

Oklahoma State University Policy and Procedures

GENDER DISCRIMINATION/SEXUAL HARASSMENT POLICY & TITLE IX GRIEVANCE PROCEDURE

1-0702
GENERAL
UNIVERSITY
Oklahoma City
Campus
April 2005

1.01 GENERAL STATEMENT OF POLICY

It is the policy of Oklahoma State University (OSU) that unlawful gender discrimination in any form, including sexual harassment of faculty and staff, or other forms of gender discrimination as referenced by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e (Title VII), and Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 (Title IX), is prohibited in the workplace and in the recruitment, appointment, and advancement of employees. Gender discrimination of students, including sexual harassment, as referenced by Title IX, is prohibited in and out of the classroom and in the evaluation of students' academic or work performance. This policy is in keeping with the spirit and intent of various federal guidelines which address the issue of fair employment practices, ethical standards and enforcement procedures.

The University encourages victims to report instances of gender discrimination prohibited by Title IX or Title VII, including but not limited to, sexual assault or other sex offenses, either forcible or nonforcible in nature. In addition to internal grievance procedures, victims of criminal gender discrimination (e.g., sexual assault or harassment) are encouraged to file complaints or reports with the Office of Safety and Security or local law enforcement agencies as soon as possible after the offense occurs in order to preserve evidence necessary to the proof of criminal offenses. The Office of Safety and Security is available to assist victims in filing reports with other law enforcement agencies.

All students, members of the faculty, and non-faculty staff personnel are required to comply with the policy and procedures outlined to address complaints about gender discrimination, sexual harassment and sexual assault. In addition to the procedures outlined in this policy statement, discrimination and harassment complaints may be filed with the U.S. Equal Employment Opportunity Commission (involving employment) or U.S. Department of Education, Office for Civil Rights (involving education programs or activities). Any complaint of gender discrimination or sexual harassment filed under the University's policy shall be processed even if the complainant also files a complaint or suit with an outside agency, U.S. Equal Employment Opportunity Commission, or U.S. Department of Education, Office for Civil Rights. Retaliation against anyone who makes a complaint or participates in the complaint process will not be tolerated.

The University is committed to providing an environment of study and work free from gender discrimination and sexual harassment as prohibited by Title VII and Title IX, and to insuring the accessibility of appropriate grievance procedures for addressing all complaints regarding gender discrimination and sexual harassment, including sexual assault. The University reserves the authority to independently deal with gender discrimination, sexual harassment, and sexual assault issues whenever becoming aware of their existence, regardless of whether informal or formal complaints have been lodged by persons complaining of such issues.

Members of the University community holding positions of authority involving the legitimate exercise of power over others have a particular responsibility to be sensitive to that power relationship. Supervisors, in their relationships with subordinates, and faculty, in their relationships with students, need to be aware of potential conflicts of interest and the possible compromise of their evaluative capacity. Because there is an inherent power difference in these relationships, the potential exists for the less powerful persons to

perceive a coercive element in suggestions regarding activities outside those appropriate to the professional relationship. It is the responsibility of faculty and staff to behave in such a manner that their words or actions are not sexually coercive, abusive, or exploitative.

Sexual harassment also can involve relationships among equals such as when repeated advances, demeaning verbal behavior, or offensive physical contact interfere with an individual's ability to work and study productively. The creation or condonation of hostile working or educational environments will not be tolerated and students and employees at all levels are subject to potential disciplinary action if engaged in such actions.

The University will (1) respond to every complaint of gender discrimination, sexual harassment, or sexual assault reported, (2) take action to provide remedies when gender discrimination, sexual harassment, or sexual assault is discovered, (3) impose appropriate sanctions on offenders in a case-by-case manner, and (4) protect the privacy of all those involved to the extent it is possible. The above actions will apply to the extent permitted by law or where personal safety is not an issue.

