

NUMBER: 3.1.05

DATE: 11/01/2003

REVISION: 09/20/2006

PAGE: 1 OF 10

SECTION:	ADMINISTRATION
AREA:	GENERAL ADMINISTRATION
SUBJECT:	SEXUAL HARASSMENT

PURPOSE

The University of Arkansas for Medical Sciences (UAMS) is committed to its mission of providing an academic and employment environment that fosters excellence. Sexual harassment violates the trust and respect essential to the preservation of such an environment, and threatens the education, employment, and well being of its community members. University members have the right to work and study in an environment free of any form of sexual harassment. This right is protected by Title VII of the 1964 Civil Rights Act for employees and Title IX of the Educational Amendment of 1972 for students. Sexual harassment is destructive to students, faculty, staff, and the UAMS community as a whole, and it will not be tolerated.

This policy may not be used to infringe upon academic freedom. Students, faculty, staff, and guests must be aware of the need for freedom of inquiry and openness of discussion in its educational and research programs, and must strive to create and maintain an atmosphere of intellectual seriousness and mutual tolerance in which these essential features of academic life can thrive. No university can or should guarantee that every idea expressed in its classrooms or laboratories will be inoffensive to all; pursued seriously, education and scholarship necessarily entail raising questions about received opinions and conventional interpretations. If, however, UAMS determines that credible accusations of inappropriate sexual remarks or actions have been made, UAMS shall investigate such accusations promptly, thoroughly, and fairly.

Sexual harassment is particularly serious when it threatens relationships between teacher and student, or supervisor and subordinate, because of the potential to exploit the power inherent in these relationships and to undermine the ability of UAMS to carry out its mission. UAMS strongly encourages all community members to report incidents of sexual harassment. To the extent possible, reporting and investigating procedures are supportive of and sensitive to the alleged victim, while adequately safeguarding the rights of the alleged offender.

POLICY

UAMS opposes all forms of sexual harassment, whether subtle or direct, and is committed to a thorough, timely, and confidential investigation, in a fair and impartial manner, of all complaints from its students or employees. The sexual harassment of UAMS 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. Incidents of sexual harassment involving visitors should be reported directly to the Office of Human Resources. During non-business hours, sexual harassment complaints may be reported to the UAMS Police Department, who will then refer the complaint to the Office of Human Resources for review and action.

UAMS will take appropriate actions within the scope of its legal authority to prevent, correct, and discipline behavior that violates this policy.

A. Definition of Sexual Harassment

Sexual harassment generally includes any unwanted or unsolicited sexual gesture, physical contact, or statement which, when viewed from the perspective of a reasonable person similarly situated, is offensive, threatening, humiliating, or interferes with a person's ability to perform his or her job, educational pursuit, or participation in campus life.

B. Prohibited Acts

For the purpose of this policy, sexual harassment may take many forms — subtle or indirect, or blatant and overt. It may consist of repeated actions or may even arise from a single incident if sufficiently extreme. In assessing whether a particular act or acts constitute sexual harassment under this policy, the standard shall be the perspective of a reasonable person similarly situated.

Sexual harassment includes any behavior of a sexual nature where:

1. Submission to or rejection of the conduct is made either explicitly or implicitly a term or condition of employment or status in a UAMS-sponsored course, program, or activity;
2. Submission to or rejection of the conduct is used as a basis for employment or academic decisions affecting that individual; or
3. Such conduct unreasonably interferes with an individual's work or academic performance, or creates an intimidating, hostile, or offensive environment for work or learning.

Sexual harassment may occur within a variety of relationships. It may occur between individuals of the opposite sex – male against female, or female against male – or, between individuals of the same sex. Incidents may occur between supervisor and subordinate, faculty member and student, or between fellow employees and fellow students; they may also take place between employees and campus visitors and between employees and those who do business with UAMS. Especially injurious, however, is harassment in relationships characterized by an imbalance of power and authority. Typically, such relationships are found between:

- a. employer and employee (usually, supervisor and subordinate)
- b. administrator and faculty
- c. administrator and student or medical resident
- d. employee and student or medical resident
- e. senior and junior faculty
- f. graduate assistant and student

- g. faculty and student, whether medical student, graduate student, or undergraduate student [Examples are when the student is enrolled in a faculty member's class, or when the student is in a continuing position to require evaluation of work or letters of recommendations from faculty. Such relationships can be immediate, or based upon future expectations, e.g., the need for future evaluations and references.]
- h. faculty and medical resident
- i. resident/fellow and student

C. Examples of Sexual Harassment

The perception of conduct which constitutes sexual harassment may vary from individual to individual; what is offensive to one person may be less so to another. The following examples are intended as illustrations only; they do not cover all possible situations.

