

Document XI

UNIVERSITY POLICY REGARDING SEXUAL BEHAVIOR AND SEXUAL HARASSMENT

A. General Principles

The University of Louisiana at Lafayette is committed to creating and maintaining a campus environment where all individuals are treated with respect and dignity and where all are free to participate in a lively exchange of ideas. Each student has the right to learn and each employee has the right to work in an environment free of sexual harassment and one in which ideas may be freely expressed.

At the University of Louisiana at Lafayette, sexual harassment, whether verbal, physical, written, or visual, is unacceptable and will not be tolerated. Harassment is unlawful and hurts all members of the educational community. Each incident of harassment contributes to a general atmosphere in which the entire community suffers the consequences and in which all students and employees may feel that their safety and equality are compromised. Harassment has no legitimate educational purpose. Any employee or student, male or female, who engages in conduct prohibited by this policy shall be disciplined as provided by law, university policies, and applicable employment agreements.

UL Lafayette will not tolerate any sexual harassment of any person affiliated with UL Lafayette by any person affiliated with UL Lafayette (including non-employees, such as vendors and independent consultants), and will not tolerate academic or employment retaliation, including but not limited to, termination of anyone reporting harassment or providing information related to such a complaint.

B. Academic Freedom

The University of Louisiana at Lafayette recognizes the tension between protecting all members of the University community from sexual harassment and protecting academic freedom and freedom of expression. It is the policy of the institution that no member of the community may harass another. Conduct that reasonably serves a legitimate educational purpose, including pedagogical techniques, does not constitute harassment. In the educational setting within the University, wide latitude for professional judgment in determining the appropriate content and presentation of academic material is required. Although those participating in the educational setting bear a responsibility to balance their rights of free expression with a consideration of the reasonable sensitivities of other participants, this policy against harassment shall be applied in a manner that protects academic freedom and freedom of expression, including but not limited to the expression of ideas, however controversial, in the classroom setting, academic environment, university-recognized activities, or on the campus.

Nothing contained in this policy shall be construed to limit the legitimate exercise of free speech, including but not limited to written, graphic, or verbal expression that can reasonably be demonstrated to serve legitimate educational or artistic purposes nor shall this policy be construed to infringe upon the academic or artistic freedom of any member of the University. Artistic expression in the classroom, studio, gallery and theater merits the same protection of academic freedom that is accorded to other scholarly and teaching activities.

C. Coverage

All faculty, administrators, staff, students, and individuals affiliated with the University of Louisiana at Lafayette by contract (including non-employees, such as vendors and independent contractors) are bound by this policy. This policy protects men and women equally from sexual harassment, including same-sex harassment, and protects students from harassment by other students.

D. University Policy Regarding Prohibited Sexual Behavior

Sexual behavior, whether consensual or not, involving individuals where, by virtue of roles or position in the university, one individual is in a position of direct academic or supervisory authority with respect to the other are prohibited.

These roles include, but are not limited to, the following examples: a faculty member and any student in his or her class; a faculty member and any undergraduate major in his or her department; a faculty member and any graduate student in a departmental program; a graduate assistant who has teaching or other classroom duties and all students in the class or classes that he or she teaches or assists; a departmental, college, or university administrator and any member of the faculty in his or her chain of command; a laboratory supervisor and those using or working in his or her lab; or a supervisor of civil service employees and his or her employee.

In this category, both consensual and nonconsensual sexual behavior are proscribed, because of the university's presumption that individuals not in a position of authority (or of lesser authority) cannot willingly and freely say no to any sexual touching or advances from a person in a position of authority.

E. University Policy Regarding Sexual Harassment

1. Definition of Sexual Harassment

Sexual harassment is defined as unwelcome behavior of a sexual nature by faculty, administrators, staff, students, and other individuals covered by this policy.

