REPORT OF THE

SENATE COMMITTEE ON FACULTY AFFAIRS

SUBCOMMITTEE ON SEXUAL HARASSMENT POLICY AND PROCEDURES

(as approved by the Senate Committee
on Faculty Affairs, April 11, 1984)

February 28, 1984

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I. Statement of purpose and objectives:

The subcommittee was charged with reviewing the University policy on sexual harassment and the procedures by which complaints of sexual harassment have been registered and resolved since June, 1981. It investigated the frequency of such complaints since the current policy and procedures were instituted, as well as the relative seriousness of the allegations and the relative severity of sanctions applied in various cases. The subcommittee also sought to coordinate the policy and procedures with other aspects of University and public policy, with recent court decisions, and with what the committee and its advisors consider to be responsible professional conduct.

II. Proceedings and gathering of data:

The subcommittee was composed of four faculty members, one civil service representative, and two students. It sat from November, 1983 through February, 1984. During that time it consulted with those in the University who had done most to design and implement the present policy and procedures. It also sought advice as to how it could best coordinate the complaint procedures with the Tenure Code now in force and with the proposed new Tenure Code. Members reviewed information on relevant court decisions and on state and national human rights and anti-discrimination policy. The subcommittee also examined materials on sexual harassment from universities of a size and quality comparable to the University of Minnesota. An open hearing elicited opinions from both students and members of the University staff. (See Appendix A.)

III. General statement:

Dealing with sexual harassment as it is defined in University policy is both imperative and complex. Sexual harassment is viewed by the courts as a violation of Title VII of the 1964 Civil Rights Act. In addition, the courts have begun to make an analogy between violations of Title VII and those of Title IX, which specifically concern equal rights in education (Alexander v. Yale [D. Conn. 1977]). At least one major institution has been penalized for the sexual harassment of students under the latter section. Hence the University must consider alleged offenses against students as carefully as it must consider those against its civil service employees.

Furthermore, the commitment to education requires a university faculty to maintain an atmosphere of trust, first of all between students and faculty, but also as a necessary part of a sound educational environment, between faculty and civil servants,and among the faculty themselves. Sexual harassment abuses and destroys this trust while also, more often than not, abusing the power of faculty over students, of supervisors over employees, and of senior faculty over their junior colleagues. The harm thus done to those who deserve our professional consideration cannot be tolerated.

At the same time, we recognize the complexities involved in confronting this problem. Primarily, we must guarantee the rights of both complainants and respondents, both under the law and within the purview of professional ethics. The courts require that efficient procedures exist for reviewing complaints and redressing injuries. On the other hand, both the law and our commitment to academic freedom require scrupulous compliance with the rules of due process. For the victims we must provide protection, and help in recovering, as far as possible, the personal and professional losses which sexual harassment inflicts. At the same time, we must avoid any improper interference in the personal lives of our colleagues, for while sexual harassment is intolerable, harassment of a personal or political nature is equally so.

The sexual harassment policy and procedures put into effect in the spring of 1981 have made possible a start in dealing with this problem at the University of Minnesota and in relieving at least some victims. The committee believes that much more remains to be done. It recommends the retention of the present arrangements, with some elucidation in the policy and with both increased efficiency in and expansion of the procedures.

IV. Findings and recommendations:

A. The present policy and procedures--general assessment:

The subcommittee was encouraged to learn that the present procedures are serving their purpose. Approximately one hundred complaints against civil service and academic staff have been filed during the past two and one-half years, with allegations ranging in seriousness from mild insensitivity to rape and at least partial cause of suicide. None of the complaints was found to be unwarranted. Between twenty-five and thirty cases were called "serious," that is, they had caused lasting damage to the victims and so had severely compromised the respondent's usefulness to the University. Each case was handled in a timely fashion, although the demand on the time and energy of the University personnel charged with resolving these matters was considerable. The subcommittee expects that complaints will be made with greater frequency as the sexual harassment policy and procedures become known throughout the University community, and until potential respondents come to realize what behavior is and is not acceptable. It is clear that the procedures are needed, that they are for the most part efficiently designed, and that they have enabled those entrusted with their implementation to act promptly and responsibly with respect for the rights of all concerned.

B. Recommendations:

1) Title VII and Tenure

As the courts interpret Title VII of the 1964 Civil Rights Act, the University cannot protect itself from legal responsibility for sexual harassment. It can, however, mitigate the judgment of the courts by: 1) expediting the registration, investigation, and resolution of sexual harassment complaints; 2) dealing effectively with offenders; and 3) publicizing its sexual harassment policy and procedures widely, clearly, and often.

The location of the office where complaints are filed (the entry level office) has a significant effect on the efficiency with which they are handled. For this reason the entry level office was originally placed within that of the Vice President for Academic Affairs. This arrangement assured the complainant immediate attention at the highest levels of authority, and therefore best satisfied the requirements of Title VII. Other universities of a size and quality comparable to the University of Minnesota, however, place this responsibility with that for other Title VII concerns, in their Office of Equal Opportunity and Affirmative Action(EO& AA), and it seems appropriate that sexual harassment complaints should be first presented to the EO&AA office and then complaints against faculty will still go directly from EO&AA to the Office of the Academic Vice President. The subcommittee recommends that the Faculty Affairs Committee and the Senate approve this arrangement.

Once a complaint has been filed, it becomes an issue between the University administration and the respondent. In an estimated sixty percent of all cases involving faculty at this University, the respondent has been tenured. When this

is the case, the administration must follow the procedures outlined in the Tenure Code. Section 10.3 of the proposed new Tenure Code prescribes the steps to be followed in initiating proceedings which may lead to the suspension or termination of tenured faculty. A proposed amendment to this section remands cases, for which approved procedures exist, to the appropriate University panels. (See appendix B) The appropriate panel in sexual harassment cases will be the Sexual Harassment Board.