- a. Physical assault;
- b. Suggestions that submission to or rejection of sexual advances will influence decisions regarding an individual's employment or educational status;
- c. Repetitive remarks or actions of a sexual nature (including, but not limited to, statements, questions, jokes, and anecdotes) which constitute a pattern where actions unreasonably cause discomfort or humiliate an individual;
- d. Unwelcome visual contact or body language that communicates a sexual message;
- e. Whistling, cat calls, leering, or other improper gestures;
- f. Persistent, unwelcome flirtations, and outright advances or propositions of a sexual nature;
- g. Unwelcome remarks or actions about an individual's appearance;
- h. Unwelcome repetitive touching, such as patting, pinching, hugging, or brushing against an individual's body;
- i. Unwarranted displays of sexually suggestive objects or pictures;
- j. Unwelcome exposure to sexually explicit music, letters, or written notes;
- k. Unwelcome descriptions of sexual activity or speculation about previous sexual experiences.

Investigative steps should be taken as outlined in this policy and appropriate action will be taken if harassment is found to have occurred.

D. Anonymous Complaints

All members of the UAMS community may contact the Office of Human Resources at any time to ask questions about sexual harassment or complaint procedures without disclosing their names and without filing a complaint. However, because of the inherent difficulty in investigating and resolving allegations from unknown persons, individuals are discouraged from making anonymous complaints of sexual harassment. Although anonymous complaints are discouraged, UAMS will respond reasonably to all allegations of sexual harassment. In order to determine the appropriate response to an anonymous allegation, UAMS will weigh the following factors:

- The source and nature of the information;
- The seriousness of the alleged incident;
- The specificity of the information;
- The objectivity and credibility of the source of the report;
- Whether any individuals can be identified who were subjected to the alleged harassment; and
- Whether those individuals want to pursue the matter.

If, based on these factors, it is reasonable for UAMS to investigate the matter, the Office of Human Resources will conduct an investigation and recommend appropriate action to address substantiated allegations. However, a reasonable response would not include disciplinary action against an alleged harasser if an accuser insists that his or her name not be revealed, if there is insufficient corroborating evidence, and if the alleged harasser could not respond to the charges of sexual harassment without knowing the name of the accuser.

E. Consensual Relationships

The basic function of a university is the discovery and the transmission of knowledge, which is founded upon the free and open exchange of ideas. In order for productive learning and the work that supports it to occur, members of the campus community (faculty, staff, and students) should pursue their responsibilities guided by a strong commitment to principles of mutual trust, confidence, and professional codes of conduct.

Consenting romantic relationships between faculty members and students, supervisors and subordinates or fellow employees are **strongly discouraged**. Faculty members exercise power over students as do supervisors over subordinates, whether in promotions, raises, evaluations, recommendations, study, job duties, grades, assignments, or other benefits. This difference in power increases the opportunity for abuse of power, thus endangering the professional environment. Employees and students involved in a consenting relationship in the actual or equivalent context of educational/employment supervision and evaluation should be and are deemed to be aware of the possible costs of even an apparently consenting relationship, including the possible difficulty in defending a future sexual harassment charge on the grounds of mutual consent. The element of power implicit in sexual relationships occurring in the supervisory context has the potential to diminish a subordinate's freedom of choice. It is

incumbent upon those with authority not to abuse, or appear to abuse, the power with which they have been entrusted.

F. Disciplinary Actions for Violations of the Sexual Harassment Policy

Disciplinary actions for violations of the Sexual Harassment Policy may include, but are not limited to, the following: oral or written warning, reassignment, counseling, demotion, termination, or any combination thereof. Sanctions for sexual harassment depend upon the circumstances in each case.