Thus, sexual harassment consists of offers of "quid pro quo" behavior or of the creation of a hostile work or learning environment including unwelcome advances, or requests for sexual favors. This includes any verbal, written, physical or other conduct of a sexual nature when such conduct would be objectively regarded by a reasonable person as substantially interfering with an individual's ability to learn or work or participate in University programs or activities by creating an intimidating, hostile, or offensive school or work environment even if the person engaging in the conduct does not intend to interfere, intimidate, or be hostile or offensive. The conduct must be sufficiently severe, persistent, or pervasive that it creates a hostile or abusive learning or working environment. In determining whether the alleged conduct constitutes sexual harassment, consideration shall be given to the record of the incident as a whole and to the totality of the circumstances, including the context in which the alleged incidents occurred.

This definition of sexual harassment is essentially the standard of federal non-discrimination statutes.

a. "Quid Pro Quo" Offers

- (i.) Offering or implying an employment-related reward (such as a promotion, raise, or different work assignment) or an education-related reward (such as a better grade, a letter of recommendation, favorable treatment in the classroom, assistance in obtaining employment, grants or fellowships, or admission to any educational program or activity) in exchange for sexual favors or submission to sexual conduct or
- (ii.) threatening or taking a negative employment action (such as termination, demotion, denial of an employee benefit or privilege, or change in working conditions) or negative educational action (such as giving an unfair grade, withholding a letter of recommendation, or withholding assistance with any educational activity) or intentionally making the individual's job or academic work more difficult because sexual conduct is rejected.

b. Creation of a Hostile Work or Learning Environment

Creation of a hostile work or learning environment includes (but is not limited to)

- (i.) Physical conduct such as touching, pinching, patting, grabbing, poking, or brushing against another individual's body, if such conduct would be regarded by a reasonable and objective person, in light of all relevant circumstances, as sexual in nature.
- (ii.) Making sexual references to a person's body parts, gestures, noises, remarks, jokes, questions, or comments about a person's sexuality or sexual experience directed at or made in the presence of any individual.
- (iii.) Unwelcome sexual advances, including requests for a romantic or sexual relationship to an individual who indicates or has indicated that such conduct is unwelcome.

2. Retaliation

No member of the UL Lafayette community will be disciplined for refusing sexual advances, objecting to sexual harassment, or making a good faith report of harassment.

Retaliatory or intimidating conduct against any individual who has made a good faith harassment complaint or who has testified or assisted in any manner in an investigation is specifically prohibited and shall provide grounds for a separate complaint. Examples of such retaliatory or intimidating conduct include disciplining, changing working or educational conditions, providing inaccurate information to or about, or refusing to cooperate or discuss work- or school-related matters with any individual because that individual has complained about or resisted sexual harassment. The initiation of a good faith complaint of harassment by a student will not reflect negatively on that student nor will it affect the student's academic standing, rights, or privileges. Likewise, the initiation of a good faith complaint by an employee will not reflect negatively on that employee nor will it affect the employee's working conditions, rights, or privileges.

F. University Policy Regarding Faculty Consensual Relationships with Other Faculty Members.

1. Permitted Consensual Sex Bounded by Procedural Protections

The nature of the collegial relationship of faculty may lead to the development of consensual romantic or sexual relationships. This has the potential for putting all faculty members at risk when colleagues judge other faculty members for merit raises, promotion, tenure and other issues. Therefore, this policy does not prohibit romantic or sexual behavior between faculty members, but provides procedures to handle potential conflicts of interest.

2. Recusal

Any member of the faculty or administration shall recuse himself or herself from tenure and promotion decisions, faculty awards such as sabbatical and research grants or any other personnel matter in cases where a history of past or current relationships or sexual behavior might affect impartial decision making. In such cases, the recusal should be accepted without question or penalty by all members of the faculty. Where such recusal does not voluntarily occur, the affected member of the university community should write a letter to the head of the relevant department requesting that the other faculty member recuse himself or herself. Should the other faculty member refuse to do so, the head of the department should make the request for recusal known to the members of the relevant committee.