1.02 INFORMATION AND ASSISTANCE

Any individual who believes he/she may have experienced gender discrimination, including sexual harassment, or who believes that he/she has observed such actions taking place, may receive information and assistance regarding the University's policies and responsive processes from any of the following offices:

1. Director of Human Resources (Affirmative Action)/Title IX Coordinator
Administration Building, Second Floor, Human Resource Office (405)945-3297
2. Vice President for Finance and Operations
Administration Building, Second Floor, Room 201B (405)945-8631
3. Vice President for Student Services/Student Conduct Officer
Student Center Building, First Floor (405)945-3204
4. Vice President for Academic Affairs
Administration Building, Second Floor, Room 200 (405)945-3376

If an apparent conflict of interest prevents use of the assistance of the above offices, the person complaining of gender discrimination, sexual harassment, or sexual assault may request assistance directly from the Office of the President, Administration Building, Second Floor, (405)945-3230).

1.03 GENDER DISCRIMINATION AND SEXUAL HARASSMENT DEFINITIONS

"Gender discrimination" is unequal or disadvantageous treatment of an individual or group of individuals based on gender. Sexual harassment is a form of illegal gender discrimination. "Sexual harassment," as prohibited under federal and state law and University policy, is defined as unwelcome conduct of a sexual nature, and may include unwelcomed sexual advances, sexual assaults, or requests for sexual favors. This and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

- A. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic standing;

B. submission to or rejection of such conduct by an individual is used as the basis for employment decisions or academic decisions affecting such individual; or

C. such conduct is sufficiently serious that it has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment. Harassment does not include verbal expressions or written material that is relevant and appropriately related to course subject matter or curriculum, and this policy shall not abridge academic freedom or the University's educational mission.

1.04 EXAMPLES OF SEXUAL HARASSMENT

It is not possible to exhaustively list all examples of conduct which can constitute gender discrimination or sexual harassment. The following list of examples of conduct prohibited by this policy statement is intended to aid in the understanding of this area. Conduct prohibited by this policy statement may include, but is not limited to:

A. VERBAL CONDUCT

Unwelcome sexual flirtation, advances or propositions for sexual activity. Asking about someone else's personal social or sexual life or about their sexual fantasies, preferences, or history may constitute sexual harassment. Discussing your own personal sexual fantasies, preferences, or history or repeatedly asking for a date from a person who is not interested may also constitute sexual harassment.

Continued or repeated verbal abuse of a sexual nature. Suggestive comments and sexually explicit jokes, or turning discussions at work or in the academic classroom to sexual topics may constitute sexual harassment. Making offensive sounds such as smacking or licking lips, making kissing sounds, or "wolf whistles" may constitute sexual harassment.

Sexually offensive or degrading language used to describe an individual or remarks of a sexual nature to describe a person's body or clothing. Calling a person a "hunk," "doll," "babe," "sugar," or "honey," or similar descriptive terms may constitute sexual harassment if the person being so described is offended by such terms or if others hearing the references are offended.

Stating, indicating, or implying in any manner that benefits will be gained or lost based on response to sexual advances.

B. NON-VERBAL

Displaying sexually demeaning or offensive objects and pictures. Nude or semi-nude photographs and drawings, or computer software is very likely to be viewed as sexual harassment.

Staring repeatedly at someone, blocking another person's path or otherwise restricting their movements. Such acts, particularly when in conjunction with other acts or comments, may be viewed as sexual harassment. Invading a person's personal body space, such as by standing closer than appropriate or necessary for the work being done may similarly constitute sexual harassment.

Bringing physical items to work which express sexually offensive comments regarding men or women. Messages of this nature such as might be contained on coffee mugs, hats, or tee shirts may be offensive and be viewed as sexual harassment.

Making sexual gestures with hands or body movements. Looking a person up and down in a suggestive or intimidating manner may also constitute sexual harassment.

Letters, gifts, or materials of a sexual nature. Such attention may not be appreciated in the manner intended, may be offensive to the subject of the attention, and may constitute sexual harassment.