In addition to disciplinary action, those who engage in sexual harassment may be subject to legal consequences, including civil and criminal penalties and monetary damages.

All individuals accused of sexual harassment shall be given the opportunity to respond to the complaints prior to any final employment and academic decisions.

G. Confidentiality

UAMS understands that some individuals may be reluctant to tell anyone about harassment or to have their names disclosed. Every reasonable effort will be made to maintain confidentiality of all parties, all conversations, and all documents concerning a sexual harassment complaint. However, UAMS's obligation to stop sexual harassment means that it cannot fail to take appropriate action and, as such, confidentiality cannot always be guaranteed. The appropriate administrative officials will be kept informed on a "need to know" basis. All persons involved should maintain confidentiality to the greatest extent possible, except to the extent needed for processing complaints under this Policy.

H. Retaliation

Reprisals or retaliatory action against an individual who, in good faith, reports or provides information in an investigation about behavior that may violate this policy will not be tolerated. Such action should be regarded as a separate and distinct cause for disciplinary action.

I. Malicious Allegations/Complaints; False Information

UAMS is committed to protecting the due process rights it provides to the accused as well as the accuser. Allegations of sexual harassment that are malicious, intentionally false, or without foundation are very serious with potential for great harm to all persons involved and are prohibited by this policy. Such actions constitute grounds for disciplinary action that may include, but is not limited to, written warning, demotion, transfer, or dismissal. Further, repeated filing of frivolous complaints is considered a malicious action and may be grounds for disciplinary action.

The failure to substantiate a sexual harassment complaint does not automatically constitute a malicious or frivolous complaint. In the event that allegations are not substantiated, every reasonable effort will be made and all reasonable steps taken to restore the reputation of the accused if it was damaged by the proceedings.

J. Record Keeping

Each complaint should be documented and kept in a confidential file separate from the personnel or student files normally maintained by the offices of Human Resources or Student Affairs. Documentation should include the name of the complainant, the name of the accused, the nature of the complaint, date(s), witnesses, the name(s) of the person(s) who received the complaint, the name(s) of the person(s) who prepared the written documentation and the date of the written documentation, and any other information relevant to the case. If some of this information is not available, the reason(s) for unavailability, if known, should be documented. Such file will be maintained as provided by law.

PROCEDURE

Complaints of sexual harassment, submitted in writing or accepted orally, are taken seriously and will be dealt with promptly. Allegations of sexual harassment shall be judged on the facts of the particular case and the context in which the alleged incident(s) occurred. The complainant has the responsibility of providing evidence to substantiate the alleged sexual harassment. The specific action taken in any particular case depends on the nature and gravity of the conduct reported and may include intervention, mediation, investigation and the initiation of disciplinary action as described above. Where a violation of the Sexual Harassment policy is found to have occurred, UAMS will act to stop the harassment, prevent its recurrence, and discipline those responsible.

UAMS recommends that all reports of suspected sexual harassment be made within 180 days of the alleged incident to assist in the investigation process.

A. Reporting Procedures

Employees

Employees with complaints of sexual harassment are encouraged to notify their immediate supervisor, department head, or the UAMS Office of Human Resources. If the alleged harasser is the employee's supervisor, the employee may contact someone outside his or her chain-of-command.

Employees who need to report an incident of sexual harassment after regular business hours should report the incident to the UAMS Police Department if the employee's supervisor is unavailable or other administrative offices are closed. The UAMS Police Department will take appropriate action and will notify the Office of Human Resources at the beginning of the next business day, i.e., Monday through Friday, excluding holidays. Individuals who witness possible sexual harassment should report their concerns to the Office of Human Resources.

When a UAMS employee receives a report of sexual harassment, he or she **must** immediately notify their Department Head or the Office of Human Resources prior to taking any action to investigate or resolve the matter informally and must act only on direction from such office.

Students

Students should report incidents of sexual harassment to his or her college's Office of Student Affairs. A designated individual in each college's Office of Student Affairs will handle all

complaints from students. If assistance is needed, please contact the Employee Relations Manager in the Office of Human Resources at 686-5650.