2) The Sexual Harassment Board

According to present procedures, sexual harassment complaints of students against members of the academic staff, or of members of the academic staff against each other, are heard by the Sexual Harassment Board, at the choice of the Academic Vice President or on appeal by the complainant against the Academic Vice President. Several factors make it advisable to retain this Board, whose members are drawn from the faculty, the academic professional/ administrative staff, the civil service, and the student body. First, the Board insures the University's credibility, under Title VII, as a departmental or other academic unit's reviewers, presumably composed of the respondent's closest associates, would not. Secondly, it can provide the complainant with a necessary avenue of appeal in case of a perceived injustice when EO&AA or the Academic Vice President refuses to consider a complaint or, having considered it, neglects to act. Thirdly, the Board can both safeguard respondent faculty against having to face unprovable charges and assure him or her of adequate warning as to possible sanctions.

The subcommittee understands that tenured faculty have the right to appeal any decision of the Vice President to the Judicial Committee. In most cases, if the Vice President applies sanctions less serious than suspension or termination, only procedures will be subject to Judicial Committee review. When suspension or termination is recommended, however, the Judicial Committee will hear appeals de novo.

These alternatives are required so that sexual harassment cases will not be overwhelmed by procedural and bureaucratic difficulties. They are intended to protect tenure rights and the right to due process, while at the same time providing reasonable efficiency in the handling of complaints. The committee's proposal balances these claims in a manner which it believes will provide a sufficient review--and, if desired, appeal--of each case, and yet prevent as far as possible both the complainant's and the respondent's having to describe and document more than once all matters of fact. (See Appendix C.)

3) Consensual Relationships

The University's educational function requires it to offer its students protection beyond the minimal safeguards which the law demands. Students depend on their teachers for encouragement and approval, and therefore a teaching faculty deeply affects its students emotionally as well as intellectually. In no way can a teacher evade his or her responsibilities in this area of personal trust and ratification.

In the opinion of the subcommittee, romantic and sexual relationships interfere with the professional objectivity needed for the reliable direction and evaluation of students, and therefore, as is now done by the University administration, should be construed as having lessened the instructor's professional effectiveness. Furthermore, the actual freedom with which a student may consent to such a relation-

ship is suspect. Since students are conditioned to meet their teachers' demands and to appreciate their teachers' approval, requests for sexual favors have confused students sufficiently to nullify, in actuality, their freedom to refuse. Therefore, while consensual relationships are not expressly forbidden in the reformulated policy, they are termed professionally inappropriate. At this time they are not viewed sympathetically by either the University administration or the courts, when and if complaints are filed. The procedures have been clarified to reflect current practice in these cases.

4) Counseling

During its review, the subcommittee received unanimous testimony on the need for counseling sexual harassment victims. At least three factors render counseling necessary: First, the intimate nature of the matter makes victims reluctant to subject themselves to official scrutiny. Secondly, the inequality in power which pertains in most sexual harassment cases makes victims fear reprisals should they file a complaint. Third, the superior status of most offenders and the bond of trust which exists in professional relationships confuses victims and makes it difficult for them to see that they have been exploited. Rather than leave the victims to friends and associates, it seems incumbent upon the University to provide professionally trained counselors for consultation by victims before a complaint is filed and during and after any official proceedings. Efforts are at present being made by the Women's Center and EO&AA to obtain help from Boynton

Health Service and Student Counseling. The subcommittee foresees a need for additional personnel in the counseling offices, and all personnel engaged in this work will need additional training.

The intimate nature of sexual harassment complaints requires also a variety of possible counselors, so that victims can feel sufficiently at ease to explain the circumstances fully. This problem is particularly acute on the outstate campuses, where very few women, for example, hold high administrative positions, and where counseling personnel are also few.

5. Publication

The subcommittee also found unanimous agreement that the University sexual harassment policy and procedures must be more widely published. Here we quote one of our consultants:

> It is important that every member of the University community be informed about (1) what behavior constitutes sexual harassment, (2) the University's policy in regard to sexual harassment, and (3) the process by which such behavior is dealt with and corrective action taken.
>
> Making such information available to faculty, staff, and students should serve the dual purpose of (1) letting recipients of such behavior know of their rights and procedural options and (2) preventing such behavior on the part of those who are informed that it will not be tolerated.

While information may be provided through recordings and films, and while EO&AA has conducted workshops on sexual harassment with every academic unit, the most immediate way is through printed material. Both the University of Iowa and Michigan State have already developed and distributed useful materials. The subcommittee recommends that the Vice President for Academic Affairs arrange as soon as possible for the following:

1. policy statement to be posted on all departmental bulletin boards, those for faculty as well as those for students;
2. a pamphlet, written in simple, clear language, advising students and employees of their rights and describing the complaint procedures. These should also describe a wide range of possible sanctions (e.g., denial of merit pay, postponement of tenure, reassignment of teaching responsibilities, suspension, or termination). The pamphlet should be distributed at the time and place of student registration. It should also be included in the orientation materials for all new University students and in the information given new University civil service employees. The same material should also be printed in student handbooks and should be given to new faculty, academic administrators, and academic professional staff as well.
3. anonymous descriptions of cases involving typical sexually harassing behavior, with appropriate sanctions and legal implications, distributed to students, faculty, and staff.
4. development and promulgation of a code of ethics for faculty, administrators, and supervisors;
5. publication of the sexual harassment policy and procedures in the Daily every quarter.

In addition, the subcommittee recommends that the topic of sexual harassment be included in relevant courses, such as those in human sexuality and those in civil rights. We believe that the EO&AA Office and the Academic Vice President's Office should publish at least once a year the number of sexual harassment complaints filed, the number or percentage of these offenses judged to have been seriously harmful, and the range of sanctions applied.

