

# SEXUAL HARASSMENT

# FEDERAL LAW – TITLE VII AND TITLE IX

- Title VII and Title IX protect any person from sex discrimination. Both males and females are protected from sex discrimination and sexual harassment. Federal law prohibits sexual harassment even if the harasser and the person being harassed are of the same sex.

# TITLE VII

- Title VII of the Civil Rights Act of 1964 prohibits sex discrimination in the terms and conditions of employment.

# TITLE IX

- Title IX of the Education Amendments of 1972 prohibits sex discrimination with regard to educational programs and activities. This law applies most frequently to students.

# COLORADO LAW

- Colorado law prohibits discrimination on the basis of sex in the terms and conditions of employment, including sexual harassment.

# SYSTEM PRESIDENT'S PROCEDURE 3-120a

- Sexual harassment of students and System employees is prohibited. Employees should know that when a power differential between the individuals involved exists, romantic or sexual relationships may lead to charges of sexual harassment.

# COLORADO STATE PERSONNEL RULES

- The Colorado State Personnel Rules prohibit discrimination against any person, including members of the public, applicants and employees.
- “Each department must notify applicants and employees of the policy prohibiting discrimination.”
- The State prohibits discrimination on the basis of gender, including sexual harassment, and sexual orientation.

# SEXUAL HARASSMENT DEFINED

- Sexual harassment is:
  - Unwelcome sexual advances
  - Requests for sexual favors
  - Other verbal or physical conduct of a sexual nature

WHEN –

# IT'S SEXUAL HARASSMENT WHEN:

- Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment, grade, or status in a course, program, or activity

# IT'S SEXUAL HARASSMENT WHEN:

- Submission to or rejection of such conduct is used as a basis for an employment or educational decision affecting an individual

# IT'S SEXUAL HARASSMENT WHEN:

- Such conduct is sufficiently severe, persistent or pervasive to have the purpose or effect of unreasonably interfering with an individual's work or academic performance, or creating an intimidating, hostile, or offensive environment for working or learning

# EXAMPLES OF SEXUAL HARASSMENT

- Physical assault
- Direct or implied threats that submissions to sexual advances will be a condition of employment, work status, promotion, grades, or letters of recommendation
- Direct propositions of a sexual nature
- Subtle pressure for sexual activity, including repeated and unwanted staring

# EXAMPLES OF SEXUAL HARASSMENT

- Unwelcome sexual flirtation
- Intimidation specifically directed at implying that one sex is inferior to the other
- Sexually explicit statements, jokes or anecdotes

# EXAMPLES OF SEXUAL HARASSMENT

- Accessing adult or pornographic information or material on personal computers or related equipment on college premises and forwarding such information to others or maintaining or displaying the information in such a way that it may be observed by others

# EXAMPLES OF SEXUAL HARASSMENT

- A pattern of conduct intended to discomfort or humiliate a reasonable person at whom the conduct is directed. This includes:
  - Touching, patting, hugging, or brushing repeatedly against a person's body
  - Remarks of a sexual nature about a person's clothing or body
  - Remarks about sexual activity or speculation about previous sexual experience
  - The display in the work or educational environment of sexually suggestive objects or pictures
  - Sex-oriented verbal teasing or abuse

# LEGITIMATE EDUCATIONAL CURRICULA

- Matters having sexual connotation which arise as part of the legitimate educational curricula and do not exploit students to a private advantage would not violate the law or System policy unless used in an improper manner.

# LEGITIMATE EDUCATIONAL CURRICULA

- An example of protected academic discourse is reading and discussion in a college-level creative writing course in which the required reading list includes excerpts from literary classics that contain descriptions of explicit sexual conduct, including scenes that depict women in submissive and demeaning roles.

# OFFICE FOR CIVIL RIGHTS

## TITLE IX

- **Quid pro quo harassment:**
  - A school employee causes a student to believe that he or she must submit to unwelcome sexual conduct in order to participate in a school program or activity. It can also occur when an employee causes a student to believe that the employee will make an educational decision based on whether or not the student submits to unwelcome sexual conduct.