Treating a student differently based upon his/her gender in academia or extracurricular activities, academic programs, discipline, classroom assignment, physical education, grading, and/or athletics.

C. PHYSICAL

Offensive physical contact. Possible problem areas include: Massaging a person's neck or shoulders; touching a person's clothing, hair, or body; hugging, kissing, patting, or stroking a person's body; touching or rubbing oneself in a sexual manner around or in the view of another person; brushing up against another person; tearing, pulling, or yanking a person's clothing, may all constitute sexual harassment.

Sexual assault, coerced sexual intercourse or other sexual contact.

1.05 SUPERVISORY RESPONSIBILITY

Prohibited gender discrimination, including sexual harassment, may result not only from situations between supervisors and subordinate employees, or between faculty and students, but also between employees who have no direct or indirect supervisory relationship with one another, as well as between students.

University officials in supervisory relationships with employees or students are charged with the responsibility of responding immediately and appropriately to correct any situations which create a hostile working or educational environment within an administrative unit under their supervision. Such officials include, but are not necessarily limited to: unit heads, academic administrators, faculty members engaged in teaching or in supervising student workers, and intercollegiate athletic administrators and coaching staff members. Every University faculty member or administrator is responsible for promptly reporting, in writing, incidents of gender discrimination and sexual harassment (including sexual assault) that come to their attention or which they observe, to the Title IX Coordinator.

Such officials who are concerned about whether such a situation is developing, or who desire assistance in appropriately responding to such a situation may also seek assistance from the Title IX Coordinator. Any such official who fails to appropriately respond to a hostile working or educational environment, to seek assistance when a hostile working or educational environment situation develops which reasonably should have been perceived by the official, or to promptly report such matters to the Title IX Coordinator, may be subject to disciplinary action.

1.06 RETALIATION

The University will not tolerate retaliation against persons who brings a complaint of unlawful gender discrimination, sexual harassment or sexual assault, whether such complaint is brought internally or with an external agency. A student, faculty, or staff member who retaliates in any way against an individual who has brought a complaint pursuant to this policy or participated in an investigation of such a complaint is subject to disciplinary action, up to and including dismissal from the University.

2.01 GRIEVANCE PROCEDURES

All persons who believe that they have been subjected to prohibited gender discrimination or sexual harassment are encouraged to seek assistance from any of the offices listed above (§1.02), to directly report such conduct to appropriate supervisory officials, or to directly report such conduct to the Title IX

Coordinator. In instances involving allegations of gender discrimination or sexual harassment engaged in by students, the Title IX Coordinator will refer such matters to the Student Conduct Officer for review and other processing. The Student Conduct Officer shall report the results of all such referrals to the Title IX Coordinator.

As referenced above in Section 1.05, such appropriate supervisory officials include, but are not necessarily limited to: unit heads, academic administrators, faculty members engaged in teaching or in supervising student workers, and intercollegiate athletic administrators and coaching staff members.

Persons who believe that they have been subjected to prohibited gender discrimination or sexual harassment may seek either informal or formal University evaluation and response to their concerns. However, in order for disciplinary action to be taken against a University employee or against a student, it may be necessary for a formal complaint to be filed, and that procedure may require the person complaining about such behavior to cooperate with University officials on a formal basis. Independent of a formal complaint, the University is nevertheless responsible under Title IX to investigate known concerns of gender discrimination or harassment and take steps to prevent its recurrence and correct any discriminatory effects arising therefrom.