6. Survey

In recent studies, 31-90% of the respondents report having received some form of unwanted sexual attention. Estimates of "serious" incidents (unwanted touching, subtle pressure or overt demands for sexual favors, or physical assault) range from 2-12%. Several studies conducted in university settings estimate that 33-41% of the female students have encountered some form of harassment from someone in authority. In a recent study at Harvard University, 32% of tenured female professors and 49% of untenured female professors report having encountered some form of sexual harassment. Few of these studies have used stratified random samples or a rigorous research design. Therefore, it is difficult to project the true level of incidence at the University of Minnesota for particular categories of students, faculty, and civil service employees. (See Appendix D)

Our subcommittee recommends that the University sponsor a study of sexual harassment. Through such a study the University would be able to assess the prevalence of sexual harassment and the level of awareness, within the University community, of our existing policy and procedures. We would also learn how the respondents typically deal with this problem and what their needs are. Such a survey would have at least an immediate benefit in raising the level of awareness about this problem. Moreover, this study would demonstrate our continued commitment to eliminating all forms of sexual harassment at the University of Minnesota.

7. Budgetary Considerations

Few can be unaware that the past several years have been difficult ones, financially, for the University. We also know that it is easy for specialized groups to urge the spending of money in order, supposedly, to save it. Yet the subcommittee must observe that sexual discrimination has recently been one cause of oppressive costs to this institution. Sexual harassment, which is treated under the law as discrimination, can also prove expensive, in court costs and damages as well as in the waste of professional knowledge and potential. Consequently, we believe that the amount needed for counseling and educating the University community in this matter will be wisely invested.

Besides eventually saving money, prompt and proper attention to the problem of sexual harassment will confirm our professional commitment and improve the health of the entire scholarly enterprise here at Minnesota. In this regard we find appropriate the statement of John Imholte (Provost, University of Minnesota, Morris), "Civilized relationships among sensitive and intelligent human beings preclude all forms of harassment, including sexual." This University is fortunate in having in large measure prevented other forms. Nor is it wholly responsible for the lapse from professional integrity which the sexual harassment policy and procedures are intended to remedy. It is, however, obliged to help in correcting any abuse of professional authority and trust, and at this time sexual harassment requires its attention.

8. Review

The original sexual harassment policy required continuous review of the procedures. Unfortunately, this was not done. The subcommittee members were forced to educate themselves in the complexities of this problem, as well as in its prevalence and seriousness, in a very short time. An unusual degree of interest and cooperation from members of the University community made it possible for the subcommittee to do an adequate job. We do not want future reviews to depend on this exceptional goodwill, nor should they require such concentrated effort from the review committee. We recommend, therefore, that the Sexual Harassment Board conduct a continuous review, as stipulated in the reformulated procedures.

V. Summary of recommendations:

The subcommittee recommends that the Faculty Affairs Committee forward to the Senate the motion: "That the Senate endorse the Policy Statement on Sexual Harassment and the Procedures for Handling Complaints of Sexual Harassment against Academic Staff," as reformulated in 1984.

It also recommends the following:

1. wider and more frequent publication of the policy and procedures within the University community;
2. designation and training of counselors for victims and perpetrators;
3. a survey of University students, staff, and faculty to determine the extent and severity of sexual harassment and the distribution of offenders among those in positions of influence.

courts. Counseling is especially important before complaints are filed, because while the EO&AA Office is indeed the most effective place to lodge a complaint, Morrill Hall does not appear accessible to those who are most likely to need assistance in cases of sexual harassment. Again, recent court decisions make it clear that policy and procedures alone are not enough, that both complainants and respondents must know what constitutes sexual harassment, must be informed exactly how complaints are handled, and must have easy access to the appropriate relief. Therefore publication and counseling are to be considered not auxiliary, but substantive (see Heelan v. Johns Manville [D.D.C. 1978]). Finally, a survey of the problem, as it exists at this University, will produce reliable data on which to base future decisions.

Appendix A

The subcommittee owes a debt of thanks to many members of the University community for their time and their careful attention. The subcommittee consulted personally with Betty Robinett, Assistant Vice President for Academic Affairs, who handled all sexual harassment cases after June, 1981; Lillian Williams, Director, Office of Equal Opportunity and Affirmative Action (EO&AA), who had handled all civil service cases since that date and had consulted with Dr. Robinett on many others; Ann Bailly, Assistant to the Vice President for Academic Affairs; Patricia Mullen, Assistant Director, EO&AA; Stanley Sahlstrom, Provost, University of Minnesota, Crookston; Ed Frederick, Provost, University of Minnesota, Waseca; Fred Morrison, Professor of Law and Chair of the Tenure Committee; Anne Truax, Director, Women's Center; and Steve Dunham, General Counsel. Two members of the Sexual Harassment Board served on the subcommittee: Anne Pick, Professor of Child Development, and Richard Purple, Professor of Physiology. The subcommittee also held an open hearing on January 23, at which both students and staff expressed their views. The Chair spoke briefly with University grievance officers at their meeting January 10.

Letters expressing opinions as to the policy and procedures and providing suggestions were received from Gregory R. Fox, Assistant Vice Provost for Academic Administration, University of Minnesota, Duluth; Elizabeth Blake, Academic Dean, University of Minnesota, Morris; Phyllis Freier, Professor of Physics and former chair of the Sexual Harassment Board; Dorothy Loeffler, Student Counseling Bureau, who helped frame the policy and procedures; and Nicholas Barbatsis, Director, Special Counseling Office.

