

**BOARD OF REGENTS**  
EASTERN MICHIGAN UNIVERSITY

SECTION: **B**

DATE:

**June 21, 2016**

**RECOMMENDATION TO APPROVE AMENDMENTS TO SEXUAL HARASSMENT  
AND OTHER PROHIBITED CONDUCT POLICY**

**ACTION REQUESTED**

It is recommended that the Board of Regents of Eastern Michigan University approve the attached amendments to Board Policy 3.1.8, *Sexual Harassment and Other Prohibited Conduct*, effective July 1, 2016.

**STAFF SUMMARY**

The Eastern Michigan Board of Regents approved on this date the *Sexual Misconduct and Interpersonal Violence Policy*, which defines standards of conduct and expectations for all members of the EMU community, including faculty, staff, students, vendors, and visitors with respect to sexual misconduct. It is important that the policies across the University that refer to sexual misconduct, including sexual harassment, are consistent in their message and provide clear guidance to the University community. Amendments to the Sexual Harassment and Other Prohibited Conduct Policy are therefore proposed to recognize the new policy and ensure consistency between current and new policies.

**FISCAL IMPLICATIONS**

None.

**ADMINISTRATIVE RECOMMENDATION**

The proposed Board action has been reviewed and is recommended for Board approval.

\_\_\_\_\_  
**University Executive Officer**

Gloria A. Hage  
General Counsel

6-21-16  
**Date**

# Board Policy Manual

## 3. Employment and Affirmative Action

### 3.1. Employment

#### 3.1.8. Sexual Harassment and Other Prohibited Conduct

Effective Date: 8-4-2004

Revision Date:

##### UNIVERSITY POLICY STATEMENT

It is the policy of Eastern Michigan University to provide an educational, employment, and business environment free of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment, as defined and otherwise prohibited by state and federal statutes. Sexual harassment is prohibited at Eastern Michigan University. While sexual harassment often takes place in relationships with a power differential between the persons involved, the University also recognizes that sexual harassment may occur between persons in the absence of such a relationship.

The sexual harassment of University faculty, staff and students by non-University employees and guests doing business or providing services on campus (for example, contractors, vendors, delivery persons) is also prohibited by this policy.

It is the policy of the University that no member of the University community may harass another. Students are entitled to learn in an academic environment free of sexual harassment. However, conduct and pedagogical techniques that reasonably serve legitimate educational purposes do 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. 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. Therefore, this policy against harassment shall be applied in a manner that protects academic freedom and freedom of expression, including the expression of germane

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, academic or artistic freedom, including but not limited to written, graphic, or verbal expression that serves legitimate educational or artistic purposes.

## Sexual Harassment

Sexual harassment may take many forms - subtle and indirect, as well as blatant and overt. It may consist of repeated actions or may even arise from a single incident if sufficiently extreme. ~~The victim as well as the harasser may be a woman or man. The victim does not have to be of the opposite sex.~~

The definition and examples of Sexual Harassment applicable to this Policy are contained in Section III.E. of Board Policy titled *Sexual Misconduct and Interpersonal Violence Policy* (live link) which applies to all members of the University community.

~~Sexual harassment includes any behavior of a sexual nature where:~~

- ~~• submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, status in a course or program, or participation in an activity;~~
- ~~• submission to, or rejection of such conduct by an individual is used as the basis for a decision affecting an individual's employment, status in a course or program, or participation in an activity; or~~
- ~~• such conduct is intended to or would objectively be regarded by a reasonable person as unreasonably interfering with an individual's work, academic performance in a course or program, or participation in an activity, or of creating an intimidating, hostile or offensive working or educational environment.~~

~~Depending on the particular circumstances, sexual harassment may include, but is not limited to, the following:~~

- ~~1. Physical assaults of a sexual nature, such as rape, sexual battery, molestation, or attempts to commit these assaults; and intentional physical conduct that is sexual in nature such as touching, pinching, patting, grabbing, poking, or brushing against another individual's body.~~
- ~~2. 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.~~
- ~~3. 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.

