University Senate
May 11, 2006

DISCUSSION ITEM

ITEM: Romantic/Sexual Relationship section of Policy #1.15 Sexual Harassment

BACKGROUND: A number of concerns were expressed at the initial draft policy stage, both at Faculty Council and the University Senate. Since that time we have:

- gone through extensive rounds of powerpoint-based discussions and policy drafts
- met with student government leaders
- held multiple discussions with faculty leaders from the Senate
- held a faculty forum jointly sponsored by the Senate and OHR
- received, responded to, and incorporated advice from a large number of emails
- held two (2) department chair focus groups recently, to receive detailed advice and questions on administering the policy
- received feedback from the university policy review committee for HR policies
- discussed with the full group of department chairs and with the council of deans
- received close consultation from the original task force along the way
- returned to Senate Steering recently
- held a final discussion with Faculty Council last week

The advice we have received has been very valuable, resulting in a substantially improved document in both structure and language.

The draft includes a “Frequently Asked Questions” document, which will accompany the policy and any future training processes.

For any questions, please contact:

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III. Romantic and/or Sexual Relationships

Romantic and/or sexual relationships between individuals in a supervisory, teaching, evaluation, advising, coaching, or counseling relationship constitute a conflict of interest. The person in the position of higher institutional authority has the responsibility to eliminate the conflict of interest. The conflict of interest must be eliminated in a way which minimizes potential for harming the person with lower institutional authority.

In the event of an allegation of sexual harassment, the University will strictly scrutinize a defense based upon consent when the facts establish that an institutional power differential existed within the relationship.

Faculty, staff, and students who are in the position to influence academic or employment decisions about others with whom they are in a romantic and/or sexual relationship should recuse themselves from such decisions.

A. Prohibited relationships

1. Romantic and/or sexual relationships between faculty/staff/graduate associates/undergraduate TAs and students, and between attending physicians and medical residents/interns/fellows, cannot continue whenever the employee has supervisory, teaching, evaluation, advising, coaching, or counseling responsibilities for the student. Alternative academic/supervisory arrangements must be made to avoid being in a prohibited relationship; if acceptable alternative arrangements are not feasible, the relationship cannot continue.

It is prohibited for a faculty/staff/graduate associate to engage in a series of romantic and/or sexual relationships that negatively impact students.

Romantic and/or sexual relationships between supervisor and employee are also prohibited. No person involved in a romantic and/or sexual relationship will have direct responsibility for evaluating the performance or for making decisions regarding the hiring, promotion, tenure, compensation, or termination of the other party to the relationship. Supervisors, including faculty supervisors, must take immediate steps to make acceptable alternative arrangements regarding their supervisory responsibility for the other party to avoid an actual or apparent conflict of interest.

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¹A review of CIC and Benchmark, as well as other institutions indicates that the most commonly used title for this section of the policy is “consensual relationships” and the most commonly used term in the body of the policy is “romantic and/or sexual relationships.”
2. **Notification responsibilities to avoid prohibited relationships**

   University faculty/staff/graduate associates/undergraduate TAs must notify their supervisor (e.g. dean, chair, vice president, direct supervisor, etc.) of any prohibited relationship IN WHICH THEY ARE INVOLVED; and, have a duty to cooperate in making acceptable alternative arrangements. The Office of Human Resources, Organization and Human Resource Consulting, is available to facilitate or consult with parties about notification and making acceptable alternative arrangements.

   Individuals who engage in prohibited relationships (i.e., who do not notify their supervisors and do not make acceptable alternative arrangements) are in violation of this policy. Supervisors, including faculty supervisors, who obtain information that would lead a reasonable person to believe that the policy has been violated, have an institutional duty to report the violation to the Office of Human Resources, Organization and Human Resource Consulting.

   Individuals in positions of power, who engage in a series of exploitive sexual or romantic relationships, whether or not notification has occurred, may be held in violation of the romantic and/or sexual relationship policy.

3. **Acceptable alternative arrangements**

   Acceptable alternative arrangements means removing any supervisory, teaching, evaluation, advising, coaching, or counseling responsibilities between the person with institutional power and the student or employee. The alternative arrangements should avoid negative consequences for the student or employee; if acceptable alternative arrangements are not feasible, the relationship cannot continue.