The subcommittee reviewed available policy and procedural statements and official publicity from the Committee on Institutional Cooperation. Other documents consulted include: the "Policy Statement on Sexual Harassment" and "Procedures for Handling Complaints of Sexual Harassment against Academic Staff" (University Senate Minutes, April 16, 1981, V, page 36); "Procedures to be Followed in Sexual Harassment Complaints Involving Civil Service and Academic Staff Personnel" (Office of Equal Opportunity and Affirmative Action, Office of the Vice President for Academic Affairs, University Personnel Department, October 20, 1981); "Regulations Concerning Faculty Tenure" (University of Minnesota, February 9, 1945, with amendments to March 13, 1981); "Regulations Concerning Faculty Tenure (draft December 20, 1983); the Sexual Harassment Task Force Report of the State of Minnesota Council on the Economic Status of Women (March 1982); "Sexual Harassment: Critical Review of Legal Cases with General Principles and Preventive Measures," Robert H. Foley (Purdue University), unpublished paper; and Sexual and Gender Harassment in the Academy: A Guide for Faculty, Students, and Administrators, Phyllis Franklin, Helene Moglen, Phyllis Zatlin-Boring, and Ruth Angress (New York: Modern Language Association, 1981).

Appendix B
(as of February 20,1984)

. . . . . will move to amend section 10.3, page 15, lines 5-18, by striking out the present text and substituting the following:

10.3 Initial Procedures. Only a dean or an academic administrator specially designated by the Vice President may initiate preliminary procedures leading to unrequested leave of absence or to suspension or removal.

The administrator must first attempt to discuss and resolve the matter with the faculty member involved.

If the grounds for the action involve an alleged violation of a University policy, approved by the Faculty Senate, which provides for the review of such allegations by a panel established by that policy, the administrator must submit the matter to that panel for its recommendation.

In all other cases, the administrator must submit the matter to the tenured faculty of the academic unit involved for their recommendation. (The tenured faculty may decide to submit the issue to the entire regular faculty of the unit.)

Both the faculty member and the administrator may submit their views, in person or in writing, to the body making the recommendation, but neither of them may participate in the deliberation or vote. The body making the recommendation makes a written report to the administrator, indicating the number of votes for and against the proposed action and the reasons articulated. After considering the report, the administrator makes a written recommendation to the Vice President. The recommendation must include a copy of the report of the panel or of the tenured faculty, as the case may be. A copy of the report must be sent to the faculty member.

and by amending section 10.4 at page 15, line 20, by striking out the words "and the report of the faculty."

Appendix C

An administrative committee reviews and coordinates all sanctions for sexual harassment applied to faculty, academic professional and administrative staff, and civil service personnel. Its members are: Cherie Perlmutter, Associate Vice President for Health Sciences; Betty Robinett, Assistant Vice President for Academic Affairs; William Thomas, Associate Vice President for Planning and Academic Support Activities and Director of Personnel; and Lillian Williams, Director, Office of Equal Opportunity and Affirmative Action.

Certain exceptions apply to the current sexual harassment procedures: Professional/administrative academic staff may appeal to the Academic Staff Advisory Committee Appeals Committee, at least two-thirds of whose members are professional/administrative staff, rather than to the Judicial Committee, whose members are all faculty. Respondents on the staff who are also students (e.g., TA's and RA's) come under the jurisdiction of rules appropriate to the role in which they acted at the time of the alleged offense. They may appeal judgments and sanctions against them to the Sexual Harassment Board.

Appendix D

Gutek, B. & Nakamura, C. "Sexuality in the Workplace," Time, October 8, 1979.

Lott, B., Reilly, M. E. & Howard, D. R. "Sexual assault and harassment: A campus community case study," Signs: Journal of Women in Culture and Society, 1982, 8, 296-319.

McCain, N. "Female faculty members and students at Harvard report sexual harassment," Chronicle of Higher Education, November 2, 1983.

Safran, C. (Redbook-Harvard Business Review Survey). Redbook, March, 1981, 47-51.

Safran, C. "What men do to women on the job: A shocking look at sexual harassment," Redbook, November, 1976, 149, 217-223.

Wilson, K. R. & Kraus, L. A. "Sexual harassment in the university," Journal of College Student Personnel, May 1983.

SEXUAL HARASSMENT POLICY STATEMENT, PROCEDURES FOR HANDLING COMPLAINTS AGAINST ACADEMIC STAFF, AND REPORT OF THE SENATE COMMITTEE ON FACULTY AFFAIRS SUBCOMMITTEE (including the Summary of Recommendations)

as approved by the University Senate, May 17, 1984

POLICY STATEMENT ON SEXUAL HARASSMENT

Sexual harassment in any situation is reprehensible. It subverts the mission of the University, and threatens the careers of students, faculty, and staff. It is viewed as a violation of Title VII of the 1964 Civil Rights Act. Sexual harassment will not be tolerated in this University. For purposes of this policy, sexual harassment is defined as follows:

> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic advancement, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions or academic decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment.

As defined above, sexual harassment is a specific form of discrimination in which power inherent in a faculty member's or supervisor's relationship to his or her students or subordinates is unfairly exploited. While sexual harassment most often takes place in a situation of power differential between persons involved, this policy recognizes also that sexual harassment may occur between persons of the same University status, i.e., student-student, faculty-faculty, staff-staff.

It is the responsibility of the administration of this University to uphold the requirements of Title VII, and with

regard to sexual harassment specifically, to insure that this University's working environment be kept free of it. For that purpose, these Senate procedures and guidelines are promulgated to avoid misunderstandings by faculty, students, and staff on (1) the definitions of sexual harassment, and (2) procedures specifically defined to file and resolve complaints of sexual harassment.

Justice requires that the rights and concerns of both complainant and respondent be fully assured. The University shall make every effort to assure and protect these rights, and shall undertake no action that threatens or compromises them.

In determining whether alleged conduct constitutes sexual harassment, those entrusted with carrying out this policy will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the suitability of a particular action will be made from the facts, on a case by case basis.

Consensual Relationships

Consenting romantic and sexual relationships between faculty and student, or between supervisor and employee, while not expressly forbidden, are generally deemed very unwise. Codes of ethics for most professional associations forbid professional-client sexual relationships. In the view of the Senate, the professor-student relationship is one of professional and client. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in giving praise or blame, grades, recommendations for further study and future employment, etc., greatly diminish the student's actual freedom of choice should sexual favors be included among the professor's other, legitimate, demands. Therefore, faculty are warned against the possible costs of even an apparently consenting relationship, in regard to the academic efforts of both faculty member and student. A faculty member who enters into a sexual relationship

with a student (or a supervisor with an employee) where a professional power differential exists, must realize that,if a charge of sexual harassment is subsequently lodged, it will be exceedingly difficult to prove immunity on grounds of mutual consent.