In addition to this Policy, Oklahoma State University has in place the following general policies and procedures for dealing with concerns of unfair and/or illegal treatment:

- "Policy Statement to Govern Appointments, Tenure, Promotions, and Related Matters of the Faculty of Oklahoma State University-Oklahoma City
- OSU P&P Letter No. 2-0901, "Informal Ombudsman Review of Qualified Faculty Employment Issues, and Informal Voluntary Mediation of Qualified Faculty Employment Issues"
- OSU P&P Letter No. 3-0710, "Resignations and Dismissals for Classified Staff"
- OSU P&P Letter No. 3-0726, "Employment, Resignation, Suspensions, and Dismissals for" Administrative and Professional Staff
- OSU P&P Letter No. 3-0747, "Informal Ombudsperson Review and Informal Voluntary Mediation of Qualified Staff Employment Issues"
- OSU P&P Letter No. 3-0746, "Grievances and Appeals for A/P and Classified Staff"
- "Student Rights and Responsibilities Governing Student Behavior" (available at www.osuokc.edu/rights or in the Office of the Vice President for Student Services and the Office for Student Activities/Campus Life)
- OSU P&P Letter No. 2-0823, "Student Discrimination Grievances" (non-gender discrimination complaints)

Students who are determined to have violated the University's policies prohibiting unlawful gender discrimination, including but not limited to sexual harassment or sexual assault, may be subject to the following disciplinary actions, Disciplinary Sanctions of the University's policy "Student Rights and Responsibilities Governing Student Behavior": Oral or Written Reprimand; Restriction on Privileges; Voluntary Project Assignment, Community Service or Gender Discrimination Education; Restitution for Loss, Damage, or Injury; Enrollment Hold; Cancellation of Enrollment; Graduation Hold; Conduct Probation; Disciplinary Suspension; or Disciplinary Expulsion.

Non-faculty employees who are determined to have violated the University's policies prohibiting unlawful gender discrimination, including but not limited to sexual harassment or sexual assault, may be subject to disciplinary actions under OSU P&P Letter Nos. 3-0710 or 3-0726, as applicable, including but not limited to: Oral or Written Reprimand; Restriction on Privileges; Voluntary Project Assignment, Community Service or Gender Discrimination Education; Restitution for Loss, Damage, or Injury; Placement on Structured Plan of Improvement; Loss of Pay or Rank; Suspension With or Without Pay; or Dismissal.

Faculty employees who are determined to have violated the University's policies prohibiting unlawful gender discrimination, including but not limited to sexual harassment or sexual assault, may be subject to disciplinary

actions under the January 21, 2000 "Policy Statement to Govern Appointments, Tenure, Promotions, and Related Matters of the Faculty of Oklahoma State University-Oklahoma City." Such actions, under Sections 1.12 and Appendix C of the Policy Statement, can include: Simple Admonitions; Formal Sanctions (which can include, but are not limited to, written reprimands, required participation in counseling and/or corrective programs, restrictions on use of University privileges, resources, and services); or Dismissal.

2.02 Resolution Options

A person who believes that he or she has been subjected to gender discrimination or sexual harassment and seeks to take action may use the informal resolution and/or disciplinary processes listed above, or the review processes set forth in this policy, to seek review and redress of the matter. The informal resolution and formal complaint resolution processes described in this and other related University policies are not mutually exclusive. However, informal review and formal complaint review processes cannot be used at the same time, and, to conserve University resources and to prevent redundancy, the University may consolidate requests for informal review and/or formal complaints. No disciplinary investigation procedures that may be pursued as the result of gender discrimination and/or sexual harassment, will be applied to, or take the place of, investigations (informal review or formal complaint) of complaints of discrimination based on gender, including sexual harassment, that are processed pursuant to this gender discrimination grievance procedure.

In any formal resolution proceeding, the complainant possesses the right to present information relevant to his or her complaint to the appropriate investigating official. In addition, the complainant(s) and individual(s) accused are afforded the right to be advised by an individual of her or her choice throughout the formal resolution proceeding.

2.03 Informal Resolution Procedures

A. Informal resolution may be an appropriate choice when the alleged conduct involved is not of a serious or repetitive nature and disciplinary action is not required to remedy the situation. Many times, issues of concern are due to lack of communication or awareness that certain conduct is offensive and simply talking with the person engaging in the conduct in question can resolve the matter. Persons complaining of gender discrimination or sexual harassment may therefore desire to attempt to resolve the problem informally by discussing the matter with the person who is allegedly engaging in prohibited conduct. No formal investigation is involved in the informal resolution process.