4. The use or display in the classroom or workplace, including electronic, of pornographic or sexually harassing materials such as posters, photos, cartoons or graffiti without pedagogical justification.
5. Unwelcome sexual advances, repeated propositions or requests for a sexual relationship to an individual who has previously indicated that such conduct is unwelcome, or sexual gestures, noises, remarks, jokes, questions, or comments about a person's sexuality or sexual experience. Such speech or conduct must be directed against another and either abusive or humiliating, or it must persist despite the objection of the person targeted by the speech or conduct. Such conduct between peers must be sufficiently severe, persistent, or pervasive that it creates an educational or working environment that would reasonably be perceived as hostile or abusive. A single incident involving severe misconduct may rise to the level of harassment.

Sexual harassment may occur within a variety of relationships, including classroom situations involving instruction. It may occur among peers. It may occur where no relationship exists between the parties other than the co-employee or co-student relationship. Sexual harassment often occurs where the relationship is characterized by an imbalance of power and authority, including, without limitation, faculty-student, staff-student, and supervisor-employee relationships.

-

### **Consensual Sexual Relationships:**

#### **Professor and student:**

The ideal professor demonstrates respect for students as individuals and serves as students' mentor, intellectual guide, and model of honest academic conduct. The professor acts to ensure academic evaluations of students that reflect each student's true merit. He or she respects the confidential nature of the relationship between professor and student and avoids all forms of exploitation, harassment, and discriminatory treatment of students.

Sexual relations (which include contact of a sexual nature) or requests for sexual relations between students and faculty members with whom they also have a current instructional or evaluative relationship are fraught with the potential for exploitation and must be avoided, and are prohibited. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in an instructional or evaluative role, make voluntary consent by the student suspect. In their relationships with students, members of the faculty are expected to be aware of their professional responsibilities and to avoid apparent or actual conflict of interest, favoritism, or bias.

## **Supervisor and subordinate employee:**

Similar considerations apply to consensual sexual relationships (which include contact of a sexual nature) between supervisors and subordinate employees. Such relationships are also fraught with the potential for exploitation and should be avoided. The power exercised by a supervisor makes voluntary consent by the employee suspect. In their relationships with employees, those in a position of authority are expected to be aware of their professional responsibilities and to avoid apparent or actual conflict of interest, favoritism, or bias. When a consensual sexual relationship develops between adults, effective steps must be taken to ensure unbiased evaluation and supervision of the employee, and the supervisory employee has an obligation to report the relationship to the appropriate supervisor to ensure that such steps are taken. It is a violation of this policy for a supervisory employee who becomes involved in a sexual relationship with a subordinate employee to fail promptly to report the relationship to the appropriate supervisor.

## **Definitions**

*Faculty, faculty member, or professor* means all who teach at the University and includes faculty members, lecturers, staff members, graduate students and teaching assistants, and other instructional personnel. The term also includes faculty, staff members, and graduate students whose duties include supervision or evaluation of a student's academic work.

*Position of Authority* includes situations in which one makes or is responsible for the instruction, supervision, or evaluation of a student for coursework, grades, grants, research funding, or other academic work. The term also includes situations in which one makes or is responsible for the supervision or evaluation of an employee with respect to hiring, performance, discipline, or termination.

*Evaluative relationship* means one in which the faculty member or supervisor exercises judgment in assessing a student's or employee's skills, qualifications, or abilities for the purpose of making such formal determinations as grades, scholarship determinations, award designations, and formal advisory recommendations.

## **Responses to Violations of Policies**

### Protection Against Retaliation

No individual involved in the complaint procedure shall suffer retaliation as a result of such participation. Retaliation exists when action is taken against a complainant or participant in the complaint process which affects his or her employment, academic, or business status which is motivated in whole or in part by his or her participation in the process. Retaliation may be found even where the underlying complaint is found to have no merit.