The administration and the Sexual Harassment Board involved with a charge of sexual harassment shall be expected, in general, to be unsympathetic to a defense based upon consent when the facts establish that a professional faculty-student or supervisor-employee power differential existed within the relationship.

This policy on sexual harassment applies to the entire University and to the conduct of students, civil service persons, and academic staff alike. The responsibility for administering the policy, however, varies with the status of the respondent. If the respondent is a student, the procedures for dealing with complaints will be found in the current Regents' policy concerning "A Statement of Standards of Student Conduct Enforceable by University Agencies. If the respondent is a civil service employee, the procedures are outlined in the current "Civil Service Rules."

If the respondent is a member of the academic staff, the procedures are set forth in the document entitled "Procedures for Handling Complaints of Sexual Harassment Against Academic Staff." If the respondent is a student appointed as a graduate assistant (Teaching Assistant, Research Assistant, etc.) and was acting in that capacity when the alleged offense occurred, the same procedures will be followed as are required for academic staff, except in regard to appeals.

Approved by the University Senate, May 17, 1984

PROCEDURES FOR HANDLING COMPLAINTS OF SEXUAL HARASSMENT AGAINST ACADEMIC STAFF

Scope: These procedures are applicable to complaints by students, civil service persons, and academic staff against academic staff and apply to the conduct of academic staff in their capacity as members of the academic staff of the University of Minnesota. In all proceedings regarding allegations of sexual harassment, the provisions of the Regulations Concerning Faculty Tenure shall be faithfully observed.

I. An Entry Level Office.

A. The administration will provide and appropriately publicize an entry level office. This office shall have resources made available to it 1) for handling sexual harassment complaints, 2) for disseminating adequate information on the University policies and procedures for dealing with sexual harassment, and 3) for securing resource personnel who have either legal training, counseling skills, or other such skills as are necessary for the effective operation of the office in resolving complaints assisting those who may have been victimized by sexual harassment. It is expected that in cases involving academic staff, this office will maintain close liaison with the Office of the Vice President for Academic Affairs.

B. Complaints of sexual harassment may be brought by students, civil service persons, and academic staff. It shall be a duty of this office to design forms and to maintain fair and adequate procedures to process a complaint if a complainant

wishes to formalize it.

C. It will be a function of this office to discuss specific incidents in an informal fashion and to draw on other support and counseling services to assist complainants. Advice shall also be given concerning the details of formalizing a complaint, the safeguards of due process, and the possible sanctions and modes of relief. Counseling and informal discussion shall be an integral part of the functioning of this office.

D. As part of the process, this office will also apprise appropriate line officers of units from which complaints arise of the nature of charges raised, and assist them in resolving the problem at the lowest appropriate level. The intent of this section is to insure that all line officers of the administration be aware of their responsibilities toward securing an academic atmosphere within their province that properly deters sexual harassment. A record of line officer involvement with each complaint will be kept by this office.

E. If the complaint cannot be resolved informally, this office shall ask the complainant to submit a formal written complaint, including a statement of the alleged incident and the remedy desired. This office shall ask the respondent to reply to the written complaint within ten days of the receipt of the complaint. The filing of such response shall be mandatory and the person responding shall be required to indicate denial in whole or in part, or agreement with the assertions in whole or in part. Failure to respond shall be deemed a breach of academic responsibility requiring notice of such failure

to respond to be given to the Academic Vice President by this office.

F. Upon receipt of the response, this office may further investigate the complaint and may schedule a meeting of the parties. Each party may have an advisor present at this meeting. This office shall settle the formal written complaint in one of the following three ways:

1. It may dismiss the complaint as being without merit.
2. It may arrange for the parties to sign a written statement of agreement in which the parties resolve the differences between them according to terms set out in writing.
3. It may find reason to suspect that the respondent acted in violation of the University Policy Statement on Sexual Harassment; in this case, this office shall describe the nature of the alleged violation, the evidence that supports its judgment,and the sanction, if any, that it recommends that the Vice President for Academic Affairs apply. The possibility of violation and any recommendation of sanction by this office will be forwarded to the Vice President for Academic Affairs. Only the Academic Vice President can officially find a respondent in violation of the University Policy on Sexual Harassment and issue a sanction. Both parties shall be notified immediately in writing of the action of this office.

G. If this office dismisses the complaint and the complainant does not appeal the dismissal or if the parties sign a written

statement of agreement, the file shall be closed. The material retained in the file shall include a copy of the formal written complaint, a copy of the respondent's reply, a statement of the action of this office and a copy of any agreements. This file shall be kept in a secure place. The information in the file will be forwarded to the appropriate line officers.

H. If the complainant wishes to appeal the dismissal of the complaint, he or she may do so by filing a notice of appeal with the Sexual Harassment Board within ten days of written notification of the action of this office. In the case of appeal, all materials shall be retained in the files and the files shall be forwarded to the Board.

I. If this office finds reason to suspect that the respondent may have acted in violation of the University Policy on Sexual Harassment, the Vice President may direct the Sexual Harassment Board to conduct a hearing. Any hearing shall be conducted in accordance with basic and traditional principles of fairness and in accordance with procedures that guarantee due process to complainant and respondent.

J. Responsibility for reviewing the activities of the entry level office shall be assumed by the Sexual Harassment Board. This Board shall receive summaries of all dispositions of cases and shall see that the University Policy on Sexual Harassment is administered properly and fairly by this office. It is also the responsibility of this Board to report periodically to the University Senate through the Senate Committee on Faculty Affairs.

