

SEXUAL HARASSMENT POLICY

Baldwin-Wallace College

Revised September 13, 2004

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I. INTRODUCTION

Baldwin-Wallace College is committed to providing a professional working and learning environment free from sexual harassment. Sexual harassment is a form of sex discrimination, is illegal, and can result in a civil law suit. Sexual harassment most often exploits a relationship between individuals of unequal power and authority (for example, the relationship between an employee and a supervisor or between a student and a teacher), but may also occur between student peers or employees of similar rank. Sexual harassment may involve the behavior of a person of either gender against a person of the opposite or same gender. Sanctions for sexual harassment range from mandatory education about sexual harassment to dismissal, depending on the seriousness and frequency of the behavior.

II. DEFINITION

Sexual harassment is unwelcome behavior of a sexual nature that prevents or impairs the full enjoyment of educational or occupational benefits or opportunities. What is often at issue is not sexual attention *per se*, but intimidation, coercion, or abuse of power. Such behavior may be especially harmful in situations where the imposition of unwanted sexual attention is accompanied by the promise of academic or employment rewards or the threat of reprisal.

No matter how carefully worded a definition of sexual harassment might be, unforeseen situations might arise which cannot easily be included in any definition. Thus, sexual harassment is defined to include, but is not limited to, the following:

- Behavior of a sexual nature that has the purpose or effect of substantially interfering with an individual's performance or which creates a hostile, offensive, or intimidating environment.
- Behavior that is inappropriate to the academic or employment setting; for example, unwelcome or irrelevant comments, gestures or touching, which may reasonably be perceived as a sexual overture or denigration.

- A request for sexual favors when submission to, or rejection of, such a request might reasonably be viewed as a basis for evaluative decisions affecting an individual's career or educational experience.

It is important to note that Baldwin-Wallace College values and protects academic freedom. The College recognizes that vigorous and open discussion of controversial issues can cause discomfort and that vital teaching and learning can itself be the occasion for students and professors to face difficult, awkward or painful matters. Therefore, this policy on sexual harassment is not intended to restrict serious discussions of controversial issues in academic situations.

III. SEXUAL HARASSMENT PERSONNEL

The College has designated three types of individuals to be involved in sexual harassment procedures.

Sexual Harassment Advisors are faculty, staff, and students who have received special training in assisting individuals involved in sexual harassment cases. These persons are available to assist individuals in understanding the reporting and responding processes, and provide assistance as needed. Names and contact information for all Sexual Harassment Advisors can be found on the College website under Human Resources at <http://www.bw.edu/resources/hr>. This information can also be obtained by contacting Human Resources at 440-826-2220, the Health and Counseling Center at 440-826-2178, Student Affairs at 440-826-2111 or the Academic Dean's Office at 440-826-2251.

Sexual Harassment Officers investigate complaints of sexual harassment that have occurred within the Baldwin-Wallace College Community. (See Appendix 2, section A.) Names and contact information for all Sexual Harassment Officers can be found on the College website under Human Resources at <http://www.bw.edu/resources/hr>. This information can also be obtained by contacting Human Resources at 440-826-2220, the Health and Counseling Center at 440-826-2178, Student Affairs at 440-826-2111 or the Academic Dean's Office at 440-826-2251.

The **Sexual Harassment Review Committee (SHRC)** are faculty, staff and students who have received training to serve in formal grievance procedures. In addition, the SHRC works with the Sexual Harassment Officers to review the college's policy and procedures related to sexual harassment in an attempt to keep them updated and to monitor their effectiveness. (See Appendix 1.)

IV. HOW TO FILE A SEXUAL HARASSMENT COMPLAINT

Any Baldwin-Wallace student, staff, faculty member, or campus visitor having a complaint of sexual harassment (hereafter, the complainant) is encouraged to contact a Sexual Harassment Officer. The complainant may have the assistance of a Sexual Harassment Advisor who will guide the complainant during the complaint process. Sexual Harassment Advisors are also available for any person accused of sexual harassment (hereafter, the respondent) to assist the respondent through all stages of the grievance process.