Students who need to report an incident of sexual harassment after regular business hours should report the incident to the UAMS Police department if no one from the appropriate Student Affairs Office is available. The UAMS Police Department will take appropriate action and will notify the Office of Human Resources at the beginning of the next business day, i. e., Monday through Friday, excluding holidays. Students who witness possible sexual harassment should report their concerns to the designated student affairs official in their college.

B. Informal Complaint Process

Employees

1. In the event that an individual believes that sexual harassment has been or is occurring, he or she is encouraged, but not required, to communicate clearly, preferably in writing, to the alleged harasser and state the conduct is not acceptable. The individual is also encouraged to maintain careful written records of the harassment and to continue to maintain current records throughout the process.

2. The individual should consider meeting with their Department Head or the office of Human Resources to discuss the sexual harassment allegation. If an individual cannot decide whether to initiate a formal complaint or is reluctant to discuss the matter with the alleged harasser, he or she may seek the advice of the Employee Relations Manager who, with the individual's permission, may seek to resolve the issue informally through discussions with the individual, the accused, and the accused's supervisor.

If the individual does not wish to prepare a signed, written complaint, written documentation shall be prepared by the Office of Human Resources. Such written documentation shall include the nature of the complaint, the date(s) on which the alleged incident(s) occurred, and any witness(es) to the incident(s). The complaining individual shall be asked to read the written documentation to acknowledge its accuracy; a written acknowledgment will be preferred and may be made in a separate document.

Written documentation shall be prepared before any informal discussions are held with the accused and the accused's supervisor. The accused shall be given an opportunity to read the written documentation that may be edited to protect the anonymity of the complaining individual and any other collateral witnesses to the process.

3. If the parties are unable to reach a mutually satisfactory agreement after an informal discussion, the option of filing a formal complaint is available.

4. The Informal Complaint Process may also include referral of either or both parties to confidential counseling through UAMS' Employee Assistance Program (EAP).

5. The complainant or the Office of Human Resources may elect to refer the complaint to the Formal Complaint Process at any time as deemed necessary to resolve the complaint in an appropriate and timely manner.

Students

1. In the event that a student believes that sexual harassment has been or is occurring, he or she is encouraged, but not required, to communicate clearly, preferably in writing, to the alleged harasser and state the conduct is not acceptable. The student is also encouraged to maintain careful written records of the harassment and to continue to maintain current records throughout the process.
2. The student should consider meeting with the appropriate student affairs official in his or her college to discuss the sexual harassment allegation. If the student cannot decide whether to initiate a formal complaint or is reluctant to discuss the matter with the alleged harasser, he or she may seek the advice of the Employee Relations Manager who, with the individual's permission, may seek to resolve the issue informally through discussions with the individual, the accused, and the accused's supervisor.

If the student does not wish to prepare a signed, written complaint, written documentation shall be prepared by the Employee Relations Manager of the Office of Human Resources or a college's designated individual within the Office of Student Affairs. Such written documentation shall include the nature of the complaint, the date(s) on which the alleged incident(s) occurred, and any witness(es) to the incident(s). The student shall be asked to read the written documentation prepared by the appropriate representative to acknowledge its accuracy; a written acknowledgment will be prepared and may be made in a separate document.

If the student refuses to sign the written documentation, the Employee Relations Manager or college's designee shall note such on the documentation and forward it to the Office of Human Resources for determination of whether the complaint will be investigated despite the student's refusal to acknowledge the written documentation.

Written documentation shall be prepared before any informal discussions are held with the accused and the accused's supervisor. The accused shall be given an opportunity to read the written documentation that may be edited to protect the anonymity of the complaining individual and any other collateral witnesses to the process.

3. If the parties are unable to reach a mutually satisfactory agreement after an informal discussion, the option of filing a formal complaint is available.
4. The Informal Complaint Process may also include referral of either or both parties to confidential counseling through UAMS' Employee Assistance Program (EAP).
5. The complainant, the Office of Human Resources, or a college's Office of Student Affairs may elect to refer the complaint to the Formal Complaint Process at any time as deemed necessary to resolve the complaint in an appropriate and timely manner.