# OFFICE FOR CIVIL RIGHTS

## TITLE IX

- **Hostile environment harassment:**
  - When unwelcome sexually harassing conduct is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an education program or activity, or creates an intimidating, threatening, or abusive educational environment. A hostile environment can be created by a school employee, another student, or even someone visiting the school.

# STATE PERSONNEL RULES

## Definition of Sexual Harassment

- **Quid pro quo** sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to such conduct is used as a basis for an employment decision.

# STATE PERSONNEL RULES

## Definition of Sexual Harassment

- **Hostile work environment** sexual harassment is any harassment or unequal treatment based on sex, even if not sexual in nature, which results in unreasonable interference with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

# IF HARASSMENT OCCURS

- Make a complaint to the Human Resources Department of the System office or on the campus where the alleged harassment occurred, or to any faculty member, administrator, staff member, or supervisor.
- Faculty members or staff to whom a complaint is made should immediately inform the Human Resources Department.

# IF HARASSMENT OCCURS

- Complaints are treated as grievances and are processed according to the grievance policies applicable to the complainant –
  - Faculty and Administrators (BP 3-50)
  - Students (NJC Student Handbook)
  - State classified employees (State Personnel Rules Chapter 8)

# IF HARASSMENT OCCURS

- Deadlines for filing harassment complaints, from the date of the harassment or the date Complainant knew or should have known about the offending action:
  - Faculty and Administrators – 14 days
  - Students – 20 days
  - State classified employees – 10 days

# COMPLAINT INVESTIGATIONS

- The System office or the college will investigate all credible complaints of sexual harassment.

# NO RETALIATION

- Retaliation against any person for filing a complaint, grievance, or participating in or cooperating with a harassment investigation is prohibited.

# CONSENSUAL? RELATIONSHIPS

- FRCC Policy:
  - No faculty or administrator shall have an amorous relationship (consensual or otherwise) with a student who is enrolled in a class being taught by that faculty member.

# CONSENSUAL? RELATIONSHIPS

- FRCC Policy:
  - No faculty or administrator shall have an amorous relationship (consensual or otherwise) with a student whose work (including work-study or student hourly employment) is being supervised by the faculty member or administrator.

# CONSENSUAL? RELATIONSHIPS

- FRCC Policy:
  - Counselors may not have amorous relationships with clients.
  - Tutors, instructional associates, or instructional aides may not have amorous relationships with students they are assisting.

# SUPERVISOR-EMPLOYEE

- FRCC Policy:
  - It will be considered an abuse of power for a supervisor to make sexual advances toward an employee whose work he or she supervises. As in the case of faculty-student relationships, a consensual amorous relationship between supervisor and employee is a violation of this Policy.

# UNIVERSITY OF CALIFORNIA

## Faculty Code of Conduct

- Types of unacceptable conduct:
  - Entering into a romantic or sexual relationship with any student for whom a faculty member has, or should reasonably expect to have in the future, academic responsibility (instructional, evaluative, or supervisory).
  - Exercising academic responsibility (instructional, evaluative, or supervisory) for any student with whom a faculty member has a romantic or sexual relationship.

# AAUP SUGGESTED POLICY STATEMENT

- Sexual relations between students and faculty members with whom they also have an academic or evaluative relationship are fraught with the potential for exploitation. **The respect and trust accorded a professor by a student, as well as the power exercised by the professor in an academic 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. When a sexual relationship exists, effective steps should be taken to ensure unbiased evaluation or supervision of the student.

# COLORADO LAW

## DEFENSE OF PUBLIC EMPLOYEES

- A Colorado public entity is liable for the costs of defense of any of its public employees and the payment of all judgments against any of its public employees where the claim against the public employee arises out of injuries sustained from an act or omission of the employee occurring during the performance of his duties and within the scope of his employment, except where such act or omission is willful and wanton.

# INDEMNIFICATION

- Courts have found sexual harassment to be “outside the scope of employment.” Oye v. Ohio State Univ., 2003 Ohio App. LEXIS 5271 (November 6, 2003); Farmers Ins. Group v. County of Santa Clara, 11 Cal. 4<sup>th</sup> 992 (1995).