The College will investigate all complaints brought by means of the procedures described below. (Should one of the SH Officers or a member of the SHRC be the respondent or the complainant, the college's E.E.O.C. Officer will assume procedural responsibility.)

A. Confidentiality

The institution encourages all parties involved in a case to maintain confidentiality during proceedings. Information about a case should be limited to those parties who have a need to know. Parties involved should not engage in public discussion of their cases. A breach of confidentiality that reaches the level of malicious intent may result in sanctions. (See Item F for details).

B. Initial Investigation

The initial investigation begins when a Sexual Harassment Officer hears of a complaint. The Sexual Harassment Officer, joined by a second SH Officer, will gather information from the complainant to complete a complaint form. The SH Officers will use the written complaint which should include relevant information including the names of the complainant and respondent; the date or dates, time or times, duration and nature of the

alleged sexual harassment; the place where the alleged sexual harassment occurred; a general outline of the facts and nature of the alleged harassment by the complainant; and names of any witnesses. The complaint should be signed and dated by both the complainant and the SH Officers. Refusal to sign a complaint form and/or withdrawal of a complaint will not necessarily result in the termination of the college investigation into the allegations. In this instance, the College may come forward as the complainant.

The SH Officers will initiate the investigation promptly upon receiving the complaint. Normally, the SH Officers will conduct the investigation by completing the following procedures:

1. Meet with the complainant to gather additional information. Should the complainant choose, a Sexual Harassment Advisor may be present at any investigative meeting.
2. Meet with the respondent to notify him or her of the accusation. Should the respondent choose, a Sexual Harassment Advisor may be present at any investigative meeting. A copy of the complaint will be given to the respondent. The respondent will be asked to read and acknowledge that he/she has read the complaint. The respondent will be given the opportunity to share his or her explanation with the investigators including why he or she believes the accusation was made. The respondent will be asked to give a signed and dated written statement of his or her version of what occurred. The respondent will be asked to give a list of witnesses to the alleged behavior and to provide any other documents or information that can substantiate his or her account of what occurred. The respondent's statement must be signed and dated. At this point, the SH Officers will proceed to attempt to resolve the case through informal procedures.
3. The investigating SH Officers will continue the investigation by contacting witnesses, gathering other pertinent data and speaking with both the complainant and respondent as needed.
4. All persons involved in the investigation will be warned by the SH Officers about the potentially negative consequences of any behavior that could be interpreted as an act of retaliation or coercion or a breach of confidentiality.
5. Upon completing the investigation, the SH Officers will complete a written report. If they find that sexual harassment did not occur, the SH Officers document the

- findings and close the case. If the investigation is inconclusive or if evidence exists that harassment did occur, the SH Officers will then attempt to resolve the case using the informal procedures. (See Section C)
6. At the conclusion of the investigation, the complainant and respondent will receive a final report regarding the findings of the investigation. (See Section J on Record Keeping)
 7. The college will make every attempt to complete the investigation as promptly as possible.

C. Informal Procedure

The Sexual Harassment Officers will be in charge of the informal procedure. If the evidence provided through the investigation supports that sexual harassment has occurred, the SH Officers will develop appropriate sanctions. Agreements made through this procedure will be considered binding, and breaking these agreements can result in the implementation of the formal procedures or in additional sanctioning. Without evidence that sexual harassment occurred, the SH Officers may not impose sanctions. In the case of a finding, the appropriate Vice-President or Dean shall receive a copy of the final report. If the SHRC finds a respondent responsible for sexual harassment, the SH Officers will inform the appropriate Vice-President or Dean if the respondent has previously been found responsible for sexual harassment. It will be the responsibility of the Vice-President or Dean to enforce the sanctions and they may involve the minimum number of other persons necessary in order to see that sanctions are carried out.

To achieve a resolution through the informal procedure, both the complainant and respondent must sign a statement agreeing to the outcome of the informal procedure.