C. Formal Complaint Process

Employees

1. When the Informal Complaint Process fails to resolve the complaint, or in instances where the Office of Human Resources determines the nature of the allegations requires formal investigation, the Formal Complaint Process will be used. The Employee Relations Manager in

the Office of Human Resources may assist the complainant in preparing his or her complaint, in writing, as necessary.

2. If an individual wishes to file a formal complaint, he or she must submit a signed, written statement alleging harassment to the Employee Relations Manager of the Office of Human Resources. The written statement should include the name of the complainant, the name of the accused, the nature of the complaint, date(s), witness(es), and any other information relevant to the complaint. If some of this information is not available, the reason(s) of unavailability, if known, should be documented.

Upon receipt of the written complaint, the Employee Relations Manager will notify the Assistant Vice Chancellor of Human Resources, who will appoint two investigators to conduct an investigation of the complaint.

The Employee Relations Manager will meet with the accused and allow him or her to view the complaint and present a copy of the sexual harassment policy. The accused will be given an opportunity to respond to the complaint orally and in writing, and may provide evidence and witnesses. The Employee Relations Manager will also explain that there is to be no contact with or retaliation against the complainant.

The investigators will gather relevant evidence by interviewing the complainant, the victim (if different from the complainant), the accused, and any witnesses or other individuals deemed appropriate to conduct a thorough investigation.

Every effort will be made to ensure a thorough and timely investigation of the complaint.

3. Following completion of the investigation, the investigators will present their written findings to the Assistant Vice Chancellor of Human Resources. The Assistant Vice Chancellor of Human Resources will prepare a written report, containing a recommended course of action for the employee's Division Head and may provide further consultation when necessary. It is the responsibility of the division head to take action consistent with the written findings. Once a final determination is made by the appropriate Division Head, both the complainant and the accused will be notified of the action to be taken.

4. Employees may appeal any employment decision made subsequent to a finding of sexual harassment through the campus grievance procedure.

5. Complainants may not appeal administrative decisions regarding sexual harassment complaints through the UAMS grievance process.

Students

1. When the Informal Complaint Process fails to resolve the complaint, or in instances where the college's Office of Student Affairs determines the nature of the allegations requires formal investigation, the Formal Complaint Process will be used. The Employee Relations Manager in the Office of Human Resources may assist the complainant in preparing his or her complaint, in writing, as necessary.

2. If a student wishes to file a formal complaint, he or she must submit a signed, written statement alleging harassment to the Employee Relations Manager of the Office of Human Resources. Documentation should include the name of the complainant, the name of the accused, the nature of the complaint, date(s), witness(es), and any other information relevant to the complaint. If some of this information is not available, the reason(s) of unavailability, if known, should be documented.

Upon receipt of the written complaint, the Employee Relations Manager will notify the Assistant Vice Chancellor of Human Resources, who will appoint two investigators to investigate the facts of the complaint.

The Employee Relations Manager will meet with the accused and present him or her with a copy of the complaint and a copy of the sexual harassment policy. The accused will be given an opportunity to respond to the complaint orally and in writing, and may provide evidence and witnesses. The Employee Relations Manager will also explain that there is to be no contact with or retaliation against the complainant.

The investigators will gather relevant evidence by interviewing the complainant, the victim (if different from the complainant), the accused, and any witnesses or other individuals deemed appropriate to conduct a thorough investigation.

Every effort will be made to ensure a thorough and timely investigation of the complaint.

3. Following completion of the investigation, the investigators will present their written findings to the Assistant Vice Chancellor of Human Resources. The Assistant Vice Chancellor of Human Resources will consult with the student's appropriate student affairs official regarding the written findings for purposes of resolving the complaint. It is the responsibility of the student affairs official to take action consistent with the written findings. Once a final determination is made by the appropriate student affairs official, both the complainant and the accused will be notified of the action to be taken.

4. Pursuant to FERPA (Family and Educational Rights to Privacy Act), student disciplinary records will remain confidential unless the accused consents to release of information.

5. Students who are found to have violated the sexual harassment policy may grieve any decision affecting their educational status through the grievance procedure of their respective college.

6. Complainants may not appeal administrative decisions regarding sexual harassment complaints through the UAMS grievance process.

Questions regarding this policy may be directed to the Office of Human Resources at (501) 686-5650.