B. Such informal resolution requests should be made as soon as possible, but in all cases within 90 days of the date of the alleged incident. Seeking informal resolution of a matter will not toll the 90-day time period for filing a formal complaint, as set forth below.

C. If informal discussion with a supervisory official is desired, the concerns ordinarily should first be directed to the immediate supervisor of the employee, or the Student Conduct Officer for a student, accused of engaging in gender discrimination or sexual harassment. However, if the person complaining of gender discrimination or sexual harassment is uncomfortable discussing the matter with such immediate supervisor or Student Conduct Officer, if the person accused of engaging in prohibited conduct is the supervisor of the person lodging concerns or is the Student Conduct Officer, or if the supervisor or Student Conduct Officer has previously been made aware of the conduct at issue and is not believed to have adequately responded to the matter, the person complaining of gender discrimination or sexual harassment may discuss the matter with the next highest level of supervisor. In all cases, such concerns may also be discussed at any time with the Director of Affirmative Action/Title IX Coordinator.

Methods for informal resolution may include, but are not limited to: coaching the person on how to directly address a situation which is causing a problem; mediating the dispute with the parties; aiding in the modification of a

situation in which the offensive conduct occurred; arranging a documented meeting with the alleged offender that involves a discussion of the requirements of the University's policies on gender discrimination and sexual harassment; or providing education with reference to the issues of gender discrimination, sexual harassment or sexual assault.

D. Reporting and Documentation Requirements

Supervisory officials at all levels who engage in informal resolution of complaints of alleged gender discrimination, including sexual harassment, are required to promptly report such allegations, and the responsive measures taken, in writing, to the University's Title IX Coordinator. Such reports shall be made within two (2) working days of resolution of the complaint. Such officials include, but are not necessarily limited to: unit heads, academic administrators and faculty members engaged in teaching or in supervising student workers. The Student Conduct Officer shall also make such reports to the Title IX Coordinator.

The University shall document all informal resolutions. Such documentation shall be retained by the Title IX Coordinator for at least three (3) years from the date of conclusion of the informal resolution procedure and will be kept confidential to the extent permitted by law. Informal resolution attempts shall not be considered a precondition for the filing of a written grievance.

2.04 Complaints Against Students -Formal Resolution Procedures

A. An investigation by the Student Conduct Officer responding to allegations of gender discrimination or sexual harassment and leading to possible disciplinary action against a student will be initiated if a timely and complete grievance is filed with the Student

Conduct Officer. Such an investigation shall follow the procedures set forth in OSU-OKC Sections III through VIII of the OSU Student Rights and Responsibilities policy, except as such policies are specifically augmented in this Policy. Such a grievance must be filed, in writing, with the Student Conduct Officer within 90 calendar days of the occurrence of the alleged violation. In extraordinary circumstances, the time frame for such filing may be extended by the Student Conduct Officer to an additional 90-day time period.

B. Upon receipt of such a complaint, the Student Conduct Officer shall (1) notify the complainant within two working days, in writing, of receipt of the complaint and of the actions the Officer will take with the complaint, and (2) engage in a preliminary review of the matter to determine whether disciplinary procedures should be initiated in response to the complaint as called for in the Student Rights and Responsibilities policy. Such review, at the minimum, will normally involve meeting personally with the individual(s) filing the complaint, with the individual(s) accused of violations of University policy, and any relevant witnesses to the alleged actions at issue, together with reviewing any documentary evidence relevant to the matter. Such a determination shall ordinarily be made within ten (10) working days of the receipt by the Student Conduct Officer of the complaint. In extraordinary circumstances, the Student Conduct Officer has the authority to extend this 10-day time period. In such instances, the Student Conduct Officer shall notify the complainant and the respondent of such, and the date when the preliminary determination will be made.