## Disciplinary Actions for Violation of the Sexual Harassment Policy

Faculty and staff/employees, including student employees acting in an employment capacity, who violate this policy are subject to disciplinary action, up to and including discharge. Sexual harassment by students, including definitions, investigative procedures, interim measures, sanctions, and all other matters related to sexual misconduct and interpersonal violence are governed by the Sexual Misconduct and Interpersonal Violence Policy (hyperlink) ~~students who violate the policy are subject to disciplinary action, up to and including expulsion in accordance with the provisions of the University's Student Conduct Code.~~ Guests and other persons who violate the policy are subject to corrective action, which may include removal from campus and termination of contractual arrangements.

## Malicious Allegations/Complaints; False Information

Any individual who knowingly files a false complaint under this policy, or who knowingly provides false information to or intentionally misleads University officials who are investigating a complaint, may be subject to disciplinary and/or corrective action.

## Confidentiality

To the extent permitted by law, the confidentiality of each party involved in a sexual harassment investigation, complaint, or charge will be observed, provided it does not interfere with the University's ability to investigate the allegations or take corrective action.

## **UNIVERSITY PRACTICE**

The University's policy on Sexual Harassment and Other Prohibited Conduct is based on shared values and collective responsibility to respect all individuals who are part of the University's community or who participate in any way in our learning environment. This policy also reflects the University's commitment to creating and maintaining an environment that values diversity and is free from conflicts of interest.

An employee, faculty member, or student who believes that he/she is the victim of sexual harassment or that the University's policy on Sexual Harassment and Other Prohibited Conduct has been violated may seek information and assistance from the Title IX Coordinator or Office of Diversity and Affirmative Action ~~or the Office of Student Judicial Services~~. If the employee, faculty member, or student wishes to file a complaint, she/he may take the following action(s):

- A. If the alleged harasser or violator of this policy is an employee, faculty member, or guest, the affected individual(s) may contact the Title IX Coordinator or the Office of Diversity and Affirmative Action.
- B. If the alleged harasser or violator of this policy is a student, the affected individual(s) may contact the Title IX Coordinator, Office of Student Judicial Services.

The University takes seriously and will investigate all complaints made pursuant to its Sexual Harassment policy. Individuals who are accused of violating the University's Sexual Harassment and Other Prohibited Conduct policy will be provided with the opportunity to hear and respond to the charges made against them.

The University will employ generally accepted principles of progressive discipline in regards to any faculty member or other employee who, following investigation and hearing, is found by the University to have engaged in sexual harassment warranting disciplinary action. Depending on the circumstances of the particular case, disciplinary action may warrant verbal warning, written warning, suspension with or without pay, or, in the most serious cases, termination of employment.

All members of the University community and guests are responsible for knowing and understanding the University's Sexual Harassment and Other Prohibited Conduct policy. Questions about the policy may be directed to the University's Title IX Coordinator or to the Office of Diversity and Affirmative Action. Employees and faculty members who do not understand the policy should contact their department head or director. Department heads or directors who need assistance in understanding, interpreting, or applying the policy should contact the Office of Diversity and Affirmative Action. Students who do not understand the policy should contact the Office of Student Judicial Services.

~~Copies of the policy and procedures will be posted on the web sites of the Office of Diversity and Affirmative Action, the Office of Student Judicial Services, Human Resources, and the Office of the Assistant Vice President for Academic Affairs. Written copies of this policy will be available in bulk for distribution in these offices and posted on available bulletin boards. All department heads will be supplied with written copies of this policy in bulk and shall be required to post copies on official bulletin boards.~~

## **RESPONSIBILITY FOR IMPLEMENTATION**

The president of the University is responsible for the overall implementation of this policy. The president is authorized to adopt and implement appropriate complaint and enforcement procedures. Each vice president, dean, director, department head, and other supervisory personnel has responsibility for implementation of this policy within their areas of responsibility. The Title IX Coordinator, Director of Diversity and Affirmative Action, Associate Vice President for Student Affairs,~~director of student judicial services,~~ Vice-President~~executive director~~ of Human Resources and Assistant Vice President for Academic Affairs are responsible for the administration and enforcement of this policy.

## **SCOPE OF POLICY COVERAGE**

|

This policy applies to all University employees, faculty, students, and other members of the University community as well as contractors, consultants, and vendors doing business or providing services on campus.

