

FACULTY SENATE EXECUTIVE COUNCIL

Resolution to Revise the Draft SIUC Sexual Harassment Policy and Sexual Harassment Complaint and Investigation Procedures [as amended]

Background:

In fall, 2008, The Office of the President requested the SIUC Faculty Senate (and other constituency groups) to review drafts of the revised sexual harassment policy and procedures. With this charge, the SIUC Faculty Senate Executive Council prepared a survey to gather faculty input on many features of the draft policy and procedures. The survey was distributed widely and sixty individuals responded. The responses were tabulated (see attached Appendix), and discussed by the Executive Council. The following resolution is based on survey responses where there was clear indication that respondents were not in agreement with particular provisions of either the policy or the procedures.

WHEREAS the faculty are committed to creating and maintaining a harassment-free academic and work environment;

WHEREAS the Sexual Harassment Policy and Sexual Harassment Complaint and Investigation Procedures were presented to the Faculty Senate for faculty response;

WHEREAS faculty answers to the survey indicated strong disagreement with several provisions of the draft policy and procedures;

WHEREAS a consistent concern across many of the survey responses was a need for oversight of the proposed position and authority of the Associate Chancellor for Compliance (hereinafter, "Compliance Officer");

WHEREAS the following principles guided the Executive Council's discussion of the survey results and suggested revisions to the policy and procedures: (1) sensitivity to the concerns of sexual harassment targets/ complainants and their witnesses; (2) fairness to accused parties; (3) protection of the university; and (4) consistency with the law; all of which are concerns to the faculty;

THEREFORE BE IT RESOLVED that the SIU Sexual Harassment Policy reflects the following:

A. Due process rights shall be afforded to the parties, in keeping with the Fourth and Fourteenth Amendments, and shall include but not be limited to: timely notice of filing of a complaint; the opportunity to be heard, the opportunity to review and respond to the evidence against him or her; an impartial decision maker having no conflict of interest; a ruling based solely on evidence presented at a hearing; and a statement of reasons for the ruling.

B. "Sexual Harassment" shall be defined according to the definitions provided by the Illinois Human Rights Act. For employers/employees, this is the Employment Article 775 ILCS 5/2-101 and for students/higher education representatives, this is the Higher Education Article 775 ILCS 5/5A-101.E.

1. Employment Article of the IHRA: 775 ILCS 5/2-101:

"Sexual harassment" means any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature 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 substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

2. Higher Education article of the IHRA: 775 ILCS 5/5A-101.E:

"Sexual harassment in higher education" means any unwelcome sexual advances or requests for sexual favors made by a higher education representative to a student, or any conduct of a sexual nature exhibited by a higher education representative toward a student when such conduct has the purpose of substantially interfering with the student's educational performance or creating an intimidating, hostile, or offensive educational environment; or when the higher education representative either explicitly or implicitly makes the student's submission to such conduct a term or condition of, or uses the student's submission to or rejection of such conduct as a basis for determining:

1. Whether the student will be admitted to an institution of higher education;
2. The educational performance required or expected of the student;
3. The attendance or assignment requirements applicable to the student;
4. To what courses, fields of study or programs, including honors and graduate programs, the student will be admitted;
5. What placement or course proficiency requirements are applicable to the student;
6. The quality of instruction the student will receive;
7. What tuition or fee requirements are applicable to the student;
8. What scholarship opportunities are available to the student;
9. What extracurricular teams the student will be a member of or in what extracurricular competitions the student will participate;
10. Any grade the student will receive in any examination or in any course or program of instruction in which the student is enrolled;
11. The progress of the student toward successful completion of or graduation from any course or program of instruction in which the student is enrolled; or
12. What degree, if any, the student will receive.