D. Formal Procedures

If either party fails to agree to the outcome of the informal procedure, the party may request that the case be heard through the formal procedure. In addition, should the SH Officers reasonably believe that sexual harassment has occurred, and informal procedures have failed to bring resolution, they must ensure that formal procedures are initiated. Formal procedures may be implemented with or without the complainant's consent. The SH Officers shall make every good faith effort to ensure that some appropriate resolution is reached.

As soon as possible following the completion of the informal procedures, the SH Officers will contact the Chair of the SHRC to request the convening of the formal hearing.

1. Prior to the formal procedure, the respondent will receive written notification to appear before the Sexual Harassment Review Committee. It is the SH Officers' responsibility to notify the complainant (if other than the college) and all witnesses at least five (5) business days prior to the formal procedure if they are to appear. All parties must comply with the schedule of the SHRC. Appropriate Vice-Presidents or Deans may compel participation of their employees in the process.
2. The SH Officers or the appropriate Vice-President or Dean shall reserve the right to recommend to the President the suspension of the respondent prior to or during the formal procedure.
3. All parties have the right to have a Sexual Harassment Advisor accompany them through the formal procedure. SH Advisors do not speak on behalf of the complainant or respondent.
4. The formal procedure will be closed to the public.
5. The SH Officers will present the case on behalf of the complainant and the respondent.
6. The complainant and the respondent both have the right to present witnesses to the claimed conduct and provide other forms of pertinent information with respect to the case. Witnesses are not required to be members of the College community. The SHRC reserves the right to limit witnesses who do not have direct knowledge related to the alleged incident(s).
7. The Chair of the SHRC shall make and keep a record of the entire procedure by means of audio tape or stenography, which will become part of the confidential record. (See section J)
8. The SHRC has the right to question any and all witnesses who appear before it. The SHRC has the right to request witnesses to appear other than those called on behalf of the complainant or the respondent.

9. The SHRC shall be responsible for determining whether a preponderance of the evidence supports the allegations against the respondent and, if so, whether such allegations constitute sexual harassment as defined by the B-W policy.
10. To find that a respondent has committed sexual harassment, the decision of the SHRC will be a simple majority.
11. If the SHRC finds a respondent responsible for sexual harassment, the SH Officers will inform the SHRC prior to sanctioning if the respondent has previously been found responsible for sexual harassment.
12. As soon as possible following the completion of the hearing, the SHRC will notify the respondent, complainant, the SH Officers and the appropriate Vice-President or Dean in writing of its decision and recommendation for sanctioning, if any.
13. It will be the responsibility of the appropriate Vice-President or Dean to review and enforce the recommended sanctions. They may involve the minimum number of other persons necessary in order to see that sanctions are carried out.

E. Formal Hearing Procedures

The following shall be the order of procedure for a formal process:

1. SHRC Chair introduces members of the committee and explains the process to all present;
2. Opening statement by an SH Officer on behalf of the complainant and presentation of written complaint;
3. Opening statement by an SH Officer on behalf of the respondent;
4. Witnesses and evidence submitted by an SH Officer/complainant;
5. Witnesses and evidence submitted by an SH Officer/respondent;
6. Witnesses and evidence requested by the SHRC panel;
7. Rebuttal witnesses and evidence submitted by an SH Officer/complainant;

8. Rebuttal witnesses and evidence submitted by an SH Officer/ respondent;
9. Closing statement submitted by an SH Officer/complainant;
10. Closing statement submitted by an SH Officer/respondent;
11. SHRC panel meets to review evidence and make a decision and recommended sanction;
12. Recommendations for sanctioning forwarded in writing to the appropriate Vice-President or Dean;
13. The appropriate Vice-President or Dean communicates the decision and sanction to the respondent, the SH Officers and original complainant(s).

Departures from this procedural outline or other specified procedures, which do not substantially influence or alter the outcome of the case, will not be reason for dismissal of the case.

F. Sanctions

When it has been determined that sexual harassment has occurred, appropriate sanctions will be imposed. Sanctions may include, but are not limited to, a warning, a reprimand, a recommendation for suspension for a period of time, or a recommendation for termination of employment or expulsion from Baldwin-Wallace College. These sanctions may also include educational sanctions or counseling. Sanctions will be developed based on the severity of the infraction, chance of rehabilitation, precedent, and consistency with previous decisions.