C. If it is determined by the Student Conduct Officer that the University will not proceed with a disciplinary proceeding, the Student Conduct Officer will send a notification letter explaining the reason(s) to the complainant, with a copy to the alleged offender. The notification letter will also include a statement informing the complainant that, within ten (10) working days of the notification, he or she may appeal the determination not to proceed to the Vice President for Student Services. The request for appeal must be a signed, written document articulating why the decision to dismiss the complaint is believed to be in error.

The Vice President for Student Services shall respond within ten (10) working days of receipt of the appeal. If the decision to dismiss is upheld, that decision is final. If the decision is overturned, the complaint is sent back to the Student Conduct Officer for investigation in accordance with the procedures outlined below.

D. If it is determined that the University will proceed with a formal disciplinary proceeding, the Student Conduct Officer will give the complainant and the respondent notification of such determination as called for in the Student Rights and Responsibilities policy. If a student conduct committee is to be convened to consider the matter under review, such hearing shall be scheduled to take place within fifteen (15) working days of such notification. In extraordinary circumstances, the Student Conduct Officer has the authority to extend this 15-day time period. In such instances, the Student Conduct Officer shall notify the complainant and the respondent of such, and the date when the hearing will be held. The hearing shall follow the procedures set forth in the Student Rights and Responsibilities policy and the complainant and respondent shall have equal rights in all phases of the hearing and appeal processes set forth in the Student Rights and Responsibilities policy.

2.05 Complaints against Non-Faculty Employees -Formal Resolution Procedures

A. Complaints and grievances alleging gender discrimination or sexual harassment against non-faculty staff personnel may be initiated either through the University's general employee grievance/disciplinary policies located in P&P Letter No. 3-0710, "Resignations and Dismissals for Classified Staff," or P&P Letter No. 3-0726, "Employment, Resignation, Suspensions, and Dismissals for Administrative and Professional Staff," in accordance with the status of the employee, or through the Title IX Coordinator. Such complaints filed with the Title IX Coordinator shall be transferred by the Title IX Coordinator to the appropriate unit administrator for further review and action within two (2) working days of receipt of the complaint.

An investigation in response to a complaint against a non-faculty staff employee shall follow the procedures set forth in the OSU policies governing non-faculty grievances or disciplinary actions located in P&P Letter No. 3-0710, "Resignations and Dismissals for Classified Staff," or P&P Letter No. 3-0726, "Employment, Resignation, Suspensions, and Dismissals for Administrative and Professional Staff," in accordance with the status of the employee, except as such policies are specifically augmented in this Policy.

B. A complaint alleging gender discrimination or sexual harassment allegedly committed by a non-faculty staff employee may be filed, in writing, with either the appropriate unit administrator or with the Title IX Coordinator within 90 calendar days of the occurrence of the alleged violation. In extraordinary circumstances, the time frame for such filing may be extended by the unit administrator or the Title IX Coordinator to an additional 90-day time period.

C. Unit administrators who receive complaints alleging gender discrimination or sexual harassment allegedly committed by non-faculty staff employees shall notify the Director of Human Resources/Title IX Coordinator of their receipt of such a complaint within two (2) working days of receiving the complaint.

D. Upon receipt of a grievance or complaint against a non-faculty staff employee, the Director of Human Resources/Title IX Coordinator, or the unit administrator, as appropriate, shall (1) notify the complainant within two working days, in writing, of receipt of the complaint and of the actions that will be taken with the complaint, and (2) engage in a preliminary review of the matter to determine whether formal grievance or disciplinary procedures should be initiated in response to the complaint. Such a determination shall ordinarily be made within ten (10) working days of the receipt by the unit administrator or Department of Human Resources of the complaint. In extraordinary circumstances, the Director of Human Resources or appropriate unit administrator has the authority to extend this 10-day time period. In such instances, the complainant and the respondent shall be notified of such, and the date when the preliminary determination will be made.