BE IT FURTHER RESOLVED that the SIU Sexual Harassment Complaint and Investigation Procedures reflect the following:

C. A body called the Sexual Harassment Review Board (SHRB), consisting of at least ten members chosen by the constituency groups of Faculty Senate, Graduate Council, AP Council, Civil Service Council, Undergraduate Student Government, and Graduate and Professional Council, shall be formed to work with the Compliance Officer in reviewing and resolving the cases involving sexual harassment. When the decision of the Compliance Officer is appealed, a Sexual Harassment Panel (SHP) of three members shall be appointed by the SHRB by randomly selecting the panel members from the SHRB to hear the appeal. In addition, an Oversight Committee (a Standing Committee of SHRB), comprised of three members randomly selected from the SHRB, shall be appointed to serve two year terms; this Oversight Committee shall share the authority with the Compliance Officer in imposing any disciplinary measures including but not limited to placing the accused person on paid administrative leave or banning him or her from campus.

D. Decisions to place an accused person on paid administrative leave or to ban him or her from campus during an investigation or an appeal shall be made only if the accused poses an immediate and direct threat to abuse any university employee, student, or property.

E. As an alternative to appointing SHP by selecting members from the Sexual Harassment Review Board, the current Judicial Review Board members, with proper training, may be appointed to SHP for cases involving faculty to allow judgment by peers. Additional members from the Sexual Harassment Review Board may augment the JRB in order to appoint a panel that has sufficient gender or other forms of diversity as needed.

F. The accused shall be notified about the complaint against him or her within five working days of filing the complaint. Provisions shall be made to facilitate informal resolution, through the Compliance Officer, a supervisor, or some other trusted party, especially when such incidents are relatively minor and a matter primarily of retraining or education. In case a formal investigation needs to be initiated, the accuser and the accused shall be notified before initiating such investigation.

G. The Compliance Officer shall conduct the investigation as outlined in Section I.B of the draft SIUC Sexual Harassment Complaints and Investigation Procedures. The investigating team shall submit a preliminary written report of the investigation to the Compliance Officer. Before the Compliance Officer makes a decision, the accused and the complainant shall both have access to a redacted version of the preliminary investigatory report and a period of five working days to respond to the report. After reviewing the responses of the complainant and/or accused, the investigators shall submit their final report to the Compliance Officer within five working days of receiving the parties' responses to the preliminary report. The Compliance Officer shall make the final decision. The Compliance Officer shall notify his or her decision to the accused and the complainant within five working days of receiving the final investigation report. These five-day periods may be extended if circumstances warrant.

H. The accused and the complainant shall have a right to appeal the Compliance Officer's decision to the SHP. If the accused or the complainant is not satisfied with the Compliance Officer's decision, they shall have access to a redacted version of the final investigatory report and a period of five working days to respond to the report and request an appeal to the SHP. In the appeal, the accused and the complainant shall be allowed to present their own cases before the SHP. The five day limit to respond to the decision of the Compliance Officer and a request for an appeal may be extended if circumstances warrant.

I. The Sexual Harassment Panel shall review all available information and submit a final report to the Chancellor in a timely manner.

J. For the sake of tracking repeated accusations or allegations, and to keep decisions (including degrees of discipline) consistent over time, records shall be kept, under strict confidentiality, to track and to promote consistency.

BE IT FURTHER RESOLVED that the Faculty Senate's endorsement of these resolutions does not constitute wholesale acceptance of the remainder of the policy and procedures.

