

# OREGON INSTITUTE OF TECHNOLOGY

## Policy on Sexual Harassment OIT- 21-325

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### Policy Statement

To foster an environment of trust and respect for the dignity and worth of all students and staff, it is the policy of the Oregon Institute of Technology that sexual harassment of students and employees is unacceptable and impermissible conduct which will not be tolerated.

It is the University's policy to specifically prohibit any form of discrimination based upon gender. This policy applies to all members of the University community, all of whom are encouraged to promptly report incidents of or complaints about sexual harassment. Persons found to be in violation of this sexual harassment policy shall be subject to disciplinary action which may include, but is not limited to, written warning, demotion, transfer, probation, suspension or dismissal.

This policy is intended to reflect in a tangible way the University's commitment to state and federal laws and rules of the Oregon University System. This policy is not intended to create rights or to provide process inconsistent with those laws and rules. Therefore, this policy will be interpreted and administered to be consistent with the then current state of law.

The Oregon Institute of Technology is committed to a fair and timely resolution of complaints brought under this policy. However, nothing in this policy precludes any person from filing a formal grievance in accordance with a collective bargaining agreement, with the Bureau of Labor and Industries, the Equal Employment Opportunity Commission or any other regulatory/enforcement entity.

### Legal Authority

Sexual harassment is a form of unlawful discrimination prohibited by Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Oregon Revised Statutes, Chapter 659.

### Definition

Sexual harassment occurs in a variety of forms and situations, all of which share a common element: the inappropriate introduction of sexual behavior or comments into the work or learning environment. This behavior is found in relationships of unequal power as well as in relationships among equals, and may involve the behavior of a person of either gender against a person of the opposite or same gender.

As set forth in Oregon University System Administrative Rule OAR 580-015-010(2), sexual harassment of a student “means any sexual advance, any request for sexual favors or other verbal or physical conduct of a sexual nature by an OSSHE employee when:

- (a) Submission to such advances, requests or conduct is made either explicitly or implicitly a term or condition of a student's employment or academic experience; or
- (b) Submission to or rejection of such advances, requests or conduct by a student is used as a basis or condition for employment and/or academic decisions affecting the student; or
- (c) Such conduct interferes with the work or academic performance of a student because it has created an intimidating, hostile or offensive working or academic environment for the student who is the object of the conduct and a reasonable person of that student's gender would have been affected similarly to the student.”

In the employment context, sexual harassment occurs when such behavior constitutes unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal or physical behavior of a sexual nature where:

- (a) Submission to such advances, requests, or conduct is made either explicitly or implicitly a term or condition of an individual's employment; or,
- (b) Submission to or rejection of such advances, requests, or conduct by an individual is used as the basis or condition for employment; or,
- (c) Such conduct is unwelcome and sufficiently severe or pervasive that it interferes with an individual's work performance because it has created an intimidating, coercive, hostile, or offensive working environment for the individual who is the object of such conduct, and where the conduct would have such an effect on a reasonable person of the same gender.

A third party may also file a complaint under this policy if the sexual conduct of others in the education or work environment has the purpose or effect of substantially interfering with the third party's welfare, academic or work performance. Examples would include consensual sexual relationships where such relationships lead to favoritism of a student or subordinate employee with whom the instructor or the superior is sexually involved and where such favoritism adversely affects other students or employees.

Consensual relationships, in and of themselves, do not typically constitute sexual harassment. However, such relationships carry the potential for such allegations or perceptions (see Policy OIT-22-055, "*Consensual Relationships Leading to Conflicts of Interest*").

#### Examples of Prohibited Behavior

Prohibited acts that constitute sexual harassment take a variety of forms. Examples of the kinds of conduct that may constitute sexual harassment include, but are not limited to:

1. Unwelcome sexual propositions, invitations, solicitations, and flirtations.
2. Threats or insinuations that a person's employment, wages, academic grade, promotional opportunities, classroom or work assignments or other conditions of employment or academic progress may be adversely affected by not submitting to sexual advances.
3. Unwelcome verbal expressions of a sexual nature, including graphic sexual commentary about a person's body, dress, appearance, or sexual activities; the unwelcome use of sexually degrading language, jokes or innuendoes; unwelcome suggestive or insulting sounds or whistles; obscene phone calls.
4. Sexually suggestive objects, pictures, videotapes, audio recordings or literature, placed in the work or study area that may embarrass or offend individuals. Such material if used in the educational setting shall be related to educational purposes.
5. Unwelcome and inappropriate touching, patting, pinching, or obscene gestures.