II. The Sexual Harassment Board

A. The main body for reporting on the entry level office to the Senate and for hearing appeals of the actions of the entry level office is a nine-person Board to be appointed by the President. In order to achieve continuity, the Board members shall be appointed initially for staggered terms of service varying in length from one to three years, and thereafter for terms of three years. The membership of the Board shall consist of five faculty members, one academic professional-administrative person, one civil service person, and two students.

B. A Board member of any class (faculty, academic professional-administrative, civil service, or student) may participate in any hearing or appeal without regard to the class to which the respondent or complainant belongs.

C. The office of the University Attorney shall serve to advise the Board on substantive or procedural issues that arise under the University Policy on Sexual Harassment.

D. A primary function of the Board is to hear appeals and conduct hearings. The Board shall hear appeals from complainants whose complaints have been dismissed by the entry level office, and shall conduct hearings when directed to do so by the Academic Vice President. The Board shall also review the findings and recommendations of the office when the office has found reason to believe that a respondent acted in violation of the Policy on Sexual Harassment. It will also hear appeals by student respondents against whom complaints have been filed regarding their actions in an instructional capacity (as Teaching Assistants, Research Assistants,

etc.), if administrative action has already been taken.

E. In carrying out its appeal and hearing function, the Board shall adopt hearing procedures that accord due process to every party and are consistent with the Procedures for Committees of the Senate.

F. Standard of Proof. A violation of this policy on sexual harassment shall be found by the Board only where there is a preponderance of evidence that a violation occurred.

G. In hearing appeals made by a complainant, in hearing cases referred to it by the Vice President for Academic Affairs, or in reviewing an action by the Vice President, the Board may make up to three determinations. It may determine the truth or falsity of the evidence considered. It may decide whether the factual allegation constitutes a violation of the University Policy on Sexual Harassment. Lastly, the Board may decide what if any sanction is appropriate.

H. The Board will conduct a continuous review of the Sexual Harassment Policy and Procedures, as described in I.J above.

III. Appeals

A. The complainant may appeal the action of the office to dismiss his or her complaint to the Sexual Harassment Board.

B. Respondents may appeal a ruling by the Vice President for Academic Affairs that they have acted in violation of the University Policy on Sexual Harassment or may appeal any sanction imposed in this regard by the Vice President for Academic Affairs as follows:

1. Faculty may appeal to the Senate Judicial Committee.

2. Academic professional/administrative staff may appeal to the Appeals Committee of the Academic Staff Advisory Committee.
3. Students may appeal to the Student Behavior Committee.

IV. Sanctions

Violations of the University Policy on Sexual Harassment may be met with a variety of sanctions. Those could include such sanctions as a reprimand, denial of merit pay, reassignment of teaching responsibilities, or suspension without compensation for a specified period. Acts of sexual harassment of a very serious nature may warrant a recommendation of removal for cause, or may warrant criminal action.

UNIVERSITY OF MINNESOTA
TWIN CITIES

Office of the President
202 Morrill Hall
100 Church Street S.E.
Minneapolis, Minnesota 55455
(612) 373-2025

June 29, 1984

Dear Members of the University Community:

A review of the University's policy against sexual harassment was carried out this year as mandated when the policy was adopted by the Senate in April 1981. The review by a subcommittee chaired by Professor Margery Durham, appointed by the Senate Committee on Faculty Affairs, resulted in some recommendations for changes in the policy and in the procedures for handling complaints of sexual harassment against academic employees. The revised policy and procedures were approved by the Senate May 17, 1984. I strongly supported the original policy and believe that the suggested changes, which were based on the advice and experience of many who have dealt with complaints over the past three years, will improve and strengthen the policy. Therefore, the newly revised policy will become effective July 1, 1984.

This new policy contains some important features that I would like to call to your attention. Some of these are substantive in nature; others are more of a procedural nature and deal with the handling of complaints. I ask that you read carefully the newly adopted policy and procedures, copies of which are attached, since they will be rigorously applied. I believe that the policy will help ensure that students, faculty, academic staff, and Civil Service employees may pursue their activities at the University of Minnesota free from sexual harassment of any kind.

Let me comment first on a major change in the policy. After careful thought, much discussion, and on the basis of experience at this institution and at others across the nation, the drafters of the revised policy included a new section on consensual relationships between faculty and student or between supervisor and employee. It should be clearly understood that the policy does not forbid such relationships, but we believe that we would be shirking our responsibility if we did not warn individuals of the possible pitfalls in such relationships. We particularly call your attention to the following statement:

> A faculty member who enters into a sexual relationship with a student (or a supervisor with an employee) where a professional power differential exists must realize that, if a charge of sexual harassment is subsequently lodged, it will be exceedingly difficult to prove immunity on grounds of mutual consent.

In regard to procedural matters, a change has been made in the location of the Entry Level Office. When the original policy was put in place, we asked Dr. Betty W. Robinett, Assistant Vice President for Academic Affairs, to take the responsibility for that office until we could assess the severity of the problem and the amount of time and attention such an office would necessitate for the processing of complaints. On the basis of her recommendation and that of others, the new procedures mandate that the Entry Level Office should be separate from the Office of the Vice President for Academic Affairs. It will, therefore, be located in the Office of Equal Opportunity and Affirmative Action. This has the advantage of placing initial responsibility for sexual harassment complaints in the office charged with ultimate certification of compliance with federal statutes dealing with all kinds of discrimination. Dr. Robinett will continue to be consulted by the Entry Level Office whenever complaints are made against faculty and academic staff employees.

Another procedural matter needs to be called to the particular attention of administrators at all levels. In Section I.D., the procedures call for apprising line officers of the nature of any charges raised. This is "to ensure that all line officers be aware of their responsibilities toward securing an academic atmosphere within their province that properly deters sexual harassment." Because of the decentralized nature of the institution and the practice of delegating responsibility to line officers at every level, it becomes the responsibility of every administrative official who receives any complaint to investigate it promptly and thoroughly. Only in this way will administrators be exercising one of their basic responsibilities, that of keeping the University's working atmosphere free from sexual harassment.