Appendix

QUESTIONS ON THE POLICY

1. This document titled “Sexual Harassment Policy” should be a free-standing policy, or should it also extend to cover all forms of harassment (as stated in current policy: see below).
2. In former sexual harassment policies, supervisors were responsible for taking reasonable and necessary action to prevent sexual harassment. In this policy, the duty to take “reasonable and necessary action” should be extended to “all University employees.”
3. Do you agree or disagree with this statement in the policy: “This Policy also prohibits consensual sexual or dating relationships where there is a material and direct power difference between the parties involved.”
4. Do you agree or disagree with this statement in the policy: “Sexually explicit materials in the workplace or learning environment that have no relationship to the curriculum or the job description can contribute to a sexually harassing environment for faculty, staff, other employees and students. A complaint of sexual harassment may include allegations of sexually explicit materials. Such materials may be in the form of music, documents, objects, photographs, film or
5. The following language should be added to the policy to protect Due Process rights: “Also, due process rights shall be afforded to the parties, in keeping with the Fourth and Fourteenth Amendments, and shall include but not be limited to: timely notice of filing of a complaint; the opportunity to be heard, examine witnesses and present evidence at a hearing; representation by counsel or union representative, if desired; an impartial decision maker having no conflict of interest; a ruling based solely on evidence presented at a hearing: and a statement of reasons for the ruling.”
6. Should all the following examples of behavior listed in this policy be considered sexual harassment: “A pattern of conduct, annoying or humiliating in a sexual way, that includes comments of a sexual nature and/or sexually explicit statements, questions, jokes, or anecdotes, that would annoy or humiliate a reasonable person at whom the conduct was directed. Such conduct may include, but is not limited to gestures, facial expressions, speech, or physical contact that is sexual in nature, or which is repeated after the individual signifies that the conduct is perceived to be sexually offensive. Conduct need not be in person but can be written or electronic communication, such as electronic mail and/or comments sent via the internet.”

QUESTIONS ON THE PROCEDURES

7. (in proposed procedures) The Associate Vice Chancellor for Compliance (afterwards called Compliance Officer) should be allowed to choose the investigators for Sexual Harassment cases.
8. (addition to proposed procedures) Provisions should be made to facilitate informal resolution, through a Sexual Harassment Advisor, a supervisor, or some other trusted party, especially when such incidents are relatively minor and a matter primarily of retraining or education.

9. (addition to proposed procedures) A complainant should have a right to appeal the Compliance Officer's initial determination to the Sexual Harassment Panel (described in #7).
10. (in the proposed procedures) The Compliance Officer may place the accused on paid leave or ban him/her from campus during the investigation, if it is in the "best interests of the University, or may aid the investigation."
11. (addition to proposed procedures) Before the Compliance Officer makes a determination, there should be a just cause hearing in which the accused and the complainant both have access to a redacted version of the investigatory reports.
12. (in the proposed procedures) The accused may be suspended with or without pay while an appeal is pending if the Compliance Officer determines that the accused has violated the sexual harassment policy and discharge is the recommended sanction.
13. (change to proposed procedures) In the procedures, the pool of persons selected for the Sexual Harassment Panel to hear appeals would be chosen by the Vice Chancellors and approved by the Chancellor. Please respond to this suggested change to procedures: The pool of persons selected for the Sexual Harassment Panel should be chosen by the constituency groups of Faculty Senate, Graduate Council, AP, and Civil Service.
14. (change to proposed procedures) As an alternative to the Sexual Harassment Panel, the current Judicial Review Board, with proper training, may constitute the appropriate appeal board for faculty to allow judgement by peers.

II.B. The Appeal Process. Procedures for Appeal (p. 7)

15. (in proposed procedures) A limit of 5 days in which to appeal the decisions of the Compliance Officer is sufficient.
16. (in proposed procedures) The Compliance Officer is the appropriate person to choose from among the pool the three members of the Sexual Harassment Panel to review the appeal of his/her own decision.
17. (addition to proposed procedures) The accused and the complainant should be allowed to present their own cases before the Sexual Harassment Panel.
18. (in proposed procedures) The Chancellor should have the right to uphold or reverse the decision of the Sexual Harassment Panel.
19. (addition to proposed procedures) For the sake of tracking repeated accusations or allegations, and to keep decisions (including degrees of discipline) consistent over time, records should be kept, under strict confidentiality, records should be kept to track and to promote consistency.