**B. Corrective action**

After a thorough review of the facts, corrective action will be taken with any faculty/staff/student employee who violates this romantic and/or sexual relationship policy by:

1. Entering into or engaging in a prohibited relationship without notification and without making immediate acceptable alternative arrangements, or

2. Failing to follow any part of this policy, or

3. Failing to implement any responsibility of supervisors as identified in this policy. This applies to all supervisors, including faculty who serve in supervisory roles.

   The corrective action process will be in accordance with university policies, faculty rules or Code of Student Conduct.

An individual who promptly provides notification of a prohibited relationship and cooperates in making acceptable alternative arrangements in a timely manner will not be held in violation of the romantic and/or sexual relationship policy.
C. **Important Advisory Statement on Romantic/Sexual Relationships**

Individuals in positions of power must be aware that romantic or sexual relationships with students are fraught with danger for exploitation and pose a legal risk to both the individual and the institution.

There are special risks in any sexual or romantic relationship between individuals in inherently unequal positions of power. These relationships may be subject to concerns about the validity of consent and unfair treatment of other students or employees. Such relationships can undermine the atmosphere of trust essential to the educational process and the employment relationship. They may, moreover, be less consensual than the individual whose position confers power believes. The apparent consensual nature of the relationship is inherently suspect due to the fundamental asymmetry of power in the relationship and it thus may be difficult to establish consent as a defense to a charge. Even when both parties consented at the outset to a romantic or sexual involvement, this past consent does not remove grounds for or preclude a charge or subsequent finding of sexual harassment based upon subsequent unwelcome conduct.

The greater the institutional power differential that exists the greater risk there is for exploited consent. Exploited consent exists when consent to a relationship is given as a function of the position of power one occupies over another within an institution.

Many international students, faculty, and staff come from cultures in which deference to any authority figure is important and sexual harassment laws do not exist. Some individuals may be especially vulnerable to exploitive relationships given cultural, language, and immigration/visa issues. Faculty, staff, and students should be very careful to avoid relationships that may be exploitive in nature.

The University discourages romantic and/or sexual relationships between faculty and students, for all the reasons provided above.

The University strongly discourages romantic and/or sexual relationships between faculty and graduate students when in the same department; between faculty and undergraduate students majoring in the faculty member’s area of expertise; when the faculty member has any influence over academic judgments about the student; and, in any context when the perceived power differential may be significant.

Finally, it is important to be aware that in some cases non-consensual relations may constitute sexual harassment, and allegedly consensual relations that “go bad” may later result in allegations of sexual harassment.
Frequently Asked Questions – Romantic and/or Sexual Relationships

Sexual Harassment Policy

1. What relationships or behaviors are really prohibited?

   **Teachers** (faculty, instructors, staff, GAs, undergraduate TAs) are prohibited from engaging in romantic or sexual relationships with students in their classes.

   **Faculty, staff, or instructors, as well as faculty from other universities or individuals from industry** are prohibited from engaging in romantic or sexual relationships with students upon whose thesis, dissertation, program, or candidacy exam committees they sit; or over whom they exercise significant academic or career-determining authority.

   **Coaches** (staff, GAs) are prohibited from engaging in romantic or sexual relationships with students that they coach.

   **Faculty, staff, and student employees** are prohibited from engaging in romantic or sexual relationships with students that they advise.

   **Attending physicians** are prohibited from engaging in romantic and/or sexual relationships with medical residents, medical interns, and medical fellows, and other learners or trainees over whom they exercise significant academic or career determining authority.

   **Faculty, staff, instructors, GAs, or graduate students** are prohibited from engaging in romantic and/or sexual relationships with individuals with whom they are engaged in counseling relationships, as is specified by counseling codes of ethics.

   **Faculty, staff, instructors, graduate students, or undergraduate students** are prohibited from engaging in romantic and/or sexual relationships with any individual as defined in their field-specific codes of ethics or professional responsibility.

   **Faculty** members may not serve as graduate school representatives (candidacy exam, dissertation defense) for students with whom they are engaged in a romantic and/or sexual relationship.

   **Supervisors** (faculty, staff, student) are prohibited from engaging in romantic or sexual relationships with employees that they supervise (direct reports).