The final item involves procedures to be followed in the possible event of the dismissal of a faculty member for violation of this policy. I would like to suggest that administrators review carefully the procedures for suspension and dismissal appropriate for each academic personnel category. At the present time, procedures for suspension or dismissal of faculty are covered under Sections 11 and 13 of the present **Regulations Concerning Faculty Tenure.** Policies and procedures in effect for similar actions against academic professional and administrative staff have been distributed recently.

It should be noted, however, that Section 14 of the newly proposed **Regulations Concerning Faculty Tenure** mandates procedures in cases of dismissal or suspension that differ somewhat from the current ones. In the proposed **Regulations**, the administrator must request a recommendation from a body duly constituted under a specific policy, as is the Sexual Harassment Board, rather than from the tenured faculty in the unit before he or she can ask the Vice President to take such action. The statement from the proposed **Regulations** in this regard is as follows:

> If the Vice President and the Faculty Senate have expressly approved the submission of allegations of the violation of a specified policy to another body for preliminary recommendation, in place of submission to the tenured faculty of the academic unit, the administrator must submit the matter to the body for its recommendation. (Section 14.1)

Should the proposed **Regulations** be adopted in the near future, this procedure would have to be followed.

Nothing is more important to the present and future health of the University than maintaining an atmosphere that allows us all to pursue academic activities free from any intimidating, hostile, or offensive behavior. I believe this policy will help us to achieve such a positive environment for our academic endeavors.

If you have any questions after reading the University's policy and procedures against sexual harassment, you may call Ms. Patricia A. Mullen, Assistant Director, Office of Equal Opportunity and Affirmative Action (373-7969) or Dr. Betty W. Robinett, Assistant Vice President for Academic Affairs (373-5964).

Cordially,

C. Peter Magrath

C. Peter Magrath
President

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Enc: Policy Statement on Sexual Harassment
Procedures for Handling Complaints of Sexual Harassment Against Academic Staff

POLICY STATEMENT ON SEXUAL HARASSMENT*

Sexual harassment in any situation is reprehensible. It subverts the mission of the University, and threatens the careers of students, faculty, and staff. It is viewed as a violation of Title VII of the 1964 Civil Rights Act. Sexual harassment will not be tolerated in this University. For purposes of this policy, sexual harassment is defined as follows:

> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic advancement, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions or academic decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an indivudal's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment.

As defined above, sexual harassment is a specific form of discrimination in which power inherent in a faculty member's or supervisor's relationship to his or her students or subordinates is unfairly exploited. While sexual harassment most often takes place in a situation of power differential between persons involved, this policy recognizes also that sexual harassment may occur betweeen persons of the same University status, i.e., student-student, faculty-faculty, staff-staff.

It is the responsibility of the administration of this University to uphold the requirements of Title VII, and with regard to sexual harassment specifically, to insure that this University's working environment be kept free of it. For that purpose, these Senate procedures and guidelines are promulgated to avoid misunderstandings by faculty, students, and staff on (1) the definitions of sexual harassment, and (2) procedures specifically defined to file and resolve complaints of sexual harassment.

Justice requires that the rights and concerns of both complainant and respondent be fully assured. The University shall make every effort to assure and protect these rights, and shall undertake no action that threatens or compromises them.

In determining whether alleged conduct constitutes sexual harassment, those entrusted with carrying out this policy will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the suitability of a particular action will be made from the facts, on a case-by-case basis.

Consensual Relationships

Consenting romantic and sexual relationships between faculty and student, or between supervisor and employee, while not expressly forbidden, are generally deemed very unwise. Codes of ethics for most professional associations

* As approved by the University Senate, May 17, 1984

forbid professional-client sexual relationships. In the view of the Senate, the professor-student relationship is one of professional and client. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in giving praise or blame, grades, recommendations for further study and future employment, etc., greatly diminish the student's actual freedom of choice should sexual favors be included among the professor's other, legitimate, demands. Therefore, faculty are warned against the possible costs of even an apparently consenting relationship, in regard to the academic efforts of both faculty member and student. A faculty member who enters into a sexual relationship with a student (or a supervisor with an employee) where a professional power differential exists, must realize that, if a charge of sexual harassment is subsequently lodged, it will be exceedingly difficult to prove immunity on grounds of mutual consent.

The administration and the Sexual Harassment Board involved with a charge of sexual harassment shall be expected, in general, to be unsympathetic to a defense based upon consent when the fact establish that a professional faculty-student or supervisor-employee power differential existed within the relationship.

This policy on sexual harassment applies to the entire University and to the conduct of students, Civil Service persons, and academic staff alike. The responsibility for administering the policy, however, varies with the status of the respondent. If the respondent is a student, the procedures for dealing with complaints will be found in the current Regents' policy concerning "A Statement of Standards of Student Conduct Enforceable by University Agencies." If the respondent is a Civil Service employee, the procedures are outlined in the current "Civil Service Rules."

If the respondent is a member of the academic staff, the procedures are set forth in the document entitled "Procedures for Handling Complaints of Sexual Harassment Against Academic Staff." If the respondent is a student appointed as a graduate assistant (Teaching Assistant, Research Assistant, etc.) and was acting in that capacity when the alleged offense occured, the same procedures will be followed as are required for academic staff, except in regard to appeals.

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PROCEDURES FOR HANDLING COMPLAINTS OF SEXUAL HARASSMENT AGAINST ACADEMIC STAFF*

Scope: These procedures are applicable to complaints by students, Civil Service persons, and academic staff against academic staff and apply to the conduct of academic staff in their capacity as members of the academic staff of the University of Minnesota. In all proceedings regarding allegations of sexual harassment, the provisions of the Regulations Concerning Faculty Tenure shall be faithfully observed.