Sexual Harassment Survey Results
 Mary Ellen Lamb, for Faculty Senate

Lamb

3-Nov-08

Senators: 14, but only 13 counted here. One Senator sent in a survey but did not self-identify as a senator, so the number is counted with the non-senators

Non-Senators: 47 (including the one Senator who did not self-identify)

Total surveys:

	60 Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree	Blank	Str. Agree & Agree	Str Disag & Disagree
Quest. 1								
Senators	5	3	1	1	3	1		
All	10	16	10	3	9	12	26	12
Quest. 2								
Senators	5	5		1	3			
All	15	16	3	8	17	1	31	26
Quest. 3								
Senators	4	2		4	3			
All	15	12	2	19	12		27	31
Quest. 4								
Senators	3	1		2	7			
All	12	14	1	16	17		26	33
Quest. 5								
Senators	10	1	1		1			
All	35	14	2	2	6	1	49	8
Quest. 6								
Senators	2	5		1	5			
All	14	18	4	8	14	2	32	22
Quest. 7								
Senators		2		3	7	1		
All	5	11	11	14	17	2	16	31
Quest. 8								
Senators	11	2						
All	31	22	5	2			53	2
Quest. 9								
Senators	8	4			1			
All	31	17	6	1	2	3	48	3
Quest.10								
Senators	1	1	1	4	6			
All	5	12	3	15	21	4	17	36

Quest.11										
Senators	10	1	1		1					
All	30	18	4	2	3	3	48	5		
Quest.12										
Senators	1	1		5	5	1				
All	9	9	6	18	14	4	18	32		
Quest.13										
Senators	7	3			3					
All	23	21	4	1	8	3	44	9		
Quest. 14										
Senators	8	2		3						
All	22	10	12	10	6		32	14		
Quest.15										
Senators	1	2	1	3	6					
All	2	11	3	25	18	1	13	43		
Quest.16										
Senators			1	4	8					
All	2	7	5	17	28	1	9	45		
Quest.17										
Senators	8	3			1	1				
All	28	23	3	2	2	2	51	3		
Quest. 18										
Senators		2	1	3	6	1				
All	5	14	9	16	13	3	17	29		
Quest.19										
Senators	8	3	1			1				
All	26	20	2	5	2	3	46	7		
				<some of this last question was dropped off questionnaire>						

Descending order of difference

Quest.8	52-2	53-2
Quest.17		51-3
Quest.9		48-3
Quest. 11		48-5
Quest. 5		49-8
Quest.19		46-7
Quest.16		9_45
Quest.13		44-9
Quest.15		13-43
Quest. 10		17-36

Quest.14	32-14
Quest.12	18-32
stop here? Other questions are too close to call.	
Quest. 7	16-31
Quest.1	26-12
Quest.18	17-29
Quest.2	31-26
Quest.4	26-33
Quest.6	32-22
Quest.3	27-31

Faculty Senate Sexual Harassment Survey Results
Sorted in order of largest deviation from the midpoint.

	mean ⁱ	%agree	Midpoint Dev. ⁱⁱ	n
8. Provisions should be made to facilitate informal resolution, through a Sexual Harassment Advisor, a supervisor, or some other trusted party, especially when such incidents are relatively minor and a matter primarily of retraining or education.	4.37	0.88	1.37	60
9. A complainant should have a right to appeal the Compliance Officer's initial determination to the Sexual Harassment Panel	4.30	0.84	1.30	57
17. The accused and the complainant should be allowed to present their own cases before the Sexual Harassment Panel.	4.26	0.88	1.26	58
11. Before the Compliance Officer makes a determination, there should be a just cause hearing in which the accused and the complainant both have access to a redacted version of the investigatory reports.	4.23	0.84	1.23	57
5. The following language should be added to the policy to protect Due Process rights: "Also, due process rights shall be afforded to the parties, in keeping with the Fourth and Fourteenth Amendments, and shall include but not be limited to: timely notice of filing of a complaint; the opportunity to be heard, examine witnesses and present evidence at a hearing; representation by counsel or union representative, if desired; an impartial decision maker having no conflict of interest; a ruling based solely on evidence presented at a hearing; and a statement of reasons for the ruling."	4.19	0.83	1.19	59
19. For the sake of tracking repeated accusations or allegations, and to keep decisions (including degrees of discipline) consistent over time, records should be kept, under strict confidentiality, records should be kept to track and to promote consistency.	4.15	0.84	1.15	55
16. The Compliance Officer is the appropriate person to choose from among the pool the three members of the Sexual Harassment Panel to review the appeal of his/her own decision.	1.95	0.15	1.05	59
13. In the procedures, the pool of persons selected for the Sexual Harassment Panel to hear appeals would be chosen by the Vice Chancellors and approved by the Chancellor. Please respond to this suggested change to procedures: The pool of persons selected for the Sexual Harassment Panel should be chosen by the constituency groups of Faculty Senate, Graduate Council, AP, and Civil Service.	3.88	0.77	0.88	57