G. Protection from Retaliation

Retaliation of any kind will not be tolerated. If the SH Officers are made aware of an alleged retaliation, an investigation will occur. If the complainant or the respondent, or a witness for either party experiences retaliation for bringing the case or for being a party or witness in the case, that person shall inform a Sexual Harassment Officer. If the Sexual Harassment Review Committee has not heard the initial charge and response, an SH Officer will add the retaliation charge or counter-charge to the case already filed.

If the SHRC has heard the initial charge and response and the procedure has been completed, an SH Officer will file the retaliation charge or counter-charge as a new case.

H. Appeal Process

1. Either party has the right to appeal the decision of the Sexual Harassment Review Committee on the basis of:
 - a) Significant procedural errors
 - b) Significant newly discovered evidence
 - c) Sanctioning which results in suspension, expulsion or termination of the respondent
2. All appeals shall be directed to the Office of the College E.E.O.C. Officer. An appeal shall be initiated by filing a written letter of appeal. The appeal must clearly state on what basis the appeal is being requested. All appeals must be filed within ten working days after the receipt of the written decision.
3. The E.E.O.C. Officer shall determine if there is a basis for an appeal. If no sufficient basis for appeal exists, the E.E.O.C. Officer will notify the appellant in writing that the appeal has been denied. If the E.E.O.C. Officer determines that a basis for appeal does exist, he or she shall refer the case to one of the following appellate bodies:
 - a) In the case of the alleged procedural error alternate members of the SHRC shall make up the new hearing panel.
 - b) In the case of newly discovered evidence, the original SHRC panel will reconvene to review the case and hear the new evidence.
 - c) In the case of appeals related to the suspension, expulsion or termination of the respondent, the case shall be referred to the President for review.
4. If an appeal hearing is granted, the E.E.O.C. Officer shall notify the appellant of the new hearing date.

5. An appeal hearing will follow the same procedures as outlined for the formal hearing process in sections IV-D and E of this document.

I. False Charges

No member of the College community may knowingly falsify a charge or testimony under this policy. A member of the College community who believes that a false charge has been brought against him or her may request a hearing before the investigating Sexual Harassment Officers. Should the SH Officers determine that a false charge has, in fact, been made deliberately, the evidence will be turned over to the appropriate Vice-President or Dean. Moreover, false, frivolous or malicious charges may result in the College imposing sanctions against the complainant.

J. Record Keeping

1. Records of informal and formal procedures: A report of the actions of the Sexual Harassment Officers and/or the Sexual Harassment Review Committee on each case, including the action recommended, will be kept on file by a Sexual Harassment Officer.
2. Duties of the Sexual Harassment Officers regarding record keeping:
 - a) The SH Officers will be responsible for keeping records of the actions of the SHRC, a record of all incidents and confidential files on complaints and charges of sexual harassment.
 - b) Records of complaints and charges will show the complaint and the disposition of the complaint, as well as the names of the complainant, respondent and investigating SH Officers.
3. Special access to records and information:
 - a) In cases where charges are filed concurrently or subsequent to the case with outside government enforcement agencies, the Affirmative Action Officer or Title IX Compliance Officer shall be granted access to the applicable confidential files.
 - b) College counsel shall have access to all confidential files.

- c) The appropriate Vice-President or Dean will have the discretion to make available to the Promotion and Tenure Council any history of proven (through either the formal or informal hearing proceedings as described previously in this document) sexual harassment by candidates for promotion or tenure.

V. FACULTY AND STAFF DUTY TO REPORT

If a student, employee, faculty or staff member complains of sexual harassment, the faculty or staff member to whom such a complaint is conveyed has a duty to report that information to an SH Officer. Subject to the policy's stated definition of sexual harassment, if a faculty or staff member believes that he or she has observed sexual harassment of a student, employee, faculty or staff member, the faculty or staff member should report that information to an SH Officer.