I. An Entry Level Office.

A. The administration will provide and appropriately publicize an entry level office. This office shall have resources made available to it 1) for handling sexual harassment complaints, 2) for disseminating adequate information on the University policies and procedures for dealing with sexual harassment, and 3) for securing resource personnel who have either legal training, counseling skills, or other such skills as are necessary for the effective operation of the office in resolving complaints assisting those who may have been victimized by sexual harassment. It is expected that in cases involving academic staff, this office will maintain close liaison with the Office of the Vice President for Academic Affairs.

B. Complaints of sexual harassment may be brought by students, Civil Service persons, and academic staff. It shall be a duty of this office to design forms and to maintain fair and adequate procedures to process a complaint if a complainant wishes to formalize it.

C. It will be a function of this office to discuss specific incidents in an informal fashion and to draw on other support and counseling services to assist complainants. Advice shall also be given concerning the details of formalizing a complaint, the safeguards of due process, and the possible sanctions and modes of relief. Counseling and informal discussion shall be an integral part of the functioning of this office.

D. As part of the process, this office will also apprise appropriate line officers of units from which complaints arise of the nature of charges raised, and assist them in resolving the problem at the lowest appropriate level. The intent of this section is to insure that all line officers of the administration be aware of their responsibilities toward securing an academic atmosphere within their province that properly deters sexual harassment. A record of line officer involvement with each complaint will be kept by this office.

E. If the complaint cannot be resolved informally, this office shall ask the complainant to submit a formal written complaint, including a statement of the alleged incident and the remedy desired. This office shall ask the respondent to reply to the written complaint within ten days of the receipt of the complaint. The filing of such response shall be mandatory and the person responding shall be required to indicate denial in whole or in part, or agreement with the assertions in whole or in part. Failure to respond shall be deemed a breach of academic responsibility requiring notice of such failure to respond to be given to the Academic Vice President by this office.

F. Upon receipt of the response, this office may further investigate the complaint and may schedule a meeting of the parties. Each party may have an advisor present at this meeting. This office shall settle the formal written complaint in one of the following three ways:

* As approved by the University Senate, May 17, 1984

1. It may dismiss the complaint as being without merit.
2. It may arrange for the parties to sign a written statement of agreement in which the parties resolve the differencies between them according to terms set out in writing.
3. It may find reason to suspect that the respondent acted in violation of the University Policy Statement on Sexual Harassment; in this case, this office shall describe the nature of the alleged violation, the evidence that supports its judgment, and the sanction, if any, that it recommends that the Vice President for Academic Affairs apply. The possibility of violation and any recommendation of sanction by this office will be forwarded to the Vice President for Academic Affairs. Only the Academic Vice President can officially find a respondent in violation of the University Policy on Sexual Harassment and issue a sanction. Both parties shall be notified immediately in writing of the action of this office.

G. If this office dismisses the complaint and the complainant does not appeal the dismissal or if the parties sign a written statement of agreement, the file shall be closed. The material retained in the file shall include a copy of the formal written complaint, a copy of the respondent's reply, a statement of the action of this office and a copy of any agreements. This file shall be kept in a secure place. The information in the file will be forwarded to the appropriate line officers.

H. If the complainant wishes to appeal the dismissal of the complaint, he or she may do so by filing a notice of appeal with the Sexual Harassment Board within ten days of written notification of the action of this office. In the case of appeal, all materials shall be retained in the files and the files shall be forwarded to the Board.

I. If this office finds reason to suspect that the respondent may have acted in violation of the University Policy on Sexual Harassment, the Vice President may direct the Sexual Harassment Board to conduct a hearing. Any hearing shall be conducted in accordance with basic and traditional principles of fairness and in accordance with procedures that guarantee due process to complainant and respondent.

J. Responsibility for reviewing the activities of the entry level office shall be assumed by the Sexual Harassment Board. This Board shall receive summaries of all dispositions of cases and shall see that the University Policy on Sexual Harassment is administered properly and fairly by this office. It is also the responsibility of this Board to report periodically to the Unviersity Senate through the Senate Committee on Faculty Affairs.

II. The Sexual Harassment Board

A. The main body for reporting on the entry level office to the Senate and for hearing appeals of the actions of the entry level office is a nine-person Board to be appointed by the President. In order to achieve continuity, the Board members shall be appointed initially for staggered terms of service varying in length from one to three years, and thereafter for terms of three years. The membership of the Board shall consist of five faculty members, one academic professional-admininstrative person, one Civil Service person, and two students.

B. A Board member of any class (faculty, academic professional-administrative, Civil Service, or student) may participate in any hearing or appeal without regard to the class to which the respondent or complainant belongs.

C. The office of the University Attorney shall serve to advise the Board on substantive or procedural issues that arise under the University Policy on Sexual Harassment.

D. A primary function of the Board is to hear appeals and conduct hearings. The Board shall hear appeals from complainants whose complaints have been dismissed by the entry level office, and shall conduct hearings when directed to do so by the Academic Vice President. The Board shall also review the findings and recommendations of the office when the office has found reason to believe that a respondent acted in violation of the Policy on Sexual Harassment. It will also hear appeals by student respondents against whom complaints have been filed regarding their actions in an instructional capacity (as Teaching Assistants, Research Assistants, etc.), if administrative action has already been taken.

E. In carrying out its appeal and hearing function, the Board shall adopt hearing procedures that accord due process to every party and are consistent with the Procedures for Committees of the Senate.

F. Standard of Proof. A violation of this policy on sexual harassment shall be found by the Board only where there is a preponderance of evidence that a violation occurred.

G. In hearing appeals made by a complainant, in hearing cases referred to it by the Vice President for Academic Affairs, or in reviewing an action by the Vice President, the Board may make up to three determinations. It may determine the truth or falsity of the evidence considered. It may decide whether the factual allegation constitutes a violation of the University Policy on Sexual Harassment. Lastly, the Board may decide what if any sanction is appropriate.

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