#### Responsibility

Individuals who are aware of or have experienced an incident of sexual harassment should promptly report the matter to one of the officials designated to receive informal or formal complaints in "Procedures" below. Administrators and supervisors are responsible for the prevention and elimination of sexual harassment within the areas they oversee. Further, they must take immediate steps to ensure that any complaint or report of sexual harassment is addressed, even if the problem is not within their area of oversight. Faculty members must inform their department chairperson, program director, or other appropriate administrator or designated official if they have reason to believe sexual harassment is occurring.

### Retaliation

No student, faculty member, administrator, staff person, applicant for employment, or member of the public may be subjected to restraint, interference, coercion or reprisal for action taken in good faith to seek advice concerning a sexual harassment matter, in filing a sexual harassment complaint, or in serving as a witness or official in the investigation of a sexual harassment complaint. Persons believing they have been subject to retaliation for exercising their rights and responsibilities under this policy may file a retaliation complaint with the Affirmative Action Officer.

### Confidentiality and Protection of Parties

Any allegation of sexual harassment brought under this policy shall be promptly investigated in a confidential manner so as to protect the privacy of all persons involved. Confidentiality will be maintained to the extent practical and appropriate under the circumstances and to the extent permitted by law. All individuals involved in the submission, review and disposition of a complaint shall respect and uphold its confidential nature.

### Malicious and False Accusations

A complainant whose allegations are found to be both false and brought with malicious intent will be subject to disciplinary action, which may include, but is not limited to, written warning, demotion, transfer, suspension, probation, dismissal or expulsion.

### Procedures

Any faculty member, staff member, or student who believes that she or he is being sexually harassed should, if feasible, tell or otherwise inform the harasser that the conduct is unwelcome and must stop. However, in some circumstances this course of action may not be feasible, may be unsuccessful, or the individual may be uncomfortable dealing with the matter in this way.

To encourage persons experiencing alleged sexual harassment to come forward, the University provides several channels of communication and both informal and formal complaint resolution.

A. Information, Counseling, and Informal Resolution

Anyone may seek advice, information or counseling on matters related to sexual harassment without lodging a formal complaint. Persons who regard, or are uncertain as to whether, what they are experiencing is sexual harassment should consult with a department chair, the head of an administrative department, the Affirmative Action Officer, or the Director of Human Resources. Consistent with OAR 580-015-0090, OIT shall ensure that a grievance counselor is available to assist students and others in the processing of a complaint.

Any report of possible sexual harassment must be addressed in a reasonable and timely manner. Any office, department or University employee receiving a report of possible sexual harassment is expected to contact the Affirmative Action Officer for guidance without delay.

The informal resolution process will include advice and counsel on the options for action available under this policy. To the extent possible, information disclosed through this advising process will be held in confidence, unless and until the initiating individual agrees to additional disclosure in order to facilitate a solution. The aim of informal complaint resolution is not to determine whether there was intent to harass but to ensure that the alleged offending behavior ceases and that the matter is resolved promptly at the lowest possible level.

B. Formal Complaint Resolution

The filing of a verbal, written or audiotaped complaint is required for a matter to be formally investigated and a determination made as to whether this policy prohibiting sexual harassment has been violated. A formal complaint of sexual harassment must be made no more than 365 calendar days following the alleged act.

All formal complaints of sexual harassment, whether they are filed against a student, faculty or staff member, or a third party, will result in essentially the same process. The Affirmative Action Officer will conduct a full, impartial and timely investigation and will provide the person against whom the complaint is made (the respondent) with a written statement of the allegations, to which that individual will be required to respond within seven calendar days. The Affirmative Action Officer may extend this timeline up to five days. During the course of the investigation the Affirmative Action Officer will hear the complainant, the respondent, and witnesses identified by each

party. To the extent possible, complaints will be handled confidentially, with the allegations and facts made available only to those who have a compelling need to know for purposes of investigation or resolution of the matter.

1. Complaint Against a Student

To bring a formal complaint of sexual harassment against a student an individual should inform the Affirmative Action Officer, the Vice President for Student Affairs, or the Dean of Students. Sexual harassment is deemed student misconduct and is subject to the disciplinary conditions of the Student Conduct Code as set forth in the current Student Handbook. The Affirmative Action Officer will provide a written report of findings to the Vice President for Student Affairs within twenty-one calendar days of receipt of the complaint. This timeline may be extended up to ten days with the approval of the President or designee.