	mean ⁱ	%agree	Midpoint Dev. ⁱⁱ	n
15. A limit of 5 days in which to appeal the decisions of the Compliance Officer is sufficient.	2.22	0.22	0.78	59
10. The Compliance Officer may place the accused on paid leave or ban him/her from campus during the investigation, if it is in the “best interests of the University, or may aid the investigation.”	2.38	0.30	0.63	56
14. As an alternative to the Sexual Harassment Panel, the current Judicial Review Board, with proper training, may constitute the appropriate appeal board for faculty to allow judgment by peers.	3.53	0.53	0.53	60
7. The Associate Vice Chancellor for Compliance (afterwards called Compliance Officer) should be allowed to choose the investigators for Sexual Harassment cases.	2.53	0.28	0.47	58
12. The accused may be suspended with or without pay while an appeal is pending if the Compliance Officer determines that the accused has violated the sexual harassment policy and discharge is the recommended sanction.	2.66	0.32	0.34	56
18. The Chancellor should have the right to uphold or reverse the decision of the Sexual Harassment Panel.	2.68	0.33	0.32	57
1. This document titled “Sexual Harassment Policy” should be a free-standing policy, or should it also extend to cover all forms of. ⁱⁱⁱ	3.31	0.54	0.31	48
4. Do you agree or disagree with this statement in the policy: “Sexually explicit materials in the workplace or learning environment that have no relationship to the curriculum or the job description can contribute to a sexually harassing environment for faculty, staff, other employees and students. A complaint of sexual harassment may include allegations of sexually explicit materials. Such materials may be in the form of music, documents, objects, photographs, film or computer generated materials.”	2.80	0.43	0.20	60
6. Should all the following examples of behavior listed in this policy be considered sexual harassment: “A pattern of conduct, annoying or humiliating in a sexual way, that includes comments of a sexual nature and/or sexually explicit statements, questions, jokes, or anecdotes, that would annoy or humiliate a reasonable person at whom the conduct was directed. Such conduct may include, but is not limited to gestures, facial expressions, speech, or physical contact that is sexual in nature, or which is repeated after the individual signifies that the conduct is perceived to be sexually offensive. Conduct need not be in person but can be written or electronic communication, such as electronic mail and/or comments sent via the internet.”	3.17	0.55	0.17	58

	mean ⁱ	%agree	Midpoint Dev. ⁱⁱ	n
2. In former sexual harassment policies, supervisors were responsible for taking reasonable and necessary action to prevent sexual harassment. In this policy, the duty to take “reasonable and necessary action” should be extended to “all University employees.”	3.07	0.53	0.07	59
3. Do you agree or disagree with this statement in the policy: “This Policy also prohibits consensual sexual or dating relationships where there is a material and direct power difference between the parties involved.”	2.98	0.45	0.02	60

ⁱ Responses were recorded on a 5-point scale ranging from 1 (strongly disagree) to 5 (strongly agree).

ⁱⁱ Absolute value of the deviation from the midpoint (3).

ⁱⁱⁱ The item posed two alternatives, therefore it is unclear which alternatives respondents were agreeing or disagreeing with.