E. Where formal grievance proceedings are requested due to allegations of gender discrimination or sexual harassment by non-faculty employees, if it is determined by the Director of Human Resources that the University will not proceed with a formal grievance proceeding, the Director of Human Resources will send a notification letter explaining the reason(s) to the complainant, with a copy to the alleged offender. The notification letter will also include a statement informing the complainant that, within ten (10) working days of the notification, he or she may appeal the determination not to proceed to the Vice President for Finance and Operations. The request for appeal must be a signed, written document articulating why the decision to dismiss the complaint is believed to be in error.

The Vice President for Finance and Operations shall respond within ten (10) working days of receipt of the appeal. If the decision to dismiss is upheld, that decision is final. If the decision is overturned, the complaint is sent back to the Director of Human Resources for action in accordance with the procedures outlined in P&P Letter No. 3-0746, "Grievances and Appeals for Administrative/Professional and Classified Staff".

F. Where formal disciplinary action is requested due to allegations of gender discrimination or sexual harassment by non-faculty employees, if it is determined by the unit administrator that the University will not proceed with a formal disciplinary action, the unit administrator will send a notification letter explaining the reason(s) to the complainant, with a copy to the alleged offender.

The notification letter will also include a statement informing the complainant that, within ten (10) working days of the notification, he or she may appeal the determination not to take disciplinary action to the Vice President charged with supervision over the unit. The request for appeal must be a signed, written document articulating why the decision to dismiss the complaint is believed to be in error.

The Vice President shall respond within ten (10) working days of receipt of the appeal. If the decision to dismiss is upheld, that decision is final. If the decision is overturned, the complaint is sent back to the unit administrator for action in accordance with the procedures outlined in P&P Letter No. 3-0710, "Resignations and Dismissals for Classified Staff," or P&P Letter No. 3-0726, "Employment, Resignation, Suspensions, and Dismissals for Administrative and Professional Staff," in accordance with the status of the employee.

G. If it is determined that disciplinary action will be taken in response to the complaint, the unit administrator will proceed with such action, following P&P Letter No. 3-0710, "Resignations and Dismissals for Classified Staff," or P&P Letter No. 3-0726, "Employment, Resignation, Suspensions, and Dismissals for Administrative and Professional Staff," in accordance with the status of the employee, relating to imposing disciplinary action against non-faculty employees. The unit administrator shall give the complainant and the respondent notification of such determination. Such action and notification shall normally be concluded within fifteen (15) working days of the receipt by the unit administrator of the complaint. In extraordinary circumstances, the unit administrator has the authority to extend this 15-day time period. In such instances, the unit administrator shall notify the complainant and the respondent of such, and the date when the disciplinary process will be concluded.

2.06 Complaints against Faculty Employees -Formal Resolution Procedures

A. The University's policies for formal complaints against members of the faculty are set forth in the "Policy Statement to Govern Appointments, Tenure, Promotions, and Related Matters of the Faculty of Oklahoma State University" (January 21, 2000) ("the Policy Statement"). A grievance of gender discrimination or sexual harassment allegedly committed by members of the faculty may be initially filed with the Title IX Coordinator or the appropriate academic unit administrator. If such complaints are filed with the Title IX Coordinator, such complaints shall be transferred for review and action by the Title IX Coordinator to the appropriate academic unit administrator within two (2) working days of receipt of such complaint, with a copy transmitted to the Vice President for Academic Affairs. Within two (2) working days of the academic unit administrator's receipt of the complaint, the administrator shall notify the complainant, in writing, of receipt of the complaint and of the actions the academic unit administrator will take with the complaint.

B. In instances not involving the possible dismissal of a faculty member due to alleged gender discrimination or sexual harassment, the appropriate academic unit administrator (or substitute academic administrator appointed by the Vice President for Academic Affairs as authorized in the Policy Statement) shall review the complaint and take responsive action as deemed appropriate normally within thirty (30) working days, following due process provisions as set forth in the Policy Statement.