2. Complaint Against a Faculty or Staff Member

Formal complaints of sexual harassment against a member of the faculty or staff are to be filed with the Affirmative Action Officer or the appropriate Vice President. Affirmative Action Officer will conduct an investigation of the complaint and provide a written report of findings to the appropriate individual(s) as set forth below within twenty-one calendar days of receipt of the complaint. This timeline may be extended up to ten days with the approval of the President or designee.

a. Complaint Against a Faculty Member

In a matter involving a complaint against a faculty member, the Affirmative Action Officer will present the written report to the Provost/Vice President for Academic Affairs, and/or the President, as appropriate.

The report will include a statement of the allegations, the investigatory process, the evidence in the case, the persuasiveness of the evidence, the consistency of the testimony, and the credibility of the witnesses. The President will determine whether to initiate proceedings to consider sanctions against the accused faculty member.

b. Complaint Against a Staff Member

At the conclusion of the investigation of a complaint against a staff member, the Affirmative Action Officer will present to the appropriate administrative official(s) a written report which will include a discussion of the allegations, the investigatory process, the evidence in the case, the persuasiveness of the evidence, the consistency of the testimony, and the credibility of the witnesses. The administrative official(s) will determine whether the policy was violated, take necessary action, and inform the complainant and the respondent of the final disposition of the complaint. If the complaint is against the Affirmative Action Officer, the complaint shall be filed with the President, who will appoint an alternative investigatory official and take action as necessary.

3. Complaint Against a Third Party

Complaints regarding alleged sexually harassing behavior toward students, faculty or employees by members of the public such as vendors and contractors, visiting student or citizen groups, and private individuals while on University premises or activities should be reported to the Affirmative Action Officer who shall conduct a full and impartial investigation to the extent indicated and possible and submit a report of findings and recommended actions to the complainant and to the Vice President for Finance and Administration within twenty-one calendar days of receipt of the complaint. This timeline may be extended up to ten days with the approval of the President or designee.

C. Alternative Investigation Process

In the event of a potential, perceived or actual conflict of interest on the part of the Affirmative Action Officer, or if requested by the complainant or respondent, the President may appoint an alternate individual to conduct the investigation and issue a report of findings and recommendations as set forth in this policy.

Alternatively, the President may appoint an *ad hoc* panel to conduct the investigation and issue a report of findings and recommendations. This investigation panel shall consist of a chair and four members, two males and two females. The chair will

normally be non-voting, but will cast the tie-breaking vote when necessary. The purpose of the panel is to determine, to the best of its ability, the facts regarding the alleged sexual harassment.

Prior to the hearing, the panel will meet to determine procedures for the conduct of the hearing in consultation with the parties involved. The panel will hear the complainant, the respondent, and witnesses identified by each party, and will examine all evidence it deems necessary. The rights of all parties will be observed and confidentiality will be protected to the fullest extent possible.

At the conclusion of its investigation and within twenty-one calendar days of receipt of the complaint, the panel will issue a written report to the President and to the appropriate Vice President or other appropriate administrative official to whom the respondent reports. This timeline may be extended up to ten days with the approval of the President or designee. If the complainant or respondent is a student, the report will also be submitted to the Vice President for Student Affairs. The panel's report will detail the allegations, the hearing process, the evidence in the case, the persuasiveness of the evidence, the consistency of the testimony, and the credibility of the witnesses. The administrative official(s) receiving the report will determine whether there has been a violation of the policy prohibiting sexual harassment, and will take whatever disciplinary action is necessary and appropriate.

### Appeals and Grievances

Should a complainant or respondent be dissatisfied with the findings or actions resulting from the investigatory process set forth in this policy, an appeal may be presented to the President within ten calendar days of their receipt of the written report. The President shall take what actions s/he deems necessary to address the appeal and shall issue a determination within thirty (30) calendar days. The decision of the President is final in accordance with OAR 580-21-0050 (10).

Grievances relating to action taken under this policy are subject to the grievance procedures set forth in: the *OIT Student Handbook*; OAR 578-42-050, *Faculty Grievance Procedures*; OIT-21-320, the *Grievance Procedure for Administrative Staff*; or the current collective bargaining agreement, as applicable.

If a grievance is made pursuant to a collective bargaining agreement or a remedy is sought through a judicial or administrative process other than specified herein, the University, at its sole discretion, may discontinue its obligations pursuant to this policy.