G. Problematic Aspects of Consensual Sex within the University Community

Any consensual sexual relations between faculty members, administrators, academic staff members and students otherwise allowed by this policy are unwise, problematic, and fraught with risk. Even when both parties have consented to the relationship, there may be perceptions of conflicts of interest or unfair treatment of others. Such perceptions undermine the atmosphere of trust essential to the educational process or the employment relationship.

A teacher's role includes providing intellectual guidance and academic and professional support and advice for students other than majors and graduate students in his or her department, and the trust that is essential to these roles can be undermined by a sexual relationship between a student and a faculty member, administrator, or member of the academic staff.

Other students who are aware of a sexual relationship between a student and a faculty member, administrator, or member of the academic staff often believe that the student is being favored academically, and this can undermine trust among the students with regard to whether or not they are being treated fairly.

A student may be flattered by romantic or sexual attention from a relatively powerful, prestigious, and perhaps considerably older faculty member, administrator, or member of the academic staff. The faculty member, administrator, or member of the academic staff may wish to ponder whether or not he or she wishes to take advantage of his or her position.

Freshmen are especially vulnerable, engaged in a major life transition, attempting to adjust to the new demands of learning at the college level, in need of focusing on developing solid study habits, and perhaps not yet having developed clear goals or peer friendships, and can have their academic aspirations interrupted or ended by the distractions and emotional turmoil of a sexual relationship with a faculty member, administrator, or member of the academic staff.

Problems commonly emerge when a sexual relationship breaks up. Students often later reveal that they worried about the possible adverse impact on their academic and eventual professional lives of offending a faculty member by breaking off a relationship and, in many cases, delayed doing so for that reason. The emotional turmoil of a failed or failing relationship leads some faculty members to lash out in ways that do harm to the student's reputation or opportunities.

A student may voluntarily enter into a sexual relationship with a faculty member, administrator, or member of the academic staff not in a direct supervisory position with the intent to affect favorably his or her academic success and career. This motive may not be immediately evident to the faculty member, administrator, or member of the academic staff. Extreme caution on the part of the faculty member, administrator, or member of the academic staff may be appropriate, in order to protect the integrity of the academic process.

Young people have often been socialized to deflect rather than rebuff unwanted romantic or sexual advances and to be respectful to those in authority or who are considerably older than they are. As a result, a faculty member, administrator, or member of the academic staff who asks a student for a date, or in some other manner intimates an interest in dating, might wish to exercise extreme caution to ascertain with certainty the extent to which the student has given consent for the next step or may be conflicted or fearful or simply kind.

A student may hesitate to rebuff the first advance by a faculty member, administrator, or member of the academic staff for fear of possible retaliation by such a person of influence. If the student does directly rebuff such an advance, he or she may have residual uneasiness about whether that person may use his or her position to adversely affect the student's academic and professional life.

It is almost impossible to predict whether or not a student who is not at the present time in one's class or a major or graduate student in one's department may move into a category where all sexual relationships are prohibited by this policy. If there is a continuing relationship, the student may be deterred from making a change of academic direction that would ultimately benefit him or her,

because he or she does not want to end the relationship. If the relationship has ended on poor terms, the student may fear or actually experience academic harm by the person who will then have power over him or her. If the relationship ended on good terms, the faculty member will be in a position to (perhaps inadvertently) favor the student.

It is almost impossible to predict whether or not a student who is not in one's class or a major or graduate student in a departmental program may at some time in the future benefit from a letter of recommendation written by a faculty member, administrator, or member of the academic staff. A letter of recommendation, favorable or unfavorable, can have a powerful impact on a student's academic and professional future.

It is almost impossible to predict whether or not a student who is not in one's class or a major or graduate student in one's department may at some time in the future benefit or be harmed because the faculty member, administrator, or member of the academic staff serves on a university committee that awards a scholarship, fellowship, internship, assistantship, prize, or other benefit.

It is almost impossible to predict whether or not a graduate student who is not in one's class or a graduate student not in one's department may become active in an interdisciplinary center or cooperative program between departments which would bring him or her into a position where the faculty member will be in a position of power, or may cause the graduate student to not pursue an intellectual direction in order to avoid the power relationship.