SEXUAL HARASSMENT APPENDICES

Appendix 1: Composition of the Sexual Harassment Review Committee (SHRC)

- A. The Sexual Harassment Review Committee will consist of 12 persons. Those persons shall include four students, four administrators, and four faculty members. Three members of the SHRC will be selected to serve on each sexual harassment case brought through the formal procedure: one student, one staff and one faculty member. All other members of the SHRC will serve as alternates. (Any case not involving a student will be heard by staff and faculty only. If the respondent is faculty, then two faculty and one staff will comprise the hearing body. If the respondent is a staff person, then the hearing body will be two staff and one faculty from the SHRC.)
- B. The faculty will elect faculty members of the SHRC; the President will appoint administrative members; the Student Senate will appoint student members. Each committee member will serve a three-year term with terms among members of the same constituency overlapping.
- C. The Sexual Harassment Officers will coordinate training of the SHRC.
- D. The SHRC shall compile a list of Sexual Harassment Advisors who will be trained by the Sexual Harassment Officers to assist both the complainants and respondents in sexual harassment cases. The list of advisors shall be posted on the college web site annually and should reflect the diversity of the campus community. The advisors shall include but are not limited to one (1) representative from each administrative division, three (3) faculty members, one (1) Lifelong Learning student, all commuter advisors and the residence life staff.
- E. The SHRC will undertake a periodic review of the Sexual Harassment Policy and recommend revisions to the B-W community as necessary.

Appendix 2: POLICY ADMINISTRATION

A. Administration

In order to address the campus-wide needs for effective implementation of the sexual harassment policy and to provide on-going education for the campus community, the President will appoint four (4) Sexual Harassment Officers and two (2) alternates who will report to the President. The Sexual Harassment Officers will coordinate and supervise all efforts related to the investigation and resolution of all sexual harassment cases, including engaging an investigative team, if appropriate. If a Sexual Harassment Officer determines that sufficient evidence is found that sexual harassment has occurred and informal procedures have failed to bring resolution, the case will be brought to the attention of the Sexual Harassment Review Committee (SHRC), who will hear the formal complaint. Lack of consent by the complainant will not necessarily bar the hearing of the complaint. The Sexual Harassment Officers' duties include the following:

- The Sexual Harassment Officers will coordinate campus-wide education regarding the sexual harassment policy; coordinate training for the newly appointed Officers, the Sexual Harassment Review Committee (SHRC) members, the Sexual Harassment Advisors, and the appellate bodies; and provide general education regarding sexual harassment issues on campus. Campus-wide training and education regarding sexual harassment issues shall be implemented as follows:
 - Sexual harassment education training will be included during new faculty orientation sessions.
 - Sexual harassment education seminars will be offered every three years, mandatory for all faculty, administration and staff.
 - Sexual harassment education training will be conducted annually for Residence Hall Assistants and will be included in new student orientation.
- The Sexual Harassment Officers will develop and publish an annual report on the incidence of sexual harassment cases (without names) and their resolutions to share with the Baldwin-Wallace College community.
- The Sexual Harassment Officers, assisted by the Sexual Harassment Review Committee (SHRC), will give advice related to on-going policy issues, consult

regarding the execution of policies on sexual harassment, and serve during formal complaint procedures.

- The Sexual Harassment Officers will coordinate both informal and formal procedures.
- The Sexual Harassment Officers will seek to assure a confidential initial investigation. Should an officer reasonably believe that sexual harassment has occurred, he or she must either attempt to resolve the case through informal procedures, or if this attempt fails, initiate the formal procedures. Lack of consent from the complainant will not necessarily bar the hearing of the complaint.
- The Sexual Harassment Officers shall be responsible for all record keeping related to sexual harassment complaints, investigations and outcomes of informal or formal procedures.

B. Education

The current sexual harassment policy, as updated by the Sexual Harassment Review Committee and adopted by the Board of Trustees, is published in complete and unchanged form in the *Student Handbook*, the *Faculty Handbook*, the *Employee Handbook*, and the *Baldwin-Wallace College web site*. For the purposes of prevention, the Sexual Harassment Officers will coordinate campus-wide efforts to educate the Baldwin-Wallace College community regarding sexual harassment.