**Authority for Creation and Revision**

Minutes of the Board of Regents: August 4, 2004, para. .6297M.

DRAFT



# Board Policy Manual

## 3. Employment and Affirmative Action

### 3.1. Employment

#### 3.1.8. Sexual Harassment and Other Prohibited Conduct

Effective Date: 8-4-2004

Revision Date:

##### UNIVERSITY POLICY STATEMENT

It is the policy of Eastern Michigan University to provide an educational, employment, and business environment free of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment, as defined and otherwise prohibited by state and federal statutes. Sexual harassment is prohibited at Eastern Michigan University. While sexual harassment often takes place in relationships with a power differential between the persons involved, the University also recognizes that sexual harassment may occur between persons in the absence of such a relationship.

The sexual harassment of University faculty, staff and students by non-University employees and guests doing business or providing services on campus (for example, contractors, vendors, delivery persons) is also prohibited by this policy.

It is the policy of the University that no member of the University community may harass another. Students are entitled to learn in an academic environment free of sexual harassment. However, conduct and pedagogical techniques that reasonably serve legitimate educational purposes do 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. 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. Therefore, this policy against harassment shall be applied in a manner that protects academic freedom and freedom of expression, including the expression of germane

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, academic or artistic freedom, including but not limited to written, graphic, or verbal expression that serves legitimate educational or artistic purposes.

## **Sexual Harassment**

Sexual harassment may take many forms - subtle and indirect, as well as blatant and overt. It may consist of repeated actions or may even arise from a single incident if sufficiently extreme.

The definition and examples of Sexual Harassment applicable to this Policy are contained in Section III.E. of Board Policy titled *Sexual Misconduct and Interpersonal Violence Policy* ([live link](#)) which applies to all members of the University community.

## **Consensual Sexual Relationships:**

### **Professor and student:**

The ideal professor demonstrates respect for students as individuals and serves as students' mentor, intellectual guide, and model of honest academic conduct. The professor acts to ensure academic evaluations of students that reflect each student's true merit. He or she respects the confidential nature of the relationship between professor and student and avoids all forms of exploitation, harassment, and discriminatory treatment of students.

Sexual relations (which include contact of a sexual nature) or requests for sexual relations between students and faculty members with whom they also have a current instructional or evaluative relationship are fraught with the potential for exploitation and must be avoided, and are prohibited. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in an instructional or evaluative role, make voluntary consent by the student suspect. In their relationships with students, members of the faculty are expected to be aware of their professional responsibilities and to avoid apparent or actual conflict of interest, favoritism, or bias.

### **Supervisor and subordinate employee:**

Similar considerations apply to consensual sexual relationships (which include contact of a sexual nature) between supervisors and subordinate employees. Such relationships are also fraught with the potential for exploitation and should be avoided. The power exercised by a supervisor makes voluntary consent by the employee suspect. In their relationships with employees, those in a position of authority are expected to be aware of their professional responsibilities and to avoid apparent or actual conflict of interest, favoritism, or bias. When a

consensual sexual relationship develops between adults, effective steps must be taken to ensure unbiased evaluation and supervision of the employee, and the supervisory employee has an obligation to report the relationship to the appropriate supervisor to ensure that such steps are taken. It is a violation of this policy for a supervisory employee who becomes involved in a sexual relationship with a subordinate employee to fail promptly to report the relationship to the appropriate supervisor.

## **Definitions**

*Faculty, faculty member, or professor* means all who teach at the University and includes faculty members, lecturers, staff members, graduate students and teaching assistants, and other instructional personnel. The term also includes faculty, staff members, and graduate students whose duties include supervision or evaluation of a student's academic work.

*Position of Authority* includes situations in which one makes or is responsible for the instruction, supervision, or evaluation of a student for coursework, grades, grants, research funding, or other academic work. The term also includes situations in which one makes or is responsible for the supervision or evaluation of an employee with respect to hiring, performance, discipline, or termination.