2. What is a power differential?

   An individual need not occupy a direct position of organizational authority over an individual (e.g. supervisor to direct report, teacher to student) for there to be a power differential. Power is present in supervisor-employee, teacher-student, tenured-non-tenured relationships; and, power can also derive from differences in gender balance of a group,
length of time with the department or university, relative status in a field of scholarship, age variances, etc. For example, it could be that an individual has been in her/his position or academic program for five years and the other individual just started last week; this can present a power differential. Or, of 20 staff, 19 are female and one is male; this can present a power differential.

Individuals entering into a consensual relationship in which a power differential exists must recognize that the reasons for entering, maintaining, or terminating such a relationship may be a function of the power differential. According to the American Association of University Professors, “The respect and trust accorded a professor by a student, as well as the power exercised by the professor in an academic or evaluative role, make voluntary consent by the student suspect.”

An imbalance of power is inherent in the teacher-student relationship, as well as the relationship between a student and a staff member. The student may defer to the teacher or staff person as an expert, a respected figure whose authority is unassailable. This power imbalance can be further exacerbated by the existence of other factors such as race, gender, sexual orientation, international student/scholar status, command of the English language, and previous sexual victimization.2

3. **What does institutional power mean?**

Institutional power means that one individual occupies a position of authority over another individual. This institutional power can manifest through the ability to make or significantly influence such decisions as:

− Admission to or matriculation through an academic program
− Assignment of grades, determining pass/fail status in the candidacy exam or dissertation defense
− Selection, termination, compensation, promotion, or tenure in the employment setting
− Approval of sick or vacation leave
− Permission to take classes during the work day
− Assignment of resources necessary to do one’s job

4. **What are acceptable alternative arrangements?**

Acceptable alternative arrangements can be made by working with one’s supervisor, chair/director, dean/vice president. The arrangements must alleviate any actual or perceived conflicts of interest or potential conflicts of interest. The arrangements may include altering supervisory or reporting lines; moving a student to another section of the same class; having the teacher switch class sections with another teacher; appointing a different individual to serve on a thesis, dissertation, program, or evaluative committee; moving a student to another position of the same or comparable status and duties; or

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2 Report to The President’s Council on Women from the Work Group examining the university’s policy on consensual relations between faculty and students. January 11, 2005.
establishing alternative means of evaluation of academic or work performance, among other options. Having acceptable alternative arrangements made is not an entitlement and if the department determines they are not feasible, the relationship must cease.

5. **Who has a duty to act regarding prohibited relationships?**

- Any individual who begins a prohibited relationship must disclose and cooperate in making alternative acceptable arrangements.
- Any HRP, faculty or staff supervisor, chair/director, or dean/VP who becomes aware of a prohibited relationship must seek to ascertain that an acceptable alternative arrangement has been made.
- Any HRP, faculty or staff supervisor, chair/director, or dean/VP who becomes aware of a prohibited relationship for which alternative acceptable arrangements have not been made must report the relationship to the Office of Human Resources. This is the case even across departments, colleges, or units.

6. **Who has a duty to act regarding sexual harassment in general?**

Any Human Resource Professional (HRP), supervisor, chair/director, or faculty member who becomes aware of information that would lead a reasonable person to believe that sexual harassment has occurred must notify the Office of Human Resources, Organization and Human Resource Consulting, by ensuring that a Discrimination/Harassment Complaint Form or other appropriate documentation is filed within five working days of becoming aware of the information. The Complaint Form/documentation will initiate collaboration between the Office of Human Resources, Organization and Human Resource Consulting and the unit HRP to determine how to proceed with resolving the complaint. Failure to exercise reasonable care by appropriately referring and addressing these complaints may result in personal as well as institutional liability.

7. **What about current prohibited relationships? Do those individuals have to disclose?**

Yes. Any individual who is currently in a prohibited relationship must immediately disclose and cooperate in making alternative acceptable arrangements.

8. **What about past prohibited relationships? Do those have to be disclosed?**

Past prohibited relationships, in effect and ended before the effective date of this policy (June 1, 2006), must be disclosed only when they create conflicts of interest in the present or future.