For these reasons, faculty members, administrators, and academic staff members should enter such relationships, if at all, only after very careful consideration.

H. Confidentiality

Confidentiality will be maintained throughout the entire investigatory process to the extent practicable and appropriate under the circumstances to protect the privacy of persons involved. The persons charged with investigating the complaint must discuss the complaint or the underlying behavior only with persons involved in the case who have a need to know the information, which will include at least the complainant and the accused harasser.

The University is required by law to investigate any complaint of sexual harassment and will strive to protect, to the greatest extent possible, the confidentiality of persons reporting or accused of harassment. However, the University cannot guarantee complete confidentiality where it would conflict with the University's obligation to investigate cases of sexual harassment.

I. False Accusations Forbidden

While the university community encourages all members to report suspected claims of sexual harassment, false accusations of sexual harassment can have a serious effect on innocent people. If an investigation results in a finding of malicious or reckless accusations of sexual harassment, the accuser will be disciplined appropriately.

J. Penalties

Appropriate sanctions, ranging from a warning to dismissal, will be determined based on the severity of the conduct and in accordance with the provisions of applicable statutes, employment contracts, university policies, and disciplinary procedures.

K. Applicable Procedures

Any individuals who believe that they have been harassed may bring a complaint or file a grievance. Complaints will be handled informally while grievances will involve a formal investigation and may result in hearings.

1. Bringing a Complaint

- a. Any member of the university community who believes that he/she has been the victim of sexual harassment (the complainant) may bring the matter to the attention of the Associate Dean of Students, Room 211, Martin Hall (482-6272); the Title IX Coordinator, Room 230, Martin Hall (482-6306); or one of the professional counselors in the Counseling Center, Olivier Hall (482-6480).
- b. The complainant should present the complaint as promptly as possible after the alleged harassment occurs. One consequence of failure to present a complaint promptly is that it may preclude recourse to legal procedures should the complainant decide to pursue them at a later date.
- c. The initial discussion between the complainant and the university officer will be kept confidential with no written records. In many cases a satisfactory resolution of the complaint can be worked out at this point and no further action is required. If a resolution satisfactory to the complainant is reached, the complainant will sign a statement indicating that fact, and the statement will be kept in a confidential file by the University's grievance officer.

2. Filing a Grievance

- a. If a satisfactory solution to the complaint cannot be reached and the individual filing the complaint (grievant) decides to proceed, a written statement describing the alleged harassment should be submitted to the grievance officer designated by the President. Cases involving sexual harassment are particularly sensitive and demand special attention to issues of confidentiality. Dissemination of information relating to the case should be limited in order that the privacy of all individuals involved is safeguarded as fully as possible.
- b. The grievance officer shall inform the alleged offender of the allegation and the identity of the grievant. The written statement of the complaint shall be given to the alleged offender. Every effort shall be made to protect the grievant from retaliatory action by those named in the grievance.
- c. Promptly after the grievance is submitted, the grievance officer should initiate appropriate steps to effect an informal resolution of the grievance acceptable to both parties.
- d. If the grievance officer fails to effect an informal resolution, the grievance officer shall investigate the complaint further.
- e. The grievant, if unsatisfied with a proposed informal resolution and with the grievance officer's investigative findings, shall, upon prompt submission of a written request, have access to the formal grievance procedures of the University.

3. The Grievance Review

Review of the grievance against a faculty and/or staff member is conducted by a committee of peers, as follows.

- a. If the alleged offender is a faculty member, the preliminary peer-committee inquiry and possible subsequent formal ad hoc committee hearing are delineated beginning in Section 3 of the *Procedures for Dismissal for Cause and Imposition of Major Sanctions*, published in the *Faculty Handbook*.

- b. If the alleged offender is a staff member, the formal grievance procedures are those delineated in *Procedures Governing Hearings by the Discrimination and Sexual Harassment Appeals Committee*, published in the *Faculty Handbook* and in the *Staff Handbook*.
- c. If the grievant and the alleged offender are both students, the grievance will be heard by the University Discipline Committee.