any proceeding pursuant to this policy has been completed, the Committee shall prepare one official copy of a final report, which shall include its recommendation for the imposition of sanctions. The final report, together with the Dean's written statement imposing sanctions, as well as any rulings on appeal or action by the Committee on reconsideration after appeal, shall be filed in a secure place in the Dean's Office, and shall not be released or disclosed except as provided herein, as may be required by law, or to the Committee on request. Except for copies which may have been distributed to

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

the parties, all other records and reports pertaining to the proceeding, including those maintained in computers, shall be destroyed, purged or expunged.

(d) If after a hearing, the Committee finds that the respondent has violated the Sexual Harassment Policy, a statement of the finding of violation and the sanction imposed shall be placed in the Respondent's official Law Center file. The Law Center has the responsibility of making available the contents of a Respondent's official Law Center file to any judicial committee on character and fitness to practice law, or to any other licensing body or professional association.

### **Part III. Educational Programs**

#### **Section 1. Education as a Key Element of Law Center Policy.**

Educational efforts are essential to the establishment of a Law Center community that is as free as possible of sexual harassment.

There are at least four goals to be achieved through education:

- (1) ensuring that all members of the Law Center community are aware of their rights;
- (2) notifying individuals of conduct that is proscribed;
- (3) informing administrators about the proper way to address complaints of violations of this policy; and
- (4) helping educate members of the Law Center community about the problems this policy addresses.

#### **Section 2. Preparation and Dissemination of Information**

- (a) The Dean's Office is charged with distributing copies of this

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

Policy to all current members of the Law Center community and to all those who may join the community in the future. An annual letter from the Dean's Office shall be sent to all faculty and staff to remind them of the contents of the Law Center's Policy on Sexual Harassment. A copy of this Policy shall be included in student orientation materials. In addition, copies of this policy shall be made continuously available in the offices of the Associate Dean for Academic Affairs and the Assistant Dean for Student Affairs.

(b) The Committee on Sexual Harassment has an ongoing mandate to develop educational and training sessions for persons who are likely to receive complaints that this policy has been violated, including, but not limited to, such persons as advisors and supervisors. Teaching and educational aids may include seminars, videotapes, posters, films and the like.

#### **Part V. Sanctions.**

(a) Sanctions that may be recommended by the Committee and imposed by the Dean upon a finding of violation of this Policy include, but are not limited to, one or more of the following: written or oral warning, censure, or reprimand; probation, suspension, dismissal, discharge or other sanction which is found to be fair and equitable under the circumstances.

(b) Any sanctions imposed upon a faculty member shall be consistent with the Faculty Rules of Governance.

**Adopted Version: Sexual Harassment Policy (August 20, 1991)**

(c) The Committee and the Dean shall consult the records for past rulings for guidance in recommending and imposing sanctions for like offenses. The Committee and the Dean shall also consider the presence or absence of mitigating factors in the Respondent's conduct.

#### **Part VI. Other Remedies**

(a) No provision of this Policy shall be construed to limit or deny the rights and remedies of any person under applicable federal, state or local law.

(b) Any employee complainant may elect to proceed under the Continuing Resolution of the Faculty dated November 14, 1990, as long as it shall remain in effect, or any other employee sexual harassment policy applicable to employees of the Law Center.