

**R954-1. Purpose:** To outline the Office of the Commissioner of Higher Education's (OCHE's) policy against sexual harassment and to set forth the policy regarding romantic or sexual relationships between a supervisor and an employee or between peers in order to foster a work environment free of sexual harassment for employees.

## R954-2. References

- 2.1. Policies and Procedures R910, Equal Opportunity and Nondiscrimination
- 2.2. Policies and Procedures R911, Employment of Relatives
- 2.3. Policies and Procedures R951, Employment Grievances
- 2.4. Policies and Procedures R952, Discrimination and Sexual Harassment Complaint Procedures
- 2.5. Policies and Procedures R964, Disciplinary Sanctions of Staff Personnel

## R954-3. Confidentiality

- 3.1. **Confidentiality of All Parties:** The confidentiality of all parties involved in a sexual harassment complaint or concern shall be strictly respected insofar as it does not interfere with OCHE's legal obligation to investigate allegations of misconduct and to take corrective action or as otherwise provided by law.

## R954-4. Definitions

- 4.1. **"Sexual Harassment":** means the following:
  - 4.1.1. Sexual harassment as used in this policy and in policy R952, is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
    - 4.1.1.1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or participation in an OCHE activity or service;
    - 4.1.1.2. submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that individual's employment or participation in an OCHE activity or service; or
    - 4.1.1.3. such conduct has the purpose or effect of unreasonably interfering with an individual's employment or creating an intimidating, hostile, or offensive environment for that individual's employment.
  - 4.1.2. The free and open discussion of issues or theories relating to sexuality or gender in a professional setting, when appropriate to subject matter, will be presumed not to constitute sexual harassment even if it offends or embarrasses an individual unless other factors are involved. Such

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<sup>1</sup> Adopted March 16, 1995.

factors include targeting the discussion to an individual or carrying out the discussion in terms that are both patently unnecessary and gratuitously offensive.

4.1.3. Conduct alleged to be sexual harassment will be evaluated by considering the totality of the particular circumstances, including the nature, frequency, intensity, location, context, and duration of the questioned behavior. Although repeated occurrences generally create a stronger claim, a single occurrence may constitute sexual harassment.

4.1.4. Sexually-related conduct may form the basis of a sexual harassment claim if a reasonable person would consider it sufficiently severe or pervasive to interfere unreasonably with employment performance.

4.1.5. Sexual harassment most often occurs when one person has actual or apparent power or authority over another, but that is not always the case. Sexual harassment may occur between males and females and between persons of the same gender.

4.2. **"Participant"**: a person, other than a staff member, who is participating or attempting to participate in, or is receiving or attempting to receive the benefits or, any program, service or activity conducted under the sponsorship or auspices of OCHE, including but not limited to applicants for employment, clients, visitors, and volunteers.

4.3. **"Staff" or "Staff Member" or "Employee"**: a person who receives compensation for work or services from funds controlled by OCHE, regardless of the source of the funds, the duties of the position, or the amount of compensation paid.

## R954-5. Policy

5.1. **Sexual Harassment**: It is the policy of OCHE to maintain a work environment free of sexual harassment for all staff and participants. Sexual harassment will not be tolerated within OCHE.

5.2. **Violation of Policies and Laws Against Discrimination**: Sexual harassment violates OCHE's policy against discrimination on the basis of sex. Sexual harassment is also illegal. It violates Title VII of the 1964 Civil Rights Act (42 U.S.C. 2000e-2), Title IX of the Educational Amendments of 1972 (20 U.S.C. 1681, et. seq.) and Utah's Antidiscrimination Act (Utah Code Title 34A, Chapter 5).

5.3. **Claims of Sexual Harassment**: A claim under this policy may be brought by an administrator acting on behalf of OCHE, by a staff member, or by a participant in OCHE services based on the conduct of any OCHE employee that is related to or in the course of OCHE business. The human resource (HR) office will handle all alleged sexual harassment matters pursuant to the procedures set forth in R952.

5.4. **Whom to Contact**: Any staff member or participant in OCHE services who believes that there is or has been sexual harassment should contact any of the following:

5.4.1. the supervisor, director, or associate commissioner of the operational unit within which the conduct occurred;

5.4.2. the individuals designated by OCHE to address sexual harassment complaints;

5.4.3. the HR office; or

5.4.4. the Office of Equal Opportunity and Affirmative Action at the University of Utah.

5.4.5. Once informed, the supervisor, director, or associate commissioner shall consult with the HR office. Similarly, the HR office shall advise as appropriate the supervisor, director, or associate commissioner of any complaints of sexual harassment received concerning a member of his or her staff.

5.5. **Seriousness of Sexual Harassment:** Sexual harassment can be a very serious matter having far-reaching effects on the lives and careers of individuals. Thus the charge of sexual harassment is not to be taken lightly by a charging party, an accused party, or any member of OCHE's staff. A person who knowingly and intentionally files a false complaint under this policy may be subject to possible disciplinary action as described in R964.

5.6. **Concerns or Complaints Handled Formally or Informally:** Sexual harassment issues can take the form of either concerns or complaints and can be handled on either a formal or informal basis. Policy R952 outlines processes for handling these issues.

5.7. **Consensual Relationships:** Romantic or sexual relationships between a supervisor and an employee who he or she supervises are generally unwise because of the power imbalance in the relationship. Even when both parties have consented to the development of such relationships, they can raise serious questions about the validity of the consent, conflicts of interest, and unfair treatment of others.

5.7.1. A supervisor who has any direct supervisory authority over an employee and is at the same time involved in a sexual or romantic relationship with that employee, even a mutually consenting one, will be considered in violation of this policy and may be subject to disciplinary action under R964 unless corrective measures are taken.

5.7.2. Anyone who enters into a romantic or sexual relationship where a professional power differential exists must realize that if a charge of sexual harassment is subsequently lodged, it will be exceedingly difficult to sustain a defense on grounds of mutual consent. In addition, Utah law may preclude OCHE from defending and indemnifying an employee in such circumstances.

5.7.3. OCHE's nepotism policy R911 precludes individuals from evaluating the work performance of others with whom they have intimate familial relations or from making hiring, salary, promotion or tenure decisions. The same principles apply to consensual relationships in the context of work evaluation.

5.7.4. If a supervisor and an employee who he or she supervises choose to have a consensual relationship, immediate steps must be taken to modify reporting responsibility. Employees in this situation should contact the HR office at once in order to insure corrective measures are taken. Corrective measure may include reassigning performance evaluations or reporting responsibilities to other qualified individuals.