*Evaluative relationship* means one in which the faculty member or supervisor exercises judgment in assessing a student's or employee's skills, qualifications, or abilities for the purpose of making such formal determinations as grades, scholarship determinations, award designations, and formal advisory recommendations.

## **Responses to Violations of Policies**

### Protection Against Retaliation

No individual involved in the complaint procedure shall suffer retaliation as a result of such participation. Retaliation exists when action is taken against a complainant or participant in the complaint process which affects his or her employment, academic, or business status which is motivated in whole or in part by his or her participation in the process. Retaliation may be found even where the underlying complaint is found to have no merit.

### Disciplinary Actions for Violation of the Sexual Harassment Policy

Faculty and staff/employees, including student employees acting in an employment capacity, who violate this policy are subject to disciplinary action, up to and including discharge. Sexual harassment by students, including definitions, investigative procedures, interim measures, sanctions, and all other matters related to sexual misconduct and interpersonal violence are governed by the *Sexual Misconduct and Interpersonal Violence Policy* ([hyperlink](#)) Guests and

other persons who violate the policy are subject to corrective action, which may include removal from campus and termination of contractual arrangements.

#### Malicious Allegations/Complaints; False Information

Any individual who knowingly files a false complaint under this policy, or who knowingly provides false information to or intentionally misleads University officials who are investigating a complaint, may be subject to disciplinary and/or corrective action.

#### Confidentiality

To the extent permitted by law, the confidentiality of each party involved in a sexual harassment investigation, complaint, or charge will be observed, provided it does not interfere with the University's ability to investigate the allegations or take corrective action.

### **UNIVERSITY PRACTICE**

The University's policy on Sexual Harassment and Other Prohibited Conduct is based on shared values and collective responsibility to respect all individuals who are part of the University's community or who participate in any way in our learning environment. This policy also reflects the University's commitment to creating and maintaining an environment that values diversity and is free from conflicts of interest.

An employee, faculty member, or student who believes that he/she is the victim of sexual harassment or that the University's policy on Sexual Harassment and Other Prohibited Conduct has been violated may seek information and assistance from the Title IX Coordinator or Office of Diversity and Affirmative Action. If the employee, faculty member, or student wishes to file a complaint, she/he may take the following action(s):

- A. If the alleged harasser or violator of this policy is an employee, faculty member, or guest, the affected individual(s) may contact the Title IX Coordinator or the Office of Diversity and Affirmative Action.
- B. If the alleged harasser or violator of this policy is a student, the affected individual(s) may contact the Title IX Coordinator.

The University takes seriously and will investigate all complaints made pursuant to its Sexual Harassment policy. Individuals who are accused of violating the University's Sexual Harassment and Other Prohibited Conduct policy will be provided with the opportunity to hear and respond to the charges made against them.

The University will employ generally accepted principles of progressive discipline in regards to any faculty member or other employee who, following investigation and hearing, is found by the University to have engaged in sexual harassment warranting disciplinary action. Depending on the circumstances of the particular case, disciplinary action may warrant verbal warning, written

warning, suspension with or without pay, or, in the most serious cases, termination of employment.

All members of the University community and guests are responsible for knowing and understanding the University's Sexual Harassment and Other Prohibited Conduct policy. Questions about the policy may be directed to the University's Title IX Coordinator or to the Office of Diversity and Affirmative Action.

## **RESPONSIBILITY FOR IMPLEMENTATION**

The president of the University is responsible for the overall implementation of this policy. The president is authorized to adopt and implement appropriate complaint and enforcement procedures. Each vice president, dean, director, department head, and other supervisory personnel has responsibility for implementation of this policy within their areas of responsibility. The Title IX Coordinator, Director of Diversity and Affirmative Action, Associate Vice President for Student Affairs, Vice-President of Human Resources and Assistant Vice President for Academic Affairs are responsible for the administration and enforcement of this policy.

## **SCOPE OF POLICY COVERAGE**

This policy applies to all University employees, faculty, students, and other members of the University community as well as contractors, consultants, and vendors doing business or providing services on campus.

### **Authority for Creation and Revision**

Minutes of the Board of Regents: August 4, 2004, para. .6297M.