9. **Why are these relationships a conflict of interest?**

A conflict of interest is a real or seeming incompatibility between one’s private interests and one’s public or professional duties. The ability to make objective decisions is compromised if there is a romantic and/or sexual relationship between two individuals who have a reporting or evaluative relationship. Other students and faculty may be affected because it places the authority figure in a position to favor or advance one student’s interest.
at the expense of others and implicitly makes obtaining benefits contingent on amorous or sexual favors.

10. **How will same-sex sexual and/or romantic relationships be handled?**

These relationships should be handled in the same manner as opposite-sex sexual and/or romantic relationships are handled. Care should be taken not to discriminate against same-sex couples in any way, as the University’s Affirmative Action, EEO, and Non-discrimination policy prohibits discrimination based upon sexual orientation, among other categories. Individuals involved in same-sex sexual and/or romantic relationships who have concerns about disclosing and making alternative acceptable arrangements based upon fear of discrimination should contact the Office of Human Resources, Organization and Human Resource Consulting, 614-292-2800.

11. **What are the consequences if a violation occurs?**

Where a violation of the sexual harassment policy is found, including the “romantic and/or sexual relationships” section, steps will be taken to ensure that the behavior is stopped promptly, or that the relationship is managed appropriately. Appropriate corrective action may range from counseling, written reprimands, suspensions, or other action up to and including dismissal, in accordance with established University rules and procedures. The Office of Human Resources, Organization and Human Resource Consulting will monitor corrective action to ensure compliance.

In cases involving faculty members, corrective measures may be imposed in accordance with chair/dean administrative authority and/or Faculty Rules and Procedures 3335-5-04. For unclassified and classified civil service employees, refer to Human Resources Policy 8.15, Corrective Action. For bargaining unit employees, refer to the appropriate collective bargaining agreement. In cases involving students acting in their employment capacity, measures may be imposed in accordance with Human Resources Policy 10.10, Student Employment; in all other cases, measures may be imposed in accordance with the Code of Student Conduct.

12. **What if I am the only professor who teaches a required class and I want to initiate a relationship with a student who will have to take the class?**

If there is no feasible way to alleviate the conflict of interest, it is not possible to engage in the relationship. You might consider other alternatives:

- Delay the initiation of a relationship until after the student has completed your class
- Identify a comparable class taught in another department (e.g. a research methods course taught in FAES that is comparable to one taught in Education) and allow the student to apply for permission to substitute the course.
[Response to Question 12—continued]

- Arrange an independent study with another qualified professor or practitioner, from Ohio State, the immediate community, or another university.
- Arrange for the individual to be graded and guided by an equally qualified colleague at another university.

The conflict of interest must be removed by whatever reasonable means can be identified, without denying or degrading the student’s experience and creativity is invited. Although we encourage departments to be supportive in making alternative acceptable arrangements, they are not required to invest additional resources to do so. Such arrangements are not an entitlement. If acceptable alternative arrangements cannot be made, the relationship must cease.

13. **How soon do I need to notify my supervisor that I am in a relationship?**

Relationships generally don’t come into existence “out of the blue”; often they evolve over time. If you feel yourself developing an interest in an individual over whom you will almost certainly have supervisory, teaching, evaluation, advising, coaching, or counseling authority, you should think about the extent to which it will be feasible to make acceptable alternative arrangements to entirely avoid the conflict of interest. If this won’t be possible, and you decide to pursue a relationship, the relationship will be prohibited at the point that you have authority over the person—that is, at the point at which the conflict of interest manifests. If you start dating, or become intimate with an individual over whom you have such authority, you are required to immediately notify your supervisor and make alternative acceptable arrangements. It is not acceptable to let the relationship continue for a few weeks or months before you do so.

14. **What options are there for corrective action with tenured faculty?**

There are a range of options when addressing violations of policy with faculty, depending on the nature of the violation and the specific fact pattern. Some actions that may be taken are: letters of reprimand placed in the personnel file; loss of salary increase or increases; removal of administrative responsibilities and compensation; removal of privilege of advising graduate students; removal of supervisory privilege over students, faculty and staff; title change (e.g. removal of named chair); resignation in lieu of detenurization; initiating the 504 (detenurization) process.

15. **How should this be communicated to faculty, staff, and students?**

Deans and department chairs should cover this policy directly with faculty at the first faculty meeting of the year each year. Faculty and staff leaders should review this policy with supervisors and employees on an annual basis.
16. How can I talk with students/staff who are upset that they can’t be in a relationship with someone who has supervisory responsibility over them?