C. Where formal disciplinary action not involving possible dismissal is requested due to allegations of gender discrimination or sexual harassment by a faculty member, if it is determined by the unit administrator that the University will not proceed with a formal disciplinary action, the unit administrator will send a notification letter explaining the reason(s) to the complainant, with a copy to the alleged offender. The notification letter will also include a statement informing the complainant that, within ten (10) working days of the notification, he or she may appeal the determination not to take disciplinary action to the Division Head charged with supervision over the unit. The request for appeal must be a signed, written document articulating why the decision to dismiss the complaint is believed to be in error.

The Division Head shall respond within ten (10) working days of receipt of the appeal. If the decision not to take disciplinary action is upheld, that decision is final. If the decision is overturned, the complaint is sent back to the unit administrator for action in accordance with the procedures outlined in the University's disciplinary procedures for faculty.

In instances involving the possible dismissal of a faculty member due to alleged gender discrimination or sexual harassment, the procedures set forth in the General Termination Procedures of the Policy Statement shall be followed.

2.07 Formal Resolution Reporting and Documentation Requirements

Officials taking action via formal disciplinary or grievance proceedings (whether involving student, non-faculty staff, and members of the faculty) in response to complaints of alleged gender discrimination or sexual harassment are required to report such actions, in writing, to the University's Title IX Coordinator. Such reports shall be made within two (2) working days of resolution of the complaint. Such officials include, but are not necessarily limited to: unit heads, academic administrators, faculty members engaged in teaching or in supervising student workers, and intercollegiate athletic administrators and coaching staff members. The Student Conduct Officer shall also make such reports to the Title IX Coordinator.

The University shall document formal resolutions. Such documentation shall be retained by the Title IX Coordinator for at least three (3) years from the date of conclusion of the formal resolution procedure and will be kept confidential to the extent permitted by law.

3.01 Title IX Coordinator Review Authority

Nothing contained in this Policy shall be construed to limit or qualify the authority of the Title IX Coordinator to independently review any allegations of gender discrimination or sexual harassment on an informal basis and to make such reports as the Title IX Coordinator deems appropriate and necessary to University administrators.

Appendix A

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION 29 CFR Part 1604

DISCRIMINATION BECAUSE OF SEX UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED; ADOPTION OF FINAL INTERPRETIVE GUIDELINES AGENCY: Equal Employment Opportunity Commission.

ACTION: Final Amendment to Guidelines on Discrimination Because of Sex.

SUMMARY: On April 11, 1980, the Equal Employment Opportunity Commission published the Interim Guidelines on sexual harassment as an amendment to the Guidelines on Discrimination Because of Sex, 29 CFR part 1604.11, 45 FR 25024. This amendment will reaffirm that sexual harassment is an unlawful employment practice. The EEOC received public comments for 60 days subsequent to the date of publication of the Interim Guidelines. As a result of the comments and the analysis of them, these Final Guidelines were drafted.

EFFECTIVE DATE: November 10, 1980.

FOR FURTHER INFORMATION CONTACT: Karen Danart, Acting Director, Office of Policy Implementation, Equal Employment Opportunity Commission, 2401 E Street, NW, Washington, D.C. 20506, (202) 634-7060.

(Supplementary information concerning comments received on the interim guidelines, and relevant case law is omitted.)

Accordingly, 29 CFR Chapter XIV, Part 1604 is amended by adding § 1604.11 to read as follows: PART 1604-GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

§ 1604.11 Sexual harassment.

(a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII. The principles involved here continue to apply to race, color, religion or other origin. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,

(2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or

(3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

(c) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment

regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

(Title VII, Pub. L. 88-352, 78 Stat. 253 (42 V.S.C. 2000e et seq.) (FR Doc. 80-34981 Filed 11-7-80, 8:45 a.m.) Billing Code 6570-06-M

Federal Register Vol. 45, No. 219/Monday, November 10, 1980/Rules and Regulations 74676-74677