Listen for understanding and be sensitive. Explain the policy. Read the final report of the Task Force and talk with the individual about all the potential repercussions of such relationships, to the individual, her/his peers, the person in the position of power, the department, and the institution. Refer students to additional resources such as Counseling and Consultation Service (phone, address), Student Advocacy Center, Student Affairs, etc. Refer faculty and staff to the University Faculty and Staff Assistance Program (phone, address), Academic Affairs, Organization and Human Resource Consulting.

[End of Draft for New “Frequently Asked Questions”]
Q. What are some examples of sexual harassment?

Inappropriate behavior may include:
− Sexual jokes, innuendoes, gestures
− Unwanted flirtation, advances, or propositions
− Pressure for sex
− Leering
− Display of sexually suggestive objects/visuals
− Display/transmission of sexually suggestive electronic content
− Any unnecessary, unwanted physical contact
− Sexual assault (if this occurs, call the police immediately & maintain evidence)

Q. What should I do if I feel I have been sexually harassed?

− Document the problem behavior: date, time, place, witnesses, specific behaviors
− Tell the harasser that the behavior is offensive and that you want it to stop
− Seek counseling and personal support from the Counseling and Consultation Service
  (for students, 614-292-5766) or the University Faculty and Staff Assistance Program
  (for faculty and staff, 614-292-4472)
− File a complaint with the Office of Human Resources (OHR) Organization and Human
  Resource Consulting by calling 614-292-2800 or e-mailing sexualharassment@osu.edu
− File an anonymous complaint by calling Ethics Point 1-866-294-9350 or via the web at

Q. What about false allegations?

Sanctions may be imposed on individuals who knowingly or with reckless disregard for the
truth make false accusations of sexual harassment. Just because a complaint cannot be
proven does not mean that it is false.

Q. Is sexual harassment only male to female? Supervisor to employee? Faculty to student?

Sexual harassment occurs when individuals feel they are the recipients of unwanted sexual
attention or behavior. Sexual harassment can happen to or be perpetrated by anyone against
anyone else: women, men, students, faculty, staff, supervisors, employees, volunteers, and
vendors.

Q. Can I file a confidential complaint?

The university cannot promise complete confidentiality. Each situation is resolved as discreetly
as possible. Ohio State is obligated to follow up on all allegations. There are times that a one-
on-one conversation with the alleged harasser can resolve the situation without revealing the
complainant’s identity. If this doesn’t work, then it is often necessary to reveal the
complainant’s identity to conduct an investigation.
You may make an anonymous complaint by contacting the University Anonymous Reporting Line by calling EthicsPoint toll-free at 1-866-294-9350 or on the web at https://secure.ethicspoint.com/domain/en/report_custom.asp?clientid=7689

Q. What is the purpose and possible outcome of an investigation?

The purpose of the investigation is to evaluate the allegations of sexual harassment, formulate a response to address the situation, and follow up to ensure that recommended actions have been taken. Outcomes can include: no finding of harassment, finding of inappropriate behavior, finding of harassment, or finding of false allegations. The ultimate goal is to stop the harassment.

Q. Who is typically involved in an investigation?

OHR Organization and Human Resource Consulting conducts investigations. The charged party and the unit Human Resource Professional (HRP) are notified. Management, the department chair/unit director, and dean/vice president may also be notified. Information will only be shared with individuals who have a “need to know.”

Q. What if I am retaliated against?

Individuals who report sexual harassment or who are involved in the investigation as witnesses are protected against retaliation by university policy as well as state and federal law. The university will take appropriate corrective action toward those individuals who retaliate against someone because he or she filed a complaint, encouraged someone to file a complaint, served as a witness in an investigation, or otherwise participated in an investigation. If you feel you are being retaliated against, contact OHR Organization and Human Resource Consulting immediately at 614-292-2800.

Q. What should I do if I feel in danger?

If something has occurred in the workplace that is causing you to fear for your personal safety, contact University Police at 292-2121 or local police at regional campuses. Then contact OHR Organization and Human Resource Consulting at 614-292-4500. If you are a student and feel in danger in the academic environment, contact the Office of Student Affairs after you have contacted the police.